City of Killeen

Agenda

City Council Workshop

Tuesday, October 3, 2017 | **5:00 PM** | **Utility Collections Conference Room 210 West Avenue C Killeen, Texas 76541**

Items for Discussion at Workshop

1. DS-17-103 Discuss Agenda Items for the Regular City Council Meeting of October 17, 2017

2. DS-17-104 City Manager Updates

- ARAC Presentation

3. DS-17-105 Receive an Update on Beau Burkett Media LP v City of Killeen, Killeen Zoning Board of Adjustment, and Earl Abbott and Discuss Settlement Negotiations and Options

Councilmember Requests for Future Agenda Items

4. RQ-17-007 Future Agenda Item Requests:

- KEDC Briefing
- Revision of City Appointment Authorities
- Document Shredding Investigation

Items for Regular City Council Meeting of October 17, 2017

Minutes

5. MN-17-024 Consider Minutes of Regular City Council Meeting of September 26, 2017.

Attachments: Minutes

Resolutions

6. RS-17-105 Consider a memorandum/resolution to enter into a Memorandum of Understanding with the Texas Commission on Fire Protection and the Killeen Fire Academy.

Attachments: Staff Report

Memorandum of Understanding

Presentation

7. RS-17-106 Consider a memorandum/resolution authorizing a lease with purchase option of a backhoe for the Street Services division.

Attachments: Staff Report
Agreement
Quote
Specifications
Photo
Certificate of Interested Parties
Presentation

Public Hearings

8. PH-17-045 HOLD a public hearing and consider an ordinance requested by Richard Taylor of Eco-Site, L.L.C. on behalf of Florence HH MHP, L.L.C., (Case#Z17-21) to rezone approximately 0.058 acre, out of the John Essary Survey, Abstract 296, from “RMH” (Residential Mobile Home District) to “RMH” with a Conditional Use Permit (CUP) for a 110 feet tall monopole communication structure. The property is locally known as 3205 Florence Road, Killeen, Texas.

Attachments: Staff Report
Maps and Photos
Minutes
Ordinance
Presentation

9. PH-17-046A HOLD a public hearing and consider an ordinance requested by the Planning staff (FLUM#Z17-22) to amend the Comprehensive Plan’s Future Land Use Map (FLUM) from an ‘Estate’ designated area to a ‘General Residential’ designated area for approximately 2.673 acres, being part of the Robert Cunningham Survey, Abstract No. 199. The subject property is generally located along the west right-of-way of Cunningham Road, north of Hope Lane and west of Fawn Drive, Killeen, Texas.

Attachments: Staff Report
Maps and Photos
Minutes
Ordinance
Presentation

10. PH-17-046B HOLD a public hearing and consider an ordinance requested by Lagan Construction, Inc., (Case#Z17-22) to rezone approximately 2.673 acres out of the Robert Cunningham Survey, Abstract No. 199, from “A” (Agricultural District) to “R-1” (Single-Family Residential District). The property is located north of Hope Lane, approximately 1,200 feet west of Cunningham

Road, Killeen, Texas.

Attachments: Staff Report

Maps and Photos

Minutes

Ordinance

Presentation

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 September 29, 2017.

_____

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 Luncheon, October 31, 2017, 11:30 a.m., Grace Christian Center*
- *TML Conference, October 3-6, 2017, Houston, Texas*
- *AUSA Annual Meeting, October 7-11, 2017, Washington, DC*

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City of Killeen

Legislation Details

File #:	DS-17-103	**Version:**	1	**Name:**	Discuss Agenda Items
Type:	Discussion Items			**Status:**	Discussion Items
File created:	9/19/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	
Title:	Discuss Agenda Items for the Regular City Council Meeting of October 17, 2017				
Sponsors:	City Manager Department				
Indexes:					
Code sections:					
Attachments:					

Date	Ver.	Action By	Action	Result

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City of Killeen

Legislation Details

File #:	DS-17-104	**Version:**	1	**Name:**	City Manager Updates
Type:	Discussion Items			**Status:**	Discussion Items
File created:	7/14/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	
Title:	City Manager Updates · ARAC Presentation				
Sponsors:	City Manager Department				
Indexes:					
Code sections:					
Attachments:					

Date	Ver.	Action By	Action	Result

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City of Killeen

Legislation Details

File #:	DS-17-105	**Version:**	1	**Name:**	Receive an Update on Beau Burkett Media LP v City of Killeen
Type:	Discussion Items			**Status:**	Discussion Items
File created:	9/20/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	
Title:	Receive an Update on Beau Burkett Media LP v City of Killeen, Killeen Zoning Board of Adjustment, and Earl Abbott and Discuss Settlement Negotiations and Options				
Sponsors:	City Attorney Department				
Indexes:					
Code sections:					
Attachments:					

Date	Ver.	Action By	Action	Result

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City of Killeen

Legislation Details

File #:	RQ-17-007	**Version:**	1	**Name:**	Future Agenda Items
Type:	Future Agenda Requests			**Status:**	Future Agenda Items
File created:	8/2/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	
Title:	Future Agenda Item Requests: · KEDC Briefing · Revision of City Appointment Authorities · Document Shredding Investigation				
Sponsors:	City Council				
Indexes:					
Code sections:					
Attachments:					

Date	Ver.	Action By	Action	Result

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City of Killeen

Legislation Details

File #:	MN-17-024	**Version:**	1	**Name:**	Minutes of Regualr City Council Meeting of September 26, 2017
Type:	Minutes			**Status:**	Minutes
File created:	9/19/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	
Title:	Consider Minutes of Regular City Council Meeting of September 26, 2017.				
Sponsors:	City Secretary				
Indexes:					
Code sections:					
Attachments:	Minutes				

Date	Ver.	Action By	Action	Result

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City of Killeen
Regular City Council Meeting
Killeen City Hall
September 26, 2017 at 5:00 p.m.

Presiding: Mayor Jose L. Segarra

Attending: Mayor Pro-Tem Jim Kilpatrick, Councilmembers Debbie Nash-King, Juan Rivera, Shirley Fleming, Gregory Johnson, Jonathan Okray, and Steve Harris

Also attending were City Manager Ronald L. Olson, City Attorney Kathryn Davis, City Secretary Dianna Barker, and Sergeant-at-Arms Gilman.

Mr. Johnson gave the invocation, and his 4-year old son, Christopher, led everyone in the Pledge of Allegiance.

Approval of Agenda

Motion was made by Mayor Pro-Tem Kilpatrick to approve the agenda as written. Motion seconded by Councilmember Nash-King. The motion carried unanimously.

Minutes

Motion was made by Councilmember Rivera to approve the minutes of the September 5th Special City Council Meeting, the September12th Regular City Council Meeting, and the September 19th Special City Council Meeting. Motion was seconded by Councilmember Fleming. Motion carried unanimously.

Resolutions

RS-17-094 Consider a memorandum/resolution to approve the City of Killeen's Investment Policy.
Staff comments: Jonathan Locke
The Investment Committee met and reviewed investment policy adjustments suggested by the City's Investment Advisor, Valley View Consulting. The primary adjustments were revisions needed to align the City's Investment Policy with statutory requirements. Mr. Locke briefly went over the changes made to the policy. Staff recommends that the City Council approve the revised City of Killeen Investment Policy.

Motion was made by Mayor Pro-Tem Kilpatrick to approve RS-17-094. Motion was seconded by Councilmember Rivera. Motion carried unanimously.

RS-17-095 Consider a memorandum/resolution approving the investment report for the quarter ended June 30, 2017.
Staff comments: Susan Anderson, Valley View Consulting
The investment report summarizes all investment activity for the quarter that ended June 30, 2017. Mrs. Anderson briefly went over the report.

Motion was made by Councilmember Fleming to approve RS-17-095. Motion was seconded by Councilmember Harris. Motion carried unanimously.

RS-17-096 Consider a memorandum/resolution approving an Interlocal Agreement with Education Service Center Region 19, Allied States Cooperative.

Staff comments: Jonathan Locke

The Education Service Center Region 19, Allied State Cooperative provides an organizational and administrative structure to the bidding out of goods and services. Its purpose is to obtain substantial savings for member school districts and public entities through high volume purchasing. Staff recommends City Council authorize the City Manager to sign the interlocal agreement and join the Education Service Center Region 19, Allied States Cooperative.

Motion was made by Councilmember Rivera to approve RS-17-096. Motion was seconded by Councilmember Nash-King. Motion carried unanimously.

RS-17-097 Consider a memorandum/resolution authorizing the award of a construction contract with Murphy Pipeline Contractors, Inc. to rehabilitate 11,535 feet of water main.

Staff comments: David Olson

Due to congestion along VMB and the need to keep water outages to a minimum, the use of pre-chlorinated pipe bursting is recommended for this rehabilitation. Staff recommends that the City Council authorize the City Manager to enter into an agreement with Murphy Pipeline Contractors, Inc. for a construction contract to rehabilitate 11,535 feet of water main for the amount of $1,197,558.22, and that the City Manager is expressly authorized to execute any and all changes within the amounts set by state and local law.

Motion was made by Councilmember Nash-King to approve RS-17-097. Motion was seconded by Councilmember Fleming. Motion carried unanimously.

RS-17-098 Consider a memorandum/resolution authorizing the procurement of six (6) vehicles for the Water and Sewer Divisions.

Staff comments: Frank Tydlacka

The water and sewer divisions are in need of replacing a total of six (6) vehicles at this time. One was involved in an accident and totaled out, five have exceeded their useful life span and are overdue for replacement. Staff recommends procurement of the six (6) vehicles: five (5) from Caldwell Country Chevrolet utilizing BuyBoard Cooperative pricing totaling $155,700.00 and one (1) from Houston Freightliner utilizing HGAC Cooperative pricing for $371,120.00, for the total cost of $526,820.00 and that the City Manager is expressly authorized to execute any and all change orders within the amounts set by state and local law.

