



City of Killeen

Agenda City Council

Tuesday, July 12, 2016

5:00 PM

Killeen City Hall
City Council Chambers
101 North College Street
Killeen, Texas 76541

Call to Order and Roll Call

___ Jose Segarra, Mayor ___ Brockley Moore
___ Shirley Fleming ___ Jonathan Okray
___ Gregory Johnson ___ Juan Rivera
___ Jim Kilpatrick ___ Dick Young

Invocation

Pledge of Allegiance

Approval of Agenda

Minutes

[MN-16-016](#) Consider Minutes of Regular City Council Meeting of June 28, 2016.

Attachments: [Minutes](#)

[Johnson Statement for the Record](#)

Resolutions

[RS-16-074](#) Consider a memorandum/resolution accepting a Defense Economic Adjustment Assistance Grant (DEAAG) agreement.

Attachments: [Council Memorandum](#)

[Agreement](#)

[RS-16-075](#) Consider a memorandum/resolution appointing an independent auditor for the fiscal year ending September 30, 2016.

Attachments: [Council Memorandum](#)

[Audit Engagement Letter](#)

[RS-16-073](#) Consider a memorandum/resolution providing a temporary salary adjustment to Interim City Manager Lillian Ann Farris. (Tabled from June 28, 2016 Regular Council Meeting)

Attachments: [Council Memorandum](#)

[RS-16-076](#) Consider a memorandum/resolution to allow the carrying of concealed

handguns at the City's open meetings by no longer posting notice.

Attachments: [Council Memorandum](#)

[RS-16-077](#)

Consider a memorandum/resolution to allow the open carrying of handguns at the City's open meetings by no longer posting notice.

Attachments: [Council Memorandum](#)

Ordinances

[OR-16-009](#)

Consider an ordinance granting a gas franchise to Atmos Energy Corporation. (2nd of 3 readings)

Attachments: [Council Memorandum](#)

[Ordinance](#)

Public Hearings

[PH-16-021](#)

HOLD a public hearing and consider an ordinance requested by Joaquin Carrasquillo to rezone approximately 0.5 acre, being part of the T. Robinett Survey, Abstract No. 686, from "A-R1" (Agricultural Single-Family Residential District) to "B-3" (Local Business District) for an insurance office. The property is located between W. Elms Road and Janelle Drive, approximately 1,177 feet west of Winfield Drive, Killeen, Texas.

Attachments: [Council Memorandum](#)

[Attachment to CCMO](#)

[Minutes](#)

[Ordinance](#)

[Application](#)

[Location map](#)

[Buffer map](#)

[Considerations](#)

[PH-16-022](#)

HOLD a public hearing and consider an ordinance requested by the Donald Earl Nellis and Lenner Hair Nellis Revocable Living Trust to rezone 13.556 acres out of the R. Cunningham Survey, Abstract No. 199 from "R-1" (Single-Family Residential District) to Planned Unit Development (PUD) with "R-2" (Two-Family Residential District) and "R-3F" (Multifamily Residential District) uses for a Housing Tax Credit (HTC) eligible project named Hyde Estates. The property is located along the east right-of-way of Cunningham Road, approximately 600' south of its intersection with E. Stan Schlueter Loop (FM 3470).

Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Ordinance](#)
[Exhibits](#)
[Application](#)
[Location map](#)
[Buffer map](#)
[Considerations](#)
[Responses](#)
[Opposition](#)

[PH-16-023A](#) HOLD a public hearing and consider an ordinance to amend the Comprehensive Plan's Future Land Use Map (FLUM) from 'Suburban Commercial' to 'General Residential' (FLUM# Z16-10) for approximately 10.89 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Deorsom Loop and Judy Drive, Killeen, Texas.

Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Ordinance](#)
[Application](#)

[PH-16-023B](#) HOLD a public hearing and consider an ordinance requested by Killeen BES, Ltd., Killeen EGS Property, Ltd., and Bentina Ltd. (Case #Z16-10) to rezone approximately 10.89 acres, out of the Azra Webb Survey, Abstract No. 857, from "B-3" (Local Business District) to a Planned Unit Development (PUD) with "SF-2" (Single-Family Residential District) uses. The property is located on the west side of Trimmier Road between Judy Drive and Deorsam Loop, Killeen, Texas.

Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Exhibit](#)
[Ordinance](#)
[Application](#)
[Location map](#)
[Buffer map](#)
[Considerations](#)

[PH-16-024A](#) HOLD a public hearing and consider an ordinance to amend the Comprehensive Plan's Future Land Use Map (FLUM) from 'General

Commercial' to 'General Residential' (FLUM# Z16-11) for approximately 5.81 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.

Attachments: [Council Memorandum](#)

[Attachment to CCMO](#)

[Application](#)

[Minutes](#)

[Ordinance](#)

[PH-16-024B](#) HOLD a public hearing and consider an ordinance requested by Killeen BES, Ltd., Killeen EGS Property, Ltd., and Bentina Ltd. (Case #Z16-11) to rezone approximately 5.81 acres, out of the Azra Webb Survey, Abstract No. 857, from "B-5" (Business District) to "R-2" (Two-Family Residential District). The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.

Attachments: [Council Memorandum](#)

[Attachment to CCMO](#)

[Minutes](#)

[Ordinance](#)

[Application](#)

[Location map](#)

[Buffer map](#)

[Considerations](#)

[Response](#)

Adjournment

I certify that the above notice of meeting was posted on the Internet and on the bulletin boards at Killeen City Hall and at the Killeen Police Department on or before 5:00 p.m. on July 8, 2016.

Dianna Barker, City Secretary

The public is hereby informed that notices for City of Killeen meetings will no longer distinguish between matters to be discussed in open or closed session of a meeting. This practice is in accordance with rulings by the Texas Attorney General that, under the Texas Open Meetings Act, the City Council may convene a closed session to discuss any matter listed on the agenda, without prior or further notice, if the matter is one that the Open Meetings Act allows to be discussed in a closed session.

This meeting is being conducted in accordance with the Texas Open Meetings Law [V.T.C.A., Government Code, § 551.001 et seq.]. This meeting is being conducted in accordance with the Americans with Disabilities Act [42 USC 12101 (1991)]. The facility is wheelchair accessible and handicap parking is available. Requests for sign

interpretive services are available upon requests received at least 48 hours prior to the meeting. To make arrangements for those services, please call 254-501-7700, City Manager's Office, or TDD 1-800-734-2989.

Notice of Meetings

The Mayor and/or City Council have been invited to attend and/or participate in the following meetings/conferences/events. Although a quorum of the members of the City Council may or may not be available to attend this meeting, this notice is being posted to meet the requirements of the Texas Open Meetings Act and subsequent opinions of the Texas Attorney General's Office. No official action will be taken by Council.

- *GKCC Military Relations Council Luncheon, July 14, 2016, 11:30 a.m., Texas A&M University - Central Texas*
- *Korean War Veterans Association Annual Banquet, July 23, 2016, 6:00 p.m., Club Hood*

Dedicated Service -- Every Day, for Everyone!



City of Killeen

Legislation Details

File #: MN-16-016 **Version:** 1 **Name:** Minutes of Regular City Council Meeting of June 28, 2016
Type: Minutes **Status:** Minutes
File created: 6/23/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: Consider Minutes of Regular City Council Meeting of June 28, 2016.
Sponsors: City Manager Department
Indexes:
Code sections:
Attachments: [Minutes](#)
[Johnson Statement for the Record](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

City of Killeen
Regular City Council Meeting
Killeen City Hall
June 28, 2016 at 5:00 p.m.

Presiding: Mayor Jose L. Segarra

Attending: Mayor Pro-Tem Brockley Moore, Councilmembers Juan Rivera, Gregory Johnson, Jonathan Okray, and Richard Young

Absent: Jim Kilpatrick, Shirley Fleming

Also attending were Interim City Manager Lillian Ann Farris, City Attorney Kathryn Davis, City Secretary Dianna Barker, and Sergeant-at-Arms Bradley.

Minister Hamilton gave the invocation, and Mayor Pro-Tem Moore led everyone in the Pledge of Allegiance.

Approval of Agenda

Motion was made by Mayor Pro-Tem Moore to approve the agenda as written. Motion seconded by Councilmember Okray. The motion carried 5 to 0.

Presentations

PR-16-001 Presentation: Force Reduction Assessment
Stu McLennan provided a slide presentation and briefly went over the Fort Hood Force Reduction Assessment. The task was to conduct a comprehensive assessment of the economic impact resulting from the reduction of 3,350 soldiers at Fort Hood.

Minutes

Motion was made by Councilmember Rivera to approve the minutes of the June 14th Regular City Council Meeting. Motion was seconded by Councilmember Young. Motion carried 5 to 0.

Motion was made by Councilmember Johnson to approve the minutes of the June 21st Special Called City Council Meeting. Motion was seconded by Councilmember Young. Motion carried 5 to 0.

Resolutions

RS-16-071 Consider a memorandum/resolution authorizing a lease for fitness equipment at the Family Recreation Center.

Staff comments: Brett Williams

The existing lease agreement for cardiovascular equipment at the Family Recreation Center expires in June of 2016. Staff recommends that City Council authorize the City Manager to execute a contract with Team Marathon Fitness for the lease of cardiovascular / fitness equipment for the Family Recreation Center in the amount of \$118,426.39. Staff also recommends the City Manager be authorized to execute any change orders in the amounts allowed by state law.

Motion was made by Councilmember Rivera to approve RS-16-071. Motion was seconded by Mayor Pro-Tem Moore. Motion carried 5 to 0.

RS-16-072 Consider a memorandum/resolution to enter into an agreement with TriStem to conduct an assessment or audit of prior utility billing and payments.

Staff comments: Jonathan Locke

The attached agreement calls for Tri-Stem to conduct an audit and assessment of the City's prior utility billing and payments. TriStem will perform a physical inventory of the City's street lights, utility poles, and meters, as well as reconcile the inventory to utility invoices. Staff recommends that the City Council approve entering into the attached agreement with TriStem to conduct a utility audit, and that the City Manager be expressly authorized to execute any and all changes to this contract within the amounts set by state and local law.

Motion was made by Councilmember Johnson to approve RS-16-072. Motion was seconded by Mayor Pro-Tem Moore. Motion carried 5 to 0.

RS-16-073 Consider a memorandum/resolution providing a temporary salary adjustment to Interim City Manager Lillian Ann Farris.

Staff comments: Eva Bark

The City Council wishes to provide an increase in salary and benefits in recognition of her increased job duties.

- \$178,532.58 annual salary, paid in equal monthly installments;
- \$12,000 annual contribution to Deferred 457 Retirement Plan, paid in equal monthly installments;
- \$6,000 annual car allowance, paid in equal monthly installments;
- All other benefits to which other city employees may be entitled.

All salary and benefits shall be paid and accrued retroactively to April 5, 2016, and shall continue until 24 hours preceding the reporting date of the next City Manager, at which time she will revert to the position and associated salary and benefits of Assistant City Manager-Internal Services. Council recommends that salary and benefits discussed above be approved, effective April 5, 2016, and continue until 24 hours preceding the reporting date of the next City Manager.

Councilmember Johnson made a statement for the record. See attached.

Motion was made by Mayor Pro-Tem Moore to approve RS-16-073. Motion was seconded by Councilmember Okray.

Motion was made by Councilmember Young to table this item pending further information and place it back on the next workshop agenda for discussion and the next council meeting agenda for action. Motion was seconded by Councilmember Rivera. Motion carried 3 to 2 with Councilmember Okray and Mayor Pro-Tem Moore opposing.

Main motion failed due to prevailing secondary motion.

Ordinances

OR-16-010 Consider an ordinance amending the City of Killeen Code of Ordinances, Chapter 31, Article IV, Division 21, University District and Division 22, Cemetery District.

The City Secretary read the caption of the ordinances.

AN ORDINANCE AMENDING CHAPTER 31 OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; AMENDING ARTICLE IV, DIVISION 21, UNIVERSITY DISTRICT; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

AN ORDINANCE AMENDING CHAPTER 31 OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; AMENDING ARTICLE IV, DIVISION 22, CEMETERY DISTRICT; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

Staff comments: Charlotte Hitchman

Staff has summarized the proposed changes to the University District and Cemetery District. Specifically, the following items are being proposed:

- A purpose statement for each district has been added;
- Neon and electronic message display signs are excluded;
- Window sign coverage is proposed to cover no more than 25% of the total glass area;
- Building wall sign regulations and sign maintenance requirements are included;
- Parking lot guidelines are included to prevent uncontrolled vehicular movement across parking areas and to increase visual aesthetics;
- Reserved parking spaces in both districts for Purple Heart recipients and Gold Star recipients are recommended;
- Revised architectural design standards and requirements are proposed to encourage the appearance of smaller, human scale buildings;
- Masonry standards and roof standards are clarified;
- Revised landscaping requirements are recommended to increase size, number, and coverage of foliage;
- Within the Cemetery District, on-premises residential use or living quarters in a commercial structure as an allowable use has been removed as it is substantially similar to another allowable use; additionally, business day care and hotel or motel use has been removed.
- Within the University District, a recommendation to exclude credit access businesses is proposed; no outside storage was added to household appliance sales and repair service use; and business day care has been added.

The Planning and Zoning Commission recommends that the City Council approve the proposed amendments to the University District and Cemetery District. If approved, the proposed revisions will apply to all new development and redevelopment within these two districts in accordance with the nonconforming use provisions in Chapter 31.

Motion was made by Councilmember Okray to approve OR-16-010 as presented. Motion was seconded Councilmember Rivera.

Councilmember Young requested the two ordinances be voted on separately. Councilmember Okray withdrew his motion and Councilmember Rivera withdrew his second.

Motion was made by Councilmember Okray to approve OR-16-010, University District ordinance as presented. Motion was seconded by Councilmember Rivera.

Motion was made by Councilmember Young to amend the motion for the University District Ordinance by removing the verbiage added by the Planning & Zoning Commission regarding electronic signs. Motion failed for lack of a second.

The motion to approve OR-16-010, University District Ordinance, carried 5 to 0.

Motion was made by Councilmember Okray to approve OR-16-010, Cemetery District ordinance, adding the provision that business day cares be included as an approved use in the Cemetery District. Motion was seconded by Mayor Pro-Tem Moore. Motion carried 5 to 0.

Adjournment

With no further business, upon motion being made by Councilmember Okray, seconded by Councilmember Rivera, and unanimously approved, the meeting was adjourned at 5:56 p.m.

Statement for the Record:

I have received numerous calls and emails from residents that have voiced their opposition to this measure for various reasons.

I think all city employees regardless of the perceived importance of their position, deserve to be properly compensated when assigned increased leadership duties and responsibilities for an extended period of time.

I will yield to the wishes of the citizens and taxpayers of his City and oppose this measure.



City of Killeen

Legislation Details

File #: RS-16-074 **Version:** 1 **Name:** DEAAG Agreement Acceptance
Type: Resolution **Status:** Resolutions
File created: 6/10/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: Consider a memorandum/resolution accepting a Defense Economic Adjustment Assistance Grant (DEAAG) agreement.
Sponsors: Aviation Department
Indexes:
Code sections:
Attachments: [Council Memorandum Agreement](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Office of the Governor DEAAG Agreement

ORIGINATING DEPARTMENT

Aviation

BACKGROUND INFORMATION

The Office of the Governor has offered the City of Killeen a Defense Economic Adjustment Assistance Grant (DEAAG) to provide funding for the repair and rehabilitation of the Army Radar Approach Control (ARAC) at Robert Gray Army Airfield.

DISCUSSION/CONCLUSION

The City has been offered the DEAAG in the amount of \$3,475,000.00. This grant will fund 65% of the project cost. The remaining project cost will be funded by the United States Army Garrison at Fort Hood (USAG-FH), the Killeen Economic Development Corporation (KEDC), and in-kind services provided by the USAG-FH and the City. This agreement stipulates the obligations of each party regarding the expenditure of DEAAG funds.

Acceptance of the agreement requires the City to make certain assurances related to compliance with the Uniform State Grant Assurances and Standards.

FISCAL IMPACT

Acceptance of this grant will provide revenue of up to \$3,475,000.00 in account number 528-0000-382.05-03.

RECOMMENDATION

Staff recommends that the City Council accept the Office of the Governor DEAAG in the amount of \$3,475,000 and ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements incorporated into this grant agreement, authorize the City Manager to execute the agreement and all necessary grant documents, and expressly authorize the City Manager to execute any and all amendments within the amounts set by state and local law.

**AGREEMENT FOR THE
DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT
BETWEEN THE
OFFICE OF THE GOVERNOR,
TEXAS MILITARY PREPAREDNESS COMMISSION
AND
CITY OF KILLEEN**

**STATE OF TEXAS
COUNTY OF TRAVIS**

THIS AGREEMENT is between the Office of the Governor, Texas Military Preparedness Commission, P.O. Box 12428, Austin, Texas 78711 (“OOG” or “Grantor”), and the City of Killeen (“Grantee”). OOG and Grantee are referred to collectively as the “parties.” The parties hereto have severally and collectively agreed and by the execution of this Agreement are bound to the mutual obligations and to the performance and accomplishment of the tasks described herein.

SECTION 1. PURPOSE. This Grant is awarded pursuant to Texas Government Code, Chapter 436, which authorizes OOG to administer the Defense Economic Adjustment Assistance Grant (“DEAAG”) program. The DEAAG program provides state funds to defense communities that have been or may be affected by a base realignment and closure action for the purposes of purchasing property, sharing the costs of infrastructure or redevelopment projects, and the purchase or lease of equipment, including equipment for the training of defense workers.

SECTION 2. TERM OF AGREEMENT. This Agreement will commence September 1, 2016 and will terminate on August 31, 2017, or upon the completion of the Grant Project as described herein, whichever occurs first, unless terminated earlier pursuant to Section 16 of this Agreement.

SECTION 3. PROJECT REQUIREMENTS. Consistent with Section 436.203 of the Texas Government Code, grant proceeds may be used for the purchase of property, new construction, rehabilitation or renovation of facilities or infrastructure, or purchase of capital equipment or facilities insurance, and if applicable, to purchase or lease equipment to train certain workers. Subject to the requirements of applicable law and this Agreement, Grantee may use grant proceeds as cost reimbursement for certain actual, reasonable, and allowable costs that are directly allocable to the Project in accordance with the Grant Project, as further described in Exhibit A (Grant Budget), Exhibit B (Grant Narrative), and the Grantee's DEAAG Grant Application.

SECTION 4. OOG OBLIGATIONS.

A. The OOG shall reimburse the Grantee for the actual and allowable allocable costs incurred by Grantee during the term of this Agreement, subject to the requirements and limitations set forth herein.

B. OOG shall not be liable to Grantee for any costs incurred by Grantee that are not strictly in accordance with the terms of this Agreement.

SECTION 5. MAXIMUM AMOUNT OF GRANT. Notwithstanding any other provision of this Agreement, the total of all grant reimbursement payments and other obligations incurred by OOG under the terms of this Agreement shall not exceed **THREE MILLION FOUR HUNDRED SEVENTY FIVE THOUSAND AND NO/100 (\$3,475,000.00) DOLLARS**. The parties stipulate and agree that any act, action or representation by either party, their agents or employees that purport to increase the liability of the OOG is voidable by the OOG, unless this Agreement is amended.

SECTION 6. GENERAL REQUIREMENTS APPLICABLE TO THE GRANT.

A. Grant funds may be used only for the actual, reasonable, and allowable costs incurred during the term of this Agreement and that are directly allocable to the Project. Grant funds may not be used for the payment of taxes, overtime, overhead, debt repayment, indirect expenses, or administrative expenses.

B. All grant funds will be disbursed on a cost reimbursement basis only. Only costs that have been incurred and paid by the Grantee are eligible for reimbursement. Grant funds are not eligible for use to provide an advance payment to a Grantee or subgrantee.

C. In no case shall the payments made to a Grantee exceed the actual, reasonable, and allowable costs that are directly allocable to the Project costs as identified in the Grant Budget, or the Maximum Amount of Grant as set forth in Section 5 of this Agreement.

D. Pre-award costs incurred prior to the effective date of the Agreement may be allowable only with the written approval of the OOG and only to the extent that they would have been allowable if they had been incurred after the date of the award.

E. All costs must be allowable in accordance with the purposes authorized by Texas Government Code, Chapter 436, the DEAAG Administrative Rules (Title I, Texas Administrative Code, Chapter 4, Subchapter B), this Agreement, the Grant Budget, and other applicable law.

F. The grants are subject to the requirements of applicable state law, regulations, and policies, including, but not limited to, Texas Government Code Chapter 783, the administrative rules of the Texas Comptroller of Public Accounts at Title 34, Chapter 20, Subchapter I of the Texas Administrative Code, and the State Uniform Grant Management Standards (UGMS). The UGMS is available for download at: <http://comptroller.texas.gov/procurement/prog/grant-management/>. The 2004 version of the UGMS is the current version as of the date of this

Agreement, however the UGMS may be updated by the Comptroller of Public Accounts from time-to-time.

G. Grantees agree to comply with the Uniform State Grant Assurances as set forth in Exhibit C.

SECTION 7. CONDITIONS PRECEDENT TO REIMBURSEMENT. Grant funds shall be disbursed on a cost reimbursement basis, subject to the terms of this Agreement. All of the following conditions precedent must be met to the satisfaction of OOG prior to any reimbursement payments:

A. All costs incurred by Grantee for which Grantee seeks reimbursement must be for the actual, reasonable, and allowable costs that are directly allocable to the Project costs described in the Grant Budget.

B. OOG must have received from Grantee a Request for Reimbursement specifying the amount of the Grant being requested, along with invoices showing all such costs. **No requests for the reimbursement of expenditures incurred by the Grantee after August 31, 2017 will be considered by OOG.** The total amount already disbursed plus the amount requested shall not exceed the maximum amount of the Grant set forth in Section 5 of this Agreement.

C. Grantee must be in compliance with all terms of this Agreement.

D. Grantee must have supplied to the OOG all reports or other items that OOG requires or has requested.

SECTION 8. STRUCTURE FOR REIMBURSEMENT PAYMENTS.

A. **Reimbursement Request.** The OOG will make a reimbursement payment to the Grantee only in response to an approved Request for Reimbursement from the Grantee for the payment of actual, reasonable, and allowable costs that are directly allocable to the Project. The Grantee's reimbursement request will be submitted to the OOG in the form and manner as approved by the OOG and will specify the detailed and total expenses for the reimbursement request. All requests for the reimbursement of allowable costs will be submitted to the OOG in accordance with the schedule as set forth in Section 8.C.

All reimbursement requests and payment inquiries shall be submitted directly to:

Office of the Governor
Texas Military Preparedness Commission
Attn: Alexandra Taylor
P.O. Box 12428
Austin, Texas 78711
alexandra.taylor@gov.texas.gov

B. **Required Documentation.** Each Request for Reimbursement presented must include: (1) identification of the specific OOG Agreement; (2) the Grantee's federal tax identification

number; (3) the name and division of the OOG contact; (4) description of the services/costs/expenses and the dollar amount attributable to each; (5) the name of the entity or person providing the service and the cost(s) charged by such entity or person; and (6) an itemization of charges with sufficient detail to permit the OOG to determine if the costs are allowable.

Requests for Reimbursement must include documentation of proof of payment as evidence of actual expenditures. Acceptable proof of payment includes, but is not necessarily limited to, a receipt or other documentation of a paid invoice, a general ledger detailing the specific revenue and expenditures, a monthly bank statement evidencing payment of the specific expenditure, a check register or transaction register, bank reconciliation detail, copies of voided checks, or a printed copy of an electronic payment confirmation evidencing payment of the specific expenditure(s) to which the reimbursement relates.

Each item of expenditure shall be specifically attributed to the eligible project cost category as identified in the Grant Budget. By submission of a reimbursement request, Grantee is warranting the following: (1) all invoices have been carefully reviewed to ensure that all invoiced services or goods have been performed or delivered; (2) that the services or goods have been performed or delivered in compliance with all terms of this Agreement; (3) that the amount of each new invoice added together with all previous invoices does not exceed the Maximum Amount of Grant as stated in Section 5 of this Agreement; and (4) the charges and expenses shown on the invoice are reasonable, necessary, and that all supporting documentation is attached.

C. Timing of Submission of Request for Reimbursement to the OOG; Close-Out Invoice.

Grantee is responsible for submitting bills in an accurate and timely manner, and shall make every reasonable effort to submit quarterly billings to the OOG, which cover the previous quarter's expenses, so that they are received by the OOG on or before the twentieth (20th) day after the end of each quarter, or if the 20th falls on a weekend or holiday, the next business day. Quarterly reimbursement requests are due: (1) First quarter – December 20; (2) Second Quarter – March 20; (3) Third Quarter – June 20; (4) Fourth Quarter – September 20.

The OOG will make all reasonable efforts to promptly process and make payments on properly completed billings. Grantee may submit a final invoice not later than the earlier of (1) forty-five (45) calendar days after termination of this Agreement; or (2) forty-five (45) calendar days after the end of each state fiscal year.

D. Final Deadline for Reimbursement Requests. All requests for reimbursement must be received by the OOG no later than **October 15, 2017** (i.e., forty-five (45) calendar days after termination of this Agreement). An Agreement amendment must be executed by the OOG and the Grantee in order to extend this deadline. Any extension of the deadline is within the sole discretion of the OOG and subject to the availability of appropriated funds.

E. Disclosure of Reimbursement Information under the Public Information Act. All reimbursement documentation submitted to the Office of the Governor (OOG) is subject to disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code ("the Act"), whether created or produced by the Grantee or by any third-party. If it is necessary

for the Grantee to include proprietary or otherwise confidential information in the documents submitted, that particular information should be clearly identified as such. Merely making a blanket claim that the all documents are protected from disclosure because they may contain some proprietary or confidential information is not acceptable, and will not render the whole of the information confidential. Any information, which is not clearly identified as proprietary or confidential is subject to release in accordance with the Act.

F. Right to Request Additional Documentation. Upon the request of the OOG, the Grantee must submit to the OOG any additional documentation or explanation the OOG may require to support or document any requested payment under the Agreement.

G. Allowable Costs. The OOG shall reimburse the Grantee only for actual, reasonable, and allowable costs that are directly allocable to the Project as determined by the OOG in accordance with the Texas Government Code, Chapter 436, the DEAAG Administrative Rules (Title I, Texas Administrative Code, Chapter 4, Subchapter B), this Agreement, the Grant Budget, and in conformity with the UGMS.

SECTION 9. BUDGET ADJUSTMENT. Prior written approval from the OOG is required if Grantee anticipates altering the scope of the grant, adding funds to previously un-awarded budget items or categories, changing funds in any awarded budget items or category by more than 10% of the annual budget, and/or adding new line items to any awarded budget category.

SECTION 10. PURCHASE OF EQUIPMENT; MAINTENANCE AND REPAIR; TITLE UPON TERMINATION. Grantee shall not give any security interest, lien or otherwise encumber any item of equipment purchased with grant funds. Grantee shall identify all equipment purchased under this Agreement by appropriate tags or labels affixed to the equipment. Grantee shall maintain a current inventory of all equipment, which shall be available to the OOG at all times upon request, however, as between the OOG and Grantee title for equipment will remain with Grantee. Grantee will maintain, repair, and protect all equipment purchased in whole or in part with grant funds so as to ensure the full availability and usefulness of such equipment. In the event Grantee is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the equipment purchased under this Agreement, Grantee shall use the proceeds to repair or replace said equipment. Upon termination of this Agreement, title, use, and disposal of equipment shall be in conformity with the UGMS.

SECTION 11. REPORTING REQUIREMENTS.

A. Until Grantee has submitted a Project Completion Report to OOG, Grantee shall submit a Quarterly Project Status Report to OOG, using the form attached hereto as Exhibit D, no later than twenty (20) calendar days after the end of each calendar quarter summarizing grant expenditures and detailing the progress on grant requirements.

B. After Grantee has completed the Grant Project as set forth in this Agreement, but in no case more than one hundred twenty (120) calendar days after termination of this Agreement, Grantee shall submit to OOG a Project Completion Report, using the form attached hereto as Exhibit E, describing all activities performed under this Agreement. Grantee shall provide to OOG a

Certification of Delivery, certifying that Grantee has received delivery of all equipment purchased pursuant to this Agreement.

C. No later than sixty (60) calendar days after the date on which Grantee submits its Project Completion Report to OOG, Grantee shall provide to OOG a DEAAG Project Impact Report, using the form attached hereto as Exhibit F. A DEAAG Project Impact Report must contain information concerning jobs generated and retained, and individuals trained as a result of the Project. For purposes of this Agreement, job creation, retention, and training rates may be evidenced by satisfactory documentation, such as copies of payroll documents, human resource documents, or training enrollment records.