Motion was made by Councilmember Nash-King to approve RS-17-098. Motion was seconded by Mayor Pro-Tem Kilpatrick. Motion carried unanimously.

RS-17-099 Consider a memorandum/resolution authorizing repair/resurfacing of the Transfer Station tipping floor by Protective Polymer Solutions.

Staff comments: David Olson

Having a hardened surface on the tipping floor is vital to the life of the Transfer Station. Typical concrete will not hold up to the abrasive materials and chemicals that are mixed in the collection trucks and the load weight of the equipment being used to process the municipal solid waste. The current deterioration of the floor makes the surface very abrasive and is devastating to the rubber tires and pads used to protect the floor. The Transfer Station in the past five years has spent $139,996.64 on rubber edges and solid

rubber tire replacement due to the deteriorating floor conditions. The City of Killeen Transfer Station is required to stay in compliance with Texas Commission on Environmental Quality's (TCEQ) rules and regulations to maintain the City of Killeen's Transfer Station - Registration No. MSW 40209. Total cost is $120,520.00. Staff recommends that City Council award the contract to Protective Polymer Solutions and allow the City Manager to authorize and execute all necessary contract documents.

Motion was made by Councilmember Nash-King to approve RS-17-099. Motion was seconded by Councilmember Fleming. Motion carried unanimously.

RS-17-100 Consider a memorandum/resolution accepting TxDOT Routine Airport Maintenance Program (RAMP) grants for the Killeen-Fort Hood Regional Airport and Skylark Field.
Staff comments: Matt Van Valkenburgh
TxDOT has offered the City of Killeen RAMP grants of $50,000 for use at Killeen-Fort Hood Regional Airport and $15,000 for Skylark Field Airport. These grants will be used to match an equal amount of airport enterprise fund money to fund up to $100,000 for Killeen-Fort Hood Regional and up to $30,000 for Skylark Field worth of airport maintenance for the respective airports. Staff recommends the City Council accept the TxDOT RAMP Grants, TxDOT Project No. M1809FHOO, in the amount of $50,000, and TxDOT Project No. M1809KILE, in the amount of $15,000; adopt all assurances, statements, representations, covenants and agreements incorporated into this grant agreement; and authorize the City Manager to execute the agreement as accepted by the City. The City Manager is expressly authorized to execute any and all amendments to the grants within the amounts set by state and local law.

Motion was made by Councilmember Nash-King to approve RS-17-100. Motion was seconded by Councilmember Fleming. Motion carried unanimously.

RS-17-101 Consider a memorandum/resolution approving a lease agreement with David Gosnell, d/b/a Diamond Star Aviation at Skylark Field.
Staff comments: Matt Van Valkenburgh
Staff has negotiated a lease agreement with David Gosnell, d/b/a Diamond Star Aviation for the 6,400 square foot hangar being vacated by Genesis Flight Academy on September 30, 2017. The lease agreement will authorize the tenant to engage in the activities of a Limited Fixed Base Operator, providing customer aircraft storage. Staff recommends City Council approve the lease agreement with David Gosnell, d/b/a Diamond Star Aviation for a three (3) year period beginning on October 1, 2017, and authorize the City Manager to execute same. Additionally, authorize the City Manager to execute all addendums and lease actions to the agreement, including termination, to the extent allowed by the City Charter and the laws of the state of Texas.

Motion was made by Councilmember Nash-King to approve RS-17-101. Motion was seconded by Councilmember Fleming. Motion carried unanimously.

RS-17-102 Consider a memorandum/resolution awarding Bid #17-20 to Print & Finishing Solutions for the lease of a printing press for the Print Shop.
Staff comments: Hilary Shine
The useful life span of the two-color printing press purchased in 1999 was 15 years. Staff recommends that City Council award competitive bid #17-20, Printing Press Replacement for the Print Shop to Print & Finishing Solutions, that the City Manager is authorized to execute the contract for lease of said printing press from Print & Finishing

Solutions, and that he is further authorized to execute any and all change orders allowed by state and local law.

Motion was made by Mayor Pro-Tem Kilpatrick to approve RS-17-102. Motion was seconded by Councilmember Nash-King. Motion carried unanimously.

RS-17-103 Consider a memorandum/resolution authorizing an agreement with ESO Solutions for the Fire Department Emergency Medical Services patient care report software.
Staff comments: Brian Brank
The Killeen Fire Department's EMS division currently uses Zoll software to complete patient care reports. However, this system is no longer compatible with city needs. The Central Texas Regional Advisory Council (CTRAC) has recommended the use of ESO Solutions. Switching to ESO Solutions will provide for continuity of care when delivering patients to area hospitals. Additionally, it will improve access to patient care records for our billing service and it will decrease the time needed to complete a patient care report.

Motion was made by Councilmember Rivera to approve RS-17-103. Motion was seconded by Councilmember Nash-King. Motion carried unanimously.

RS-17-104 Consider a memorandum authorizing the replacement of roofs at Fire Station 3, Fire Station 7, and Central Fire Station.
Staff comments: Brian Brank
Leaks have been a problem in Fire Station #7 and Central Fire Station, and have begun to develop in Fire Station #3. Staff recommends that the City Council authorize the use of $162,538 to replace the roofs at Fire Station 3, Fire Station 7, and Central Fire Station.

Motion was made by Councilmember Fleming to approve RS-17-104. Motion was seconded by Councilmember Nash-King. Motion carried unanimously.

Adjournment

With no further business, upon motion being made by Councilmember Okray, seconded by Councilmember Fleming, and unanimously approved, the meeting was adjourned at 5:50 p.m.

City of Killeen

Legislation Details

File #:	RS-17-105	**Version:**	1	**Name:**	MOU w/TCFP
Type:	Resolution			**Status:**	Resolutions
File created:	9/18/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	
Title:	Consider a memorandum/resolution to enter into a Memorandum of Understanding with the Texas Commission on Fire Protection and the Killeen Fire Academy.				
Sponsors:	Fire Department				
Indexes:					
Code sections:					
Attachments:	Staff Report Memorandum of Understanding Presentation				

Date	Ver.	Action By	Action	Result

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STAFF REPORT

DATE: **October 3, 2017**

TO: **Ronald L. Olson, City Manager**

FROM: **Brian Brank, Fire Chief**

SUBJECT **Memorandum of Understanding with the Texas Commission on Fire Protection (TCFP) setting up an online testing facility at the Killeen Fire Academy**

BACKGROUND AND FINDINGS:

The TCFP provides for credentialing of fire protection personnel in the state of Texas. This credentialing involves testing of individuals as part of their required certifications. The Killeen Fire Department (KFD) fire training center has been a face-to-face testing site for many years; these tests can occur only on a monthly or semimonthly basis as scheduled.

The Texas Commission on Fire Protection has started the process of setting up facilities for Commission online testing throughout the state of Texas. This MOU gives the KFD fire training center the ability to establish online testing at the KFD fire academy facility. This is a benefit to all local fire departments in the Central Texas area; most importantly it will enable all KFD personnel to test here in Killeen. This MOU is mutually beneficial for the City of Killeen and the TCFP.

THE ALTERNATIVES CONSIDERED:

Not to approve entering into this MOU to establish KFD fire training center as an online testing site. This will require KFD personnel to travel to various locations within the state to test for credentialing.(not recommended)

Approval of this MOU will establish the KFD fire training center as an online testing site. This allows KFD personnel to test locally any time, preventing travel. This alternative is recommended.

CONFORMITY TO CITY POLICY:

This Memorandum of Understanding conforms to city policy and state laws.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?
There is no fiscal impact.

Is this a one-time or recurring expenditure?
N/A

Is this expenditure budgeted?
N/A

If not, where will the money come from?
N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?
N/A

RECOMMENDATION:

Staff recommends that the City Council approve the Memorandum of Understanding with the Texas Commission on Fire Protection (TCFP) and authorize the City Manager, or his designee, to execute the agreements.

DEPARTMENTAL CLEARANCES:

Legal, Fire

1701 N. Congress Avenue, Suite 1-105, Austin, TX 78701
512-936-3838 • Fax: 512-936-3808 • www.tcfp.texas.gov
Send mail to this mailing address:

TEXAS COMMISSION ON FIRE PROTECTION

MEMORANDUM OF UNDERSTANDING

between
The Texas Commission on Fire Protection
and
KILLEEN FIRE DEPARTMENT

This memorandum of understanding sets forth the responsibilities of the above partners for the delivery of internet-based (also called online) certification examinations.

Background

The Texas Commission on Fire Protection provides for the credentialing of fire protection personnel throughout the state. Following required training, individuals must successfully pass an established testing process to gain certification in their area of expertise. As part of the evolving process of certification testing, the Commission on Fire Protection is honored to partner with the above organization for online delivery of certification exams.

Responsibilities

The responsibilities of the partners for online testing are set as follows:

The Texas Commission on Fire Protection will:

- Develop and maintain all test questions, examinations, and records of examinations.
- Develop, provide, and maintain the online testing interface used by examinees.
- Make the interface and applicable exam available to the examinee upon input of the proper authorization information at the testing center.
- Retrieve and store all exam results, and provide appropriate results to the examinee.

KILLEEN FIRE DEPARTMENT will:

- Verify the identity of an examinee upon their arrival at the testing center.
- Ensure that the examinee has the access code information necessary to access their exam.
- Provide the examinee with a secure testing station from which the Commission on Fire Protection examination can be accessed.
- Provide all necessary security during the testing process.
- Ensure that an examinee has properly closed and exited the examination interface upon completion of their exam.
- Administer any fee that may be charged by the testing center for use of its facility.
- Each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

Duration

This memorandum of understanding may be modified by mutual consent of the authorized officials of the partners. It will become effective upon signature by both partners and will remain in effect until termination by either partner.

Contact Information:

Partner Name:	Texas Commission on Fire Protection
Authorized Person(s):	Tim Rutland, Executive Director
	Joyce Guinn, Training Approval and Testing Manager
Address:	PO Box 2286, Austin, Texas 78668-2286
Telephone:	512-936-3812 (Tim Rutland)
	512-936-3816 (Joyce Guinn)
Email:	tim.rutland@tcfp.texas.gov
	joyce.guinn@tcfp.texas.gov

Partner Name:	Killeen Fire Department
Authorized Person(s):	Chief Brian Brank
	Deputy Chief Cody Simmons
	Capt. Randy Pearson
Address:	201 N 28th Street Killeen, Tx 76541
Telephone:	254-501-7671
	254-501-7662
	254-501-7876
Email:	bbrank@killeentexas.gov
	csimmons@killeentexas.gov
	rpearson@killeentexas.gov

Signatures:

Texas Commission on Fire Protection — 9/13/17 Date

PARTNER (Ronald L. Olson , City Manager) BRB — Date

MEMORANDUM OF UNDERSTANDING (MOU) - TEXAS COMMISSION ON FIRE PROTECTION (TCFP) AND KILLEEN FIRE ACADEMY

RS-17-105

October 03, 2017

MOU - Texas Commission on Fire Protection and Killeen Fire Academy

- Consists of
  - Memorandum of Understanding for online testing at the Killeen Fire Academy
- TCFP requires credentialing in various disciplines of fire protection
- Allows for local fire fighters and Killeen Fire Personnel to test online
- Killeen Fire Personnel will not have to travel to various locations in the state to test

MOU - Texas Commission on Fire Protection and Killeen Fire Academy

- Alternatives:
  - Not Entering into online testing MOU with TCFP
    - Results in KFD personnel as well as KISD students having to travel long distances for certification testing
  - Enter into agreement
    - Creates cooperation between TCFP and KFD personnel as well as KISD students to test for certification credentialing online at the local KFD fire academy
- Conforms to city policy and state laws by agreement

MOU - Texas Commission on Fire Protection and Killeen Fire Academy

- Financial impact
  - Saves travel expense costs for KFD personnel

- Staff recommends approval of Memorandum of Understanding for online testing at the Killeen Fire Academy

City of Killeen

Legislation Details

File #:	RS-17-106	**Version:**	1	**Name:**	Lease with Purchase Option of Backhoe for Street Services Division
Type:	Resolution			**Status:**	Resolutions
File created:	9/18/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	
Title:	Consider a memorandum/resolution authorizing a lease with purchase option of a backhoe for the Street Services division.				
Sponsors:	Fleet Services, Public Works Department, Streets				
Indexes:					
Code sections:					
Attachments:	Staff Report Agreement Quote Specifications Photo Certificate of Interested Parties Presentation				

Date	Ver.	Action By	Action	Result

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STAFF REPORT

DATE: **October 3, 2017**

TO: **Ronald L. Olson, City Manager**

FROM: **Jonathan Locke, Executive Director of Finance**

SUBJECT: **Authorize lease with purchase option of a backhoe for the Street Services division**

BACKGROUND AND FINDINGS:

The three-year lease on one of the Street Services division's existing backhoes expires in December 2017. Due to the escalating cost of maintaining this type of heavy equipment as it ages, staff does not feel that purchasing the existing unit would be in the best interest of the City. The Street Services division is therefore requesting to initiate a new three-year backhoe lease with a purchase option at the end of the lease.

The division utilizes two backhoes that are critical pieces of equipment for ongoing street maintenance programs. One of these is an 11 year-old unit and is owned by the city; the other backhoe has been replaced every three years through new leases, since 2008, to ensure reliability.

THE ALTERNATIVES CONSIDERED:

1.) Purchase the existing backhoe for $50,715.71. This machine would have no warranty remaining and, as known from past experience, the repair and maintenance costs would dramatically increase. Future reliability would also be of concern.

2.) Return the leased backhoe and not replace it. This would limit the division to one 11-year-old backhoe with no backup and would very likely prevent the division from completing its mission in a timely manner.

3.) Procure a rental unit. This is not practical because these backhoes are not always readily available in this area. Rental cost for the backhoe would also average $3,500/mo. vs. leasing at $1,909.45/mo.

4.) Initiate a new three-year lease, as in the past, for a new backhoe that would provide dependable service.

Which alternative is recommended? Why?

The fourth alternative is recommended in order to provide the required equipment to effectively maintain the city's infrastructure.

CONFORMITY TO CITY POLICY:

The City of Killeen is a member of several purchasing cooperatives that are in compliance with the Texas Local Government Code section 271.102. Purchases made through a cooperative satisfy competitive bid requirements. The new backhoe would be a Caterpillar 420F2IT provided by Holt CAT of Waco utilizing the TASB BuyBoard Purchasing Cooperative. The lease with purchase option would be facilitated through Caterpillar Financial Services Corporation per the attached finance proposal.

FINANCIAL IMPACT:

The pricing for the equipment is as follows:

Make / Model	Monthly Cost	Purchase Option	Total Cost 3-yr + Purch.
Caterpillar 420F2IT	$1,909.45	$62,685.00	$131,425.20

What is the amount of the expenditure in the current fiscal year? For future years?

The amount of expenditure in FY18 (Dec.-Sep.) would be $19,094.50. The amount of expenditure in the following two fiscal years would be $22,913.40 per year. In FY21, the final two payments made in October and November 2020 would total $3,818.90. At the end of that period, the City would have the option of returning the equipment and initiating a new lease or purchase the equipment in FY21 for $62,685.00

Is this expenditure budgeted? If not, where will the money come from?

This expenditure is budgeted. Funding for this equipment is available in the Street Services division's Equipment Rental/Lease account (010-3445-434.44-10) at a rate of $1,909.45 per month.

Is there a sufficient amount in the budgeted line-item for this expenditure?

Yes. The FY18 budget for this account is $30,454.

RECOMMENDATION:

Staff recommends the procurement of the backhoe from Holt CAT, through the TASB BuyBoard, with financing provided by Caterpillar Financial Services Corporation on a three-year lease of $1,909.45 per month, FY 2018-2021, and that the City Manager or designee is expressly authorized to execute any and all change orders within the amounts set by state and local law.

DEPARTMENTAL CLEARANCES:

Public Works
Purchasing
Finance
City Attorney

ATTACHED SUPPORTING DOCUMENTS:

Quote
Specifications
Agreement
Photo
Certificate of Interested Parties

Tax Lease
Transaction Number _____

1. PARTIES

LESSOR *("we", "us" or "our"):*

CATERPILLAR FINANCIAL SERVICES CORPORATION
2120 West End Avenue
Nashville, TN 37203

LESSEE *("you" or "your"):*

Customer Legal Name
Address
, NM

In reliance on your selection of the equipment described below (each, a "Unit"), we have agreed to acquire and lease the Units to you, subject to the terms of this Lease. **Until this Lease has been signed by our duly authorized representative, it will constitute an offer by you to enter into this Lease with us on the terms stated herein.**

2. DESCRIPTION OF THE UNITS

DESCRIPTION OF UNIT(s) Whether the Unit is new or used, the model number, the manufacturer, and the model name.	**SERIAL/VIN** Unique ID number for this Unit.	**MONTHLY RENT** This is due per period, as stated below in Section 4.	**OPTION PURCHASE PRICE** Payment at end of lease for purchase of Unit (see Section 16).	**MAX ANNUAL HOURS/ MILEAGE** Maximum annual usage of Unit (see Application Survey).	**DELIVERY DATE** Enter date machine was delivered to you.
_____			(None)		_____

SAMPLE

LOCATION OF UNITS: , ,

You acknowledge that the Units described above were delivered to you in good working condition and that you accepted them on the date indicated.

The Application Survey ("Application Survey") submitted by you to us for each Unit is made a part of and incorporated into this Lease.

TERMS AND CONDITIONS

3. **Lease Term** The Lease Term will start on the date we sign the Lease and will continue for months, unless earlier terminated or canceled as permitted herein.

4. **Rent** You will pay us the Monthly Rent beginning One month after the date we sign this Lease and on the same date of each month thereafter for the entire Lease Term. Monthly Rent will be due without demand. You will also pay us all other amounts payable under the terms of this Lease and under any other document executed in connection with this Lease, including each Application Survey (the "Lease Documents") ("Other Payments", and together with the Monthly Rent, collectively, the "Rent"). You will pay the Rent to us at _____ or such other location that we designate in writing.**You agree this Lease constitutes a non-cancelable net lease. You also agree that your duties and liabilities under this Lease and the other Lease Documents are absolute and unconditional. Your payment and performance obligations are not subject to cancelation, reduction, or setoff for any reason. You agree to settle all claims, defenses, setoffs, counterclaims and other disputes you may have with the Supplier (as defined below), the manufacturer of each Unit, or any other third party directly with the Supplier, the manufacturer or the third party, as the case may be. You will not assert, allege or make any such claim, defense, setoff, counterclaim or other dispute against us or with respect to the payments due us under this Lease.**

5. **Late Charges** If we do not receive a Rent payment or any payments under Section 14 on the date it is due, you will pay us, on demand, a late payment charge equal to five percent (5%) of the late Rent payment.