E. Grantee shall provide to OOG additional information regarding the status of the Project at any time upon request from OOG.

F. Grantee shall cooperate with OOG and provide all requested assistance to OOG in connection with the preparation of any reports required from time to time to be made by OOG to the Texas Legislature or any relevant governmental entity regarding Grantee, the Grant, the Project, or the Grant Application.

G. All reports provided to OOG must be signed by the duly authorized representative of Grantee.

I. **Failure to Provide Required Reports and Other Documentation.** If after a written request by the OOG, Grantee fails to provide required reports, information, documentation or other information as required by this Agreement, then the OOG may require corrective action or consider this act a possible default under this Agreement.

SECTION 12. CORRECTIVE ACTION.

A. Failure to Progress with Grant Project. If after written notice by the OOG to the Grantee, Grantee fails to make progress on the grant project, then the OOG may consider this act a possible default under this Agreement.

B. Notice of Possible Default. The parties agree to make a good faith effort to identify, communicate and resolve problems found by either the OOG or Grantee. The OOG, in its sole discretion, will determine whether Grantee has acted or failed to act in such a manner that gives rise to an act of possible default under this Agreement. The OOG shall give written notice to Grantee setting out the circumstances that support the OOG's determination of possible default.

C. Opportunity to Cure. The OOG will give the Grantee at least thirty (30) calendar days to cure the possible default and to provide the OOG sufficient information that supports a finding of cure by the OOG.

D. Cure. If the OOG is satisfied that the Grantee has cured the possible default event, the OOG shall give written notice to the Grantee. The OOG will be guided by good faith and reasonableness in determining, in the sole discretion of the OOG, whether the Grantee has cured the possible default.

E. Default. If the OOG is not satisfied that the Grantee has cured the possible default, the Grantee shall be in default hereunder, and the OOG shall give written notice to the Grantee declaring such default. Any default may result in termination of this Agreement in accordance with Section 16.

F. Corrective Action Plans. If the OOG finds deficiencies in Grantee's performance under this Agreement, the OOG, at its sole discretion, may impose one or more of the following remedies as part of a corrective action plan: increase monitoring visits; require that additional or more detailed financial and/or programmatic reports be submitted; require prior approval for expenditures; require additional technical or management assistance and/or make modifications in business practices; reduce the grant award amount; and/or terminate this Agreement. The foregoing are not exclusive remedies, and the OOG may impose other requirements that the OOG determines will be in the best interest of the State.

G. Financial Hold. Failure to comply with submission deadlines for required reports, invoices, or other requested information may result in the OOG, at its sole discretion, placing Grantee on immediate financial hold without further notice to Grantee and without first requiring a corrective action plan. No reimbursements will be processed until the requested information is submitted. If Grantee is placed on financial hold, the OOG, at its sole discretion, may deny reimbursement requests associated with expenses incurred during the time Grantee was placed on financial hold.

H. Sanctions. In addition to financial hold, the OOG, at its sole discretion, may impose other sanctions without first requiring a corrective action plan. The OOG, at its sole discretion, may impose sanctions, including, but not limited to, withholding or suspending funding, requiring return or offset of previous reimbursements, requiring repayment, disallowing claims for reimbursement, reducing funding, terminating this Agreement and/or any other appropriate sanction.

I. No Waiver. Notwithstanding the imposition of corrective actions, financial hold and/or sanctions, Grantee remains responsible for complying with the Agreement terms and conditions. Corrective action plans, financial hold and/or sanctions do not excuse or operate as a waiver of prior failure to comply with this Agreement.

SECTION 13. NOTICES. Any notice required or permitted to be given under this Agreement by the either party shall be in writing and shall be deemed to have been given immediately if delivered by e-mail, or in person as set forth in this section. Any notice required or permitted to be given under this Agreement may be given by regular first class mail and/or email and shall be deemed to have been given on the date of attempted or actual delivery to the recipient if addressed to the receiving party at the address specified in this section:

Office of the Governor
Texas Military Preparedness Commission
Attn: Alexandra Taylor
P.O. Box 12428

City of Killeen
Matt Van Valkenburgh
Executive Director of Aviation
101 N. College Street

Austin, Texas 78711
Email: alexandra.taylor@gov.texas.gov

Killeen, TX 76541
Email: mvanvalkenburgh@killeentexas.gov

SECTION 14. GRANTEE CERTIFICATIONS. By executing this Agreement, Grantee hereby makes the following certifications and warranties:

A. Delinquent Child Support Obligations. Under Texas Family Code, Section 231.006(d), regarding child support, Grantee certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

B. Prohibited Bids and Agreements. Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and agreements), Grantee certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

C. Gift to Public Servant. Grantee warrants that it has not given, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this Agreement.

D. Former Executive Head and Employees of the Agency. Grantee certifies that this Agreement is compliant, and will remain in compliance during the Agreement term, with the following Sections of the Texas Government Code: Section 669.003 (Contracting with Executive Head of State Agency); Section 572.069 (Prohibiting employment of state officers and employees who participated in the procurement of services); and Section 2252.901 (Contracts with Former or Retired Agency Employees).

E. Conflicts of Interest. Grantee certifies that neither it nor the personnel or entities employed in rendering services under this Agreement have, nor shall they knowingly acquire, any interest that would be adverse to or conflict in any manner with the performance of Grantee's obligations under this Agreement. Grantee has a continual and ongoing obligation to immediately notify the OOG in writing, upon discovery of any actual or potential conflict.

F. Corporate Franchise Tax. Grantee certifies that, if applicable, its Texas franchise tax payments are current, or that it is exempt from, or not subject to, such tax.

G. No Claims. Grantee certifies that Grantee does not have any potential or existing claims against or unresolved audit exceptions with the State of Texas or any agency of the State of Texas.

H. Debt to State. Grantee acknowledges and agrees that, to the extent Grantee owes any debt or delinquent taxes to the State of Texas, any payments Grantee is owed under this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Grantee owes the State of Texas until the debt or delinquent taxes are paid in full.

I. Suspension/Debarment. Grantee certifies that Grantee and Grantee's principals are, to the best of its knowledge and belief, not on the specially-designated nationals list or debarred, suspended, declared ineligible, or voluntarily excluded from participation in this solicitation or any resulting contract. Grantee certifies that it will not knowingly enter into any subcontract with an entity who is, or whose principals are, on the specially designated nationals list or debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Grantee will ensure that this section regarding debarment, suspension, ineligibility, and voluntary exclusion, and the specially-designated nationals list without modification in any subcontracts or solicitations for subcontracts.

J. Deceptive Trade Practices/Unfair Business Practices. Grantee represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that the Respondent has not been found to be liable for such practices in such proceedings. Grantee certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

K. False Statements. By signature to this Agreement, Grantee makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If Grantee signs this Agreement with a false statement or it is subsequently determined that Grantee has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, Grantee shall be in default under this Agreement and the OOG may terminate or void this Agreement for cause and pursue other remedies available to the OOG under this Agreement and applicable law.

L. Felony Criminal Convictions. Grantee represents and warrants that Grantee and its employees who will perform services under this Agreement have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Grantee has fully advised the OOG as to the facts and circumstances surrounding the conviction.

M. Immigration. The Grantee shall comply with the requirements of the Immigration Reform and Control Acts of 1986 and 1990 ("IRCA") regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services in the United States of America under this Grant Agreement, if any, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996.

N. U.S. Department of Homeland Security's E-Verify System. Grantee certifies and ensures that it utilizes and will continue to utilize, for the term of this Grant Agreement, the U.S. Department of Homeland Security's E-Verify system as required by Chapter 673 of the Texas Government Code, and to determine the eligibility of:

- a. All persons employed to perform duties within Texas, during the term of the Grant; and

- b. All persons employed or assigned by Grantee to perform work pursuant to the Grant Agreement, within the United States of America; and
- c. If this certification is falsely made, the Agreement may be terminated.

O. Certification Concerning Hurricane Relief. The OOG is prohibited from awarding an Agreement to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with an Agreement involving relief for any disaster as defined by Section 418.004 Texas Government Code occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Grantee certifies that it is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification inaccurate.

P. Technology Access Clause. If applicable, Grantee will comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Likewise, if applicable, Grantee shall provide the Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). A company not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

Q. Buy Texas. With respect to all services, if any, purchased pursuant to this Agreement, Grantee represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.

R. Liability for Taxes. Grantee represents and warrants that it shall pay all taxes or similar amounts resulting from this Agreement, including, but not limited to, any federal, State, or local income, sales or excise taxes of Grantee or its employees. The OOG shall not be liable for any taxes resulting from this Agreement.

SECTION 15. GENERAL TERMS AND CONDITIONS.

A. Independent Contractor Grantee or Grantee’s employees, representatives, agents and any subcontractors shall serve as an independent contractor in performing the services under this Agreement shall not be employees of the OOG or the State of Texas.

B. Subcontracting. In the event that the Grantee should determine that it is necessary or expedient to subcontract for any of the performances herein, Grantee understands and agrees that it will be responsible to the OOG for any subcontractor’s performance under this Agreement. In

no event shall this section or any other provision of this Agreement be construed as relieving the Grantee of the responsibility for ensuring that performance under this Agreement, and any subcontracts thereto, is rendered in compliance with all of the terms of this Agreement. If Grantee uses a subcontractor for any or all of the work required, the following conditions will apply: (1) The Grantee, in subcontracting for any performances specified herein, expressly understands and agrees that subcontracting will be solely at Grantee's expense and the OOG shall not be liable in any manner to the Grantee's subcontractor(s); (2) Grantee will be the sole contact for the OOG; and (3) Pursuant to Chapter 2251 of the Texas Government Code, Grantee will make any payments owed to subcontractors within ten (10) calendar days of Grantee's receipt of funds from the OOG.

C. No Assignment. This Agreement is not assignable by Grantee. Notwithstanding any attempt to assign the Agreement, Grantee shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.

D. Records Retention. Records shall be maintained and made available to the OOG or its authorized representatives upon request during the entire performance period of this Agreement and until seven (7) years from date of final payment by the OOG for the services provided under this Agreement. In addition, those records relating to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available to the OOG or its designee until completion of such action and resolution of all issues which arise from it, or until the end of the aforementioned seven (7) year period, whichever is later. Failure to provide reasonable access to authorized OOG representatives shall give OOG the right to terminate this Agreement pursuant to Section 16 of this Agreement, or any portion thereof, for reason of default.

E. Right to Audit. Grantee will cooperate fully in any review conducted by the OOG or its authorized representatives related to services provided under this Agreement. The OOG has the authority to monitor, inspect, assess, and review the fiscal, contractual, or performance of the Grantee with respect to the Agreement, including all information related to any services provided under this Agreement or billed to the OOG. Grantee will remedy in a timely manner, any weaknesses, deficiencies, Agreement noncompliance, or audit exceptions found as a result of a review by the OOG or its authorized representatives. Such remedy can include a refund or offset of Agreement payments or any other appropriate actions deemed necessary by the OOG. Acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office to audit or investigate the expenditure of funds under this Agreement or any subcontract. Grantee will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Grantee and the requirement to cooperate is included in any subcontract it awards.

F. Texas Public Information Act. Notwithstanding any provisions of this Grant Agreement to the contrary, Grantee acknowledges that the State of Texas, OOG, and this Grant Agreement are subject to the Texas Public Information Act, Texas Government Code Chapter 552, (the "Act"). Grantee acknowledges that the OOG will comply with the Act, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas.

Grantee acknowledges that information created or exchanged in connection with this Grant Agreement is subject to the Act, and Grantee agrees that information not otherwise excepted from disclosure under the Act, will be available in a format that is accessible by the public at no additional charge to the OOG or State of Texas. Grantee will cooperate with the OOG in the production of documents or information responsive to a request for information.

Information provided by or on behalf of Grantee under, pursuant to, or in connection with this Grant Agreement that Grantee considers proprietary, financial, or trade secret information (collectively "Confidential Information") shall be designated as such when it is provided to the OOG or State of Texas or any other entity in accordance with this Grant Agreement. The OOG agrees to notify Grantee in writing within a reasonable time from receipt of a request for information covering Grantee's Confidential Information. The OOG will make a determination whether to submit a request for a ruling under the Public Information Act to the Attorney General.

Grantee agrees to maintain the confidentiality of information received from the OOG or State of Texas during the performance of this Grant Agreement to the extent allowed by the Act, including information which discloses confidential personal information particularly, but not limited to, personally identifying information, personal financial information and social security numbers. Grantee will notify the OOG within twenty-four (24) hours of receipt of any third party requests for information that was provided to the Grantee by the OOG or the State of Texas.

G. Media Releases or Pronouncements. Grantee understands that the OOG does not endorse any vendor, commodity good, or service. The Grantee, its employees, representatives, subcontractors, or other agents may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Agreement or the services or project to which this Agreement relates, or which mentions the OOG, without the prior written approval of the OOG.

H. Indemnification. TO THE EXTENT ALLOWED BY LAW, GRANTEE WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, THE OOG, AND ITS OFFICERS AND EMPLOYEES FROM ANY CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND COURT COSTS CONNECTED WITH ANY ACTS OR OMISSIONS OF GRANTEE OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. GRANTEE WILL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY THE OOG. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE OOG FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE OOG OR ITS EMPLOYEES.

I. Intellectual Property. TO THE EXTENT ALLOWED BY LAW, THE GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OOG, THE STATE OF

TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, GRANTEEES, ASSIGNEES, AND/OR DESIGNEES AGAINST ANY CLAIM OF COPYRIGHT, TRADEMARK, OR PATENT INFRINGEMENT, OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT ARISING IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF GRANTEE PURSUANT TO THIS AGREEMENT. THE GRANTEE SHALL BE LIABLE TO PAY ALL COSTS, DAMAGES, AND ATTORNEYS' FEES INCURRED BY THE OOG RESULTING FROM SUCH CLAIMS INCLUDING ANY CLAIM FOR THE INFRINGEMENT OF ANY UNITED STATES OR INTERNATIONALLY PROTECTED PATENTS OR COPYRIGHTS ARISING FROM THE USE BY THE GRANTEE OR THE OOG, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, GRANTEEES, ASSIGNEES, AND/OR DESIGNEES OF ANY EQUIPMENT, MATERIALS, INFORMATION, OR IDEAS EMPLOYED OR FURNISHED BY THE GRANTEE IN CONNECTION WITH THE PERFORMANCES CALLED FOR IN THIS AGREEMENT

J. Taxes/Workers' Compensation/Unemployment Insurance. GRANTEE IS FULLY RESPONSIBLE FOR ITS OWN FEDERAL, STATE, AND LOCAL TAXES. GRANTEE AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, GRANTEE SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF GRANTEE'S AND GRANTEE'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. GRANTEE AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE OOG, THE BANK AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE GRANTEE, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF THE OOG.

K. Tax Identification Information Required. As a prerequisite to the OOG's ability to process any payments to Grantee under this Agreement, Grantee shall provide the OOG with required tax and payee identification information in the form of a completed "Application for Texas Identification Number" (available on the Comptroller of Public Accounts' website at <http://www.window.state.tx.us/taxinfo/taxforms/ap-152.pdf>). If Grantee has previously completed the required documentation to obtain a Texas Identification Number (TIN) prior to the effective date of this Agreement, Grantee may satisfy this requirement by providing the OOG with Grantee's current TIN, name, and address to permit the OOG to verify registration in the TINS System with the Texas Comptroller of Public Accounts.

L. Insurance. Unless otherwise noted in this Agreement, and to the extent that Grantee does not have or maintain insurance or does not have or maintain sufficient insurance, Grantee acknowledges and agrees that Grantee will be solely responsible for any losses or damages related to or caused by the Grantee's performing its duties and obligations under this Agreement. The OOG will have no obligation to reimburse or otherwise pay Grantee for any costs incurred related to any such losses or damages.

M. Fraud, Waste and Abuse. Grantee understands that the OOG does not tolerate any type of fraud, waste, or misuse of funds received from the OOG. The OOG's policy is to promote consistent, legal, and ethical organizational behavior, by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, OOG policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event Grantee becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from the OOG that is made against Grantee, Grantee is required to immediately notify the OOG of said allegation or finding. Grantee is also obliged to inform the OOG of the status of any on-going investigations regarding allegations of fraud, waste, or abuse. Grantee is expected to report any possible fraudulent or dishonest acts, waste, or abuse to the OOG's Fraud Coordinator or Ethics Advisor at (512) 463-1788 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

N. Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted in this Agreement is a Saturday or a Sunday or a scheduled State of Texas or national holiday, then such action may be taken or such right may be exercised on the next succeeding business day that is not a Saturday, Sunday or holiday. A schedule of State of Texas holidays is located at:
<http://www.hr.sao.state.tx.us/compensation/holidays.html>

O. Applicable Law and Venue. This Agreement is governed by the laws of the State of Texas. Grantee agrees that any action, suit, litigation or other proceeding (collectively "litigation") arising out of or in any way relating to this Agreement, or the matters referred to therein, shall be commenced exclusively in the Travis County District Court, and hereby irrevocably and unconditionally consents to the exclusive jurisdiction of those courts for the purpose of prosecuting and/or defending such litigation. Grantee hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that: (a) Grantee is not personally subject to the jurisdiction of the above-named court; (b) the suit, action or proceeding is brought in an inconvenient forum; or (c) the venue of the suit, action or proceeding is improper.

P. No Waiver. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the OOG, the State of Texas, and their officials and staff of any immunities from suit or from liability that the OOG or the State may have by operation of law.

SECTION 16. TERMINATION.

A. Convenience. The OOG may, at its sole discretion, terminate this Grant Agreement without recourse, liability, or penalty, against the OOG, upon thirty (30) calendar days' notice to the Grantee.

B. Cause/Default. In the event that Grantee fails to provide the agreed upon services according to the provisions of this Agreement, or fails to comply with any of the terms or conditions of this Agreement, the OOG may, upon written notice of default to Grantee,

immediately terminate all or any part of this Agreement. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law, or under this Agreement.

C. Rights upon Termination or Expiration. In the event that the Agreement is terminated for any reason, or upon its expiration, the OOG shall be obligated to pay Grantee only for actual allowable costs incurred up to the effective date of termination. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Agreement. OOG will not be liable to Grantee or to Grantee's creditors for any costs incurred subsequent to receipt of a Notice to Terminate or any unacceptable or disallowed costs as determined by OOG.

D. Notwithstanding any exercise by OOG of its right of early termination pursuant to this section, Grantee shall not be relieved of any liability to OOG for damages due to OOG by virtue of any breach of this Agreement by Grantee. OOG may withhold payments to Grantee until such time as the exact amount of damages due to OOG from Grantee is agreed upon or is otherwise determined.

E. In the event Grantee fails to comply with any provision as specified in this Agreement, the Grantee may be liable for damages under this Agreement and barred from applying for or receiving additional funding under the DEAAAG program until repayment is made and any other compliance or audit findings are resolved and/or any issue of non-compliance is cured to the satisfaction of OOG pursuant to this section.

F. Grantee shall refund to OOG any sum of money paid to Grantee by OOG, which OOG determines is an overpayment to Grantee, or in the event OOG determines funds spent by Grantee were not an allowable cost of this Project. No refund payment(s) may be made from local, state, or federal grant funds unless statute or regulation specifically permits repayment with grant funds. Such refund shall be made by Grantee to OOG within thirty (30) calendar days after such refund is requested in writing by OOG, or within thirty (30) calendar days of a notice from OOG indicating the request is the result of a final determination that the refund is owed.

SECTION 17. AVAILABILITY OF FUNDS. This Agreement is subject to the availability and receipt of funds appropriated by the Texas Legislature that the OOG has allocated to this Agreement. If funds for this Agreement become unavailable during any budget period, the OOG may terminate this Agreement, without penalty, or reduce the amount of this Agreement at the discretion of the OOG. Grantee will have no right of action against the OOG if the OOG cannot perform its obligations under this Agreement as a result of lack of legislative appropriations in amounts sufficient to fund any activities or functions contained within the scope of this Agreement.

SECTION 18. MONITORING. OOG or its designee may perform periodic on-site monitoring of Grantee's compliance with the terms and conditions of this Agreement and of the adequacy and timeliness of Grantee's performance. After each monitoring visit, OOG will provide Grantee with a written report of the monitor's findings. If the monitoring report notes deficiencies in Grantee's performances under the terms of this Agreement, the monitoring report

shall include requirements for the timely correction of such deficiencies by Grantee. Failure by Grantee to take action specified in the monitoring report may be cause for termination of this Agreement in accordance with Section 16 of this Agreement.

SECTION 19. CONFLICT OF INTEREST

A. Grantee shall ensure that no employee, officer, or agent of Grantee shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Grantee shall comply with Texas Local Government Code, Chapter 171.

B. No employee, agent, consultant, officer, or elected or appointed official, of either Grantee or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties.

SECTION 20. LITIGATION AND CLAIMS

A. Grantee shall give OOG immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement. Except as otherwise directed by OOG, Grantee shall immediately furnish to OOG copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify OOG immediately of any legal action filed against the Grantee or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to OOG within thirty (30) calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred as the result of any claims, judgments, fines, or settlements.

B. OOG and Grantee acknowledge that they are governmental units of the State of Texas and are subject to, and shall comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 *et. seq.*

C. Grantee acknowledges that OOG, the State of Texas, and their employees shall not be held liable for any claims or causes of action whatsoever which may occur in the course of performing the services described in this Agreement, or from the award, cancellation, or withdrawal of this Grant.

SECTION 21. NOTICE OF MATERIAL EVENTS. Grantee shall furnish to OOG prompt written notice upon becoming aware or having knowledge of the occurrence of any event or development that has, or would reasonably be expected to have, a material adverse effect on the completion of the Project as described under this Agreement. Under no circumstances shall

notice under this section occur more than fifteen (15) calendar days following Grantee receiving knowledge of such event or development.

SECTION 22. FORCE MAJEURE. Neither party shall be required to perform any obligation under this Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God, including but not limited to strikes, lockouts or labor shortages, embargo, riot, war, revolution, terrorism, rebellion, insurrection, flood, natural disaster, or interruption of utilities from external causes.

SECTION 23. DISPUTE RESOLUTION

A. Informal Meetings. The parties' representatives shall meet as needed to implement the terms of this Agreement and shall make a good faith attempt to informally resolve any disputes.

B. Alternative Dispute Resolution at State Office Administrative Hearings. The parties may agree, but are not required, to utilize the non-binding alternative dispute resolution services of the State Office of Administrative Hearings (SOAH) to attempt to resolve their disagreements, claims or disputes under this Agreement. Grantee and the OOG, in the event they determine to utilize SOAH, agree to share equally the costs of the alternative dispute resolution service. The purpose of this subsection is to reasonably ensure that the OOG and Grantee shall, in good faith, utilize mediation. The Parties' participation in, or the results of, any mediation under the subsection or the provisions of this Section shall not be construed as a waiver by the OOG or the Grantee of any rights, privileges, defenses, remedies or immunities available to the OOG or Grantee.

C. Dispute Resolution. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the parties to attempt to resolve any claim for breach of this Agreement made by Grantee.

Grantee's claims for breach of this Agreement that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Government Code. To initiate the process, Grantee shall submit written notice, as required by Subchapter B, to the OOG's Director of Administration. Said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. Compliance by Grantee with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Government Code.

The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is Grantee's sole and exclusive process for seeking a remedy for any and all alleged breaches of this Agreement by the OOG if the Parties are unable to otherwise informally resolve their disputes.

Compliance with the contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither the execution of

this Agreement by OOG nor any other conduct of any representative of OOG relating to this Agreement shall be considered a waiver of sovereign immunity.

The submission, processing, and resolution of Grantee's claim is governed by the published rules, if any. If no OOG rules have been published, then Title 1, Chapter 68 of the Texas Administrative Code, shall govern.

SECTION 24. CHANGES AND AMENDMENTS.

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by a written amendment executed by both parties.

B. During the term of this Agreement, OOG may issue policy directives to establish, interpret, or clarify requirements under this Agreement. Policy directives from OOG shall be binding upon Grantee.

SECTION 25. SEVERABILITY.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 26. ENTIRE AGREEMENT. This Agreement is intended as a full and complete expression of and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and all prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written, are superseded and replaced by this Agreement.

SECTION 27. CONSTRUCTION. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning. The parties acknowledge that each party and its counsel have reviewed this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Agreement.

SECTION 28. HEADINGS. The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

SECTION 29. SURVIVAL OF CERTAIN PROVISIONS. Notwithstanding any expiration, termination or cancellation of this Agreement, the rights and obligations pertaining to repayment of Grant funds and/or damages, limitation of liability, indemnification, public information, reporting requirements, retention and accessibility of records, audit rights, rights upon termination, and any other provision implying survivability shall remain in effect after this Agreement ends.

SECTION 30. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

IN TESTIMONY HEREOF, Grantee and OOG have executed this Defense Economic Adjustment Assistance Agreement in duplicate originals, effective as of the last date contained on the signature lines below.

OFFICE OF THE GOVERNOR

CITY OF KILLEEN

Chief of Staff or Designee

City Manager

Date

Date

**GRANT AGREEMENT BETWEEN
THE OFFICE OF THE GOVERNOR
AND
CITY OF KILLEEN**

EXHIBIT A

\$3,475,000.00

**THREE MILLION FOUR HUNDRED SEVENTY FIVE THOUSAND AND 00/100
AMOUNT (DOLLARS).**

Budget. Subject to the limitations within this Agreement, the OOG will reimburse Grantee for actual and allowable allocable costs paid according to the following amounts and budget categories:

| Budget Category | |
|---|-------------|
| Infrastructure – Purchase of property | |
| Infrastructure - Professional & Consultant Services | |
| Infrastructure – New Construction | |
| Infrastructure - Rehabilitation and Renovation | \$3,475,000 |
| Infrastructure – Capital Equipment ¹ | |
| Infrastructure – Capital Supplies ³ | |
| Infrastructure – Facilities Insurance | |
| Training Equipment ² | |
| Training Supplies ³ | |
| | |
| Total | |

¹ Per UGMS, "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and a per unit acquisition cost of \$5,000 or more.

² *Id.*

³ Per UGMS, items of equipment with a per unit acquisition cost of less than \$5,000 are considered to be supplies.

**GRANT AGREEMENT BETWEEN
THE OFFICE OF THE GOVERNOR
AND
CITY OF KILLEEN**

EXHIBIT B

GRANT NARRATIVE

UNLESS OTHERWISE LIMITED, DEEMED INAPPROPRIATE BY SPECIAL CONDITIONS OR ALTERED BY APPROVED BUDGET ADJUSTMENTS/BUDGET MODIFICATIONS, the following narrative provided by Grantee in its DATED grant application applies to this Agreement:

This project is a complete repair and renovation of the Robert Gray Army Airfield (RGAAF) Army Radar Approach Control (ARAC) Facility that supports Fort Hood military deployments, Fort Hood range live-fire training, and aviation training, Killeen area commercial aviation, and Federal Aviation Administration (FAA) radar functions for a sixty (60) mile radius around RGAAF. Failure of this forty (40) year old facility and associated systems is imminent and will have significant and lasting impacts on the military readiness of soldiers and units at Fort Hood, the active duty and reserve units which use Fort Hood training ranges, will significantly interrupt and cripple the commercial aviation services to the Killeen Fort Hood Regional Airport, and negatively affect the local economy.

When the ARAC fails, all active and reserve component training, all military deployments, all live-fire training, and aviation training will stop at Fort Hood for a minimum of thirty (30) days until a temporary facility is assembled to gain partial ARAC operational functionality. During that time, the Post would be forced to provide interim solutions for training and deployments which would include, but are not limited to busing soldiers to other facilities in the region for deployments; truck and rail movements of weapon systems and equipment to other installations for deployments and to conduct pre-deployment training; and, extending unit deployment timelines. These adjustments have the potential to cost hundreds of million dollars. This disruption to the Fort Hood deployment enterprise will have lasting and costly impacts to the military readiness of our units as scarce resources are expended to work around a failed ARAC Facility.

Constructed in 1976, the ARAC has had significant increases in service volume and operational mission requirements, has added additional radar and mission essential equipment to the facility, has increased the number of qualified controllers working in the facility, and has increased facility maintenance equipment and requirements. Yet, the facility has not received upgrades to structural and critical infrastructure systems despite this growth; thus, both internal and external degradation rates have outpaced the resources available to continue to provide reactive and scheduled maintenance and upkeep. This project will include the repair / replacement and upgrade of all electrical power and distribution systems; heating, ventilation, cooling systems; emergency power

systems; rehabilitation of floors, walls, ceilings, and roof; and internal structural improvements to enhance operator efficiency to meet mission requirements. Additionally, this project will bring the structure up-to-date with the latest military and federal installation design standards. Specifically, a major requirement is the facility's electrical infrastructure that requires replacement parts that can no longer be procured because they are aged-out and no longer exist. Given the structure's current state/condition and the lack of resources available for the needed repair and renovation, failure is imminent.

We cannot overemphasize the importance of this project to Fort Hood and the Killeen area. The transportation of soldiers and equipment to deployments, the ability to conduct live-fire training, and our ability to execute aviation training will be crippled by a failure of the ARAC facility and associated systems. Equally, without the ARAC, the Killeen Fort Hood Regional Airport would not be able to function as the region's premier commercial service airport. This facility is a high-priority project which meets the needs of the Army, the City, the community, and the DEAG Program. This grant gives us an opportunity to avoid system failure, significant costs, and lasting impacts to both military readiness of Fort Hood and the local economy.

EXHIBIT C

UNIFORM STATE GRANT ASSURANCES

*The Grantee must assure and certify compliance with any and all applicable federal and state statutes, regulations, policies, guidelines and requirements, including, but not limited to, the Uniform Grant Management Standards (UGMS); and Title 1, Part 1, Chapter 4 of the Texas Administrative Code, that govern the application, acceptance and use of Federal and State funds for this project. In instances where multiple requirements apply to a Grantee, the more restrictive requirement applies. **By accepting the grant award, the Grantee certifies and assures that it complies and will continue to comply with the following:***

1. Grantee possesses legal authority to apply for the grant. A resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative, or their designee of the organization to act in connection with the application and to provide such additional information as may be required. State agencies are not required to adopt a resolution.
2. A grantee must comply with Texas Government Code, Chapter 573, Vernon's 1994, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
3. A grantee must insure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, Vernon's 1994, unless otherwise expressly prohibited by law.
4. A grantee must comply with Texas Government Code, Chapter 551, Vernon's 1994, which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.
5. A grantee must comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.
6. No health and human services agency or public safety or law enforcement agency may contract with or issue a license, certificate or permit to the owner, operator or administrator of a facility if the license, permit or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.
7. A grantee that is a law enforcement agency regulated by Texas Government Code, Chapter 415, must be in compliance with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 415, Texas Government Code or must provide the grantor agency with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in the process of achieving compliance with such rules.
8. When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and local grantees shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met.
9. A grantee must comply with the Texas Family Code, Section 261.101 which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Grantees shall also ensure that all program personnel are properly trained and aware of this requirement.
10. Grantees will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the

- Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
11. Grantees will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § § 276a to 276a-7), the Copeland Act (40 U.S.C. § § 276c and 18 U.S.C. § § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § § 327-333), regarding labor standards for federally assisted construction subagreements.
 12. Grantees will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
 13. Grantees will comply with the provisions of the Hatch Political Activity Act (5 U.S.C. § 7321-29) which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.
 14. Grantees will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.
 15. Grantees will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA. (EO 11738).
 16. Grantees will comply with the flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102 (a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
 17. Grantees will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
 18. Grantees will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
 19. Grantees will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
 20. Grantees will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
 21. Grantees will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

22. Grantees must adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.
23. Grantees will comply with Public Law 103-277, also known as the Pro-Children Act of 1994 (Act), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.
24. Grantees will comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.
25. Grantees will comply with all applicable requirements of all other federal and state laws, executive orders, regulations and policies governing this program.
26. The applicant must certify that they are not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs.

EXHIBIT D

QUARTERLY PROJECT STATUS REPORT

Repair and Rehabilitation of the Army Radar Approach Control Facility
TMPC PROJECT NUMBER 1701-01-03

Expenditures for Quarter Ending (DATE)

Expenditures Description

Percentage of Project Completed:

Summary of Expenditures to Date:

Quarter Ending Expenditures

Brief Narrative Explaining Expenditures:

Project Status:

Grantee's Duly Authorized Representative: _____ Date: _____

EXHIBIT E

PROJECT COMPLETION REPORT

Repair and Rehabilitation of the Army Radar Approach Control Facility
TMPC PROJECT NUMBER 1701-01-03

Locality:
DEAAG Grant Number:
Percent Completed:

The **GRANTEE** has successfully completed, and in a satisfactory manner, the **PROJECT**. The purpose of the grant was to **GRANT PURPOSE**.

The total cost for the project is as follows:

| | |
|----------------|-----------|
| •Project Total | \$ |
| •Total | \$ |

The following is a brief project scope summary:

This is to certify that an inspection of 100% of the completed project described below was conducted on the ___ day of _____, 20__.

Contracts were entered into for **PROJECT** between the **GRANTEE** and the following subcontractors: [**SUBCONTRACTORS.**]

This is to further certify that any and all Equipment included as part of the grant budget has been purchased with the specified grant purpose, timeline, budget, and all addenda, change orders, and supplemental agreements thereto.

NAME OF GRANTEE:

Signature of Grantee's Duly Authorized Representative

Print Name

Title

Date

Exhibit F

DEAAG PROJECT IMPACT REPORT

Project Name:

DEAAG Grant Number:

Grantee Name:

Address:

Telephone:

Fax:

Contact Person:

Email:

Time Period Covered by Report: _____ to _____

Project Performance Measures:

- Create, retain, or train _____ Jobs by the completion of the project
- Project Description:

- Project Address:

Jobs Created

| Time Period | Active Full Time Jobs Created, Retained or Students Trained |
|--------------------|--|
| EX. 01/12 – 03/12 | |
| | |
| | |
| | |
| Total | |

Breakdown of Jobs Created

| Job Type | Jobs Created or Retained This Reporting Period | Total Jobs Created to Date |
|-------------------------|---|---------------------------------------|
| Direct Permanent Jobs | | |
| Indirect Permanent Jobs | | |
| Individuals Trained | | |
| Total | | |

Businesses assisted or created this period: _____
Businesses assisted or created to date: _____

Project Financial Impact

- Narrative summary of Impact:
- Update on current Project Status (include curriculum updates):

THE SIGNATURE BELOW CERTIFIES THAT THE INFORMATION SUBMITTED IN THIS REPORT IS TRUE AND CORRECT TO THE BEST KNOWLEDGE OF THE GRANTEE.

FOR THE GRANTEE:

Signature

Print Name

Title

Date



City of Killeen

Legislation Details

File #: RS-16-075 **Version:** 1 **Name:** Appoint Independent Auditor for FY2016
Type: Resolution **Status:** Resolutions
File created: 6/23/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: Consider a memorandum/resolution appointing an independent auditor for the fiscal year ending September 30, 2016.
Sponsors: City Auditor, Finance Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Audit Engagement Letter](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Appointing the independent audit firm, Weaver LLP, for the fiscal year ending September 30, 2016 audit

ORIGINATING DEPARTMENT

City Auditor

BACKGROUND INFORMATION

The City Charter states that the Council shall designate qualified public accountants to conduct an independent audit of all City accounts and other evidences of financial transactions of the City government and submit their report to the Council. Additionally, Texas Local Government Code requires an annual audit of municipal finances to be performed by a qualified Certified Public Accountant.

DISCUSSION/CONCLUSION

The City's audits are required to be performed in accordance with generally accepted auditing standards, the standards set forth in the General Accounting Office's (GAO) Government Auditing Standards, the provisions of the Single Audit Act Amendments of 1996, the U.S. Office of Management and Budget (OMB) 2 CFR Part 200 Super Circular, and Audits of State and Local Governments.

In July 2012, the City issued a Request for Proposals for independent audit services for the fiscal years ending on September 30, 2012 and 2013 with a renewal option for three additional years. The qualified public accounting firm that was appointed by Council at that time was Weaver LLP. Weaver LLP has conducted the City's audit for the fiscal years ended September 30, 2012, 2013, 2014, and 2015 in accordance with the applicable standards, and presented the City Council with audits of the City's finances in a timely manner. Their examinations of the City's financial records were thorough. They were available for meetings and discussions with City personnel concerning accounting issues and were willing to answer questions and give financial guidance when requested. Additionally the firm employs a skilled governmental audit staff large enough to adequately perform the annual audit of the City of Killeen in a timely manner.

This is the final year to exercise the option to renew the agreement with Weaver LLP. As such, staff plans to issue a Request for Proposals for independent audit services in the spring of 2017 in order to secure a qualified public accounting firm to conduct the audit for subsequent fiscal years.

FISCAL IMPACT

The engagement letter from Weaver LLP proposes to perform the audit for the fiscal year ending September 30, 2016, for a fee of \$106,000. This fee is in line with the proposal Weaver

LLP submitted to the City in 2012. Funding will be provided in various Professional Services accounts located in the major funds in the FY2016-17 proposed budget.

RECOMMENDATION

City staff and the Audit Committee recommend that Weaver LLP be engaged to perform the annual independent audit for the City of Killeen for the fiscal year ending September 30, 2016, and that the City Manager be authorized to contract for professional services provided by Weaver LLP, to include the approval of any necessary change orders meeting state law and charter requirements.



June 24, 2016

To the City Council and
Mrs. Ann Farris, Interim City Manager
City of Killeen
101 North College Street
Killeen, Texas 76541

Dear Mrs. Farris:

You have requested that we audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Killeen, Texas (the City), as of September 30, 2016, and for the year then ended, and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the table of contents. In addition, we will audit the City's compliance over major federal award programs for the period ended September 30, 2016. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter.

Accounting principles generally accepted in the United States of America require that management's discussion and analysis and budgetary comparison information, among other items, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation, and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The following RSI is required by accounting principles generally accepted in the United States of America. This RSI will be subjected to certain limited procedures but will not be audited:

1. Management's Discussion and Analysis
2. Budgetary Comparison Schedules
3. Retirement Plans – Supplemental Information
4. Post Employee Benefits Other than Pensions – Supplemental Information

Supplementary information other than RSI will accompany the City's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and

other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on the following supplementary information in relation to the financial statements as a whole:

1. Combining and individual fund financial statements and schedules
2. Schedule of expenditures of federal awards
3. Schedule of passenger facilities charges

Also, the document we submit to you will include the following other additional information that will not be subjected to the auditing procedures applied in our audit of the financial statements:

1. Introductory section
2. Statistical section

Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material aspects, in conformity with generally accepted accounting principles and to report on the fairness of the supplementary information referred to above when considered in relation to the financial statements as a whole. The objective also includes reporting on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*; and internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add emphasis-of-matter, or other-matter paragraphs. If our opinions on the financial statements or compliance are other than modified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or withdraw from this engagement.

Auditor Responsibilities

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America; and the provisions of the Uniform Guidance. Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards* issued by the Comptroller General of the United States of America. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

In making our risk assessments, we consider internal control relevant to the City's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with certain provisions of laws, regulations, contracts, and grants that could have a direct and material effect on the

determination of financial statement amounts. However, providing an opinion on compliance with those provisions is not an objective of our audit, and accordingly, we will not express such an opinion.

Our audit of the City's major federal award program(s) compliance will be conducted in accordance with the requirements of the Single Audit Act, as amended; and the provisions of the Uniform Guidance; and will include tests of accounting records, a determination of major programs in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such an opinion on major federal award program compliance and to render the required reports. We cannot provide assurance that an unmodified opinion on compliance will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or withdraw from the engagement.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the City has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major federal award programs. Our procedures will consist of determining major federal programs and performing the applicable procedures described in the U.S. Office of Management and Budget *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of those procedures will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Also, as required by the Uniform Guidance, we will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each of the City's major federal award programs. However, our tests will be less in scope than would be necessary to render an opinion on these controls and, accordingly, no opinion will be expressed in our report.

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service

provider. Furthermore, we will remain responsible for the work provided by any such third-party service provider.

Management's Responsibilities

Our audit will be conducted on the basis that the City's management acknowledge and understand that they have responsibility:

- a. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
- b. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements;
- c. For safeguarding assets;
- d. For identifying all federal awards expended during the period including federal awards and funding increments received prior to December 26, 2014, and those received in accordance with the Uniform Guidance generally received after December 26, 2014;
- e. For preparing the schedule of expenses of federal awards (including notes and noncash assistance received) in accordance with the Uniform Guidance;
- f. For the design, implementation, and maintenance of internal control over compliance;
- g. For identifying and ensuring that the City complies with laws, regulations, grants, and contracts applicable to its activities and its federal award programs;
- h. For following up and taking corrective action on reported audit findings from prior periods and preparing a summary schedule of prior audit findings;
- i. For following up and taking corrective action on current year audit findings and preparing a corrective action plan for such findings;
- j. For submitting the reporting package and data collection form to the appropriate parties;
- k. For making the auditor aware of any significant vendor relationships where the vendor is responsible for program compliance;
- l. To provide us with:
 - i. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, and relevant to federal award programs, such as records, documentation, and other matters;
 - ii. Additional information that we may request from management for the purpose of the audit; and
 - iii. Unrestricted access to persons within the City from whom we determine it necessary to obtain audit evidence.

- m. For including the auditor's report in any document containing financial statements that indicates that such financial statements have been audited by the City's auditor;
- n. For adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year under audit are immaterial, both individually and in the aggregate, to the financial statements as a whole;
- o. For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter;
- p. With respect to any nonaudit/nonattest services we perform, for (a) making all management decisions and performing all management functions; (b) assigning an individual with suitable skills, knowledge, and experience to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities. These nonaudit/nonattest services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.
- q. With regard to the supplementary information referred to above: (a) for the preparation of the supplementary information in accordance with the applicable criteria; (b) to provide us with the appropriate written representations regarding supplementary information; (c) to include our report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information; and (d) to present the supplementary information with the audited consolidated financial statements, or if the supplementary information will not be presented with the audited consolidated financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by you of the supplementary information and our report thereon.

Government Auditing Standards require that we document an assessment of the skills, knowledge, and experience of management, should we participate in any form of preparation of the basic financial statements and related schedules or disclosures as these actions are deemed a nonaudit/nonattest service.

During the course of our engagement, we will request information and explanations from management regarding the City's operations, internal controls, future plans, specific transactions and accounting systems and procedures. At the conclusion of our engagement, we will require, as a precondition to the issuance of our report, that management provide certain representations in a written representation letter. The City agrees that as a condition of our engagement to

perform an audit that management will, to the best of its knowledge and belief, be truthful, accurate, and complete in all representations made to us during the course of the audit and in the written representation letter. The procedures we perform in our engagement and the conclusions we reach as a basis for our report will be heavily influenced by the written and oral representations that we receive from management. False or misleading representations could cause us to expend unnecessary efforts in the audit; or, worse, could cause a material error or a fraud to go undetected by our procedures. Thus, the City agrees that we will not be liable for any damages or otherwise responsible for any misstatements in the City's financial statements that we may fail to detect as a result of false or misleading representations that are made to us by management. Moreover, the City agrees to indemnify and hold us harmless from any claims and liabilities, including reasonable attorneys' fees, expert fees, and costs of investigation and defense, arising out of or related to this engagement if false or misleading representations are made to us by any member of the City's management.

Reporting

We will issue a written report upon completion of our audit of the City's basic financial statements. Our report will be addressed to the City Council.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

We will issue a report on compliance that will include an opinion or disclaimer of opinion regarding the City's major federal award programs, and a report on internal controls over compliance that will report any significant deficiencies and material weaknesses identified; however, such report will not express an opinion on internal control.

Other

We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

In the unlikely event that circumstances occur which we in our sole discretion believe could create a conflict with either the ethical standards of our firm or the ethical standards of our profession in continuing our engagement, we may suspend our services until a satisfactory resolution can be achieved or we may resign from the engagement. We will notify you of such

City of Killeen
June 24, 2016

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conflict as soon as practicable, and will discuss with you any possible means of resolving them prior to suspending our services.

Both of us agree that any dispute between you and Weaver and Tidwell, L.L.P., arising from the engagement, this agreement, or the breach of it, may, if negotiations and other discussion fail be first submitted to mediation in accordance with the provisions of the Commercial Mediation Rules of the American Arbitration Association (AAA) then in effect. Both of us agree to conduct any mediation in good faith and make reasonable efforts to resolve any dispute by mediation. Mediation is not a pre-condition to the arbitration provided for below and the failure or refusal by either party to request or participate in mediation shall not preclude the right of either party to initiate arbitration. We agree to conduct the mediation in Austin, Texas or another mutually agreed upon location.

Both of us agree that any dispute arising from the engagement, this agreement or the breach of it shall be subject to binding arbitration under the provisions of the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and of the Dispute Resolution Rules for Professional Accounting and Related Services Disputes of the AAA (the Rules), and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitration shall be heard before one or more arbitrators selected in accordance with the Rules. The parties agree to conduct the arbitration in in Austin, Texas or another mutually agreed upon location. The arbitrator may only award direct damages and may not award consequential, exemplary, or punitive damages. The prevailing party in any arbitration or litigation shall be entitled to recover from the other party reasonable attorneys' and expert witness fees, court costs, and the administrative costs, arbitrator's fees, and expenses of the AAA incurred in the arbitration or litigation in addition to any other relief that may be awarded.

Notwithstanding the provisions of the immediately preceding paragraph, neither of us shall be compelled to arbitrate any dispute between us which arises out of any claim asserted against either of us by a third party, unless the third party (whether one or more) agrees to join the arbitration or can be compelled to join it.

If any term of this engagement letter is declared illegal, unenforceable, or unconscionable, that term shall be severed and the remaining terms of the engagement letter shall remain in force. Both of us agree that the arbitrator(s) or Court, as the case may be, should modify any term declared to be illegal, unenforceable, or unconscionable in a manner that will retain the intended term as closely as possible. If a dispute arising from the engagement or from this agreement or any term of it or any alleged breach of it is submitted to a Court for interpretation or adjudication, both of us irrevocably waive right to trial by jury and agree that the provisions of this engagement letter regarding damages, attorneys' fees, and expenses shall be applied and enforced by the Court.

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June 24, 2016

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If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

Adam McCane is the engagement partner for the audit services specified in this letter. His responsibilities include supervising our services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report. We expect to begin our audit procedures in August 2016, and issue our report in March 2017.

We estimate that the fee for our audit will be \$106,000. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. Our fee is based upon the complexity of the work to be performed and the tasks required. Payments are due in compliance with the Texas Local Government Code.]

The audit documentation for this engagement is the property of Weaver and Tidwell, L.L.P. and constitutes confidential information. However, we may be requested to make certain audit documentation available to regulators and federal agencies and the U.S. Government Accountability Office pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of Weaver and Tidwell, L.L.P.'s personnel. Furthermore, upon request, we may provide copies of selected audit documentation to these agencies and regulators. The regulators and agencies may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

It is expected that prior to the conclusion of the engagement, sections of the Data Collection Form will be completed by our firm. The sections that we will complete summarize our audit findings by federal grant or contract. Management is responsible to submit the reporting package (defined as including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditor's reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. The instructions to the Data Collection Form

City of Killeen
June 24, 2016

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require that the reporting package be an unlocked, unencrypted, text searchable portable document file (PDF) or else it will be rejected by the Federal Audit Clearinghouse. We will be available to assist management in creating the PDF if needed.

We will coordinate with you the electronic submission and certification upon the reporting package completion. If applicable, we will provide copies of our report for you to include with the reporting package if there is a need to submit the package to pass-through entities.

The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of our reports or nine months after the end of the audit period.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

In accordance with the requirements of *Government Auditing Standards*, we have attached a copy of our latest external peer review report of our firm for your consideration and files.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements compliance over major federal award programs including our respective responsibilities.

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Yours truly,

Weaver and Tidwell, L.L.P.

WEAVER AND TIDWELL, L.L.P.

ACM:mlm

City of Killeen
June 24, 2016

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RESPONSE:

This letter correctly sets forth the understanding.

Acknowledged and agreed on behalf of the City of Killeen, Texas by:

Signature: _____

Title: _____

Date: _____



System Review Report

October 4, 2013

To the Partners of Weaver and Tidwell, L.L.P.
and the National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of Weave and Tidwell, L.L.P. (the firm) applicable to non-SEC issuers in effect for the year ended May 31, 2013. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. As a part of our peer review, we considered reviews by regulatory entities, if applicable, in determining the nature and extent of our procedures. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards*; audits of employee benefit plans, audits performed under FDICIA, and examinations of service organizations (Service Organizations Control (SOC) 1 and 2 engagements).

In our opinion, the system of quality control for the accounting and auditing practice of Weaver and Tidwell, L.L.P. applicable to non-SEC issuers in effect for the year ended May 31, 2013, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Weaver and Tidwell, L.L.P. has received a peer review rating of *pass*.

Eide Bailly LLP

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City of Killeen

Legislation Details

File #: RS-16-073 **Version:** 1 **Name:** ICM Salary Adjustment
Type: Resolution **Status:** Resolutions
File created: 6/16/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: Consider a memorandum/resolution providing a temporary salary adjustment to Interim City Manager Lillian Ann Farris. (Tabled from June 28, 2016 Regular Council Meeting)
Sponsors: Human Resources Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

| Date | Ver. | Action By | Action | Result |
|-----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |
| 6/28/2016 | 1 | City Council | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Temporary Salary Adjustment to Interim City Manager Lillian Ann Farris

ORIGINATING DEPARTMENT

CITY COUNCIL

BACKGROUND INFORMATION

Lillian Ann Farris was appointed as Interim City Manager, effective April 5, 2016. The City Council wishes to provide an increase in salary and benefits in recognition of her increased job duties.

DISCUSSION/CONCLUSION

During the time that Dr. Farris acts as Interim City Manager, she will receive the following salary and benefits:

- \$178,532.58 annual salary, paid in equal monthly installments;
- \$12,000 annual contribution to Deferred 457 Retirement Plan, paid in equal monthly installments;
- \$6,000 annual car allowance, paid in equal monthly installments;
- All other benefits to which other city employees may be entitled.

All salary and benefits shall be paid and accrued retroactively to April 5, 2016, and shall continue until 24 hours preceding the reporting date of the next City Manager, at which time she will revert to the position and associated salary and benefits of Assistant City Manager-Internal Services.

RECOMMENDATION

Council recommends that salary and benefits discussed above be approved, effective April 5, 2016, and continue until 24 hours preceding the reporting date of the next City Manager.



City of Killeen

Legislation Details

File #: RS-16-076 **Version:** 1 **Name:** Concealed handguns at open meetings
Type: Resolution **Status:** Resolutions
File created: 7/6/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: Consider a memorandum/resolution to allow the carrying of concealed handguns at the City's open meetings by no longer posting notice.
Sponsors: City Attorney Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
|------|------|-----------|--------|--------|

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Allowing the carrying of concealed handguns at the City's open meetings by no longer posting notice

ORIGINATING DEPARTMENT

City Council

BACKGROUND INFORMATION

Effective January 1, 2016, Texas Penal Code section 46.035(c) provides:

A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter.

Section 46.035(i) provides that effective notice must be given. One method of providing notice is a sign in English and Spanish with specific required language that entry with a concealed handgun is prohibited.

DISCUSSION/CONCLUSION

In January 2016, the City Council discussed the recent change to the law regarding the open carrying of handguns. A consensus was reached that the concealed and open carrying of handguns would not be allowed at meetings required to be posted by the Texas Open Meetings Act (Government Code 551), to include City Council, Planning and Zoning Commission, and Civil Service Commission. Following the meeting, staff ordered and began placing signs at the entrance to the rooms where such meetings were scheduled.

At its meeting of July 5, 2016, the City Council directed staff to bring forward a resolution to consider no longer posting notice, thereby allowing concealed handguns to be carried at its meetings.

FISCAL IMPACT

There is no anticipated fiscal impact.

RECOMMENDATION

It is recommended that signs no longer be posted prohibiting the concealed carrying of handguns at open meetings of the city.



City of Killeen

Legislation Details

File #: RS-16-077 **Version:** 1 **Name:** Open carry of handguns at open meetings
Type: Resolution **Status:** Resolutions
File created: 7/6/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: Consider a memorandum/resolution to allow the open carrying of handguns at the City's open meetings by no longer posting notice.
Sponsors: City Attorney Department
Indexes:
Code sections:
Attachments: [Council Memorandum](#)

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
|------|------|-----------|--------|--------|

CITY COUNCIL MEMORANDUM

AGENDA ITEM

Allowing the open carrying of handguns at the City's open meetings by no longer posting notice

ORIGINATING DEPARTMENT

City Council

BACKGROUND INFORMATION

Effective January 1, 2016, Texas Penal Code section 46.035(c) provides:

A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter.

Section 46.035(i) provides that effective notice must be given. One method of providing notice is a sign in English and Spanish with specific required language that entry while openly carrying a handgun is prohibited.

DISCUSSION/CONCLUSION

In January 2016, the City Council discussed the recent change to the law regarding the open carrying of handguns. A consensus was reached that the concealed and open carrying of handguns would not be allowed at meetings required to be posted by the Texas Open Meetings Act (Government Code 551), to include City Council, Planning and Zoning Commission, and Civil Service Commission. Following the meeting, staff ordered and began placing signs at the entrance to the rooms where such meetings were scheduled.

At its meeting of July 5, 2016, the City Council directed staff to bring forward a resolution to consider no longer posting notice, thereby allowing open carry of handguns at its meetings.

FISCAL IMPACT

There is no anticipated fiscal impact.

RECOMMENDATION

It is recommended that signs no longer be posted prohibiting the open carry of handguns at open meetings of the city.



City of Killeen

Legislation Details

File #: OR-16-009 **Version:** 1 **Name:** Atmos Franchise
Type: Ordinance **Status:** Second Reading
File created: 5/23/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: Consider an ordinance granting a gas franchise to Atmos Energy Corporation. (2nd of 3 readings)
Sponsors: City Attorney Department
Indexes:
Code sections:
Attachments: [Council Memorandum Ordinance](#)

| Date | Ver. | Action By | Action | Result |
|-----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |
| 6/14/2016 | 1 | City Council | | |
| 6/7/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

An ordinance granting a gas franchise to Atmos Energy Corporation

ORIGINATING DEPARTMENT

City Attorney

BACKGROUND INFORMATION

The City Charter states that the City has ownership and right of control and use of streets, highways, alleys, parks, public places, and all other real property. It further provides that the City Council may grant a right of use of City property to others for the purpose of furnishing to the public any general public service through a franchise.

In 1996, the City granted a twenty-year gas franchise to Lone Star Gas. Lone Star's successor, Atmos Energy Corporation, seeks to establish a new franchise upon the expiration of the current franchise later this year.

DISCUSSION/CONCLUSION

City staff has worked with Atmos representatives to prepare the proposed franchise. The fee received by the City will continue to be five percent (5%) of the gross revenues received by Atmos for the sale of gas within the city limits, with payments made quarterly. Atmos has requested to remove two categories of revenue from the current definition of revenue. The first is revenues billed but not collected, or uncollectable debt. Based on information provided by Atmos for the past four years, removal of that category would reduce the City's revenue from Atmos by approximately \$4,000 per year. The second is contributions in aid of construction. These are reimbursements Atmos receives for costs they expend to move or extend infrastructure, either from a governmental entity or a private developer. The reimbursements have varied over the past several years, ranging from less than \$100 to \$1,444 annually.

The franchise term is proposed to be fifteen (15) years, with an automatic five-year (5) renewal unless notice to terminate or renegotiate is given by either party 120 days before expiration.

Staff has reviewed franchises granted to Atmos by other cities in recent years, and the terms and conditions of the proposed franchise are substantially the same. The franchise also contains what is commonly called a most favored nations provision. If Atmos were to grant a franchise to another city that results in a higher franchise fee, the City would also have that fee available upon acceptance of all terms granted to the other city.

The City Charter requires three (3) readings of a franchise ordinance, and the last reading must be not less than 30 days from the first. The three readings will be June 14, July 12, and July 26. A franchise does not take effect until 60 days after passage. It is proposed that this ordinance be effective October 1, 2016.

FISCAL IMPACT

Atmos has paid the following revenue to the City over the past five years:

FY 2016 - \$ 74,402.11 (reflects one quarterly payment)

FY 2015 - \$390,254.01

FY 2014 - \$364,594.62

FY 2013 - \$270,101.37

FY 2012 - \$256,786.27

RECOMMENDATION

Recommend the City Council approve the proposed franchise ordinance.

ORDINANCE NO: _____

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS:

SECTION 1. GRANT OF AUTHORITY: The City of Killeen, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places ("Public Rights-of-Way"), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the "System") to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2031, provided that at the end of the expiration of the initial term, the term shall be automatically renewed for one (1) additional five-year period on the same terms and conditions as set forth herein, unless written notice is given by either party 120 days before the expiration of the initial term setting forth the desire to renegotiate or terminate the franchise.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF ATMOS ENERGY FACILITIES:

- A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and restore to approximate original condition all Public Rights-of-Way that it may disturb, in accordance with applicable city ordinances and regulations. In determining the location of the facilities of the City and other users of Public Right-of-Way within City, City shall minimize interference with then existing facilities of Atmos Energy and shall require other users of Public Rights-of-Way to minimize interference with existing facilities of Atmos Energy. In the event of a conflict between the location of the

proposed facilities of Atmos Energy and the location of the existing facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way.