6. **Disclaimer of Warranties** You have selected each Unit based upon your own judgment. You understand that we are not the manufacturer or the seller of the Units. WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THIS LEASE OR TO ANY UNIT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH UNIT IS LEASED "AS IS, WHERE IS." WE MAKE NO WARRANTIES AS TO THE QUALITY OF MATERIALS OR WORKMANSHIP OR THAT THE MATERIALS OR WORKMANSHIP COMPLY WITH THE TERMS OF ANY PURCHASE ORDER OR AGREEMENT. WE EXPRESSLY DISCLAIM, AND YOU WAIVE ALL OTHER WARRANTIES AND CLAIMS EXPRESS OR IMPLIED,

ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY UNIT OR THIS LEASE, INCLUDING WITHOUT LIMITATION: (A) ANY IMPLIED WARRANTY THAT ANY UNIT IS MERCHANTABLE; (B) ANY IMPLIED WARRANTY THAT ANY UNIT IS FIT FOR A PARTICULAR PURPOSE; (C) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT; AND (E) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR LOSS OF OR DAMAGE TO ANY UNIT, FOR LOSS OF USE, REVENUE, OR PROFIT WITH RESPECT TO ANY UNIT, FOR ANY LIABILITY TO ANY THIRD PARTY, OR FOR ANY OTHER DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING STRICT OR ABSOLUTE LIABILITY IN TORT. Nothing in this Lease takes away any rights you may have against any other parties (such as the Supplier or the manufacturer of any Unit). You agree to pursue only these third parties for any and all claims concerning any Unit except as to ownership and title. You are entitled to all the promises and warranties made by the Supplier to us with respect to the Units, and you may contact the Supplier in order to receive a description of those promises and warranties.

7. **Possession, Use, and Maintenance** (a) At your own expense, you will use and keep the Units in good operating order and condition and at least in accordance with Supplier's and manufacturer's recommendations and all maintenance and operating manuals and service agreements, and in accordance with all applicable laws and regulations, including the rules or limits on idling, fleet average or site based exhaust emissions, or operational limitations, for which you have sole responsibility for compliance. (b) You will not abandon a Unit. (c) You will not sublease a Unit or permit the use of a Unit by anyone other than you. (d) You will not change the use of a Unit from that specified in the Application Survey, without our prior written consent. (e) You will not change the Location of a Unit from that specified above, without our prior written consent. (f) You will not sell, assign, transfer, create or allow to exist a lien, claim, security interest, or encumbrance on any of your rights under this Lease or with respect to a Unit (including any Additional Collateral). Each Unit is and will remain personal property regardless of its use or manner of attachment to realty. We have the right (but not the obligation) to inspect each Unit and its maintenance records. We also have the right to observe the use of each Unit and determine its mileage. You will not alter a Unit or affix any accessory or equipment to a Unit if doing so will impair its originally intended function or use or reduce its value. You will not make any "non-severable" addition (as defined for federal income tax purposes) to a Unit without our prior written consent. If added to a Unit, the following will immediately become our property: (i) replacement parts; (ii) parts essential to the operation of the Unit; and (iii) parts that cannot be detached from the Unit without interfering with the operation of the Unit or adversely affecting the value or utility the Unit would have had without the addition. All such parts will be deemed incorporated in the Unit and will be subject to the terms of this Lease as if originally leased under this Lease. If an Event of Default has occurred and is continuing, all parts, accessories, and equipment affixed to a Unit will become our property.

8. **Taxes Rent includes all taxes arising from, or due in connection with, this Lease or the Units. You will pay when due, or promptly reimburse us for payment of, all taxes (other than our federal, state, or local net income taxes) imposed on a Unit, or the Rent.** You will also pay or reimburse us for all (i) license and registration fees, (ii) fines, penalties, interest, or additions to any tax, (iii) charges similar to those stated in clauses (i) and (ii) that are imposed in connection with the ownership, possession, use, or lease of a Unit from the time we purchase the Unit until it is returned to us or purchased by you. You will remain responsible for the payment, or reimbursement of, any such charges, regardless of when we receive notice of the charge. You will prepare and file, in a manner satisfactory to us, all reports or returns required with respect to a Unit. You will reimburse us in full for any amounts that we pay or advance without regard to early payment discounts. We may estimate the amount of, and bill you periodically in advance for, any charge. You will be responsible, however, for any difference between the estimated amount and the actual amount. Except as provided in this section, you agree that we are entitled to receive any and all federal, state, or local tax credits and benefits, if any, applicable to a Unit. We are entitled to income tax depreciation deduction for each Unit based on the use as described in the Application Survey.

9. **Tax Indemnity** This Lease is entered into on the basis that we are entitled to claim certain depreciation deductions on the Units in accordance with Section 168(a) of the Internal Revenue Code of 1986, as amended, (the "Code") based upon the applicable depreciation method and recovery period specified in Code Sections 168(b) and (c), and to similar state and local income tax deductions (collectively, the "Tax Benefits"). Our classification of a Unit under Code Section 168(e), our determination of the applicable depreciation method and recovery period, and our claim for an entitlement to the Tax Benefits are based solely upon your representations in Section 7 and the applicable Application Survey. If we do not receive nor retain all of the Tax Benefits anticipated with respect to any Unit (a "Tax Loss"), because (a) of a change in the US federal income tax rate, (b) you move any Unit outside the United States, or (c) you use any Unit for a different purpose than stated in the applicable Application Survey; you will pay us, within thirty (30) days after we provide you written notice of such Tax Loss, an amount which, in our opinion, will cause our net after-tax rate of return over the Lease Term in respect to the Unit to equal the net after-tax rate of return we would have realized if such Tax Loss had not occurred. For purposes of this section, we may be included in any affiliated group (within the meaning of Section 1504 of the Code) of which we are a member for any year in which a consolidated or combined income tax return is filed for the affiliated group.

10. **Loss or Damage** (a) You bear the risk of loss or damage to a Unit from the time we purchase the Unit (or from the beginning of the Lease Term, if earlier) until the Unit is returned to us or purchased by you in accordance with this Lease. Should any loss or damage occur, you will not be released from your obligations under the Lease or any other Lease Document. (b) You will provide prompt, written notice to us of any Total Loss (as defined below) or any material damage to any Unit. Any such notice will include any damage reports provided to any governmental authority, an insurer, or the Supplier, and any documents pertaining to the repair of such damage, including copies of work orders and all invoices for related charges. (c) Without limiting any other term in this Lease, you will promptly repair all damage that does not constitute a Total Loss, to restore the Unit to the condition required by this Lease. (d) A Unit has incurred a "Total Loss" upon: (i) the disappearance, theft or destruction or any other total loss of such Unit; (ii) damage to the Unit that is uneconomical to repair; or (iii) the condemnation, confiscation, or other taking of title to or use of a Unit or the imposition of any lien on such Unit by any governmental authority. On the next Rent due date following a Total Loss (a "Loss Payment Date"), you will pay us the Monthly Rent due on that date plus the Casualty Loss Value of the Unit with respect to which the Total Loss has occurred (the "Lost Units"), together with any Other Payments due with respect to the Lost Units. Until such payment is made, you will continue to pay us the Monthly Rent on the due dates set forth in Section 4. Upon making the full payment required on the Loss Payment Date, your obligation to pay future Monthly Rent on the Lost Units will terminate, but you will remain liable for all Monthly Rent and all Other Payments on any remaining Units. Furthermore, upon receipt of the full payment required on the Loss Payment Date, we convey to you all of our right, title, and interest in the Lost Units, "AS IS WHERE IS", but subject to the requirements of any third party insurance carrier in order to settle an insurance claim. "Residual Value" means the future fair market value of a Unit at the end of the Lease Term (determined at Lease inception). "Casualty Loss Value" means the sum of: (i) all amounts then due under this Lease with respect to the Lost Units (including all Other Payments then owing and unpaid); (ii) the discounted present value of all unpaid future Rent for the Lost Units; and (iii) the discounted present value of the Lost Unit's Residual Value as determined by us. If the Total Loss occurs after the final Rent due date of the Lease Term, the Casualty Loss Value will be determined as of the last Monthly Rent due date during the Lease Term. (e) We are not required to pursue any claim against any person in connection with a Total Loss or other loss or damage. (f) If we receive a payment under an insurance policy required under this Lease in connection with any Total Loss or other loss or damage to a Unit, and such payment is both unconditional and indefeasible, then provided you have complied with the applicable provisions of this section, we will either (i)) if the payment results from a Total Loss, send you proceeds up to an amount equal to the Casualty Loss

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Value you previously paid us, or credit the proceeds against any amounts you owe us or (ii) if the payment results from repairs made pursuant to Section 10(c), send you proceeds up to an amount equal to the amount of your actually incurred costs of repair.

11. **Waiver and Indemnity** You release and agree to indemnify, defend, and keep harmless, us (including any assignee of ours) and our directors, officers, agents and employees (each, an "Indemnitee"), from and against any and all Claims (defined below) (other than those directly resulting from the actual gross negligence or willful misconduct of the Indemnitee). To meet this obligation, you will pay, on a net after-tax basis, or otherwise discharge such Claims, when and as they become due. We will give you prompt notice of a Claim. You are entitled to control the defense of or to settle a Claim, so long as: (a) no Event of Default has occurred and is then continuing; (b) you are financially capable of satisfying your obligations under this section; and (c) we approve your proposed defense counsel. "Claims" means all claims, allegations, judgments, settlements, suits, actions, damages (whether incidental, consequential or direct), demands (for compensation, indemnification, reimbursement or otherwise), losses, penalties, fines, liabilities (including strict liability), and charges that we incur or for which we are or may be responsible, in the nature of interest, liens, and costs (including attorneys' fees and disbursements and any other legal or non-legal expenses of investigation or defense of any Claim, whether or not the Claim is ultimately defeated, or enforcing the rights, remedies, or indemnities provided for hereunder, or otherwise available at law or in equity to us), of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, by or against any person. Claims include any of the foregoing arising from: (i) a Lease Document; (ii) a Unit, including the contents and any regulated or hazardous substances at any time contained in a Unit or emitted from a Unit, (iii) the premises at which any Unit may be located from time to time; (iv) the ordering, acquisition, delivery, installation, or rejection of a Unit; (v) the possession of a Unit or any property to which the Unit may be attached from time to time; (vi) the maintenance, use, condition, ownership or operation of any Unit, during the Lease Term; (vii) the existence of a latent or other defect (whether or not discoverable by you or us) with respect to a Unit; (viii) any Claim in tort for negligence or strict liability in relation to a Unit; (ix) any Claim for patent, trademark or copyright infringement in relation to a Unit; (x) the Total Loss or damage, return, surrender, sale, or other disposition of any Unit or any part thereof; or (xi) any Claim involving or alleging environmental damage, or any criminal or terrorist act, relating in any way to a Unit. To the extent necessary under law or regulation, in order to eliminate liability for us, we transfer and you accept the transfer from us of any and all liability associated with exhaust emissions in connection with the Units. If any Claim is made against you or an Indemnitee, the party receiving notice of the Claim will promptly notify the other. If the party receiving notice of the Claim fails to notify the other, however, your obligations are still in effect. You agree to be responsible for all costs and expenses, including reasonable attorneys' fees, incurred by us or our directors, officers, employees, agents, or assigns in defending such claims or in enforcing this section. Under no condition or cause of action will we be liable for any loss of actual or anticipated business or profits or any special, indirect, or consequential damages.