Atmos Energy or contractors working on behalf of Atmos Energy shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Atmos Energy's operations in Public Rights-of-Way. City shall provide Atmos Energy with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy's facilities located in the Public Rights-of-Way. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, Atmos Energy shall do so as soon as practically possible with respect to the scope of the project. In no event shall Atmos Energy be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by City.

- B. If City, in constructing, reconstructing or improving its sewers, drainage, water lines, streets, or utilities, or in constructing, reconstructing, improving, widening or straightening its Public Rights-of-Way, should request that Atmos Energy remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, Atmos Energy shall do so at its own expense for facilities that are in conflict, unless such work is for the primary purpose of beautification or to accommodate a private developer. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by Atmos Energy, after consulting with the City, to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Atmos Energy.

When Atmos Energy is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy

submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City. In the event that the City does not provide sufficient written notice to Atmos Energy as set forth in this paragraph, the City shall be responsible for fifty percent (50%) of the cost of the removal or relocation of Atmos Energy's facilities.

If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines, streets or utilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

- C. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs.

- D. If City abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Atmos Energy for all removal or relocation expenses if Atmos Energy agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Atmos Energy to remove or relocate its facilities and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 3. INDEMNITY & INSURANCE: In the event of injury to any person or damage to any property by reason of Atmos Energy's construction, operation, maintenance, or replacement of Atmos Energy's pipeline system within Public Rights-of-Way, Atmos Energy shall indemnify and keep harmless City from any and all liability in connection therewith, except to the extent such injury or damage is attributable to the fault of the City, including, without limitation, the City's negligent or intentional acts or omissions. Atmos Energy's insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under an Atmos Energy plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 4. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 5. PAYMENTS TO CITY:

A. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on or before the 30th day of November, 2016 and the last days of February, May, and August, 2017, and on or before the same days of each succeeding year during the life of this franchise the last payment of the initial term being made on the 30th day of November, 2031, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in 5.B below, received by Atmos Energy during the preceding calendar quarter.

B. "Gross Revenues" shall mean:

- (1) all revenues received by Atmos Energy from the sale of gas to all classes of customers (excluding gas sold to another gas utility in the City for resale to its customers within City) within the City;
- (2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);

- (3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales")(excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and
- (4) "Gross Revenues" shall also include fees collected pursuant to this agreement and the following "miscellaneous charges": charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the City.
- (5) "Gross Revenues" shall not include:
- (a) revenues billed but not ultimately collected or received by Atmos Energy;
 - (b) contributions in aid of construction;
 - (c) the revenue of any affiliate or subsidiary of Atmos Energy;
 - (d) sales tax paid to the City;
 - (e) interest or investment income earned by Atmos Energy; and
 - (f) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way.

C. The initial payment made under this franchise for the rights and privileges herein provided shall be on November 30, 2016, and shall be for the period October 1 through December 31, 2016, and each succeeding payment shall be for the calendar quarter in which the payment is made, as follows:

| <u>Payment Due Date</u> | <u>Quarter Upon Which Payment is Based</u> | <u>Quarter for Which Payment is Made</u> |
|---------------------------|--|--|
| February 28 th | October 1 – December 31 | January 1 – March 31 |
| May 31 st | January 1 – March 31 | April 1 – June 30 |
| August 31 st | April 1 – June 30 | July 1 - September 30 |
| November 30 th | July 1 - September 30 | October 1 – December 31 |

It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy

If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

E. Atmos Energy Franchise Fee Recovery Tariff

- (1) Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.

- (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.
- (3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.

F. Lease of Facilities Within City's Rights-of-Way. Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within the City's public rights-of-way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 5 of this Ordinance. This authority to Lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

SECTION 6. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Atmos Energy must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Atmos Energy shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 7. PARAGRAPH HEADINGS. CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of

this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 8. EFFECTIVE DATE: If Atmos Energy accepts this ordinance, it becomes effective as of October 1, 2016.

PASSED AND APPROVED on this the _____ day of _____, 2016.

ATTEST:

Dianna Barker, City Secretary

Jose L. Segarra, Mayor
City of Killeen, Texas

Kathryn H. Davis, City Attorney

STATE OF TEXAS §
COUNTY OF BELL §
CITY OF KILLEEN §

I, Dianna Barker, City Secretary of the City of Killeen, Bell County, Texas, do hereby certify that the above and foregoing is a true and correct copy of ordinance 16-____, passed by the City Council of the City of Killeen, Texas, at a _____ session, held on the _____ day of _____, 2016, as it appears of record in the Minutes for said meeting.

WITNESS MY HAND AND SEAL OF SAID CITY, this the ____ day of _____, 2016.

Dianna Barker, City Secretary
City of Killeen, Texas



City of Killeen

Legislation Details

File #: PH-16-021 **Version:** 1 **Name:** Zoning 16-08
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 6/16/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: HOLD a public hearing and consider an ordinance requested by Joaquin Carrasquillo to rezone approximately 0.5 acre, being part of the T. Robinett Survey, Abstract No. 686, from "A-R1" (Agricultural Single-Family Residential District) to "B-3" (Local Business District) for an insurance office. The property is located between W. Elms Road and Janelle Drive, approximately 1,177 feet west of Winfield Drive, Killeen, Texas.
Sponsors: Planning & Development Dept
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Ordinance](#)
[Application](#)
[Location map](#)
[Buffer map](#)
[Considerations](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

**ZONING CASE #Z16-08 "A-R1"
(AGRICULTURAL SINGLE-FAMILY
RESIDENTIAL DISTRICT) TO "B-3" (LOCAL
BUSINESS DISTRICT)**

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

This request is submitted by Joaquin Carrasquillo to rezone approximately 0.5 acre, being part of the T. Robinett Survey, Abstract No. 686, from "A-R1" (Agricultural Single-Family Residential District) to "B-3" (Local Business District) for an insurance office. The property is located between W. Elms Road and Janelle Drive, approximately 1,177 feet west of Winfield Drive, Killeen, Texas.

District Descriptions:

A building or premises in the district "B-3" Local Business District shall be used only for the following purposes:

- (1) Any use permitted in the "B-2" district
- (2) Bank, savings and loan or other financial institution
- (3) Day camp
- (4) Hospital, home or center for the acute or chronic ill
- (5) Mortuary or funeral chapel
- (6) Appliance (household) sales and repair service
- (7) Bakery or confectionery: engaged in preparation, baking, cooking and selling of products at retail on the premises, with six (6) or less employees
- (8) Boat and accessory sales, rental and service
- (9) Bowling alleys
- (10) Cleaning or laundry (self-service)
- (11) Cleaning, pressing and dyeing: with six (6) or less employees
- (12) Florist, garden shop, greenhouse or nursery office (retail): no growing of plants, shrubs or trees out-of-doors on premises; no outside display or storage unless behind the required front yard or the actual setback of the principal building, whichever is greater
- (13) General food products, retail sales, such as supermarkets, butcher shops, dairy stores, seafood sales or health food sales
- (14) Cafeteria or catering service
- (15) Marine supplies, sales and service
- (16) Office, general business
- (17) Restaurant or café permitted to offer alcoholic beverages for sale operating under the rules and regulations promulgated by the Texas Alcoholic Beverage Commission, as amended, all of which are adopted hereby and made a part hereof for all purposes. No restaurant will be permitted to dispense any type of alcoholic beverage through any "drive-through" facility or window
- (18) Tennis or swim club
- (19) Small animal clinic or pet grooming shop
- (20) Hotel or motel

- (21) Job printing. Not more than seventeen (17) inches by twenty-five (25) inches page size
- (22) Gasoline service station, auto laundry or car wash
- (23) Auto parts sales, new, at retail
- (24) A customarily incidental use: sale of beer and/or wine only for off-premises consumption only shall be considered a customarily incidental use in this district, but not in any residential district or any more restrictive business district
- (25) Theaters of general release
- (26) Mini/self-storage facilities - a building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual compartmentalized and controlled access stalls or lockers for the storage of customer's goods or wares. No outside storage, sales, service, or repair activities, other than the rental of storage units shall be permitted on premises

Property Specifics

Applicant/Property Owner: Joaquin Carrasquillo

Property Location: The property is located between W. Elms Road and Janelle Drive, approximately 1,177 feet west of Winfield Drive, Killeen, Texas.

Legal Description: 0.5 acre, being part of the T. Robinett Survey, Abstract No. 686

Zoning/ Plat Case History:

- There is no recent zoning activity for this property.
- The property is not platted.

Character of the Area

Existing Land Use(s) on the Property: The property is currently undeveloped. Shoemaker High School is located due north of the subject site. There are numerous restaurant and business uses located west of the site.

Figure 1. Zoning Map

See attachment.

Historic Properties: None

Infrastructure and Community Facilities

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Water, sanitary sewer, and drainage utility services are readily accessible to the subject property located within the City of Killeen municipal utility service area. Adequate potable water capacity is available to the tract. Sanitary sewer capacity is available south of the

proposed tract and will require offsite utility easements to access existing public sanitary sewer infrastructure. The property is currently part of a remainder tract and will be required to be platted prior to development. Detention of post development storm water run-off will be required if inadequate capacity remains within existing drainage infrastructure. It shall be noted that Public Works personnel have performed only a basic assessment of publicly-dedicated water and sanitary sewer infrastructure that would serve this property. The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to the property. Further, City of Killeen development regulations require that capacity analyses related to development of the property are the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for re-development of the subject property, shall coordinate tie-in to all publicly dedicated infrastructure with the Public Works Department.

Transportation:

Existing conditions: Ingress/egress to the property would be limited to the single point of existing ingress/egress to West Elms Road, which is classified as a minor arterial street (90 feet right-of-way) of the City's approved Thoroughfare Plan. No proposed right-of-way taking affects the property.

Environmental Assessment

Topography/Regulated Floodplain/Floodway/Creek: The tract does not lie within a FEMA regulatory Special Flood Hazard Area (SFHA).

Land Use Analysis

Land Use Plan: This area is designated as 'General Residential' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

Plan Recommendation: The 'General Residential' designation encompasses detached, residential dwelling units, attached housing types, planned developments, as well as parks and public/ institutional places.

Consistency: The Comprehensive Plan considers 'General Residential' to be of a medium intensity category/character and states that "neighborhood-scale commercial uses are expected to emerge over time and should be encouraged on sites and in locations within (or near the edge of) 'General Residential' areas that are best suited to accommodate such uses while ensuring compatibility with nearby residential uses." This request is consistent with the Comprehensive Plan.

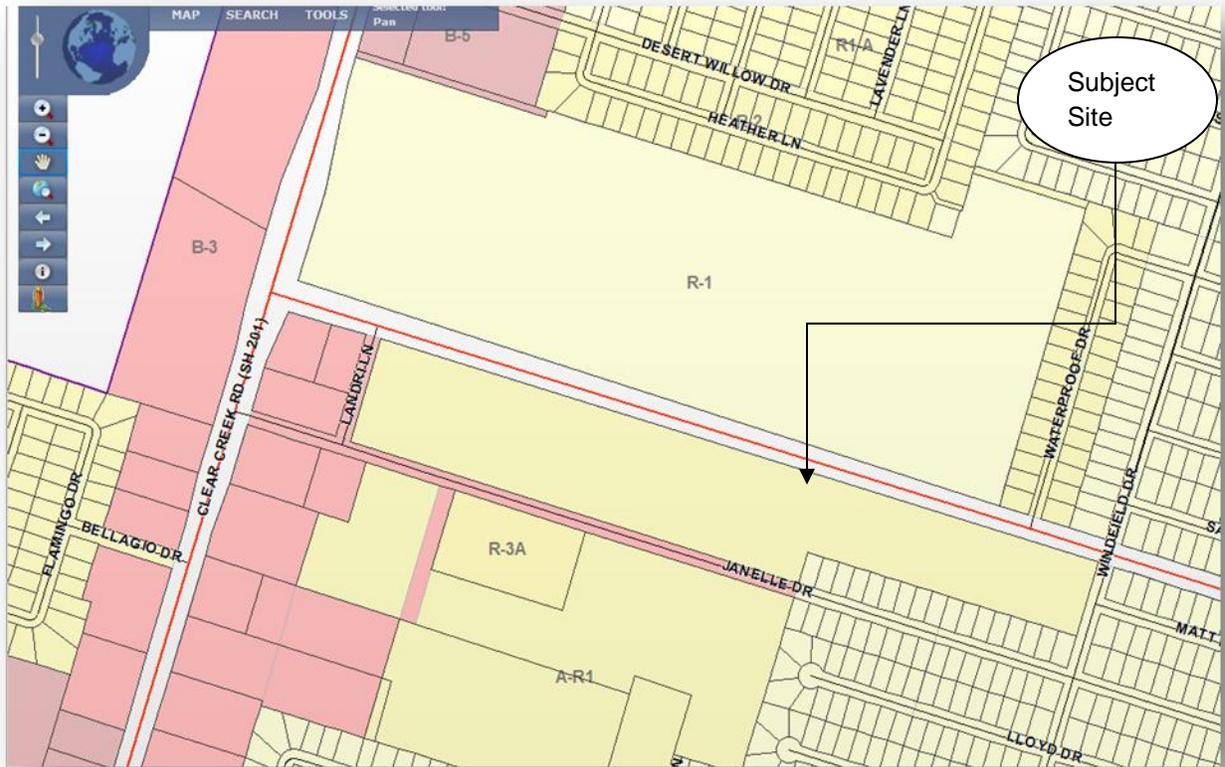
Public Notification

The staff notified four (4) surrounding property owners regarding this request. Staff has received no responses.

Recommendation

The Planning & Zoning Commission recommended approval of "B-3" zoning by a vote of 6 to 0.

Figure 1. Zoning Map



**MINUTES
PLANNING AND ZONING COMMISSION MEETING
JUNE 20, 2016**

**CASE #Z16-08
A-R1 TO B-3**

HOLD a public hearing and consider a request by Joaquin Carrasquillo to rezone approximately 0.5 acre, being part of the T. Robinett Survey, Abstract No. 686, from “A-R1” (Agricultural Single-Family Residential District) to “B-3” (Local Business District) for an insurance office. The property is located between W. Elms Road and Janelle Drive, approximately 1,177 feet west of Winfield Drive, Killeen, Texas.

Chairman Frederick requested staff comments.

City Planner Tony McIlwain stated that this is a proposal to rezone 0.5 acre, to “B-3” (Local Business District). The property is located between W. Elms Road and Janelle Drive, approximately 1,177 feet west of Winfield Drive, Killeen, Texas. This area is designated as ‘General Residential’ on the Future Land Use Map (FLUM) of the Comprehensive Plan. The ‘General Residential’ designation allows neighborhood-scale commercial uses. The tract does not lie within a FEMA regulatory Special Flood Hazard Area (SFHA).

The staff notified four (4) surrounding property owners regarding this request. Staff has received no responses.

Staff recommends approval of “B-3” (Local Business District) zoning for the site.

Mr. Joaquin Carrasquillo, 4200 W. Stan Schlueter Loop, Killeen, Texas, was present to represent this request.

Chairman Frederick opened the public hearing. With no one requesting to speak, the public hearing was closed.

Vice Chair Dorroh motioned to recommend approval of the request. Commissioner Beronio seconded the motion. The motion passed 6-0.

Chairman Frederick stated that this request will be forwarded to City Council with a recommendation to approve.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM “A-R1” (AGRICULTURAL SINGLE-FAMILY RESIDENTIAL DISTRICT) TO “B-3” (LOCAL BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Joaquin Carrasquillo has presented to the City of Killeen a request for amendment of the Zoning Ordinance of the City of Killeen by changing the classification of approximately 0.5 acre, being part of the T. Robinett Survey, Abstract No. 686, from “A-R1” (Agricultural Single-Family Residential District) to “B-3” (Local Business District) for an insurance office, said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 20th day of June 2016, and 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 12th day of July 2016, at the City Hall, City of Killeen;

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 that the request should be approved;

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

Section I. That the zoning classification of the following described tract be changed from “A-R1” (Agricultural Single-Family Residential District) to “B-3” (Local Business District) for approximately 0.5 acre, being part of the T. Robinett Survey, Abstract No. 686, for property located between W. Elms Road and Janelle Drive, approximately 1,177 feet west of Winfield

Drive, 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 12th day of July 2016, 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:

Jose L. Segarra, MAYOR

ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis, City Attorney

Case #16-08

Ord. #



| | |
|--------------------|----------|
| Date Paid: | _____ |
| Amount Paid: | \$ _____ |
| Cash/MO #/Check #: | # _____ |
| Receipt #: | _____ |

CASE #: 216-08

City of Killeen Zoning Change Application

[] General Zoning Change \$300.00 [] Conditional Use Permit \$500.00

Name(s) of Property Owner: JOAQUIN CARRASQUILLO
 Current Address: 4200 W. STAN SCHLUETER LOOP, SUITE B-200
 City: KILLEEN State: TX Zip: 76549
 Home Phone: () 254-245-9779 Business Phone: () _____ Cell Phone: () 917-969-5898
 Email: joaquin.carrasquillo.kszy@statefarm.com
 Name of Applicant: SAME AS ABOVE
 (If different than Property Owner)

Address: _____
 City: _____ State: _____ Zip: _____
 Home Phone: () _____ Business Phone: () _____ Cell Phone () _____
 Email: _____

Address/Location of property to be rezoned: SEE ATTACHED SURVEY DRAWING

Legal Description: 0.5 AC. out of the T. ROBINETT SURVEY, ABST.# 686
SEE ATTACHED Field notes
 Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan? YES NO
 If NO, a FLUM amendment application must be submitted.

Type of Ownership: Sole Ownership Partnership Corporation Other

Present Zoning: A-RI Present Use: VACANT

Proposed Zoning: B-3 Proposed Use: LOCAL INSURANCE OFFICE

Conditional Use Permit for: _____

This property was conveyed to owner by deed dated APRIL 22, 2016 and recorded in Volume ✓
 Page _____, Instrument Number 2016-15131 of the Bell County Deed Records.
 (Attached)

Is this the first rezoning application on a unilaterally annexed tract?
 Yes (Fee not required) No (Submit required fee)

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: BELTON ENGINEERING INC. (LINA CHTAY)

Mailing Address: 106 N. "EAST" STREET

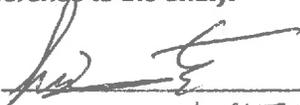
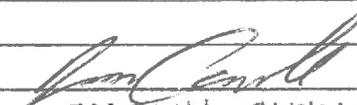
City: BELTON State: TX Zip: 76513

Home Phone: () _____ Business Phone: (254) 731-5600 Email: LCHTAY@BELTONENGINEERS.COM

I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

be the point of contact between myself and the City: make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific zoning request.

I understand that the City will deal only with a fully authorized agent. At any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter. If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

| | |
|--|-----------------------------|
| Signature of Agent  | Title <u>Civil Engineer</u> |
| Printed/Typed Name of Agent <u>LINA CHTAY, BELTON ENGINEERING</u> | Date <u>05-13-16</u> |
| Signature of Agent _____ | Title _____ |
| Printed/Typed Name of Agent _____ | Date _____ |
| Signature of Applicant  | Title <u>OWNER</u> |
| Printed/Typed Name of Applicant <u>JOAQUIN CARRASQUILLO</u> | Date <u>05-13-2016</u> |
| Signature of Property Owner _____ | Title _____ |
| Printed/Typed Name of Property Owner _____ | Date _____ |
| Signature of Property Owner _____ | Title _____ |
| Printed/Typed Name of Property Owner _____ | Date _____ |
| Signature of Property Owner _____ | Title _____ |
| Printed/Typed Name of Property Owner _____ | Date _____ |

*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.



**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z16-08

ZONING FROM:

A-R1 To B-3

APPLICANT:

JOAQUIN CARRASQUILLO

PROPERTY OWNER:

JOAQUIN CARRASQUILLO

LEGAL DESCRIPTION:

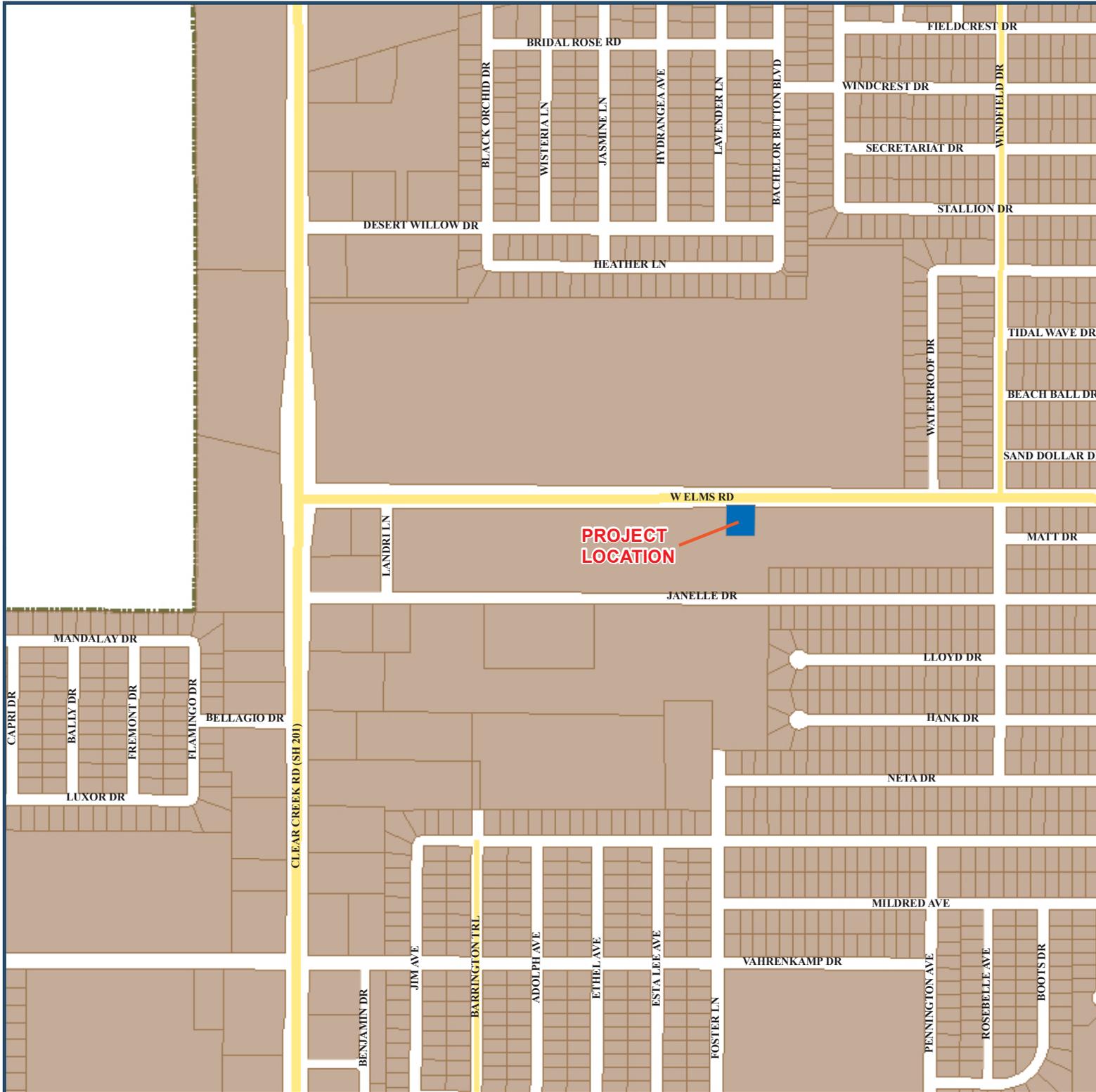
.05 ACRES OUT OF
A0686BC T ROBINETT, 53-1,
ACRES 25.864

LEGEND

-  Zoning Case
-  Parcel
-  City Limits



Date: 5/25/2016





**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z16-08

ZONING FROM:

A-R1 To B-3

APPLICANT:

JOAQUIN CARRASQUILLO

PROPERTY OWNER:

JOAQUIN CARRASQUILLO

LEGAL DESCRIPTION:

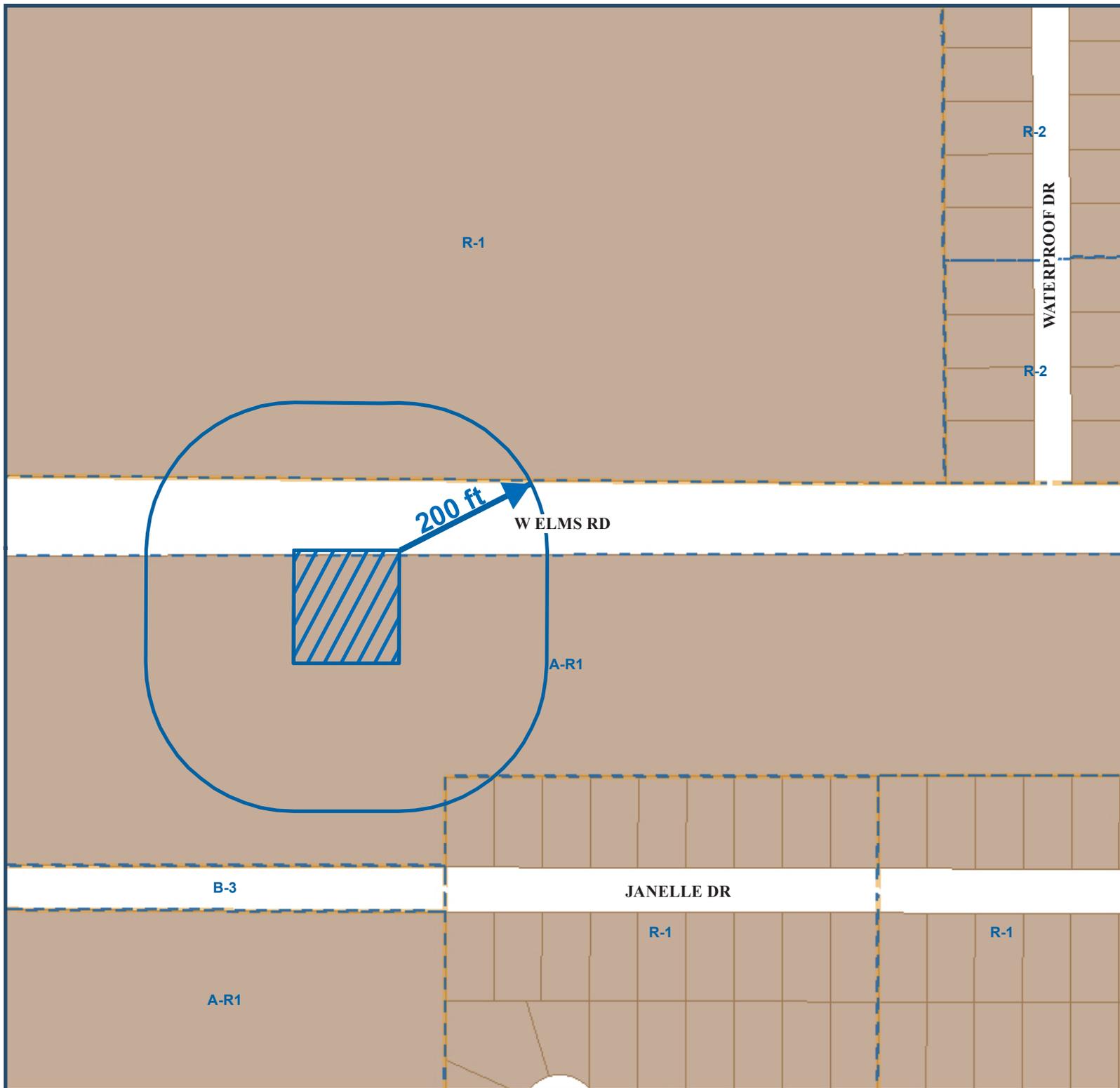
.05 ACRES OUT OF
A0686BC T ROBINETT, 53-1,
ACRES 25.864

LEGEND

-  200' BUFFER
-  Zoning Case
-  Current Zoning
-  Subdivision
-  Parcel
-  City Limits



Date: 5/25/2016



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 in 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.