12. **Insurance** You, at your expense, must keep each Unit (including any Additional Collateral) insured with a commercial physical damage insurance policy for our benefit. This insurance will protect each Unit against all risks for an amount at least equal to the then-applicable Casualty Loss Value. You will also maintain comprehensive public liability insurance (including product and broad form contractual liability) covering each Unit (including any Additional Collateral) for at least $1,000,000 combined coverage for bodily injury and property damage per occurrence. All insurance must be in a form and with companies approved by us. The insurance shall specify you as named insured and us as loss payee. The insurance shall be primary, without the right of contribution from any insurance carried by us and will have a deductible amount reasonably acceptable to us. The insurance must provide that it may not be canceled or altered so as to affect our interest without at least ten (10) days' prior written notice to us. The insurance carrier must have a minimum rating of A- by A.M. Best or a credit rating of “BBB” by Standard & Poor’s or Fitch with an A.M. Best Financial Size Category of 7 or higher. You cannot make adjustments with insurers without our prior written consent. You irrevocably appoint us as your attorney-in-fact to receive payment of and to endorse all checks, drafts, and other documents and to take any other actions necessary to pursue insurance claims and recover payments if you fail to promptly do so. You must promptly notify us of any occurrence that may become the basis of a claim. You must also provide us with all requested pertinent data. Upon demand, you must promptly deliver to us evidence of insurance coverage. If you fail to provide and maintain any of the required insurance coverage or fail to furnish us with required evidence of such insurance, we are authorized, but not required, to obtain such insurance on your behalf and you agree to pay us for the cost of the insurance as invoiced or, alternatively, we may terminate the Lease as provided in Section 14.

If any hazardous property or material will be transported with a Unit, you will provide and maintain environmental liability coverage at all times during the Lease Term, at your expense and in your own name as primary insured, for the greater of $5,000,000 or the statutory minimum coverage. This environmental liability coverage will have a deductible amount reasonably acceptable to us and will provide a waiver of subrogation by the insurance carrier in favor of us. The insurance carrier must have a minimum rating of A- by A.M. Best or a credit rating of “BBB” by Standard & Poor’s or Fitch with an A.M. Best Financial Size Category of 7 or higher.

13. **Events of Default** Each of the following is an event of default ("Event of Default"): (a) You fail to make a payment when due. (b) A representation or warranty made to us in connection with this Lease is incorrect or misleading. (c) You fail to observe or perform a covenant, agreement, or warranty and the failure continues for ten days after written notice to you. (d) A default occurs under any other agreement between you or a guarantor of this Lease (each a "Guarantor") and us or an affiliate of ours. (e) You, or a Guarantor, cease to do business, die, become insolvent, make an assignment for the benefit of creditors or file a petition or action under a bankruptcy, reorganization, insolvency or moratorium law, or a law for the relief of, or relating to, debtors. (f) Any filing of an involuntary petition under a bankruptcy statute against you or a Guarantor, or appointment of a receiver, trustee, custodian or similar official to take possession of your properties or those of a Guarantor, unless the petition or appointment ceases to be in effect within thirty days after filing or appointment. (g) There is a material adverse change in your, or a Guarantor's, financial condition, business operations or prospects. (h) There is a termination, breach, or repudiation of a Guarantor's guaranty.

14. **Remedies** (a) If an Event of Default occurs, we will have the rights and remedies provided by this Lease and under the Uniform Commercial Code ("UCC") and any other law. Among these rights and remedies are to: (i) proceed at law or in equity, to enforce specifically your performance or to recover damages; (ii) declare this Lease in default, and cancel this Lease or otherwise terminate your right to use any Unit and your other rights, but not your obligations, (iii) require you to assemble Units and make them available to us at a place we designate; (iv) enter premises where a Unit may be located and take immediate possession of such Unit and remove (or disable in place) such Unit (and any unattached parts) without notice, liability, or legal process; (v) use your premises for storage without liability; (vi) sell or lease any of the Units, whether or not in our possession, at public or private sale, with or without notice to you, and apply or retain the net proceeds of such disposition in accordance with this Lease; (vii) enforce any or all of the preceding remedies with respect to any related collateral, and apply any deposit or other cash collateral, or any proceeds of any such collateral, at any time to reduce any amounts you owe us; (viii) demand and recover from you all Liquidated Damages (as defined below) and all Other Payments whenever they are due; and (ix) if we financed your obligations under a warranty agreement such as an Equipment Protection Plan, Customer Service Agreement, or similar agreement, we may cancel the agreement on your behalf and receive the refund of the fees that we financed but had not received from you as of the date of the Event of Default. As used herein, "Liquidated Damages" means the liquidated damages (all of which, you hereby acknowledge, are damages to be paid in lieu of future Monthly Rent and expected Residual Values and are reasonable in light of the anticipated harm arising by reason of an Event of Default, and are not a penalty) described in the first sentence of parts (i) or (ii) of Section 14(b) below, depending upon the recovery and disposition of the Units.

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(b) If an Event of Default occurs and:

(i) we recover a Unit and dispose of it by a lease or elect not to dispose of the Unit after recovery, you will pay us on demand an amount equal to the *sum* of (A) any accrued and unpaid Rent as of the date we recover the Unit, *plus* (B) the present value as of such date of the total Monthly Rent for the then remaining Lease Term, *minus* (C) either (1) the present value, as of the commencement date of any substantially similar re-lease of the Unit, of the re-lease rent payable to us for the period, commencing on such commencement date, which is comparable to the then remaining Lease Term or (2) the present value of the "market rent" for such Unit (as computed pursuant to Article 2A of the UCC ("Article 2A")) in the continental United States as of the date on which we have a reasonable opportunity to remarket the Unit for the period, commencing on such date, which is comparable to the then remaining Lease Term, as applicable; provided, however, you acknowledge that if we are unable after a reasonable effort to dispose of the Unit at a reasonable price and pursuant to other reasonable terms, or the circumstances reasonably indicate that such an effort will be unavailing, the "market rent" in such event will be deemed to be $0.00, but in the event that we do eventually re-lease or otherwise dispose of the Unit, we will apply the net proceeds of such disposition, to the extent received in good and indefeasible funds, as a credit or reimbursement, as applicable, in a manner consistent with the terms of this Lease and the applicable provisions of Article 2A. Any amounts discounted to present value, shall be discounted at the rate of three percent (3%) per annum, compounded annually;

(ii) you fail to return a Unit in the manner and condition required by this Lease, or we recover and sell the Unit, you will pay to us on demand an amount calculated as the Casualty Loss Value of the Unit (determined as of the next Monthly Rent payment date after the date of the Event of Default), together with all costs and expenses (as defined below), *less* a credit for any disposition proceeds, if applicable pursuant to the application provisions in the next sentence. If we demand the Liquidated Damages under this part (ii) and recover and sell the Unit, we will apply any proceeds received in good and indefeasible funds: first, to pay all costs and expenses not already paid; second, to pay us an amount equal to any unpaid Rent due and payable, together with the Liquidated Damage amounts specified in this part (ii), to the extent not previously paid; third, to pay us any interest accruing on the amounts covered by the preceding clauses, plus late charges, from and after the date the same becomes due, through the date of payment; fourth, to pay us an amount equal to any remaining obligations that you owe us whether related hereto or unrelated to this Lease; fifth, to reimburse you for any amount paid as Liquidated Damages pursuant to this part (ii) by applying any surplus to any other existing indebtedness or obligations of Lessee to Lessor.

The remedies provided to us are cumulative and in addition to all other remedies at law or in equity. You will remain liable for any deficiency and we will retain any excess after our exercise of these remedies. To the extent you are entitled to a refund from us, you agree we have the right to offset any obligation that you have with us or our affiliates with such refund.

15. **Return of Unit** On expiration of the Lease Term or if we demand possession of a Unit pursuant to the terms of the Lease, you will, at your expense, promptly deliver the Unit to us properly protected and in the condition required by Section 7 and the applicable Application Survey. You will deliver the Unit, at our option, (a) to the nearest Caterpillar dealer selling equipment of the same type as the Unit; or (b) on board a carrier named by us and shipping the Unit, freight collect, to a destination designated by us. If the Unit is not in the condition required by Section 7 and the applicable Application Survey or if the Unit is not in the same operating order, repair, condition, and appearance as it was on the date of the applicable Delivery Supplement (excepting ordinary wear and tear from proper use), you must pay us, on demand, all costs and expenses incurred by us to bring the Unit into the required condition. You are obligated to pay holdover rent in the amount equal to 1/30th of the Monthly Rent plus any other costs and expenses for each day following the end of the Lease Term on any Unit that is not returned or purchased pursuant to the terms of this Lease.

16. **Purchase Option** At the expiration of the Lease, if no Event of Default has occurred and is continuing, you may choose to purchase any Unit for the Option Purchase Price set forth on the front of this Lease if this Lease includes an Option Purchase Price. In order to exercise a purchase option, you must send written notice to us at least sixty (60) days prior to the end of the Lease Term. Upon receipt of the Option Purchase Price and all other amounts owing under the Lease, plus any taxes or our other costs and expenses arising from the sale of the Unit or the delivery of the bill of sale, we will deliver to you, upon request, a bill of sale without warranties except that the Unit is free of all encumbrances of any person claiming through us. You agree to purchase the Unit "**AS IS, WHERE IS, WITH ALL FAULTS**." Any applicable purchase option must be exercised as of the last day of the Lease Term and it is not available during any holdover period.

17. **Your Assurances and Representations** Each of us intends that: (i) this Lease constitutes a true "lease" and a "finance lease" as such terms are defined in Article 2A and not a sale or retention of a security interest; (ii) you have selected the "Supplier" (as defined in Article 2A) and have directed us to purchase each Unit (excluding any Additional Collateral) from this Supplier; (iii) you were informed, before your execution of this Lease and are hereby informed in writing that you are entitled under Article 2A to the promises and warranties, including those of any third party, provided to us by the Supplier in connection with or as part of the purchase of the Units, and that you may communicate directly with the Supplier and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations on remedies relating thereto; and (iv) we are and shall remain the owner of each Unit (unless sold by us pursuant to any Lease Document), and you shall not acquire any right, title or interest in or to such Unit except the right to use it in accordance with the terms hereof.

You represent and warrant to us that: (a) You will use each Unit for business purposes only and not for personal, family or household use. (b) You will provide all financial information and reporting as we may reasonably require. (c) All credit, financial and other information submitted by you or on your behalf to us in connection with this Lease is and shall be true, correct and complete. (d) You will not change your name, principal place of business or primary residence and, if you are a business entity, your state of formation or form of business organization (including by merger, consolidation, reincorporation or restructure) without prior written notice to us. (e) We may share any of your information provided by you, or gathered by us, with any affiliate of ours that has or may extend credit to you. (f) You will not assign this Lease or any right or obligation under it without our prior written consent.

You agree, at your expense, to do any act and execute, acknowledge, authorize, deliver, file, register, and record any documents that we deem desirable in our reasonable discretion to protect our title or rights in a Unit and our rights and benefits under this Lease. You hereby irrevocably appoint us as your attorney-in-fact for the signing and filing of such documents and authorize us to delegate these limited powers.

You will not remove, disable, or impair any Unit monitoring system such as Cat® Product Link, if the Unit is equipped with such system. You agree to permit Caterpillar Inc. or its subsidiaries or affiliates, including us (collectively "Caterpillar") and Caterpillar dealers to access data concerning the Unit, its condition, and its operation transmitted from the monitoring system. The information may be used: (1) to administer, implement, and enforce the terms of this Lease, (2) to recover the Unit if necessary, and (3) to improve Caterpillar's products and services. You agree that information transmitted may include, among other things, the serial number, VIN, location, and operational and other data, including but not limited to fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments.

18. **Assignment; Counterparts** We may assign, sell or encumber all or any part of this Lease, the Rent, and the Units with or without notice to you. THE RIGHTS OF ANY SUCH ASSIGNEE WILL NOT BE SUBJECT TO ANY DEFENSE, COUNTERCLAIM OR SET OFF WHICH YOU MAY HAVE AGAINST US. If requested by us, you will assist us in the assignment of any of our rights under this Lease. If requested by us, you will also sign a notice of assignment in a form approved by us. If notified by us, you will make all payments due

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under this Lease to the party designated in the notice without offset or deduction. In connection with any potential or actual assignment, you consent to the sharing of your credit file information, including personal information relating to your principals, with any potential assignee. Upon any assignment by us of our rights under this Lease, and except as may otherwise be provided herein, all references in this Lease to "Lessor", "we", "us", and "our" will mean the assignee. This Lease is for the benefit of, and is binding upon, your and our respective successors and assigns. Though multiple counterparts of this document may be signed, only the counterpart accepted, acknowledged, and certified by us on the signature page as the original will constitute original chattel paper. A photocopy or facsimile of this Lease will be legally admissible under the "best evidence rule." A signed copy of this Lease and any related document sent electronically will be treated as an original document and will be admissible as evidence thereof, and all signatures thereon will be binding as if manual signatures were personally delivered. You are hereby notified that we may assign our rights (but not our obligations) under this Lease and in the Units to CF Exchange, LLC, a qualified intermediary, as part of a 1031 exchange.

19. **Effect of Waiver; Entire Agreement; Notices; Applicable Law** Our delay or omission in exercising any right or remedy will not impair such right or remedy. A delay or omission by us will not be construed as a waiver of any Event of Default. Any waiver or consent by us must be in writing. This Lease and the Lease Documents completely state our and your rights and supersedes all prior agreements with respect to a Unit. All notices must be in writing, addressed to the other party at the address stated on the front of this Lease or at such other address as may be furnished in writing. This Lease is governed by and construed under the laws of the State of Tennessee, without giving effect to the conflict-of-laws principles. You consent to the jurisdiction of any state or federal court located within the State of Tennessee. **THE PARTIES WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS LEASE, THE OBLIGATIONS, OR THE UNITS (INCLUDING ANY ADDITIONAL COLLATERAL).**

20. **No Agency; Modification of Lease; Miscellaneous** No person or entity, including, without limitation, the supplier or the manufacturer of the Units, is authorized to act as our agent regarding this Lease. No waiver, modification, or change in this Lease will bind us unless provided by us in writing. Oral agreements are not binding. You agree that we may correct patent errors in this Lease and the Lease Documents and fill in blanks including for example correcting or filling in serial numbers, VIN numbers, and dates. Headings in this Lease are inserted for convenience only. Headings do not affect the meaning or interpretation of this Lease. If a provision of this Lease is invalid under any law, it shall be deemed omitted. Any such omission will not invalidate the remaining provisions. To the extent any payment due us under this Lease is deemed to be usurious, the payment obligation shall be amended and limited to the maximum lawful amount. All obligations under this Lease survive the expiration or termination of the Lease if necessary to give full effect to the terms of this Lease.

By signing this Lease, you certify that you have read this Lease and all the other Lease Documents, including each Application Survey.

SIGNATURES

LESSOR

Caterpillar Financial Services Corporation

Signature _____

Name (print) _____

Title _____

Date _____

LESSEE

Customer Legal Name

Signature _____

Name (print) _____

Title _____

Date _____

SAMPLE

NON-APPROPRIATIONS ADDENDUM TO LONG TERM RENTAL AGREEMENT
Transaction Number _____

PARTIES

LESSOR:

CATERPILLAR FINANCIAL SERVICES CORPORATION
2120 West End Avenue
Nashville, TN 37203

LESSEE:

Customer Legal Name
Address
NM

Lessor and Lessee hereby agree to add the following provision to the Lease, and further acknowledge that all terms contained herein are to be defined according to the provisions of the Lease:

Lessee represents and warrants to Lessor that Lessee has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal year and reasonably believes that funds can be obtained sufficient to make all rental payments during the term of the Lease. Lessee hereby covenants that it will do all things reasonably within its power to obtain funds from which the rental payments may be made, including making provision for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding and using its bona fide best efforts to have such portion of the budget approved. It is Lessee's intent to make rental payments for the full term of this Lease if funds are available therefor and in that regard Lessee represents that the use of the Units is essential to Lessee's proper, efficient and economic operation. In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year for rental payments due under this Lease, then Lessee will immediately notify Lessor of such occurrence and this Lease shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to Lessee for any kind whatsoever, except as to the portions of rental payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. Subsequent to a termination of this lease, Lessee shall have no obligation to make rental payments with respect to the remainder of the Lease. In the event of such termination, Lessee agrees to return the Units to Lessor pursuant to Section 15 of this Lease, and Lessor shall have all legal and equitable rights and remedies to take possession of the Units. Notwithstanding the foregoing, Lessee agrees that it will not cancel this Lease under the terms of this Addendum if any funds are appropriated to it, or for the acquisition, retention or operation of the Units or other equipment performing functions similar to the Units.

SAMPLE

SIGNATURES

LESSOR	LESSEE
CATERPILLAR FINANCIAL SERVICES CORPORATION	Customer Legal Name
Signature _____	Signature _____
Name (print) _____	Name (print) _____
Title _____	Title _____
Date _____	Date _____

Caterpillar Financial Services Corporation

Finance Proposal

CUSTOMER

Name: CITY OF KILLEEN, TX

Address ..... 101 N. COLLEGE
City ..... KILLEEN
State ..... TX
Zip code 76541
County ..... BELL

Good if:
Acknowledged by Nov-18-17
Funded by Nov-18-17

DEALER

HOLT TEXAS, LTD
Sales person ..... Bryan Taylor
Dealer contact .....
Telephone .....

Quote number 561-0856
Fax number .....
Quote date 09/19/2017
Quote time 15:39:48

FINANCE PROPOSAL

This is Caterpillar Financial Services Corporation's confirmation of the following finance proposal. This is a proposal only and is subject to credit approval, execution of documentation, and execution and approval of the application survey.

Financing type ..... CAT VALUE OPTION
Number of payments ..... 36 Monthly
Payments ..... in Arrears

Purchase option ..... Stated option
Equipment ..... Construction
Quoted by ..... mcnamcm
Report created by ..... mcnamcm

	Model	ADR Code	Ann. Hours	Qty	Amount Financed	Payment	Purchase Option
New	420F2IT	915.00	1500	1	112,775.00	1,909.45	62,685.00

Special Conditions:

420F2IT
Model Year - 2017, Standard Environment; Major Attachments-Tires, Air Conditioning, Cab; Blades/Buckets/Rippers-General Purpose Bucket, Forks

	Model	Insurance	Payment w/Insurance
New	420F2IT	168.53	2,077.98

The estimate for insurance is provided through Caterpillar Insurance Company (Provided by Westchester Insurance Company in Rhode Island) and is not an offer to contract for insurance.