City of Killeen

Legislation Details

File #: PH-16-022 **Version:** 1 **Name:** Zoning 16-09
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 6/16/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**

Title: HOLD a public hearing and consider an ordinance requested by the Donald Earl Nellis and Lenner Hair Nellis Revocable Living Trust to rezone 13.556 acres out of the R. Cunningham Survey, Abstract No. 199 from "R-1" (Single-Family Residential District) to Planned Unit Development (PUD) with "R-2" (Two-Family Residential District) and "R-3F" (Multifamily Residential District) uses for a Housing Tax Credit (HTC) eligible project named Hyde Estates. The property is located along the east right-of-way of Cunningham Road, approximately 600' south of its intersection with E. Stan Schlueter Loop (FM 3470).

Sponsors: Planning & Development Dept

Indexes:

Code sections:

Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Ordinance](#)
[Exhibits](#)
[Application](#)
[Location map](#)
[Buffer map](#)
[Considerations](#)
[Responses](#)
[Opposition](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

ZONING CASE #Z16-09 "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO PUD (PLANNED UNIT DEVELOPMENT) WITH "R-2" (TWO FAMILY RESIDENTIAL DISTRICT) AND "R-3F" (MULTIFAMILY RESIDENTIAL DISTRICT) USES

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

Quintero Engineering submits this request on behalf of the Donald Earl Nellis and Lenner Hair Nellis Revocable Living Trust to rezone 13.556 acres out of the R. Cunningham Survey, Abstract No. 199 from "R-1" (Single-Family Residential District) to Planned Unit Development (PUD) with "R-2" (Two-Family Residential District) and "R-3F" (Multifamily Residential District) uses for a Housing Tax Credit (HTC) eligible project named *Hyde Estates*. The developer for the project, Housing Solutions Alliance L.L.C. is proposing to construct a 76 dwelling unit project with 4 duplex buildings and 17 fourplex buildings. The development is proposing 17 one-bedroom units; 37 two-bedroom units; 16 three-bedroom units; 6 four-bedroom units; and one office building proposed for this development. This project was presented to the City Council on February 23, 2016 and received a resolution of Local Government Support and a Commitment of Development funding by a Local Political Subdivision (LPS Funding) for the project. The Texas Department of Housing and Community Affairs (TDHCA) is the State administering agency for the HTC.

District Descriptions:

A building or premises in a "R-2" Two-Family Residential District shall be used only for the following purposes:

- (1) Any use permitted in district "R-1"
- (2) Two-family dwellings

A building or premises in a "R-3F" Multifamily Residential District shall be used only for the following purposes:

- (a) Uses. A building or premises in an R-3F multifamily residential district shall be used only for the following purposes:
 - (1) All uses allowed in section 31-186
 - (2) Multifamily structures containing three (3) or four (4) separate dwelling units
 - (3) Institutions of a religious, educational, charitable or philanthropic nature, but not a penal or mental institution
 - (4) Licensed group or community home housing five (5) or fewer persons
 - (5) Accessory buildings and uses, customarily incident to the above uses and located on the same lot therewith, not involving the conduct of a business

- (b) When a planned unit development required, rezoning applications under this division shall be subject to the requirements of 31-256.9 of Division 8B of this article, if applicable.

A planned unit development (PUD) is a land use design incorporating the concepts of density and common open space. Common open space shall include, but is not limited to, community amenities such as parks, gardens, pedestrian trails, recreation areas, and usable undisturbed, natural areas. The PUD designation serves as an "overlay zoning and development classification." In this capacity, the designation permits specific negotiated development regulations to be applied to the base land use zoning district(s) in which the property is located. When a parcel of land receives a PUD designation, the entire parcel must be assigned one or more standard zoning district classifications. However, the added PUD overlay classification enables the developer of the site to request that specific land use development regulations be applied to his development site. Such specific land use and development regulations shall not take effect until they are reviewed, public hearings are held and approval is obtained from both the Planning and Zoning Commission and the City Council. The PUD classification is an overlay designation to provide the flexibility to permit development projects which may include multiple land uses. This classification serves the following purposes:

- (a) Establish a procedure for the development of a parcel of land under unified control to reduce or eliminate the inflexibility that might otherwise result from strict application of land use standards and procedures designed primarily for individual lots.
- (b) Ensure structured review and approval procedures are applied to unique development projects that intended to take advantage of common open space and promote pedestrian circulation.
- (c) Allow developers greater freedom to be innovative in selecting the means to provide access, light, open space, and amenities.
- (d) Provide flexibility from the strict application of existing development regulations and land use standards and allow developers the opportunity to take advantage of special site characteristics and location.

The regulatory provisions of this classification are intended to achieve the above purposes while maintaining the spirit of the current City of Killeen Development Regulations, as amended. As such, these provisions represent the governing body's minimum quality of life standard and no variance or exception shall be granted thereto.

Property Specifics

Applicant/Property Owner: The Donald Earl Nellis and Lenner Hair Nellis Revocable Living Trust

Property Location: The property is located along the east right-of-way of Cunningham Road, approximately 600' south of its intersection with E. Stan Schlueter Loop (FM 3470).

Legal Description: 13.556 acres out of the R. Cunningham Survey, Abstract No. 199, Killeen, Texas

Zoning/ Plat Case History:

- There is no recent zoning activity for the property.
- The subject property is not platted.

Character of the Area

Existing Land Use(s) on the Property: The project area is currently undeveloped. Oak Valley Subdivision Phases II and IV are located south and east of the subject site.

Figure 1. Zoning Map

See attachment.

Figure 2. Water and Wastewater Map

See attachment.

Historic Properties: None

Infrastructure and Community Facilities

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: The existing potable water main that would serve the property is a 16-inch diameter transmission main running parallel to the lot frontage within the right-of-way of Cunningham Road. Upon approval of a future development permit application, the developer would be required to extend public water mains across the property to provide adequate domestic and fire flows in accordance with the City of Killeen Code of Ordinances and other applicable development criteria. A permit applicant is solely responsible for and shall perform and submit the results of all required testing of the public water mains to confirm adequate flow and pressure exists to support any Code-mandated fire protection measures.

Various scenarios are available for retail potable water supply to a multifamily development:

- A master meter (with backflow/crossflow isolation) set at a tap on a public water main, with a multi-service-unit-equivalent yard line with or without (owner-side) sub-metering
- A looped dedicated public water main (the means of water distribution required per the City's adopted Infrastructure Development & Design Standards Manual) internal to the complex with one or more service connections or
- An individual service connections from an abutting public water main to individual buildings and, in some cases, individual units

Please note that transmission of potable water to individual "customers" through a private potable water transmission system that does not conform with 30 TAC 290 and Killeen Code of Ordinances Chapter 30 rules would result in regulation of the supplier as a retail water purveyor by the TCEQ. Public sanitary sewer utility service is immediately available to the property. An

existing 12-inch diameter gravity sanitary sewer interceptor that serves the entire contributing wastewater drainage basin crosses the full extent of the eastern portion of the subject tract. Upon approval of a future development permit application, the developer would be required to extend a public sanitary sewer main to provide adequate collection capacity in accordance with City of Killeen Code of Ordinances and other applicable development criteria.

It shall be noted that Public Works personnel have performed only a basic assessment of publicly-dedicated water and sanitary sewer infrastructure that would serve this property. The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to the property. Further, City of Killeen development regulations require that capacity analyses related to development of the property are the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for redevelopment of the subject property, shall coordinate tie-in to all publicly dedicated infrastructure with the Public Works Department.

Transportation:

Existing conditions: The applicant is advised that ingress/egress to and from Cunningham Road will be disciplined through the policies of the City's Thoroughfare Development Manual when the property is developed. Cunningham Road, classified as a minor arterial (90 feet right-of-way) street by the City's adopted Thoroughfare Plan, is constructed as an urban section road functioning at its desired level of service. City Code requires that capacity analysis related to development is the responsibility of the developer. Accordingly, the developer may be required to conduct a traffic impact analysis to demonstrate that the transportation demand from the proposed development will not negatively impact (i.e., downgrade) the transportation level of service for Cunningham Road.

Proposed Improvements: No proposed improvements are contemplated as part of this zoning request.

Projected Traffic Generation: Significant upon build out

Environmental Assessment

Topography: The property ranges in elevation from 838 feet to 868 feet in elevation.

Regulated Floodplain/Floodway/Creek: This parcel is located within a FEMA regulatory Special Flood Hazard Area (SFHA) Zone X. This area has an unmapped creek that connects the upstream pond to the downstream FEMA identified creek. The north part of the parcel is a known high ground water and flood prone area. A creek buffer zone and/or a riparian buffer zone will need to be established for this development.

Land Use Analysis

Land Use Plan: This area is designated as 'General Residential' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

Plan Recommendation: The 'General Residential' character encourages detached residential dwellings as the primary focus, attached housing types subject to compatibility and open space standards (e.g. duplexes), planned developments with a mix of housing types subject to compatibility and open space standards, public/institutional, parks, and other public spaces. The characteristics of this designation include:

- Predominantly “R-1” zoning district with less openness and separation between dwellings compared to Suburban Residential areas
- Auto-oriented character that can be offset with architectural standards, landscaping, and limited uniform subdivision designs
- Neighborhood-scale commercial emerging over time for well-suited areas

Consistency: The zoning request is consistent with the intent of the Comprehensive Plan.

Public Notification

The staff notified fifty-seven (57) surrounding property owners regarding this request. Staff received a protest from Ramon K. Sarmiento, the owner of 3613 Crosscut Loop, Killeen, Texas. Additionally, Kyle Wheatley, the owner of 5118 Spring Drive, Killeen, spoke in opposition to the request. Leroy W. Nellis, the owner of 4600 Cunningham Road, submitted a response in support of the project.

Recommendation

The Planning & Zoning Commission recommended approval of the applicant’s PUD zoning request by a vote of 4 to 2 with Vice Chair Dorroh and Commissioner Harkin in opposition. The Planning and Zoning Commission recommends the following conditions as part of the approval:

- the applicant shall adhere to the submitted site plan, architectural elevations and floorplans;
- the applicant shall match or exceed the façade standards as prescribed by the Texas Department of Housing and Community Affairs 2016 Qualified Allocation Plan (QAP); the QAP requires greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely;
- the applicant shall provide a minimum of four different color variations within the project;
- all buildings shall be one-story with the exception of those buildings containing 4-bedroom units;
- the applicant shall satisfy all landscaping and screening requirements set in Killeen Code of Ordinances Sections 31-255.5 and 31-255.7. Specifically, the requirements amount to 68 trees, 204 shrubs and screening around the north, east and south project boundaries;
- the applicant shall provide two play areas, each to include universal designed, ADA compliant equipment, as illustrated on the site plan;
- the applicant shall provide an interior sidewalk plan subject to City Council review and approval;
- the applicant shall meet all Hill Country transit (HOP) guidelines and specifications for the bus stop shelter illustrated on the site plan; and
- the applicant shall satisfy City Code for trash receptacles.

Figure 1. Zoning Map

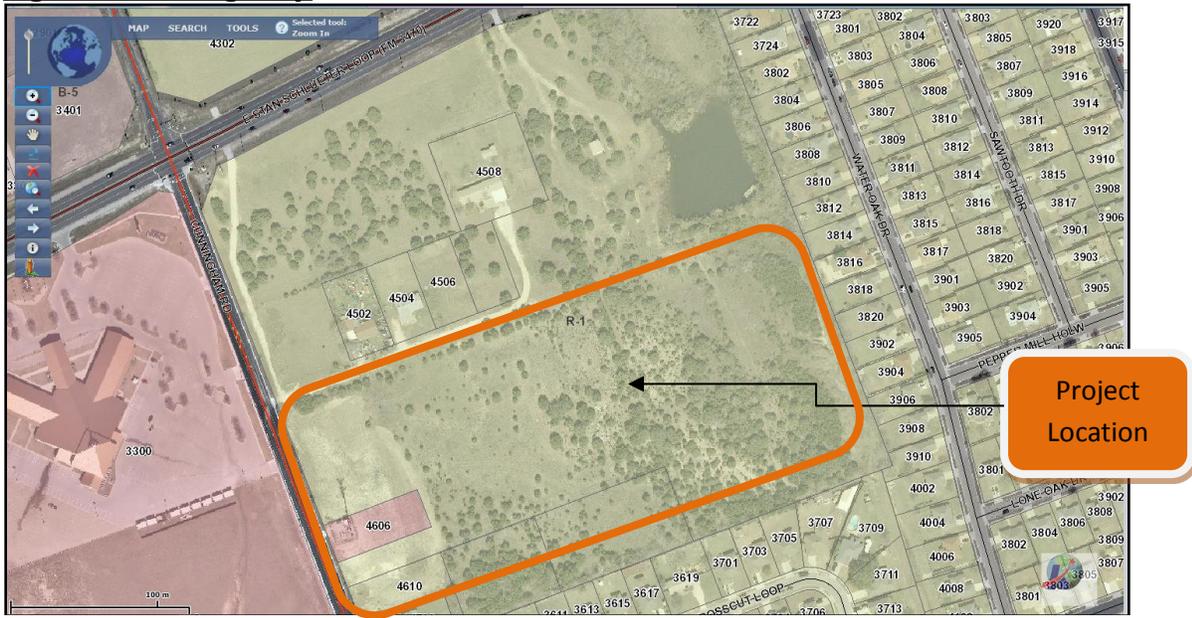
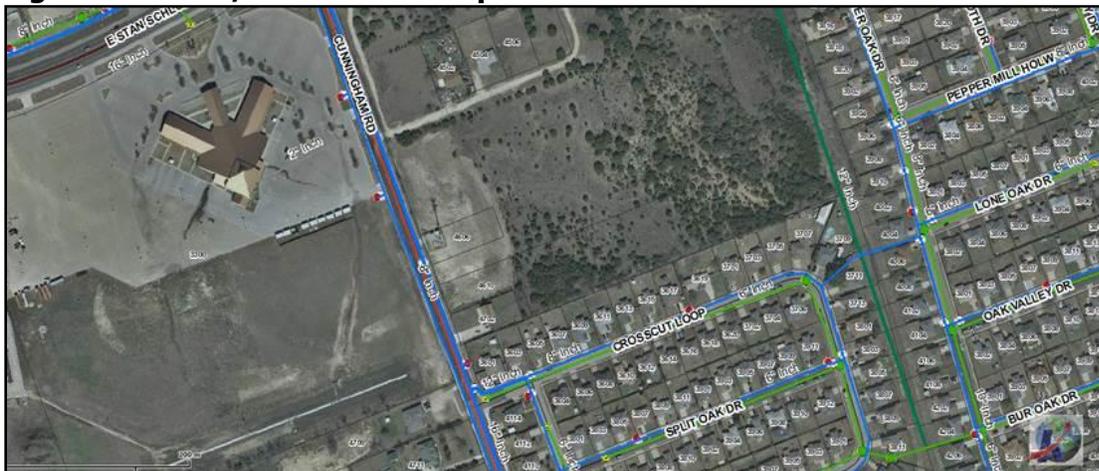


Figure 2. Water/Wastewater Map



**MINUTES
PLANNING AND ZONING COMMISSION MEETING
JUNE 20, 2016**

**CASE #Z16-09
R-1 TO PUD with R-2 and R-3F**

HOLD a public hearing and consider a request by the Donald Earl Nellis and Lenner Hair Nellis Revocable Living Trust to rezone approximately 13.556 acres out of the Robert Cunningham Survey, Abstract No. 199, from “R-1” (Single-Family Residential District) to a Planned Unit Development (PUD) with “R-2” (Two-Family Residential District) and “R-3F” (Multi-Family Residential District) uses. The property is located along the east right-of-way of Cunningham Road, approximately 600’ south of its intersection with E. Stan Schlueter Loop (FM 3470).

Chairman Frederick requested staff comments.

City Planner Tony McIlwain stated that the developer for the project, Housing Solutions Alliance L.L.C. is proposing to construct a 76 dwelling unit project with 4 duplex buildings and 17 fourplex buildings. The development is proposing 17 one-bedroom units; 37 two-bedroom units; 16 three-bedroom units; 6 four-bedroom units; and one office building proposed for this development. This project was presented to the City Council in February 2016.

The staff notified 57 (fifty seven) surrounding property owners regarding this request. Staff received one protest and one response in support.

Staff recommends approval of the applicant’s PUD request subject to the following:

- the applicant shall adhere to the submitted site plan, architectural elevations and floorplans (i.e. exhibits 1, 2 and 3);
- the applicant shall provide a minimum of four different color variations within the project;
- all buildings shall be one-story with the exception of those buildings containing 4-bedroom units;
- the applicant shall satisfy all landscaping and screening requirements set in Killeen Code of Ordinances Sections 31-255.5 and 31-255.7. Specifically, the requirements amount to 68 trees, 204 shrubs and screening around the north, east and south project boundaries; and
- the applicant shall provide a second play area (to include equipment) in the eastern portion of the development site.

Vice Chair Dorroh suggested that the following be added to the recommendations: the playground equipment needs to be universal designed, ADA compliant equipment for both playground areas; provide an interior sidewalk plan; meet all Hill Country transit (HOP) guidelines and specifications for the bus stop shelter illustrated on the site plan; the applicant

shall match or exceed the masonry standards as prescribed by the Texas Department of Housing and Community Affairs 2016 Qualified Allocation Plan (QAP); the applicant shall satisfy City Code for trash receptacles.

Mr. Pedro Quintero, Quintero Engineering, LLC, 415 E. Avenue D, Killeen, Texas, was present to represent this request.

Chairman Frederick opened the public hearing.

Mr. Kyle Wheatley, the owner of 5118 Spring Drive, Killeen, Texas spoke against the request.

With no one else requesting to speak, the public hearing was closed.

Commissioner Dillard motioned to recommend approval of the request with the recommendations. Commissioner Alvarez seconded the motion. The motion passed 4-2 with Vice Chair Dorroh and Commissioner Harkin in opposition.

Chairman Frederick stated that this request will be forwarded to City Council with a recommendation to approve.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM R-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO PLANNED UNIT DEVELOPMENT (PUD) WITH R-2 (TWO FAMILY RESIDENTIAL DISTRICT) AND R-3F (MULTIFAMILY RESIDENTIAL DISTRICT) USES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Quintero Engineering submits this request on behalf of the Donald Earl Nellis and Lenner Hair Nellis Revocable Living Trust to the City of Killeen for a request for an amendment of the Zoning Ordinance of the City of Killeen by changing the classification of approximately 13.556 acres, being part of the R. Cunningham Survey, Abstract No. 199, from “R-1” (Single-Family Residential District) to a Planned Unit Development (PUD) with “R-2” (Two-Family Residential District) and “R-3F” (Multifamily Residential District) uses for a Housing Tax Credit (HTC) eligible project named Hyde Estates, said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 20th day of June 2016 with the following conditions:

- the applicant shall adhere to the submitted site plan, architectural elevations and floorplans attached as Figure 1, Figure 2, and Figure 3;
- the applicant shall match or exceed the façade standards as prescribed by the Texas Department of Housing and Community Affairs’ 2016 Qualified Allocation Plan (QAP); the QAP requires greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely;
- the applicant shall provide a minimum of four different color variations within the

project;

- all buildings shall be one-story with the exception of those buildings containing 4-bedroom units;
- the applicant shall satisfy all landscaping and screening requirements set in Killeen Code of Ordinances Sections 31-255.5 and 31-255.7. Specifically, the requirements amount to 68 trees, 204 shrubs and screening around the north, east and south project boundaries;
- the applicant shall provide two play areas, to include universal designed, ADA compliant equipment, as illustrated on the site plan;
- the applicant shall provide an interior sidewalk plan subject to City Council review and approval;
- the applicant shall meet all Hill Country transit (HOP) guidelines and specifications for the bus stop shelter illustrated on the site plan; and
- the applicant shall satisfy City Code for trash receptacles.

and 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 12th day of July 2016, at the City Hall, City of Killeen;

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 that the request should be approved;

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

Section I. That the zoning classification of the following described tract be changed from “R-1” (Single-Family Residential District) to Planned Unit Development (PUD) with “R-2” (Two-Family Residential District) and “R-3F” (Multifamily Residential District) uses, with those conditions

stipulated by the Planning and Zoning Commission, for approximately 13.556 acres, being part of the R. Cunningham Survey, Abstract No. 199, for property located along the east right-of-way of Cunningham Road, approximately 600' south of its intersection with E. Stan Schlueter Loop (FM 3470), 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 12th day of July 2016, 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:

Jose L. Segarra, MAYOR

ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis, City Attorney

Case #16-09
Ord. #

Figure 1. Site Plan



Click on Signatures on

PROJECT NO. 1006
DATE: February 2016

GE
GOLDER ASSOCIATES
1400 N. MOORE
DALLAS, TEXAS 75207
TEL: 972.362.1000
WWW.GOLDERASSOCIATES.COM

CUNNINGHAM TRACT MULTIFAMILY DEVELOPMENT
MULLEN, BELL COUNTY, TEXAS
PROPOSED DEVELOPMENT CONCEPT PLAN

C101

Figure 2. Elevations



Exhibit 3



1 BEDROOM UNIT
750 SF



2 BEDROOM UNIT
998 SF



3 BEDROOM UNIT
1,165 SF



4 BEDROOM UNIT
1,550 SF

HYDE ESTATES

A RESIDENTIAL COMMUNITY DEVELOPED BY
GREATER KILLEEN HOUSING ALLIANCE, INC.

KILLEEN TEXAS



Figure 3. Floorplans

PROPOSED SITE INFORMATION:

- LANDUSE:
 - EXISTING USE: UNDEVELOPED
 - PROPOSED USE: MULTIFAMILY RESIDENTIAL
- ZONING:
 - EXISTING ZONING: R-1
 - PROPOSED ZONING: R-2 & R-3F WITH PUD
- BUILDING USE:
 - TOTAL NUMBER OF BUILDINGS: 22
 - DUPLEX: 4 BUILDINGS
 - FOUR-PLEX: 17 BUILDINGS
 - COMMUNITY BUILDING: 1 BUILDING
- DWELLING UNIT SUMMARY:
 - TOTAL NUMBER OF DWELLING UNITS: 76
 - "1" BEDROOM UNITS: 17
 - "2" BEDROOM UNITS: 37
 - "3" BEDROOM UNITS: 16
 - "4" BEDROOM UNITS: 6
- TOTAL PARKING: 192 SPACES

PROPOSED SUBDIVISION INFORMATION:

SURVEY: R. CUNNINGHAM SURVEY, A-199

NUMBER OF BLOCKS: 1

NUMBER OF LOTS: 1

TOTAL ACREAGE: 13.556 ACRES

LEGEND

- PROPERTY LINE
- EASEMENT LINES
- BUILDING LINES
- PROPOSED 6" WATER LINE
- PROPOSED 6" SEWER LINE
- PROPOSED SCREENING
- FIRE HYDRANT
- GATE VALVE
- WATER METER
- MANHOLE
- CLEANOUT
- FLOW DIRECTION
- HANDICAP PARKING
- PARKING COUNT
- SHRUB
- TREE

| No. | DATE | REVISIONS |
|-----|------|-----------|
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For Interim Review Only
 These documents are released for the purpose of review and comment under the authority of Pedro Quintero, P.E., P.E. No. 111656 on February 19, 2016. They are not to be used for construction purposes.

ISSUED FOR REVIEW, COMMENT

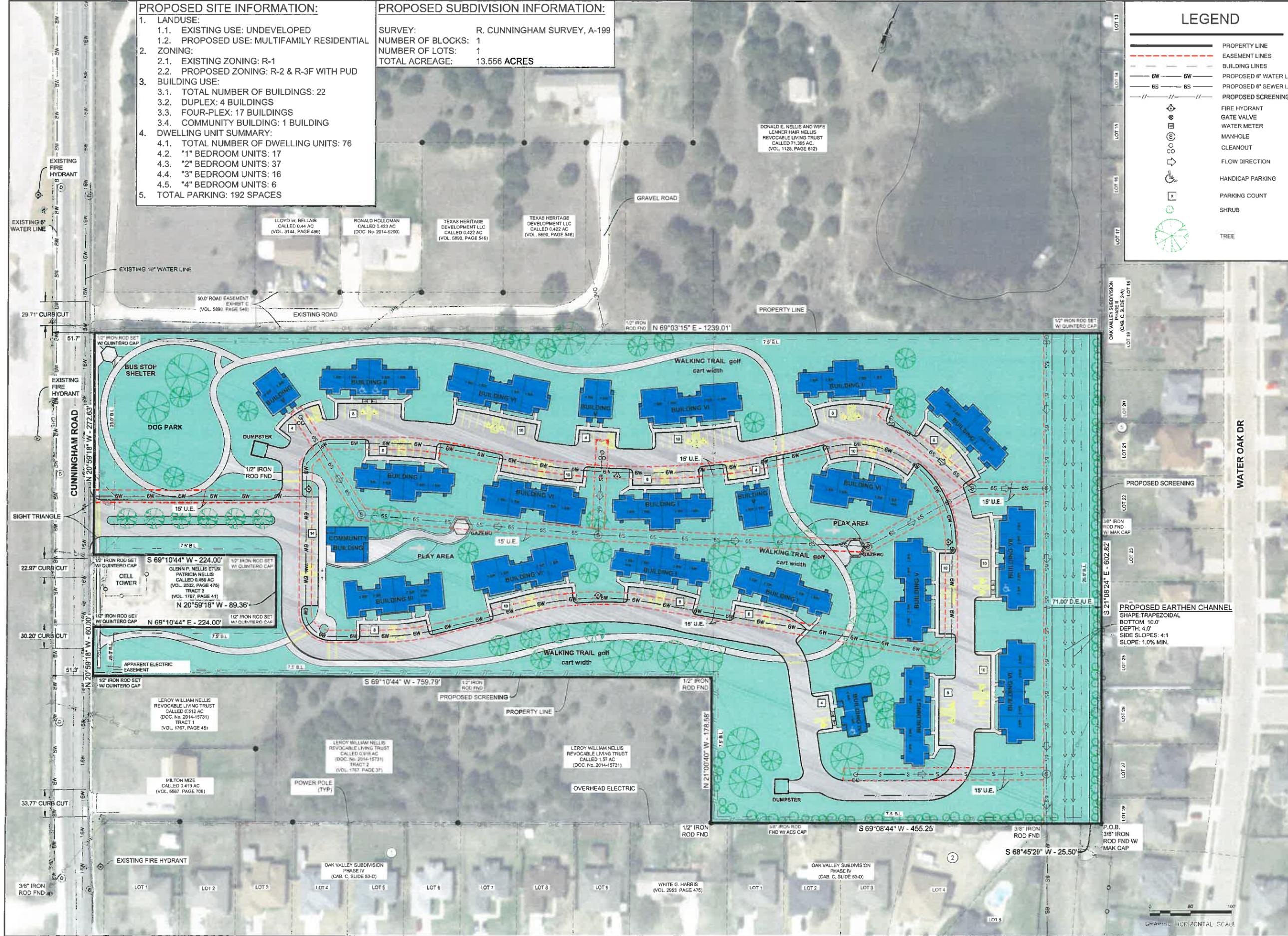
PROJECT NO.: 15-069
 DATE: February 2016

QUINTERO ENGINEERING, LLC
 415 E. AVENUE D
 KILLEEN, TEXAS 76541
 PHONE: (254) 493-9982
 FAX: (254) 493-7070
 T.B.P.E. FIRM NO.: 14779
 T.B.P.L.S. FIRM NO.: 10794111



CUNNINGHAM TRACT MULTI-FAMILY DEVELOPMENT
 KILLEEN, BELL COUNTY, TEXAS
PROPOSED DEVELOPMENT CONCEPT PLAN

DRAWING NO.: C101





GAZEBO

HYDE ESTATES

KILLEEN TEXAS

A RESIDENTIAL COMMUNITY DEVELOPED BY
GREATER KILLEEN HOUSING ALLIANCE, INC.