CONDITIONS

Insurance: The customer must provide evidence of physical damage and liability insurance in an amount and from an insurance carrier satisfactory to CFSC. CFSC must be named on the policies, as loss payee and additional insured, as applicable, and a certificate of insurance, in form and substance acceptable to CFSC, must be provided to CFSC.

Taxes: All taxes are the responsibility of the customer and may or may not be included in the above payment amounts. Under the CAT Master Tax Lease and CAT Long Term Rental Agreement, a lessee is required to indemnify the lessor for loss of tax benefits.

Equipment: The equipment cannot be delivered until all documents are executed by CFSC. All equipment must reside in the United States at all times.

Approval: This proposal is subject to, among other things, final pricing, credit approval and document approval by CFSC.

The terms and conditions outlined herein are not all-inclusive and are based upon information provided to date. This proposal may be withdrawn or modified by Lessor at anytime. This proposal does not represent an offer or commitment by CFSC to enter into a transaction or to provide financing, and does not create any obligation for CFSC. A commitment to enter into the transaction described herein may only be extended by CFSC after this transaction has been approved by all appropriate credit and other authorities within CFSC.

Please indicate your acceptance of this proposal by executing this proposal and returning it to my attention along with the Proposal Fee at the address below. Please be sure to indicate which financing option you have accepted.

Caterpillar Financial Services Corporation
2120 West End Avenue, Nashville, TN 37203
(615)-341-1000

We appreciate the opportunity to provide you a proposal for this transaction.

Proposed by:	Acknowledged by:	
_____	_____	
Caterpillar Financial Services Corporation	CITY OF KILLEEN, TX	Date

DATE: July 31, 2017
QUOTE #:197145-01

CITY OF KILLEEN **FLEET SERVICES** **Bryan Taylor**
FRANK TYDLACKA 254.709.7572

PO BOX 1329
KILLEEN, TEXAS 76540-1329

One (1) New Caterpillar Inc Model: 420F ITC4E Backhoe Loaders with all standard equipment in addition to the additional specifications listed below:

BUY BOARD QUOTE#: 515-16

DATE: July 31, 2017QUOTE #:Quote 197145-01

MACHINE SPECIFICATIONS

STOCK NUMBER: HLK030841

DESCRIPTION	REF.#
420F2 BHL IT, TIER 4, HRC	450-8450
LANE 3 ORDER	0P-9003
STICK, EXTENDABLE, 14FT	450-8730
PT, 4WD, STD SHIFT	450-8606
ENGINE, 74.5KW,C4.4 ACERT, T4F	450-8757
HYDRAULICS, MP, 6FCN/8BNK, IT	450-8533
CAB, DELUXE	450-8683
WORKLIGHTS (8) HALOGEN LAMPS	491-6734
SEAT, DELUXE FABRIC	433-4806
BELT, SEAT, 2" SUSPENSION	206-1747
AIR CONDITIONER, T4	450-8715
TIRES, 12.5 80/19.5L-24, FS	380-8961
COUNTERWEIGHT, 1015 LBS	337-9696
STABILIZER PADS, FLIP-OVER	9R-6007
INSTRUCTIONS, ANSI	430-9944
SERIALIZED TECHNICAL MEDIA KIT	421-8926
RIDE CONTROL	398-2681
COUPLING,QD,THREADED WITH CAPS	456-3390
LINES, COMBINED AUX, E-STICK	398-2853
FAN, DELUXE CAB	387-6682
PRODUCT LINK, CELLULAR, PL641I	447-0049
BATTERY, HEAVY DUTY	457-2797
PLATE GROUP - BOOM WEAR	423-7607
SECURITY SYSTEM, KEYPAD	387-6570
GUARD, STABILIZER	353-1389
CARRIAGE, FORK	6W-8832
FORK TINE, 2" X 5" X 54"	195-6939

DESCRIPTION	REF.#
COUPLER, PIN LOCK	487-0712
BUCKET-GP, 1.5 YD3, IT	251-1794
CUTTING EDGE, TWO PIECE,WIDE	9R-5320
RUST PREVENTATIVE APPLICATOR	462-1033
SHIPPING/STORAGE PROTECTION	461-6839
PACK, DOMESTIC TRUCK	0P-0210
18" QC DIRT BUCKET	
24" HD DIRT BUCKET	

STOCK NUMBER: HLK030841

SELL PRICE	$112,425.33
EXT WARRANTY	Included
TOTAL PRICE	**$112,425.33**
SUB TOTAL	**$112,425.33**
TOTAL QUOTED PRICE	**$112,425.33**

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine

Extended Warranty: 3YR / 5000 HOUR POWERTRAIN + HYDRAULIC

NOTES

STANDARD EQUIPMENT

CONSIST NOTE

THIS LISTING IS A GENERAL DESCRIPTION OF A 420F2 BACKHOE LOADER EQUIPPED WITH THE LOWEST CHARGE ITEMS.

BOOMS, STICKS AND LINKAGES

14'4" Center pivot excavator style backhoe
Pilot operated joystick hydraulic controls with pattern changer valve
Pilot operated stabilizer controls
Boom transport lock
Swing transport lock
Street pads stabilizer shoes
Anti-drift hydraulics

POWERTRAIN

Drive-line parking brake
High Ambient Cooling Package
Torque converter
Transmission--four speed synchro mesh with power shuttle & neutral safety switch
Spin-on fuel, engine oil & transmission oil filters
Outboard planetary rear axles
Open Circuit Breather

HYDRAULICS

Load sensing, variable flow system with 43 gpm axial piston pump
6 micron hydraulic filter
O-ring face seal hydraulic fittings
Caterpillar XT-3 hose
Hydraulic oil cooler
Pilot control shutoff switch
PPPC, Flow-sharing hydraulic valves
Hydraulic suction strainer

ELECTRICAL

12 volt electrical start
150 ampere alternator
Horn and Backup Alarm
Hazard flashers/turn signals
Halogen head lights (4)
Halogen rear flood lights (4)
Stop and tail lights
Audible system fault alarm
Key start/stop system
880 CCA maintenance free battery
Battery disconnect switch
External/internal power receptacles(12v)
Diagnostic ports for engine and machine Electronic Control Modules

POWERTRAIN

Differential lock disk brake with dual pedals & interlock
Hydraulically boosted multi-plate wet indicator
ejection system & filter condition
integral precleaner, automatic dust
A dry-type axial seal air cleaner with Eco mode
Thermal starting aid system
Water separator with service indicator
with Selective Catalytic Reduction(SCR)
US EPA Tier4 Final Emissions Compliant with ACERT technology.
Direct Injection Turbo Charged Engine, Cat C4.4, 74.5KW (Net 93HP / 69kW)

BOOMS, STICKS AND LINKAGES

Single Tilt Loader
Transmission neutralizer switch control
Self-leveling loader with single lever
Return-to-dig (auto bucket positioner)
Lift cylinder brace
Bucket level indicator
Cat Cushion Swing(tm) system (Boom, Stick and E-Stick)

ELECTRICAL

Remote jump start connector

OPERATOR ENVIRONMENT

Lighted gauge group
Interior rearview mirror
Rear fenders
ROPS canopy
Hand and foot throttle
Automatic Engine Speed Control
One Touch Low Idle
Floor mat and Coat Strap

2-inch retractable seat belt
Tilt steering column
Steering knob
Lockable storage area
Air suspension seat

OTHER STANDARD EQUIPMENT

Hydrostatic power steering
Standard Storage Box
Transport tie-downs
Ground line fill fuel tank with 44 gallon capacity
Ground line fill diesel exhaust fluid tank with 5 gallon capacity
Rubber impact strips on radiator guards
Bumper
CD-ROM Parts Manual
Backhoe Safety Manual
Operations and Maintenance Manual
Lockable hood
Tire Valve Stem Protection
Long Life Coolant -30C (-20F)
Padlocks (2 on ST, 3 on IT)

420F IT
CAT

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2017-260074

Date Filed:
09/13/2017

Date Acknowledged:

1 **Name of business entity filing form, and the city, state and country of the business entity's place of business.**
Holt Texas, LTD.
San Antonio, TX United States

2 **Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**
Killeen, City of

3 **Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**
Buy Board # 515-16
Supply of 420F2 IT Caterpillar Backhoe

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
TAYLOR, Bryan	Holland,TX United States		X
RICHTER, Corinna Holt	San Antonio, TX United States	X	
HOLT, Peter J.	San Antonio, TX United States	X	
HOLT, Julianna	San Antonio, TX United States	X	
HOLT , Peter M.	San Antonio, TX United States	X	

5 **Check only if there is NO Interested Party.** ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

LUCY M TITZMAN
Notary Public, State of Texas
Comm. Expires 07-02-2021
Notary ID 4097765

Paul C. Hensley
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Paul C. Hensley, this the 13 day of September, 20 17, to certify which, witness my hand and seal of office.

Lucy M. Titzman — Signature of officer administering oath
Lucy M. Titzman — Printed name of officer administering oath
Executive Assistant- Notary — Title of officer administering oath

STREET SERVICES BACKHOE LEASE/PURCHASE

RS-17-106

October 03, 2017

Street Services Backhoe Overview

- Streets Services needs to replace a backhoe
  - Critical equipment for ongoing street maintenance programs
  - Replacement will ensure continued reliability
- Equipment procurement
  - Holt CAT is the supplier
  - Purchased through the Texas Association of School Boards (TASB) BuyBoard Purchasing Cooperative
  - Financed through Caterpillar Financial Services Corporation
- Lease terms and budget
  - 3-Year lease with monthly payments of $1,909.45
  - Option to purchase at end of lease for $62,685 or return
  - Funding is available in the Street Services division's Equipment Rental/Lease account, number 010-3445-434.44-10
    - FY 2018 budget - $32,104

Caterpillar 420F2IT Backhoe

Street Services Backhoe Recommendation

Staff recommends City Council approve the lease agreement with Caterpillar Financial Services for the backhoe within the Street Services division.