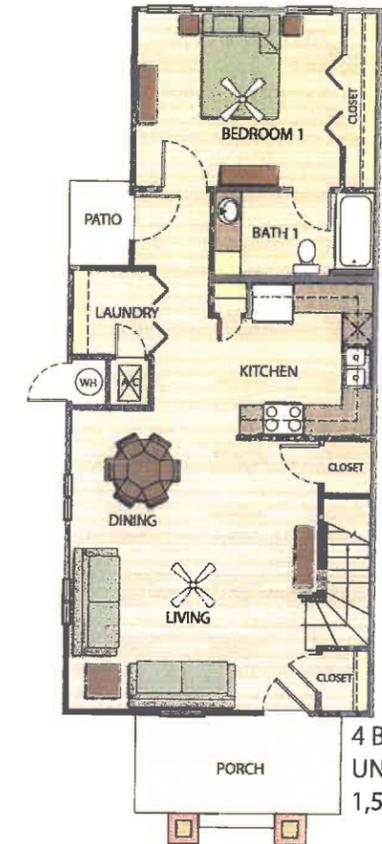
1 BEDROOM UNIT
750 SF



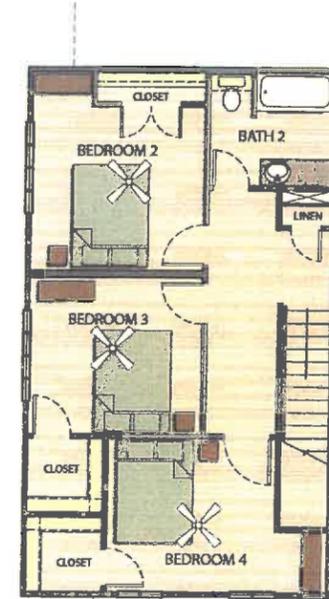
2 BEDROOM UNIT
998 SF



3 BEDROOM UNIT
1,165 SF



4 BEDROOM
UNIT
1,550 SF



HYDE ESTATES

KILLEEN TEXAS

A RESIDENTIAL COMMUNITY DEVELOPED BY
GREATER KILLEEN HOUSING ALLIANCE, INC.

Exhibit 4



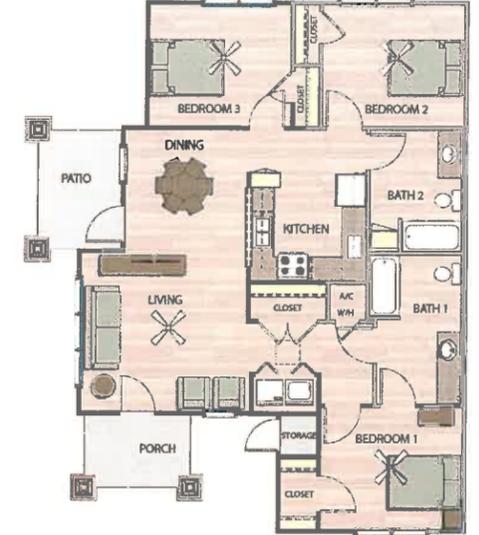
Site Plan



One BR, 800 nsf



Two BR, 1,035 nsf



Three BR, 1,200 nsf

- ◆ Large apartment sizes
- ◆ 9' ceilings throughout
- ◆ Private patios
- ◆ Energy-Star design

Hyde Estates

- ◆ Low-Density
- ◆ Only 76 units on 13.5 acres
- ◆ Boulevard entrance
- ◆ Furnished Community Center
- ◆ Generous landscaping
- ◆ Dog Park for residents
- ◆ Walking Trail
- ◆ Outdoor gazebos
- ◆ Two play areas
- ◆ Screen fencing on East side



Four BR, 1,540 nsf



Rendering of completed building



| | |
|--------------------|-----------|
| Date Paid: | 2/19/2016 |
| Amount Paid: | \$ 300- |
| Cash/MO #/Check #: | # 1328 |
| Receipt #: | 0357 |

CASE #: Z16-09

City of Killeen Zoning Change Application

General Zoning Change \$300.00 [] Conditional Use Permit \$500.00

Name(s) of Property Owner: Donald Earl Nellis and Lenner Hair Nellis Revocable Living Trust
 Current Address: 21204 Bogie Road
 City: Edmond State: OK Zip: 73012
 Home Phone: () _____ Business Phone: () _____ Cell Phone: (405) 826-5279
 Email: linda@nellisvineyards.com

Name of Applicant: Housing Solutions Alliance, LLC
 (If different than Property Owner)
 Address: 1935 Airline Drive
 City: Bossier City State: LA Zip: 71112
 Home Phone: () _____ Business Phone: (214) 213-8502 Cell Phone () _____
 Email: art@sgba.com

Address/Location of property to be rezoned: _____
 Legal Description: A0199BC R Cunningham, 2, Acres 27.845

Surveyor's Sketch Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan? YES NO
 If NO, a FLUM amendment application must be submitted.

Type of Ownership: _____ Sole Ownership _____ Partnership _____ Corporation X _____ Other
 Present Zoning: R-1 Present Use: Undeveloped
 Proposed Zoning: R-2 & R-3F W/PUD Proposed Use: Multifamily Residential
 Conditional Use Permit for: N/A

This property was conveyed to owner by deed dated 10/16/1996 and recorded in Volume 3536,
 Page 477, Instrument Number Doc. #: 000034382 of the Bell County Deed Records.
 (Attached)

Is this the first rezoning application on a unilaterally annexed tract?
 Yes (Fee not required) No (Submit required fee)

APPOINTMENT OF AGENT

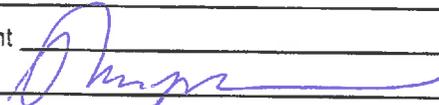
As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Quintero Engineering, LLC
Mailing Address: P.O. Box 4386
City: Killeen State: TX Zip: 76540
Home Phone: () _____ Business Phone: (254) 493-9962 Email: pquintero@quinteroeng.com

I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific zoning request.

I understand that the City will deal only with a fully authorized agent. At any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter. If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

| | |
|--|------------------------|
| Signature of Agent <u></u> | Title <u>President</u> |
| Printed/Typed Name of Agent <u>Pedro Quintero, P.E.</u> | Date <u>02/12/16</u> |
| Signature of Agent _____ | Title _____ |
| Printed/Typed Name of Agent _____ | Date _____ |
| Signature of Applicant <u></u> | Title <u>President</u> |
| Printed/Typed Name of Applicant <u>Art Schudt, Jr., AIA</u> | Date <u>2/16/16</u> |
| Signature of Property Owner <u></u> | Title <u>Trustee</u> |
| Printed/Typed Name of Property Owner <u>Linda A. Nellis</u> | Date <u>2/15/16</u> |
| Signature of Property Owner <u></u> | Title _____ |
| Printed/Typed Name of Property Owner _____ | Date _____ |
| Signature of Property Owner _____ | Title _____ |
| Printed/Typed Name of Property Owner _____ | Date _____ |

*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.



**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z16-09

ZONING FROM:

A-R1 To R-2 & R-3 W/PUD

APPLICANT:

**HOUSING SOLUTIONS
ALLIANCE, LLC**

PROPERTY OWNER:

**DONALD EARL NELLIS
LENNER HAIR NELLIS
REV. LIVING TRUST**

LEGAL DESCRIPTION:

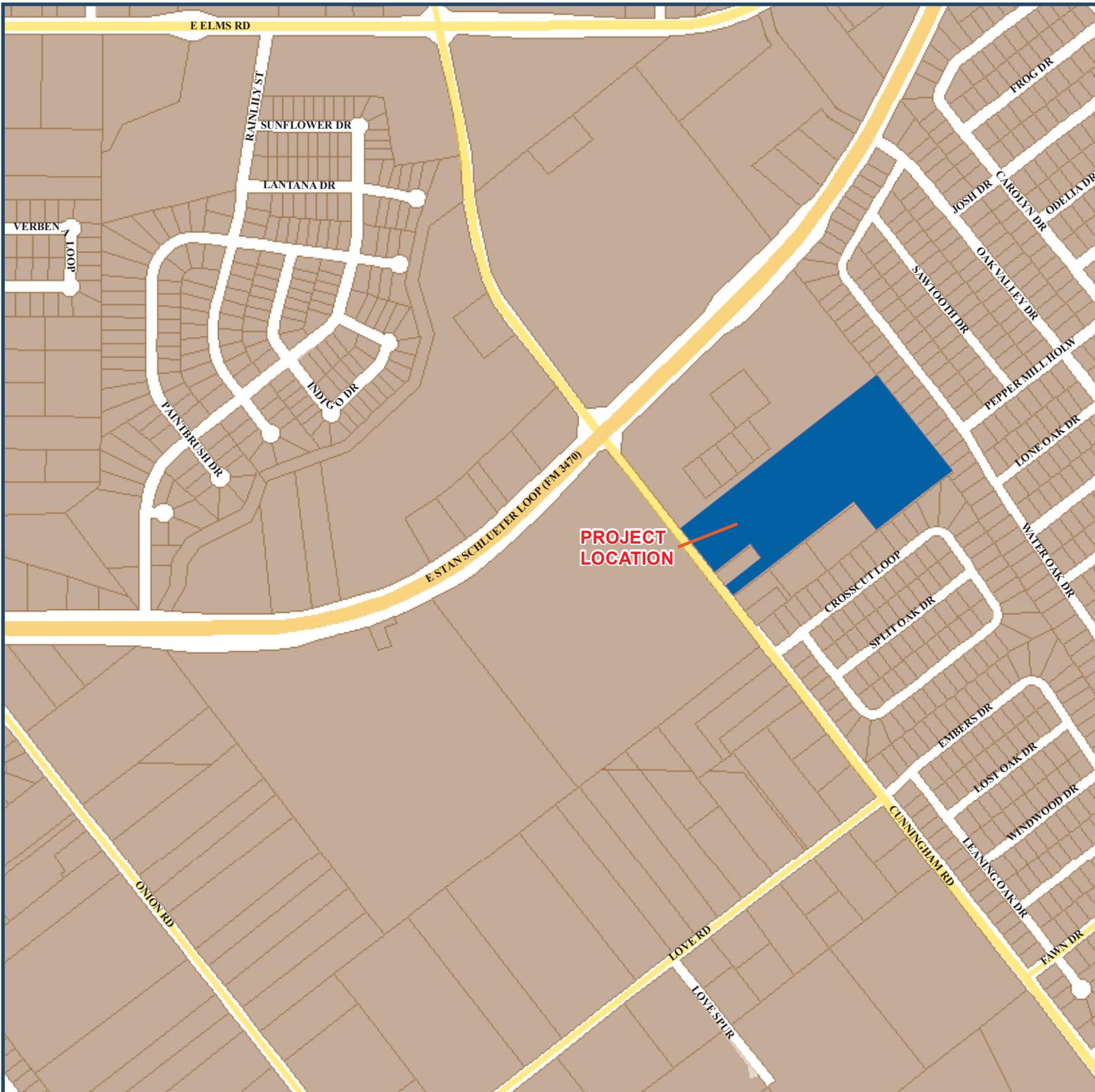
**13.556 ACRES A0199BC
R CUNNINGHAM, 2,
ACRES 27.845**

LEGEND

-  Zoning Case
-  Parcel
-  City Limits



Date: 5/25/2016





**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z16-09

ZONING FROM:

A-R1 To R-2 & R-3 W/PUD

APPLICANT:

**HOUSING SOLUTIONS
ALLIANCE, LLC**

PROPERTY OWNER:

**DONALD EARL NELLIS
LENNER HAIR NELLIS
REV. LIVING TRUST**

LEGAL DESCRIPTION:

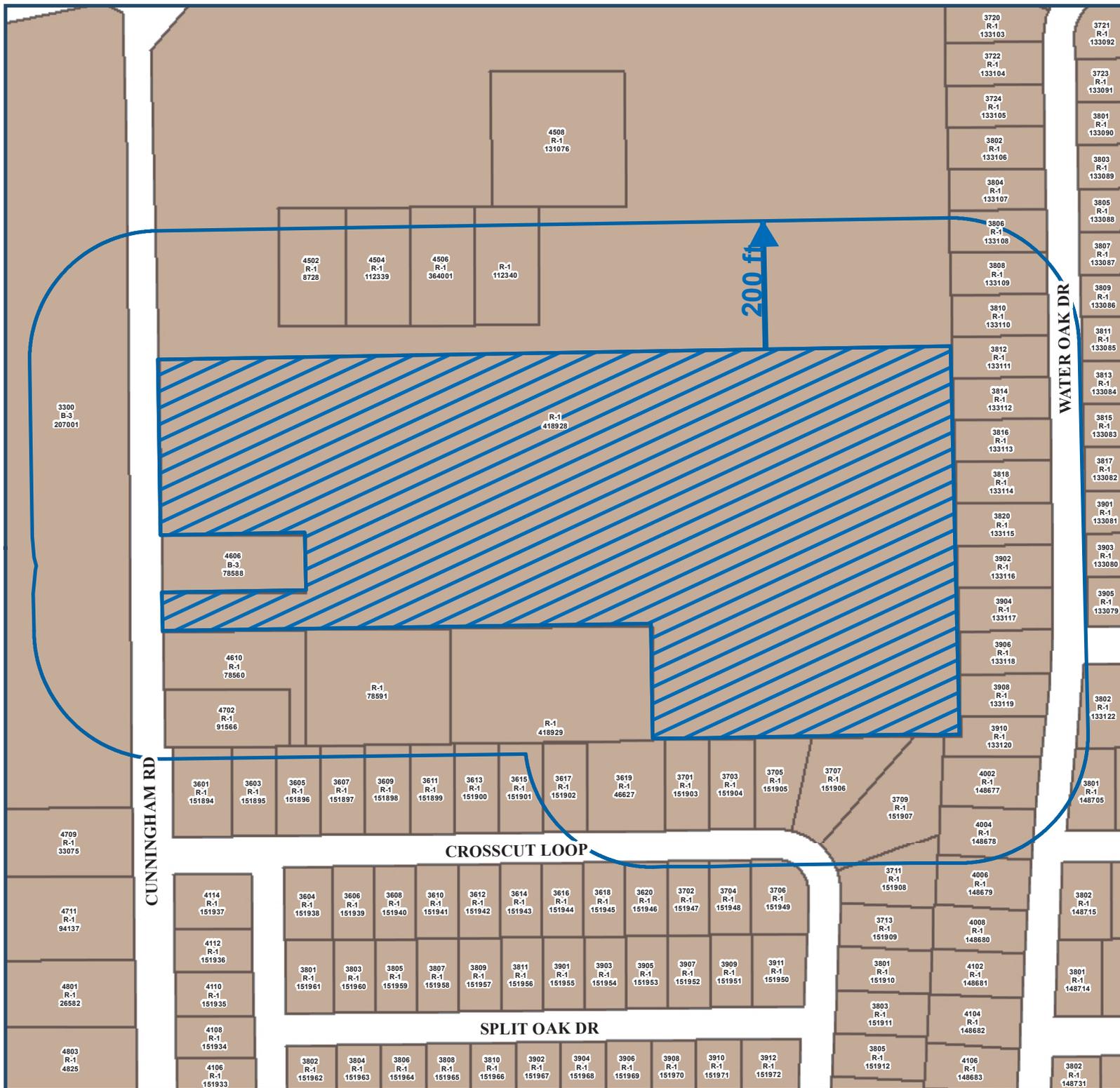
**13.556 ACRES A0199BC
R CUNNINGHAM, 2,
ACRES 27.845**

LEGEND

-  200' BUFFER
-  Zoning Case
-  Parcel
-  Parcel



Date: 5/25/2016



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.

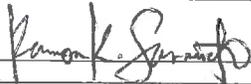
B. Conditional Use Permit (if applicable)

Whether the use is in 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.

-----CUT HERE-----

| | |
|---|----------------------------|
| YOUR NAME: Sarmiento, Ramon K. | PHONE NUMBER: 702-544-2285 |
| CURRENT ADDRESS: 3613 Crosscut Loop, Killeen TX 76542 | |
| ADDRESS OF PROPERTY OWNED: Same as above. | |
| COMMENTS: | R-1 to R-2 and R-3F w/PUD |
| I am concerned that the result of rezoning the property will have a negative effect on our privacy and safety. This may also lead to an increase in noise. All these may have a negative effect on my property's value. | |
| RECEIVED | |
| JUN 20 2016 | |
| PLANNING | |
| SIGNATURE:  | SPO #Z16-09/ 17 |

CUT HERE

YOUR NAME: LEROY W. NELLIS PHONE NUMBER: 512-983-9025

CURRENT ADDRESS: 6418 ZADOCK WOODS, AUSTIN, TX 78749

ADDRESS OF PROPERTY OWNED: 3 PARCELS ADJACENT TO PROPERTY TO REZONE; 4600 CUNNINGHAM ST R-1 to R-2 and R-3F w/PUD

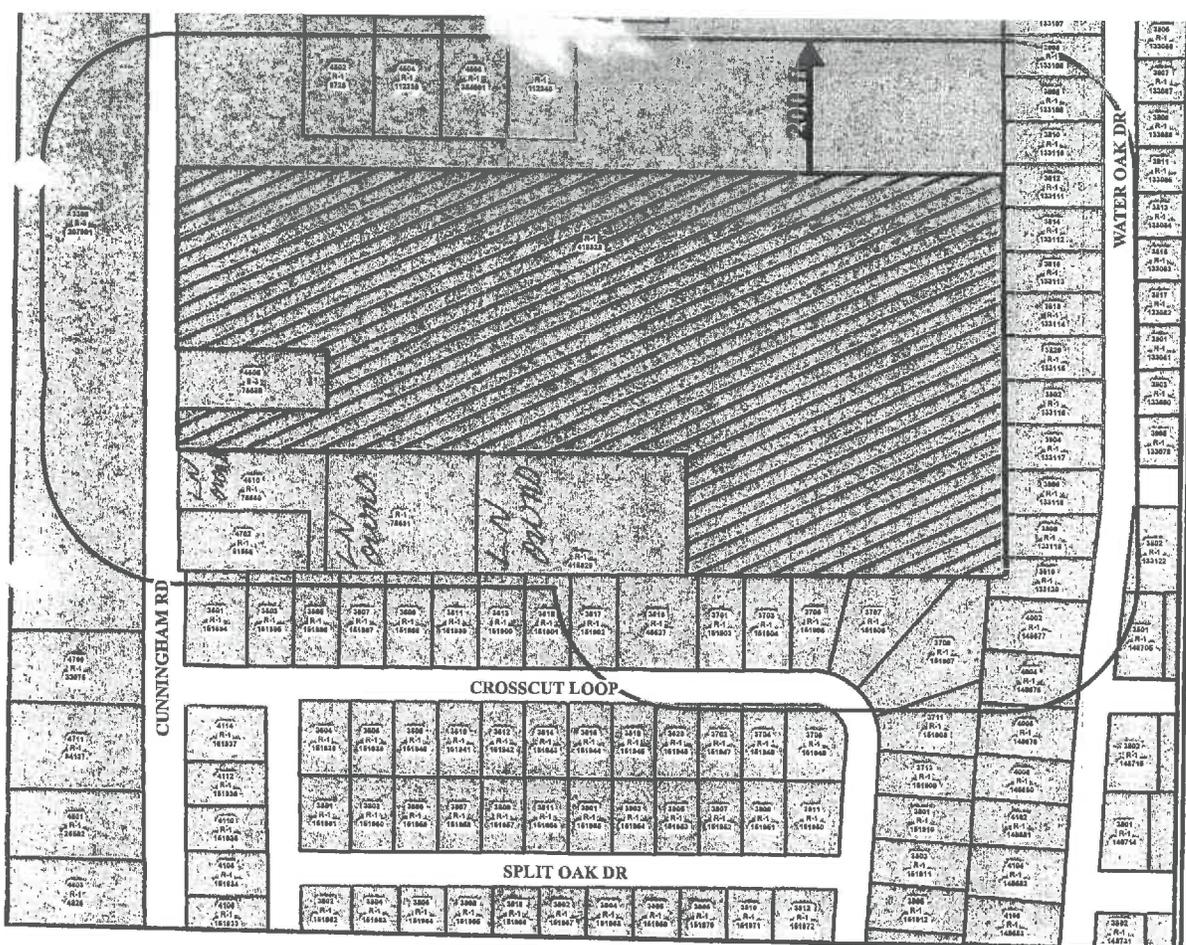
COMMENTS: 3 ACRES on attaching MAP.

I fully support proposed zoning REQUEST.

SIGNATURE: [Signature] SPO #Z16-09/07.08.09

PO BOX 1329 KILLEEN TEXAS 76540 1329 254 501 7630 254.501.7628 FAX
 WWW.CIKILLEEN.TX.US

RECEIVED
JUN 17 2016
PLANNING



PLANNING AND DEVELOPMENT SERVICES

ZONING CASE:
 Z16-09

ZONING FROM:
 A-R1 To R-2 & R-3 W/PUD

APPLICANT:
 HOUSING SOLUTIONS ALLIANCE, LLC

PROPERTY OWNER:
 DONALD EARL NELLIS
 LENNER HAIR NELLIS
 REV. LIVING TRUST

LEGAL DESCRIPTION:
 13.556 ACRES A0199BC
 R CUNNINGHAM, 2,
 ACRES 27.845

- LEGEND**
- 200' BUFFER
 - Zoning Case
 - Parcel
 - Parcel



Date: 5/25/2016

-----CUT HERE-----

| | |
|--|-----------------------------------|
| YOUR NAME: <i>Linda Williams</i> | PHONE NUMBER: <i>254-681-8641</i> |
| CURRENT ADDRESS: <i>1426 Corner Lane Harker Heights, Tx 76548</i> | |
| ADDRESS OF PROPERTY OWNED: <i>3817 Water Oak Drive Killeen Tx 76542</i> | |
| COMMENTS: | R-1 to R-2 and R-3F w/PUD |
| <i>I am protesting changing the property code to R-2 and R-3F. Leave it as R-1</i> | |
| RECEIVED | |
| JUN 27 2016 | |
| PLANNING | |
| SIGNATURE: <i>L Williams</i> | SPO #Z16-09/ <i>52</i> |

P.O. BOX 1329 KILLEEN, TEXAS 76540-1329 254.501.7630 254.501.7628 FAX
WWW.CIKILLEEN.TX.US



City of Killeen

Legislation Details

File #: PH-16-023A **Version:** 1 **Name:** FLUM #Z16-10
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 6/16/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: HOLD a public hearing and consider an ordinance to amend the Comprehensive Plan's Future Land Use Map (FLUM) from 'Suburban Commercial' to 'General Residential' (FLUM# Z16-10) for approximately 10.89 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Deorsom Loop and Judy Drive, Killeen, Texas.
Sponsors: Planning & Development Dept
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Ordinance](#)
[Application](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

**COMPREHENSIVE PLAN FUTURE LAND USE
MAP (FLUM) AMENDMENT: 'SUBURBAN
COMMERCIAL' TO 'GENERAL RESIDENTIAL'**

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

Nature of the Request

The applicant is requesting to amend the Comprehensive Plan's Future Land Use Map (FLUM) to change a 'Suburban Commercial' designated area to a 'General Residential' designated area for approximately 10.89 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Deorsom Loop and Judy Drive, Killeen, Texas. The applicant has submitted a concurrent request to rezone the subject property from "B-3" (Local Business District) to a Planned Unit Development (PUD) with "SF-2" (Single-Family Residential District) uses.

Land Use Plan: The property is designated as 'Suburban Commercial' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

If approved, the 'General Residential' designation encourages the following land uses and has the following characteristics:

- Detached residential dwellings
- Attached housing types subject to compatibility and open space standards (e.g., duplexes, townhomes, patio homes)
- Planned developments, potentially with a mix of housing types and varying densities, subject to compatibility and open space standards; public/institutional; parks and public spaces
- Predominantly "R-1" zoning district with less openness and separation between dwellings compared to Suburban Residential areas
- Auto-oriented character that can be offset with architectural standards, landscaping, and limited uniform subdivision designs
- Neighborhood-scale commercial emerging over time for well-suited areas

Figure 1. Future Land Use Map (FLUM)

See attachment.

The items below should be reviewed and addressed when a Future Land Use & Character map adjustment is proposed:

- **Scope of Amendment:** Is the proposed map change limited to one or a few parcels, or would it affect a much larger area? *The amendment would affect approximately 10.89 acres and should be considered a small scale amendment.*

- **Change in Circumstances:** What specific conditions (e.g., population size and/or characteristics, area character and building form, property/structure conditions, infrastructure or public services, market factors including need for more land in a particular designation, etc.) have changed sufficiently to render the current map designation(s) inappropriate or out-of-date? *The surrounding area has developed with a mixture of commercial and high density residential development.*

- **Consistency with Other Plans:** In addition to the Comprehensive Plan, is the proposed map change consistent with the intent and policy direction of any applicable small area plans, utility or drainage plans, or other City plans? *The proposed map change is not inconsistent with other City planning efforts (Water and Wastewater Master Plan, Thoroughfare Plan, Parks Master Plan).*

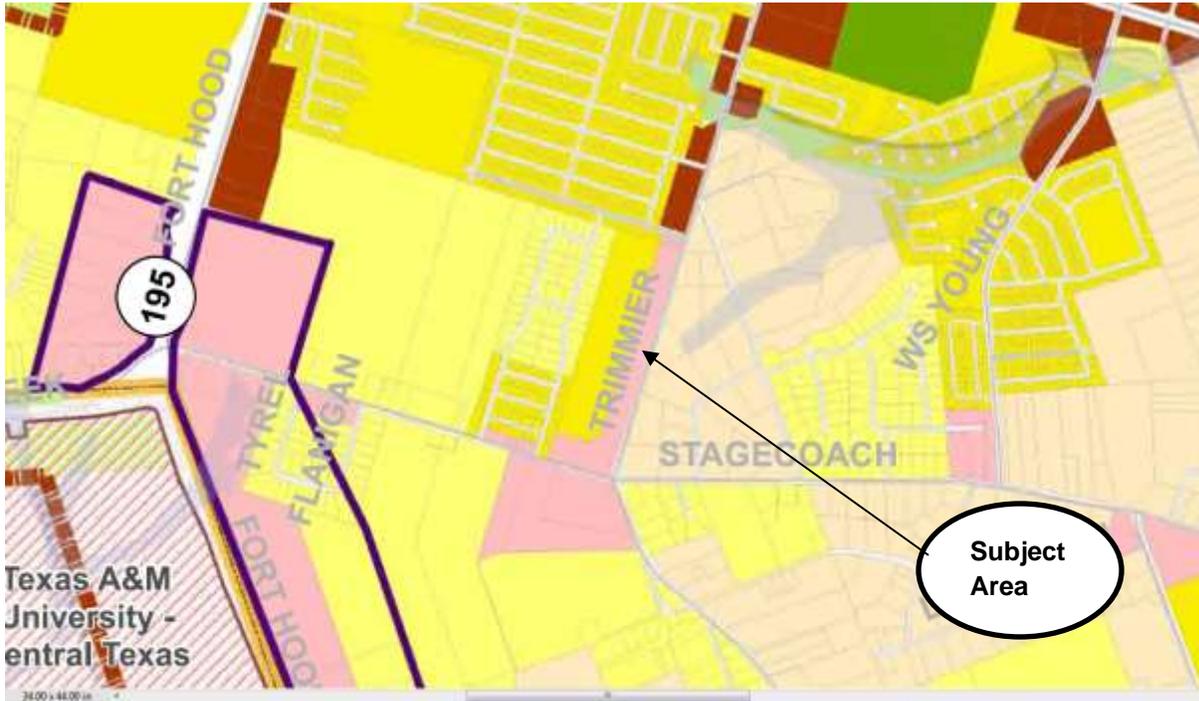
- **Adequate Information:** Do City staff, the Planning and Zoning Commission, and/or City Council have enough and appropriate information to move ahead with a decision (e.g., utility capacity, potential traffic impacts, other public service implications, resident/stakeholder concerns and input)? *Staff has sufficient information regarding utility capacity and roadway level of service for this area.*

- **Stakeholder Input:** What points, concerns, and insights have been raised by area residents, property owners, business owners, or others? *With the exception of listing this action as a public hearing item on the Planning and Zoning Commission's agenda, there is no public notice requirement for this amendment action.*

Recommendation

The Planning and Zoning Commission recommended approval of the applicant's request for an amendment of the Future Land Use Map (FLUM) from 'Suburban Commercial' to 'General Residential' by a vote of 6 to 0.

Figure 1. Future Land Use Map (FLUM)



**PLANNING AND ZONING COMMISSION MEETING
JUNE 20, 2016**

**CASE FLUM #Z16-10
SUBURBAN COMMERCIAL TO GENERAL RESIDENTIAL**

A. HOLD a public hearing and consider a request to amend the Comprehensive Plan's Future Land Use Map (FLUM) to change a 'Suburban Commercial' designated area to a 'General Residential' designated area (FLUM #Z16-10) for approximately 10.89 acres out of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Deorsam Loop and Judy Drive, Killeen, Texas.

Chairman Frederick requested staff comments.

Senior Planner Charlotte Hitchman stated that the applicant is requesting to amend the Comprehensive Plan's Future Land Use Map (FLUM) to change a 'Suburban Commercial' designated area to a 'General Residential' designated area for approximately 10.89 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Deorsam Loop and Judy Drive, Killeen, Texas.

Staff recommends approval of amending the FLUM from 'Suburban Commercial' to 'General Residential' and for approximately 10.89 acres. An amendment to the FLUM for this property will be consistent with the current land uses in the area and the projected residential growth anticipated for this area.

Mr. Ben Purser, Killeen Engineering & Surveying, Ltd., 2901 E. Stan Schlueter Loop, Killeen, Texas, was present to represent this request.

Chairman Frederick opened the public hearing. With no one requesting to speak, the public hearing was closed.

Commissioner Alvarez motioned to recommend approval of the request. Commissioner Beronio seconded the motion. The motion passed 6-0.

Chairman Frederick stated that this request will be forwarded to City Council with a recommendation to approve.

ORDINANCE _____

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP FROM 'SUBURBAN COMMERCIAL' TO 'GENERAL RESIDENTIAL' FOR APPROXIMATELY 10.89 ACRES, BEING PART OF THE AZRA WEBB SURVEY, ABSTRACT NO. 857, KILLEEN, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Killeen finds that Chapter 213.003 of the Local Government Code enables municipalities to adopt and amend comprehensive plans in the interest of coordinating long-range development of the municipality.

WHEREAS, the Planning and Zoning Commission has received a request by Killeen BES, Ltd., Killeen EGS Property, Ltd., and Bentina Ltd. to amend the Future Land Use Map (FLUM) of the Comprehensive Plan, to change approximately 10.89 acres, out of the Azra Webb Survey, Abstract No. 857 from 'Suburban Commercial' to 'General Residential'; said revision having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 20th day of June 2016, and due notice of the filing of said revision 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 12th day of July 2016, at the City Hall, City of Killeen;

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 opinion that the amendment should be approved;

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

SECTION I: That the land use designation of approximately 10.89 acres, out of the Azra Webb Survey, Abstract No. 857 be amended from ‘Suburban Commercial’ to ‘General Residential’.

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 12th day of July 2016, 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:

Jose Segarra
MAYOR

ATTEST:

Diana Barker
CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis
CITY ATTORNEY

Case #: FLUM #Z16-10
Ord#: 16-___



| | |
|--------------------|-------------|
| Date Paid: | 5/23/2016 |
| Amount Paid: | \$ 100.00 |
| Cash/MO #/Check #: | # 1290.2079 |
| Receipt #: | 390.391 |

CASE #: FLUM#216-10

City of Killeen

Future Land Use Map (FLUM) Amendment Application

FLUM Amendment Request \$100.00

Name(s) of Property Owner: Killeen BES LTD, Killeen EGS Property, Ltd., and Bentina, Ltd.

Current Address: 2901 E. Stan Schlueter Loop

City: Killeen State: TX Zip: 76542 -

Home Phone: (254) 634-5567 Business Phone: (254) 634-5567 Cell Phone: (254) 634-5567

Email: cspurser@purserco.com

Name of Applicant: (same)
(If different than Property Owner)

Address: _____

City: _____ State: _____ Zip: _____

Home Phone: (____) _____ Business Phone: (____) _____ Cell Phone (____) _____

Email: _____

Address/Location of property proposed for FLUM amendment: Located between Deorsam Loop & Judy Drive on the west side of West Trimmier Rd.

Legal Description: 10.89 Ac. of the Azra Webb Survey, Abstract No. 857

Metes & Bounds or Lot(s) Block Subdivision

Type of Ownership: _____ Sole Ownership Partnership _____ Corporation _____ Other

Present FLUM Designation: SC Present Use: Vacant

Proposed FLUM Designation: PUD (SF-2) Proposed Use: PUD (SF-2 Underlay)

This property was conveyed to owner by deed dated January 16, 2007 and recorded in Volume _____, Page _____, Instrument Number 2007-00002259 of the Bell County Deed Records. (Attached)

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Killeen Engineering & Surveying, Ltd.

Mailing Address: 2901 E. Stan Schlueter Loop

City: Killeen State: Texas Zip: 76542 - _____

Home Phone: (254) 526-4652 Business Phone: (254) 526-3981 Email: bpurser@kesltd.com

I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific FLUM amendment request.

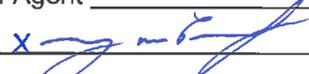
I understand that the City will deal only with a fully authorized agent. At any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, **I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter.** If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

Signature of Agent  Title Project Manager

Printed/Typed Name of Agent Ben Purser Date 5-27-16

Signature of Agent _____ Title _____

Printed/Typed Name of Agent _____ Date _____

Signature of Applicant  Title Owner's Agent

Printed/Typed Name of Applicant Gary Purser, Jr. Date 5-27-16

Signature of Property Owner  Title Owner's Agent

Printed/Typed Name of Property Owner Killeen BES LTD, Killeen EGS Property, Ltd., and Bentina, Ltd. Date 5-27-16

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.



City of Killeen

Legislation Details

File #: PH-16-023B **Version:** 1 **Name:** Zoning 16-10
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 6/16/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: HOLD a public hearing and consider an ordinance requested by Killeen BES, Ltd., Killeen EGS Property, Ltd., and Bentina Ltd. (Case #Z16-10) to rezone approximately 10.89 acres, out of the Azra Webb Survey, Abstract No. 857, from "B-3" (Local Business District) to a Planned Unit Development (PUD) with "SF-2" (Single-Family Residential District) uses. The property is located on the west side of Trimmier Road between Judy Drive and Deorsam Loop, Killeen, Texas.
Sponsors: Planning & Development Dept
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Exhibit](#)
[Ordinance](#)
[Application](#)
[Location map](#)
[Buffer map](#)
[Considerations](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

ZONING CASE #Z16-10 "B-3" (LOCAL BUSINESS DISTRICT) TO A PLANNED UNIT DEVELOPMENT (PUD) WITH "SF-2" (SINGLE-FAMILY RESIDENTIAL DISTRICT) USES.

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

This request is to rezone approximately 10.89 acres out of the Azra Webb Survey, Abstract No. 857, from "B-3" (Local Business District) to a Planned Unit Development (PUD) with "SF-2" (Single-Family Residential District) uses. The property is located on the west side of Trimmier Road between Judy Drive and Deorsam Loop, Killeen, Texas.

PUD Request:

The applicant is requesting modification of the front yard setback to having not less than twenty (20) feet, from the current "SF-2" standard of not less than twenty-five (25) feet.

The applicant is requesting modification of the architectural design standard for "SF-2" zoning. They are proposing that the homes have a minimum of 75% brick, stucco, or stone veneer for exterior walls excluding doors, windows, and gables; the current standard is 50%.

District Descriptions:

A building or premises in a district "SF-2" single-family residential district shall be used only for the following purposes:

- (1) Single-family dwellings meeting the criteria of the garden home district, with a minimum floor area of one thousand one hundred (1,100) square feet
- (2) All uses allowed in section 31-186, including those defined as home occupation uses

Property Specifics

Applicant/Property Owner: Killeen BES, Ltd., Killeen EGS Property, Ltd., Bentina Ltd.

Property Location: The property is located on the west side of Trimmier Road between Judy Drive and Deorsam Loop, Killeen, Texas.

Legal Description: Approximately 10.89 acres out of the Azra Webb Survey, Abstract No. 857

Zoning/ Plat Case History:

- There is no recent zoning for this property. The property is unplatted.

Character of the Area

Existing Land Use(s) on the Property: Undeveloped and vacant. This location is surrounded by a mixture of residential uses from "R-1" (Single-Family Residential) to "A" (Agricultural Residential) and undeveloped commercial zoning.

Figure 1. Zoning Map

See attachment.

Historic Properties: None

Infrastructure and Community Facilities

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Water, sanitary sewer, and drainage utility services are readily accessible to the subject property located within the City of Killeen municipal utility service area. Adequate potable water and sanitary sewer capacity are available to the tract. The property is currently part of a remainder tract and will be required to be platted prior to development. Public storm drainage infrastructure lies within the abutting right-of-way. Detention of post development storm water run-off will be required if inadequate capacity remains within existing drainage infrastructure. Ingress/egress to the property would be limited to the single point of existing ingress/egress to Trimmier Road, a major arterial street and one along Atlas Avenue and Constellation Drive, both local residential streets. No proposed right-of-way taking affects the property.

It shall be noted that Public Works personnel have performed only a basic assessment of publicly-dedicated water and sanitary sewer infrastructure that would serve this property. The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to the property. Further, City of Killeen development regulations require that capacity analyses related to development of the property are the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for redevelopment of the subject property, shall coordinate tie-in to all publicly dedicated infrastructure with the Public Works Department.

Transportation:

Existing conditions: Trimmier Road is designated as a 90' minor arterial on the City's approved Thoroughfare Plan.

Proposed improvements: None

Projected Traffic Generation: The traffic impact will be marginal.

City's approved Thoroughfare Plan. No proposed right-of-way taking affects the property.

Environmental Assessment

Topography/Regulated Floodplain/Floodway/Creek: The tract does not lie within a FEMA regulatory Special Flood Hazard Area (SFHA).

Land Use Analysis

Land Use Plan: The property is designated as 'Suburban Commercial' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

Plan Recommendation: The Comprehensive Plan calls for a wide range of commercial, retail, and service uses, at varying scales and intensities depending on the site.

Consistency: The rezone request is not consistent with the Comprehensive Plan. The applicant has submitted a separate request to amend the FLUM to 'General Residential.'

Public Notification

The staff notified seventy-two (72) surrounding property owners regarding this request. Staff has received no responses.

Recommendation

The Planning & Zoning Commission recommended approval of the PUD with the requested "SF-2" modifications by a vote of 5 to 1, with Commissioner Harkin voting in opposition.

**MINUTES
PLANNING AND ZONING COMMISSION MEETING
JUNE 20, 2016**

**CASE #Z16-10
B-3 to PUD with SF-2**

B. HOLD a public hearing and consider a request by Killeen BES, Ltd., Killeen EGS Property, Ltd. and Bentina Ltd. to rezone approximately 10.89 acres out of the Azra Webb Survey, Abstract No. 857, from “B-3” (Local Business District) to a Planned Unit Development (PUD) with “SF-2” (Single-Family Residential District) uses. The property is located on the west side of Trimmier Road between Deorsam Loop and Judy Drive, Killeen, Texas.

Chairman Frederick asked for staff comments.

Senior Planner Charlotte Hitchman stated that this request is to rezone approximately 10.89 acres out of the Azra Webb Survey, Abstract No. 857, from “B-3” (Local Business District) to “SF-2” (Single-Family Residential District) with a Planned Unit Development (PUD). The property is located on the west side of Trimmier Road between Judy Drive and Deorsam Loop, Killeen, Texas.

The staff notified seventy-two (72) surrounding property owners regarding this request. Staff has received no responses.

Staff recommends approval of the requested PUD.

Mr. Ben Purser, Killeen Engineering & Surveying, Ltd., 2901 E. Stan Schlueter Loop, Killeen, Texas was present to represent this request.

Chairman Frederick opened the public hearing.

Mr. Gary Purser, Jr., 2901 E. Stan Schlueter Loop, Killeen, Texas, spoke in support of the request.

With no one else requesting to speak, the public hearing was closed.

Commissioner Alvarez motioned to recommend approval of the request. Vice Chair Dorroh seconded the motion. The motion passed 5-1 with Commissioner Harkin in opposition.

Chairman Frederick stated that this request will be forwarded to City Council with a recommendation to approve.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM B-3 (LOCAL BUSINESS DISTRICT) TO A PLANNED UNIT DEVELOPMENT (PUD) WITH SF-2 (SINGLE-FAMILY RESIDENTIAL DISTRICT) USES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Killeen BES, Ltd., Killeen EGS Property, Ltd., and Bentina Ltd. submits this request for an amendment of the Zoning Ordinance of the City of Killeen by changing the classification of approximately 10.89 acres out of the Azra Webb Survey, Abstract No. 857, from “B-3” (Local Business District) to a Planned Unit Development (PUD) with “SF-2” (Single-Family Residential District) uses, said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 20th day of June 2016 with the following conditions:

- Request modification of front yard setback to having not less than twenty (20) feet, from the current “SF-2” standard, of not less than twenty-five (25) feet;
- Request modification of architectural design standard for “SF-2” zoning. Homes must have a minimum of 75% vs. the current 50% brick, stucco or stone veneer for exterior walls excluding doors, windows and gables;

and 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 12th day of July 2016, at the City Hall, City of Killeen;

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

that the request should be approved;

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

Section I. That the zoning classification of the following described tract be changed from “B-3” (Local Business District) to a Planned Unit Development (PUD) with “SF-2” (Single-Family Residential District) uses, with those conditions stipulated by the Planning and Zoning Commission, for approximately 10.89 acres, being part of the Azra Webb Survey, Abstract No. 857, for property located on the west side of Trimmier Road between Judy Drive and Deorsam Loop, 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 12th day of July 2016, 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:

Jose L. Segarra, MAYOR

ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis, City Attorney

Case #16-10

Ord. #



| | |
|--------------------|-------------------------|
| Date Paid: | <u>5/23/2016</u> |
| Amount Paid: | <u>\$ 300.00</u> |
| Cash/MO #/Check #: | <u>#1289 & 2078</u> |
| Receipt #: | <u>392 & 393</u> |

CASE #: 216-10

City of Killeen Zoning Change Application

General Zoning Change \$300.00 [] **Conditional Use Permit \$500.00**

Name(s) of Property Owner: Killeen BES LTD, Killeen EGS Property, Ltd., and Bentina, Ltd.

Current Address: 2901 E. Stan Schlueter Loop

City: Killeen **State:** Texas **Zip:** 75642 -

Home Phone: (254) 526-4652 **Business Phone:** (254) ⁶³⁴⁻⁵⁵⁶⁷ Ext #104 **Cell Phone:** (254) 535-1540

Email: cpurser@purserco.com

Name of Applicant: (same)
(If different than Property Owner)

Address: _____

City: _____ **State:** _____ **Zip:** _____

Home Phone: () _____ **Business Phone:** () _____ **Cell Phone:** () _____

Email: _____

Address/Location of property to be rezoned: Located between Deorsam Loop & Judy Dr. on the west side of West Trimmer Rd.

Legal Description: 10.89 Ac. of the Azra Webb Survey, Abstract No. 857

Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan? YES NO
If NO, a FLUM amendment application must be submitted.

Type of Ownership: _____ Sole Ownership Partnership _____ Corporation _____ Other _____

Present Zoning: B-3 **Present Use:** Vacant

Proposed Zoning: PUD (SF-2) **Proposed Use:** PUD (SF-2 Underlay)

Conditional Use Permit for: _____

This property was conveyed to owner by deed dated January 16, 2007 and recorded in Volume _____

Page _____, Instrument Number 2007-00002259 of the Bell County Deed Records. (Attached)

Is this the first rezoning application on a unilaterally annexed tract?
Yes _____ (Fee not required) No _____ (Submit required fee)

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Killeen Engineering & Surveying, Ltd.

Mailing Address: 2901 E. Stan Schlueter Loop

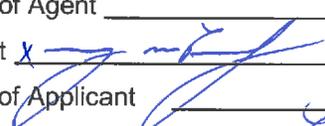
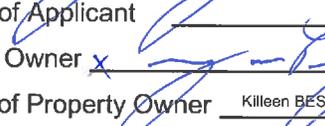
City: Killeen State: Texas Zip: 76542 -

Home Phone: (254) 526-4652 Business Phone: (254) 526-3981 Email: bpurser@kesitd.com

I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific zoning request.

I understand that the City will deal only with a fully authorized agent. At any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, **I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter.** If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

| | |
|--|------------------------------|
| Signature of Agent <u></u> | Title <u>Project Manager</u> |
| Printed/Typed Name of Agent <u>Ben Purser</u> | Date <u>5-27-16</u> |
| Signature of Agent _____ | Title _____ |
| Printed/Typed Name of Agent _____ | Date _____ |
| Signature of Applicant <u></u> | Title <u>Owner's Agent</u> |
| Printed/Typed Name of Applicant <u>Gary W. Purser, Jr.</u> | Date <u>5-27-16</u> |
| Signature of Property Owner <u></u> | Title <u>Owner's Agent</u> |
| Printed/Typed Name of Property Owner <u>Killeen BES LTD, Killeen EGS Property, Ltd., and Bentina, Ltd.</u> | Date <u>5-27-16</u> |
| Signature of Property Owner _____ | Title _____ |
| Printed/Typed Name of Property Owner _____ | Date _____ |
| Signature of Property Owner _____ | Title _____ |
| Printed/Typed Name of Property Owner _____ | Date _____ |

*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.



**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z16-10

ZONING FROM:

B-3 To PUD (SF-2)

APPLICANT:

KILLEEN BES LTD,
KILLEEN EGS PROPERTY, LTD.
AND BENTINA, LTD.

PROPERTY OWNER:

KILLEEN BES LTD,
KILLEEN EGS PROPERTY, LTD.
AND BENTINA, LTD.

LEGAL DESCRIPTION:

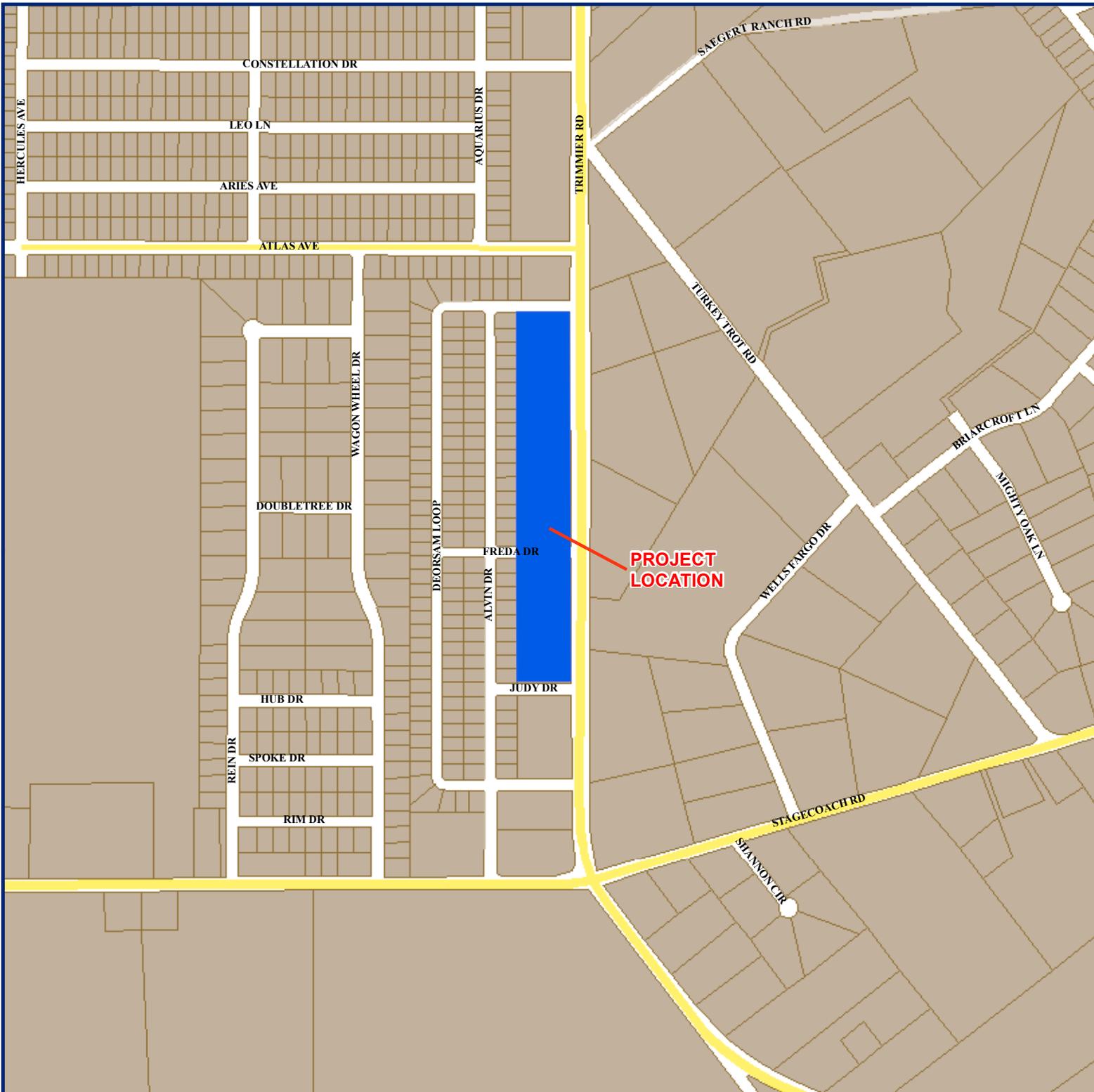
A0857BC A WEBB, 10,
ACRES 7.158 AND A0857BC
A WEBB, 10, ACRES 3.829

LEGEND

-  Zoning Case
-  Parcel
-  City Limits



Date: 6/1/2016





PLANNING AND
DEVELOPMENT SERVICES

ZONING CASE:

Z16-10

ZONING FROM:

B-3 To PUD (SF-2)

APPLICANT:

KILLEN BES LTD,
KILLEN EGS PROPERTY, LTD.
AND BENTINA, LTD.

PROPERTY OWNER:

KILLEN BES LTD,
KILLEN EGS PROPERTY, LTD.
AND BENTINA, LTD.

LEGAL DESCRIPTION:

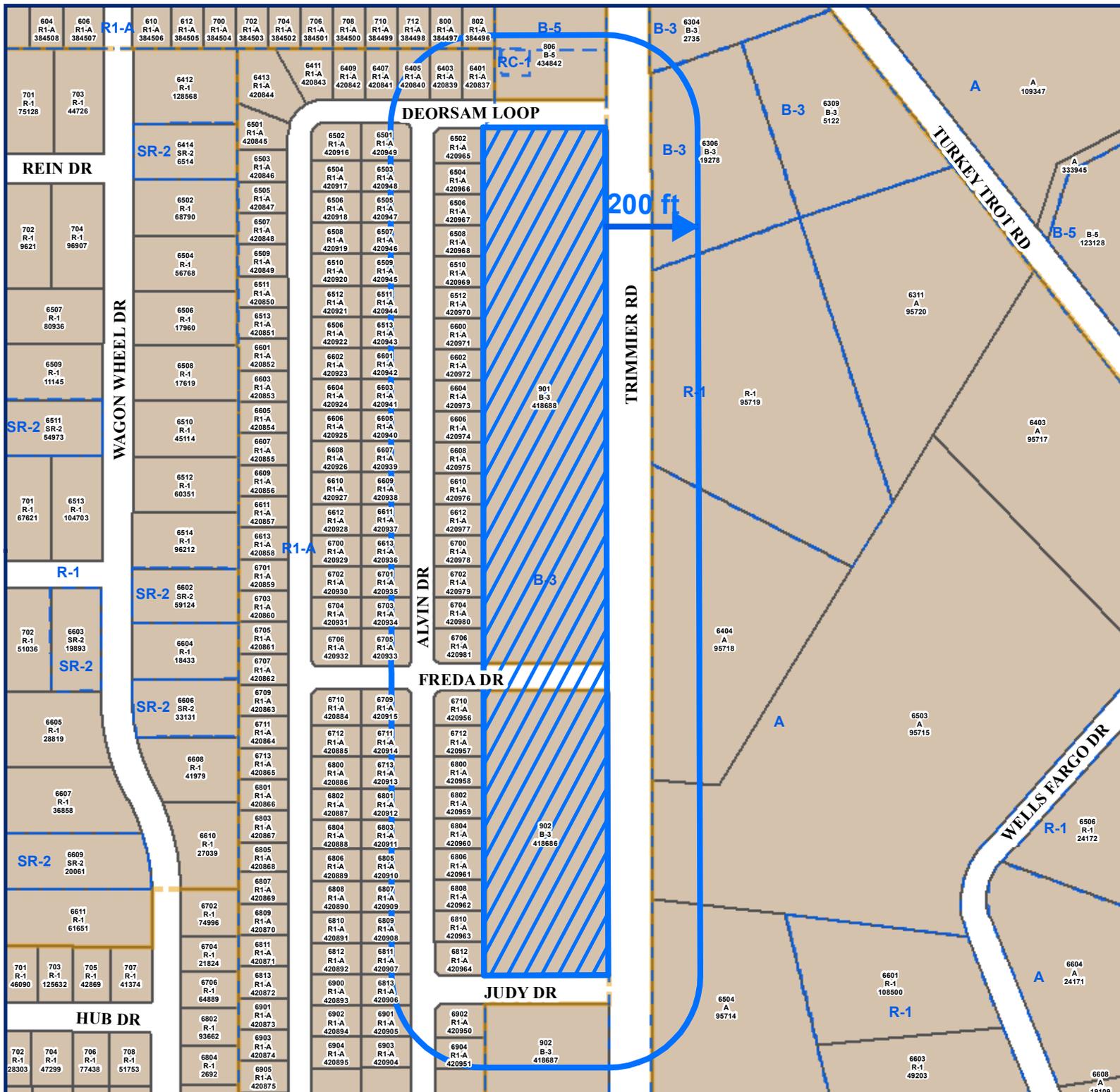
A0857BC A WEBB, 10,
ACRES 7.158 AND A0857BC
A WEBB, 10, ACRES 3.829

LEGEND

-  200' Buffer
-  Zoning Case
-  Current Zoning
-  Subdivision
-  Parcel
-  City Limits



Date: 6/1/2016



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 in 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.



City of Killeen

Legislation Details

File #: PH-16-024A **Version:** 1 **Name:** FLUM #Z16-11
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 6/16/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: HOLD a public hearing and consider an ordinance to amend the Comprehensive Plan's Future Land Use Map (FLUM) from 'General Commercial' to 'General Residential' (FLUM# Z16-11) for approximately 5.81 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.
Sponsors: Planning & Development Dept
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Application](#)
[Minutes](#)
[Ordinance](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

COMPREHENSIVE PLAN FUTURE LAND USE MAP (FLUM) AMENDMENT: 'GENERAL COMMERCIAL' TO 'GENERAL RESIDENTIAL'

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

Nature of the Request

The applicant is requesting to amend the Comprehensive Plan's Future Land Use Map (FLUM) to change a 'General Commercial' designated area to a 'General Residential' designated area for approximately 5.81 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas. The applicant has submitted a concurrent request to rezone the subject property from "B-5" (Business District) to "R-2" (Two Family Residential District).

Land Use Plan: The property is designated as 'General Commercial' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

If approved, the 'General Residential' designation encourages the following land uses and has the following characteristics:

- Detached residential dwellings;
- Attached housing types subject to compatibility and open space standards (e.g., duplexes, townhomes, patio homes);
- Planned developments, potentially with a mix of housing types and varying densities, subject to compatibility and open space standards; public/institutional; parks and public spaces;
- Predominantly "R-1" zoning district with less openness and separation between dwellings compared to Suburban Residential areas;
- Auto-oriented character that can be offset with architectural standards, landscaping, and limited uniform subdivision designs;
- Neighborhood-scale commercial emerging over time for well-suited areas.

Figure 1. Future Land Use Map (FLUM)

See attachment.

The items below should be reviewed and addressed when a Future Land Use & Character map adjustment is proposed:

- **Scope of Amendment:** Is the proposed map change limited to one or a few parcels, or would it affect a much larger area? *The amendment would affect approximately 5.81 acres and should be considered a small scale amendment.*

- **Change in Circumstances:** What specific conditions (e.g., population size and/or characteristics, area character and building form, property/structure conditions, infrastructure or public services, market factors including need for more land in a particular designation, etc.) have changed sufficiently to render the current map designation(s) inappropriate or out-of-date? *The surrounding area has developed with a mixture of commercial and high density residential development.*

- **Consistency with Other Plans:** In addition to the Comprehensive Plan, is the proposed map change consistent with the intent and policy direction of any applicable small area plans, utility or drainage plans, or other City plans? *The proposed map change is not inconsistent with other City planning efforts (Water and Wastewater Master Plan, Thoroughfare Plan, Parks Master Plan).*

- **Adequate Information:** Do City staff, the Planning and Zoning Commission, and/or City Council have enough and appropriate information to move ahead with a decision (e.g., utility capacity, potential traffic impacts, other public service implications, resident/stakeholder concerns and input)? *Staff has sufficient information regarding utility capacity and roadway level of service for this area.*

- **Stakeholder Input:** What points, concerns, and insights have been raised by area residents, property owners, business owners, or others? *With the exception of listing this action as a public hearing item on the Planning and Zoning Commission's agenda, there is no public notice requirement for this amendment action.*

Recommendation

The Planning and Zoning Commission recommended approval of the applicant's request for an amendment of the Future Land Use Map (FLUM) from 'General Commercial' to 'General Residential' by a vote of 5 to 1 with Commissioner Harkin voting in opposition.

Figure 1. Future Land Use Map (FLUM)





Date Paid: _____
 Amount Paid: \$ _____
 Cash/MO #/Check #: # _____
 Receipt #: _____

CASE #: FLUM#216-11

City of Killeen
Future Land Use Map (FLUM) Amendment Application
 FLUM Amendment Request \$100.00

Name(s) of Property Owner: Killeen BES LTD, Killeen EGS Property, Ltd., and Bentina, Ltd.

Current Address: 2901 E. Stan Schlueter Loop

City: Killeen State: TX Zip: 76542 - _____

Home Phone: (254) 634-5567 Business Phone: (254) 634-5567 Cell Phone: (254) 634-5567

Email: cspurser@purserco.com

Name of Applicant: (same)
 (If different than Property Owner)

Address: _____

City: _____ State: _____ Zip: _____

Home Phone: (____) _____ Business Phone: (____) _____ Cell Phone (____) _____

Email: _____ *Atlas Ave*

Address/Location of property proposed for FLUM amendment: Located between Constellation Dr. & ~~Judy Drive~~ on the west side of West Trimmier Rd.

Legal Description: 5.81 Ac. of the Azra Webb Survey, Abstract No. 857

Metes & Bounds or Lot(s) Block Subdivision

Type of Ownership: _____ Sole Ownership Partnership _____ Corporation _____ Other _____

Present FLUM Designation: _____ GC Present Use: _____ Vacant _____

Proposed FLUM Designation: _____ R-2 Proposed Use: _____ Two-Family Residential _____

This property was conveyed to owner by deed dated May 5, 2006 and recorded in Volume 6051, Page 807 & 810, Instrument Number _____ of the Bell County Deed Records. (Attached)

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Killeen Engineering & Surveying, Ltd.

Mailing Address: 2901 E. Stan Schlueter Loop

City: Killeen State: Texas Zip: 76542 - _____

Home Phone: (254) 526-4652 Business Phone: (254) 526-3981 Email: bpurser@kesltd.com

I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific FLUM amendment request.

I understand that the City will deal only with a fully authorized agent. At any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter. If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

Signature of Agent  Title Project Manager

Printed/Typed Name of Agent Ben Purser Date 5-27-16

Signature of Agent _____ Title _____

Printed/Typed Name of Agent _____ Date _____

Signature of Applicant X  Title Owner's Agent

Printed/Typed Name of Applicant Gary Purser, Jr. Date 5-27-16

Signature of Property Owner X  Title Owner's Agent

Printed/Typed Name of Property Owner Killeen BES LTD, Killeen EGS Property, Ltd., and Bentina, Ltd. Date 5-27-16

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.

Dated: 10-05-2015

**PLANNING AND ZONING COMMISSION MEETING
JUNE 20, 2016**

**CASE FLUM #Z16-11
GENERAL COMMERCIAL TO GENERAL RESIDENTIAL**

A. HOLD a public hearing and consider a request to amend the Comprehensive Plan's Future Land Use Map (FLUM) to change a 'General Commercial' designated area to a 'General Residential' designated area for approximately 5.81 acres out of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.

Chairman Frederick asked for staff comments.

Senior Planner Charlotte Hitchman stated that the applicant is requesting to amend the Comprehensive Plan's Future Land Use Map (FLUM) to change a 'General Commercial' designated area to a 'General Residential' designated area for approximately 5.81 acres, being part of the Azra Webb Survey, Abstract No. 857. The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.

Staff recommends approval of amending the FLUM from 'General Commercial' to 'General Residential' and for approximately 5.81 acres. An amendment to the FLUM for this property will be consistent with the current land uses in the area and the projected residential growth anticipated for this area.

Mr. Ben Purser, Killeen Engineering & Surveying, Ltd., 2901 E. Stan Schlueter Loop, Killeen, Texas was present to represent this request.

Chairman Frederick opened the public hearing. With no one requesting to speak, the public hearing was closed.

Vice Chair Dorroh motioned to recommend approval of the request. Commissioner Beronio seconded the motion. The motion passed 5-1 with Commissioner Harkin in opposition.

Chairman Frederick stated that this request will be forwarded to City Council with a recommendation to approve.

ORDINANCE _____

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP FROM 'GENERAL COMMERCIAL' TO 'GENERAL RESIDENTIAL' FOR APPROXIMATELY 5.81 ACRES, BEING PART OF THE AZRA WEBB SURVEY, ABSTRACT NO. 857, KILLEEN, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Killeen finds that Chapter 213.003 of the Local Government Code enables municipalities to adopt and amend comprehensive plans in the interest of coordinating long-range development of the municipality.

WHEREAS, the Planning and Zoning Commission has received a request by Killeen BES, Ltd., Killeen EGS Property, Ltd., and Bentina Ltd. to amend the Future Land Use Map (FLUM) of the Comprehensive Plan, to change approximately 5.81 acres, out of the Azra Webb Survey, Abstract No. 857 from 'General Commercial' to 'General Residential'; said revision having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 20th day of June 2016, and due notice of the filing of said revision 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 12th day of July 2016, at the City Hall, City of Killeen;

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 opinion that the amendment should be approved;

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

SECTION I: That the land use designation of approximately 5.81 acres, out of the Azra Webb Survey, Abstract No. 857 be amended from 'General Commercial' to 'General Residential'.

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 12th day of July 2016, 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:

Jose L. Segarra
MAYOR

ATTEST:

Diana Barker
CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis
CITY ATTORNEY

Case #: FLUM #Z16-11
Ord#: 16-___



City of Killeen

Legislation Details

File #: PH-16-024B **Version:** 1 **Name:** Zoning 16-11
Type: Ordinance/Public Hearing **Status:** Public Hearings
File created: 6/16/2016 **In control:** City Council
On agenda: 7/12/2016 **Final action:**
Title: HOLD a public hearing and consider an ordinance requested by Killeen BES, Ltd., Killeen EGS Property, Ltd., and Bentina Ltd. (Case #Z16-11) to rezone approximately 5.81 acres, out of the Azra Webb Survey, Abstract No. 857, from "B-5" (Business District) to "R-2" (Two-Family Residential District). The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.
Sponsors: Planning & Development Dept
Indexes:
Code sections:
Attachments: [Council Memorandum](#)
[Attachment to CCMO](#)
[Minutes](#)
[Ordinance](#)
[Application](#)
[Location map](#)
[Buffer map](#)
[Considerations](#)
[Response](#)

| Date | Ver. | Action By | Action | Result |
|----------|------|-----------------------|--------|--------|
| 7/5/2016 | 1 | City Council Workshop | | |

CITY COUNCIL MEMORANDUM

AGENDA ITEM

ZONING CASE #Z16-11 "B-5" (BUSINESS DISTRICT) TO "R-2" (TWO-FAMILY RESIDENTIAL DISTRICT).

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

This request is to rezone approximately 5.81 acres out of the Azra Webb Survey, Abstract No. 857, from "B-5" (Business District) to "R-2" (Two-Family Residential District). The applicant is rezoning the property to develop for duplex use. The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.

District Descriptions:

A building or premises in a district "R-2" Two-Family Residential District shall be used only for the following purposes:

- (1) Any use permitted in district "R-1"
- (2) Two-family dwellings

Property Specifics

Applicant/Property Owner: Killeen BES, Ltd., Killeen EGS Property, Ltd., Bentina Ltd.

Property Location: The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.

Legal Description: Approximately 5.81 acres out of the Azra Webb Survey, Abstract No. 857

Zoning/ Plat Case History:

- This property was rezoned from "A-R1" (Agricultural Single-Family Residential District) to "B-5" (Business District) on October 25, 2005, per Ordinance No. 05-97.
The property is not platted.

Character of the Area

Existing Land Use(s) on the Property: The property is undeveloped and vacant. This location is surrounded by a mixture of residential uses from "R-1" (Single-Family Residential) to "A" (Agricultural Residential) and undeveloped commercial zoning.

Figure 1. Zoning Map

See attachment.

Historic Properties: None

Infrastructure and Community Facilities

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Water, sanitary sewer, and drainage utility services are readily accessible to the subject property located within the City of Killeen municipal utility service area. Adequate potable water and sanitary sewer capacity are available to the tract. The property is currently part of a remainder tract and will be required to be platted prior to development. Public storm drainage infrastructure lies within the abutting right-of-way. Detention of post development storm water run-off will be required if inadequate capacity remains within existing drainage infrastructure. Ingress/egress to the property would be limited to the single point of existing ingress/egress to Trimmier Road, a major arterial street and one along Atlas Avenue and Constellation Drive, both local residential streets. No proposed right-of-way taking affects the property.

It shall be noted that Public Works personnel have performed only a basic assessment of publicly-dedicated water and sanitary sewer infrastructure that would serve this property. The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to the property. Further, City of Killeen development regulations require that capacity analyses related to development of the property are the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for redevelopment of the subject property, shall coordinate tie-in to all publicly dedicated infrastructure with the Public Works Department.

Transportation:

Existing conditions: Trimmier Road is designated as a 90' minor arterial on the City's approved Thoroughfare Plan.

Proposed improvements: None

Projected Traffic Generation: The traffic impact will be minimal.

City's approved Thoroughfare Plan. No proposed right-of-way taking affects the property.

Environmental Assessment

Topography/Regulated Floodplain/Floodway/Creek: The tract does not lie within a FEMA regulatory Special Flood Hazard Area (SFHA).

Land Use Analysis

Land Use Plan: The property is designated as 'General Commercial' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

Plan Recommendation: The Comprehensive Plan calls for a wide range of commercial, retail, and service uses, at varying scales and intensities depending on the site.

Consistency: The rezone request is not consistent with the Comprehensive Plan. The applicant has submitted a separate request to amend the FLUM to 'General Residential.'

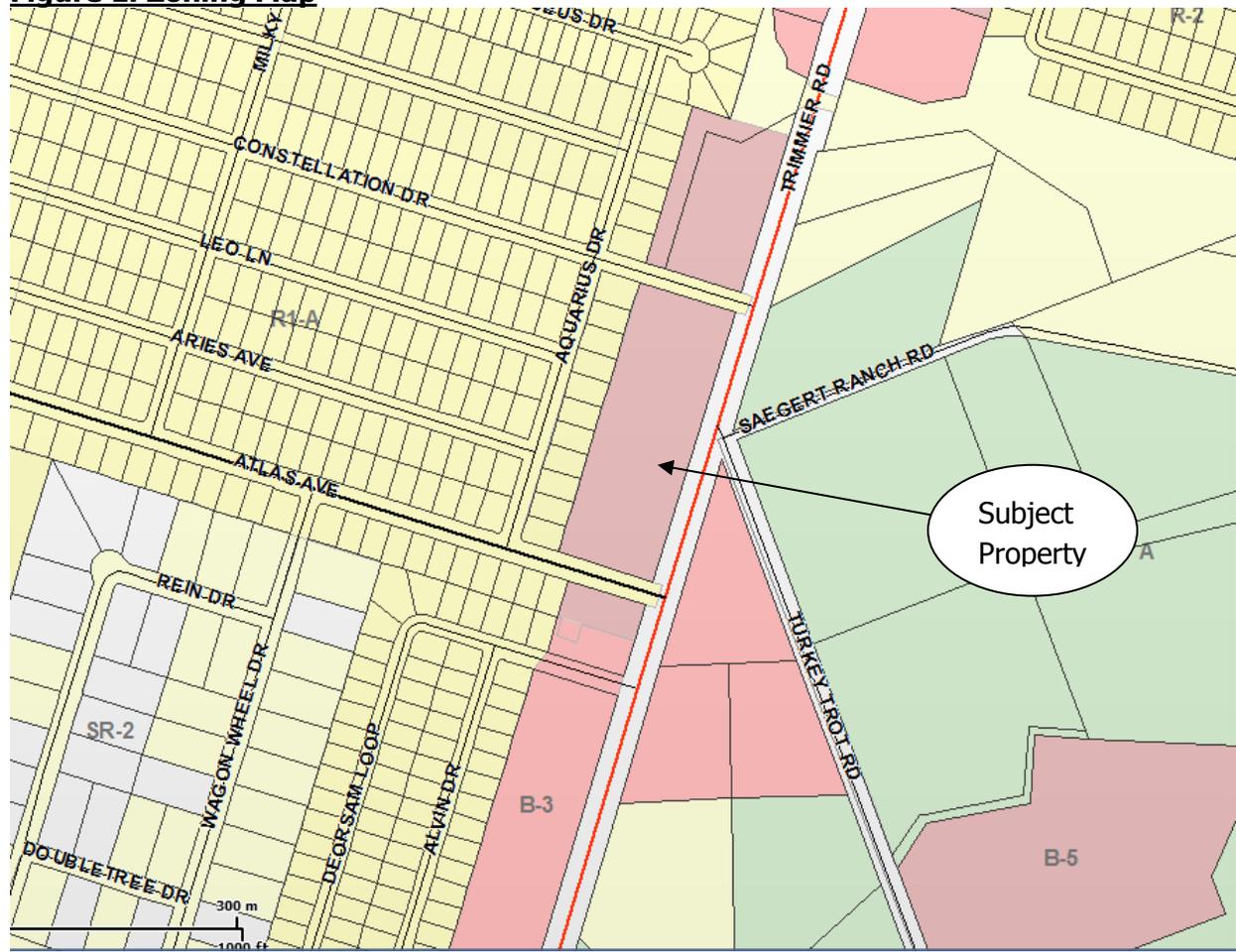
Public Notification

The staff notified thirty-four (34) surrounding property owners regarding this request. Staff has received one response in support of 'R-2' zoning in this area.

Recommendation

The Planning & Zoning Commission recommended approval of "R-2" zoning by a vote of 5 to 1, with Commissioner Harkin voting in opposition.

Figure 1. Zoning Map



**MINUTES
PLANNING AND ZONING COMMISSION MEETING
JUNE 20, 2016**

**CASE #Z16-11
B-5 to R-2**

B. HOLD a public hearing and consider a request by Killeen BES, Ltd., Killeen EGS Property, Ltd, and Bentina Ltd. to rezone approximately 5.81 acres out of the Azra Webb Survey, Abstract No. 857, from “B-5” (Business District) to “R-2” (Two-Family Residential District). The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.

Chairman Frederick asked for staff comments

Senior Planner Charlotte Hitchman stated that this request is to rezone approximately 5.81 acres out of the Azra Webb Survey, Abstract No. 857, from “B-5” (Business District) to “R-2” (Two-Family Residential District). The applicant is rezoning the property to develop for duplex use. The property is located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, Killeen, Texas.

The staff notified thirty-four (34) surrounding property owners regarding this request. Staff has received one response in support.

Staff recommends approval of the request to change the zoning designation of the subject property to “R-2” (Two-Family Residential District).

Mr. Ben Purser, Killeen Engineering & Surveying, Ltd., 2901 E. Stan Schlueter Loop, Killeen, Texas was present to represent the case.

Chairman Frederick opened the public hearing. With no one requesting to speak, the public hearing was closed.

Commissioner Alvarez motioned to recommend approval of the request. Commissioner Beronio seconded the motion. The motion passed 5-1 with Commissioner Harkin in opposition.

Chairman Frederick stated that this request will be forwarded to City Council with a recommendation to approve.

ORDINANCE _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM B-5 (BUSINESS DISTRICT) TO R-2 (TWO-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Killeen BES, Ltd., Killeen EGS Property, Ltd., and Bentina Ltd. submits this request for an amendment of the Zoning Ordinance of the City of Killeen by changing the classification of approximately 5.81 acres out of the Azra Webb Survey, Abstract No. 857, from “B-5” (Business District) to “R-2” (Two-Family Residential District), said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 20th day of June 2016 and 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 12th day of July 2016, at the City Hall, City of Killeen;

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 that the request should be approved;

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

Section I. That the zoning classification of the following described tract be changed from “B-5” (Business District) to “R-2” (Two-Family Residential District), with those conditions stipulated by the Planning and Zoning Commission, for approximately 5.81 acres, being part of the Azra Webb Survey, Abstract No. 857, for property located on the west side of Trimmier Road between Constellation Drive and Atlas Avenue, 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 12th day of July 2016, 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:

Jose L. Segarra, MAYOR

ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis, City Attorney

Case #16-11
Ord. #



Date Paid: _____
 Amount Paid: \$ _____
 Cash/MO #/Check #: # _____
 Receipt #: _____

CASE #: 216-11

City of Killeen Zoning Change Application

General Zoning Change \$300.00 [] **Conditional Use Permit \$500.00**

Name(s) of Property Owner: Killeen BES LTD, Killeen EGS Property, Ltd., and Bentina, Ltd.

Current Address: 2901 E. Stan Schlueter Loop

City: Killeen **State:** Texas **Zip:** 75642 - _____

Home Phone: (254) 526-4652 **Business Phone:** (254) ⁶³⁴⁻⁵⁵⁶⁷ Ext #104 **Cell Phone:** (254) 535-1540

Email: cpurser@purserco.com

Name of Applicant: (same)
(If different than Property Owner)

Address: _____

City: _____ **State:** _____ **Zip:** _____

Home Phone: (___) _____ **Business Phone:** (___) _____ **Cell Phone:** (___) _____

Email: _____

Address/Location of property to be rezoned: Located between Constellation Dr. & ~~Judy Dr.~~ ^{Atlas Ave} on the west side of West Trimmer Rd.

Legal Description: 5.81 Ac. of the Azra Webb Survey, Abstract No. 857

Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan? YES NO
 If NO, a FLUM amendment application must be submitted.

Type of Ownership: _____ Sole Ownership Partnership _____ Corporation _____ Other _____

Present Zoning: B-5 **Present Use:** Vacant

Proposed Zoning: R-2 **Proposed Use:** Two-Family Residential

Conditional Use Permit for: _____

This property was conveyed to owner by deed dated May 5, 2006 and recorded in Volume 6051,

Page 807 & 810, Instrument Number _____ of the Bell County Deed Records. (Attached)

Is this the first rezoning application on a unilaterally annexed tract?
 Yes _____ (Fee not required) No (Submit required fee)

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Killeen Engineering & Surveying, Ltd.

Mailing Address: 2901 E. Stan Schlueter Loop

City: Killeen State: Texas Zip: 76542 - _____

Home Phone: (254) 526-4652 Business Phone: (254) 526-3981 Email: bpurser@kesltd.com

I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

be the point of contact between myself and the City; make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific zoning request.

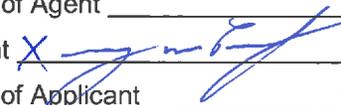
I understand that the City will deal only with a fully authorized agent. At any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter. If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

Signature of Agent  Title Project Manager

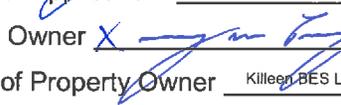
Printed/Typed Name of Agent Ben Purser Date 5-27-16

Signature of Agent _____ Title _____

Printed/Typed Name of Agent _____ Date 5/27

Signature of Applicant  Title Owner's Agent

Printed/Typed Name of Applicant Gary W. Purser, Jr. Date 5-27-16

Signature of Property Owner  Title Owner's Agent

Printed/Typed Name of Property Owner Killeen BES LTD, Killeen EGS Property, Ltd., and Bentina, Ltd. Date 5-27-16

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.



**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z16-11

ZONING FROM:

B-5 To R-2

APPLICANT:

**KILLEEN BES LTD,
KILLEEN EGS PROPERTY, LTD.
AND BENTINA, LTD.**

PROPERTY OWNER:

**KILLEEN BES LTD,
KILLEEN EGS PROPERTY, LTD.
AND BENTINA, LTD.**

LEGAL DESCRIPTION:

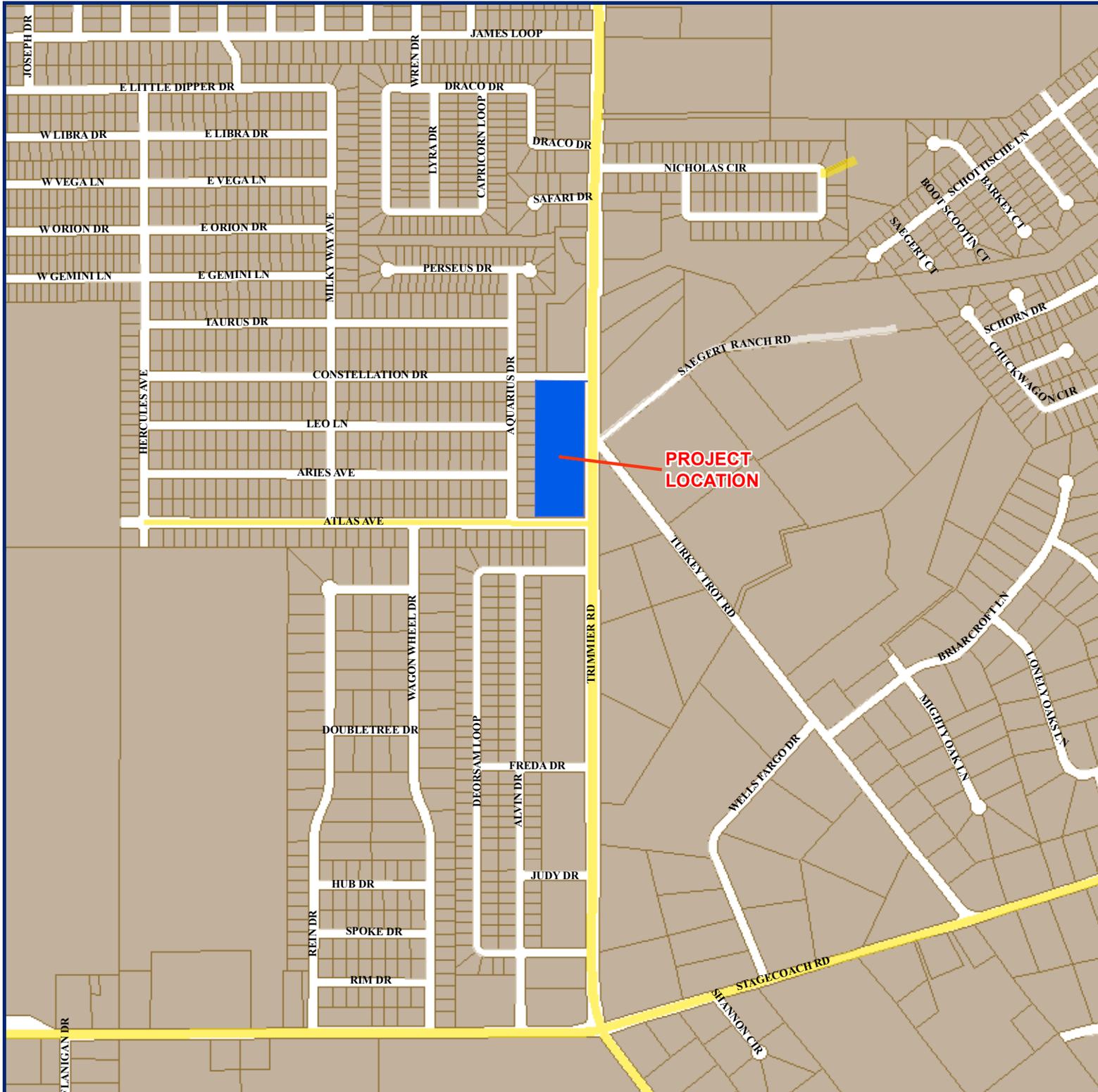
A0857BC A WEBB, ACRES 5.483

LEGEND

-  Zoning Case
-  Parcel
-  City Limits



Date: 6/1/2016





**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z16-11

ZONING FROM:

B-5 To R-2

APPLICANT:

**KILLEN BES LTD,
KILLEN EGS PROPERTY, LTD.
AND BENTINA, LTD.**

PROPERTY OWNER:

**KILLEN BES LTD,
KILLEN EGS PROPERTY, LTD.
AND BENTINA, LTD.**

LEGAL DESCRIPTION:

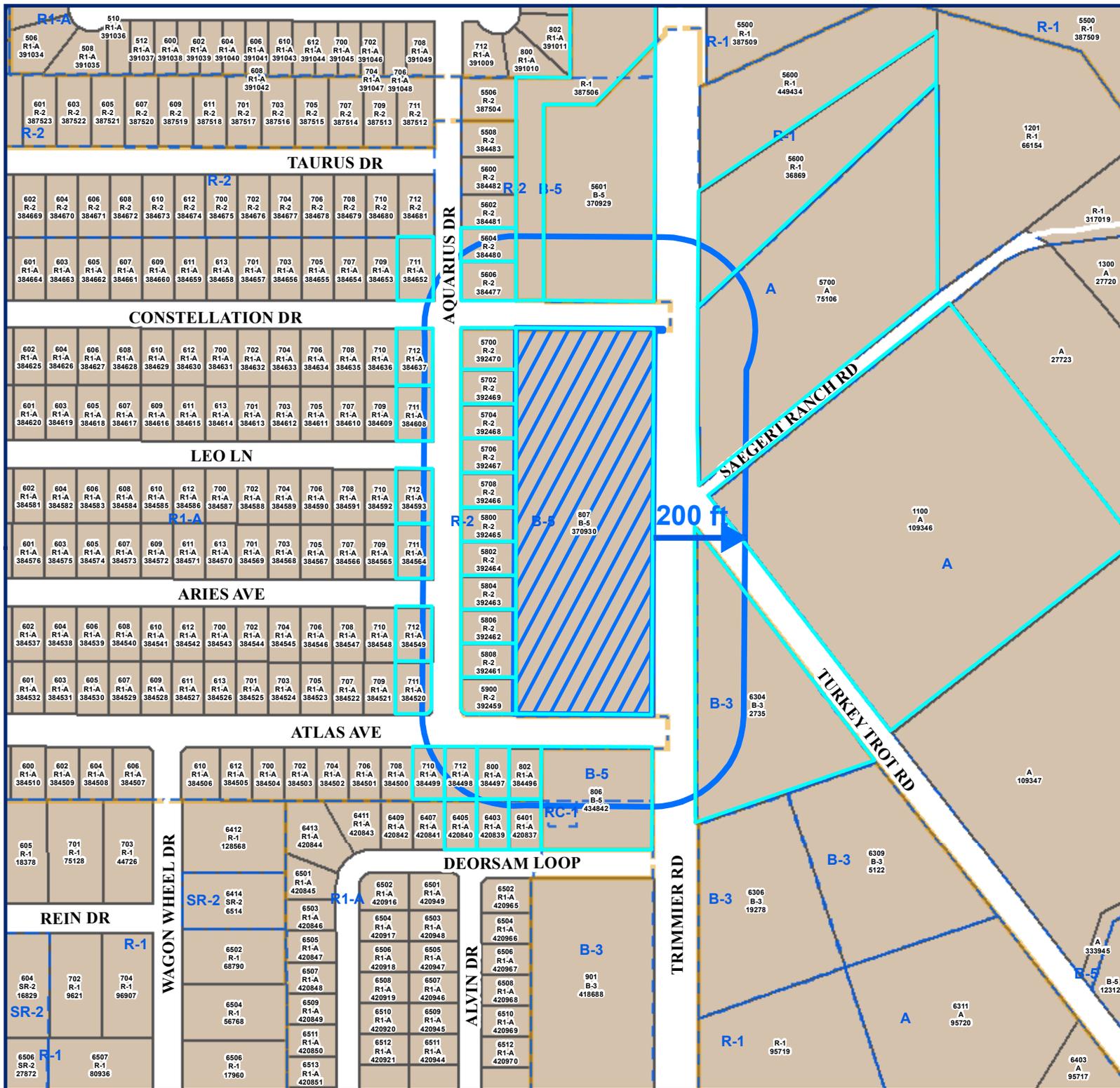
A0857BC A WEBB, ACRES 5.483

LEGEND

-  200' Buffer
-  Zoning Case
-  Current Zoning
-  Subdivision
-  Parcel
-  City Limits



Date: 6/1/2016



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 in 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.

----- CUT HERE -----

| | |
|--|------------------------------|
| YOUR NAME: John & Janell Mitten | PHONE NUMBER: 254-634-1473 |
| CURRENT ADDRESS: 5700 Trimmer Road - Killeen 76542 | |
| ADDRESS OF PROPERTY OWNED: - SAME - | |
| COMMENTS: We support the | B-5 to R-2 |
| zoning change to R-2. We hope that any proposed road only connect with ATLAS to the South and Constellation to the North. | |
| This seems only logical; we don't need any more street openings onto Trimmer which is very busy with connecting traffic from Turkey Trot Road. | |
| SIGNATURE: <i>[Signature]</i> | Janell Mitten SPO #Z16-11/29 |

LTC. USA (Retired)

RECEIVED

PO BOX 1329 KILLEEN, TEXAS 76540 1329 254 501 7630 254.501.7628 FAX
WWW.CI KILLEEN TX.US

JUN 15 2016
PLANNING