City of Killeen

Legislation Details

File #:	PH-17-045	**Version:**	1	**Name:**	Zoning 17-21
Type:	Ordinance/Public Hearing			**Status:**	Public Hearings
File created:	9/14/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	

Title: HOLD a public hearing and consider an ordinance requested by Richard Taylor of Eco-Site, L.L.C. on behalf of Florence HH MHP, L.L.C., (Case#Z17-21) to rezone approximately 0.058 acre, out of the John Essary Survey, Abstract 296, from “RMH” (Residential Mobile Home District) to “RMH” with a Conditional Use Permit (CUP) for a 110 feet tall monopole communication structure. The property is locally known as 3205 Florence Road, Killeen, Texas.

Sponsors: Planning & Development Dept

Indexes:

Code sections:

Attachments:
- Staff Report
- Maps and Photos
- Minutes
- Ordinance
- Presentation

Date	Ver.	Action By	Action	Result

powered by Legistar™

STAFF REPORT

DATE: **October 3, 2017**

TO: **Ronald L. Olson, City Manager**

FROM: **Ray Shanaa, AICP, Executive Director of Planning and Development Services**

SUBJECT: **ZONING CASE #Z17-21 "RMH" (RESIDENTIAL MOBLE HOME DISTRICT) TO "RMH" WITH A CONDITIONAL USE PERMIT (CUP)**

BACKGROUND AND FINDINGS:

Nature of the Request:

Richard Taylor of Eco-Site, L.L.C. submits this request on behalf of Florence HH MHP, L.L.C. (Case #Z17-21) to rezone approximately 0.058 acre out of the John Essary Survey, Abstract 296, from "RMH" (Residential Mobile Home District) to "RMH" with a Conditional Use Permit (CUP) for a 110 feet tall monopole communication structure. The subject area is 50 feet square and is located in the northwest corner of the property locally known as 3205 Florence Road, Killeen, Texas.

The proposed monopole is 110 feet in height with a 10 feet lightning rod on top, for an overall height of 120 feet. It will be located in back corner of the subject property, approximately 750 feet from Florence Road. The rear portion of the subject property is densely wooded with mature trees. The proposed communication tower will be located 25 feet from both the side and rear property lines. It will be enclosed by a 50 feet by 50 feet fence enclosure, which is proposed to be located approximately 10 feet from the side and rear property lines. The subject area is adjacent to property zoned "B-5" (Business District) to the north, and "R-1" (Single-Family Residential District) to the west.

Criteria for Approval of a Conditional Use Permit (CUP):

Conditional Use Permits must be approved by the majority of the Planning and Zoning Commission and then by the City Council with a three-fourths affirmative vote. The City Council may approve the application with or without conditions, deny the application, postpone the matter for future consideration, or refer the application back to the Planning and Zoning Commission for further study and recommendation. The City Council may establish conditions of approval that are reasonably necessary to ensure compatibility with surrounding uses and to preserve the public health, safety and welfare. Such conditions may include, without limitation, a limited term or duration of the permit; requirements for special yards, lot sizes, open spaces, buffers, fences, walls or screening; requirements for the installation and maintenance of landscaping or erosion control measures; requirements for street improvements, regulation of vehicular ingress or egress and traffic circulation, regulation of signs; regulation of hours or other characteristics of operation; establishment of development

schedules for performance or completion; and such other reasonable conditions as the City Council may deem necessary to preserve the health, safety, and welfare of the applicant and the public.

Property Specifics:

Applicant/Property Owner: Richard Taylor of Eco-Site, L.L.C. / Florence HH MHP, L.L.C.
Property Location: The subject area is located at 3205 Florence Road, Killeen, Texas.
Legal Description: Approximately 0.058 acre, out of the John Essary Survey, Abstract 296, Killeen, Texas

Zoning / Plat Case History:

- There is no recent zoning history for this property.
- The subject property has not been platted.

Character of the Area:

Existing Land Use(s) on the Property: The subject property is located in a wooded, undeveloped area behind a former mobile home park.

Historic Properties: There are no historic structures on this property.

COMPLIANCE WITH DIVISION 6 - TOWER REGULATIONS:

Conditional Use Permit Required: Sec. 31-603(a) states that "any tower that does not comply with both subsections 31-602 and 31-605 may be constructed only upon approval of a Conditional Use Permit as provided in Sec. 31-456 of this chapter." The proposed tower does not comply with the provisions in Sec. 31-602 or 31-605. Therefore, a Conditional Use Permit (CUP) is required. Per Sec. 31-603(b), Conditional Use Permits must be approved by the majority of the Planning and Zoning Commission and then by the City Council with a three-fourths affirmative vote. *The City Council may impose reasonable conditions and safeguards deemed appropriate to that application in order to protect the health, safety, and welfare of the public and protect property and property values.*"

Collocation: There are six (6) other communication towers within one mile of the subject area. The closest tower is located approximately 2,890 feet away at 2913 S. Fort Hood Street. The applicant asserts that an exhaustive review was conducted in order to identify an alternative location for the proposed tower, including opportunities to co-locate on an existing tower, but no viable alternatives exist that would resolve the significant gap in the provider's coverage area.

Sec. 31-604 requires that all proposed communication facilities must have the capacity for other service providers to collocate on the proposed tower. The applicant has proposed a monopole capable of accommodating four wireless antennas. In addition to the T-Mobile carrier proposed, there will also be space for three additional carriers to collocate on the proposed tower. There will also be three 10 feet by 15 feet lease spaces for additional service providers within the proposed facility enclosure.

Tower Setback: Sec. 31-605(a) states that "all towers shall be located in such a manner that if the tower should fall along its longest dimension it will remain within the premises of the property owner and will avoid public streets and utility lines." Further, Sec. 30-605(e) states that "the setback required by this section for a telecommunication facility tower that is not adjacent to property used or zoned for residential use shall be reduced to a minimum of fifty (50) feet if the tower will be designed with stress points within the structure and will fall within the reduced setback in case of major windloads, ice loads, or a sustained windspeed of one hundred thirty (130) mph, as determined by a licensed design engineer." The subject property is immediately adjacent to a parcel owned by the City of Killeen that is zoned "R-1". *Therefore, without a Conditional Use Permit, the minimum required setback for the proposed tower would be 110 feet.* The applicant has proposed to set the tower approximately 35 feet from the side and rear property lines.

Through the Conditional Use Permit process, the City Council has the authority to reduce the minimum setback requirements as deemed appropriate. Given that the adjacent "R-1" property is owned by the City and is unlikely to ever be developed and given that the proposed tower is at least 110 feet from any existing structures, staff finds that reducing the setback of the tower from 110 feet is appropriate. However, staff finds that the proposed 35 feet setback from the side and rear property line has the potential to negatively impact the commercially zoned property to the north. Staff recommends that the tower be set back at least 50 feet from the side and rear property lines.

Enclosure Setback: Sec. 31-605(d) states that "equipment enclosures shall be set back from property lines as prescribed for the district in which the enclosure is located or ten (10) feet, whichever is greater." On August 13, 1996, Council approved Ordinance No. 96-63, which states that "mobile trailer parks in existence on the date of the ordinance from which this section is derived with proper zoning and current mobile trailer park permits shall hereinafter be designated RMP Mobile Home District." Therefore, the applicable rear yard setback in the "RMH" (Residential Modular Home) district shall be consistent with the setbacks prescribed for "RMP." Sec. 31-263(a) states that "the minimum setback [for RMP] shall be ten (10) feet from rear property line of the park, except when such property abuts an R-1 district a minimum of twenty-five (25) feet rear yard shall be provided." *Therefore, the required rear yard setback for the proposed enclosure is 25 feet*. The applicant has proposed a rear setback of 10 feet. Staff finds that the proposed equipment enclosure does not meet the setback requirements set forth in Sec. 31-605(d). Staff recommends that the enclosure be set back at least 25 feet from the rear property line.

Screening Requirements: Per Sec. 31-606, a communication facility "must be completely enclosed by a fence, wall, or barrier which limits climbing access to such tower and any supporting systems, lines, wires, buildings, or other structures. The facility must be fully screened from view from property used or zoned for residential use and public roadways." The proposed enclosure consists of a 6 feet tall fence constructed out of 6 inch wide boards with ¾ inch gaps between the boards. The proposed fence also includes approximately 6 inches of barbed wire at the top. Staff finds that the proposed screening fence complies with Sec. 31-606.

All-Weather Surface: Sec. 31-609(a)(3) states that "all lots on which towers and communications facilities are located must have all-weather access to a public street." A 20

feet wide access and utility easement will connect from Florence Road to the tower. The applicant proposes to improve the existing gravel driveway on Florence Road by paving the initial 40 feet of the easement with asphalt. There is no all-weather surface proposed beyond the initial 40 feet. However, staff finds that the proposed 40 feet of asphalt at the beginning of the driveway meets the requirements of Sec. 31-609(a).

Landscaping: Sec. 31-609(a)(5) states that "towers shall be designed and placed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures so as to disguise as much of the tower as possible from the public view." The proposed tower will be located in an area that contains many mature trees. As of the date of this report, the applicant has not proposed any landscaping around the enclosure.

Sec. 31-609(a)(6) states that "communications facilities shall landscape screening. Further, the use of existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or in supplement towards meeting landscaping requirements." Staff finds that the proposed location of the communication tower among the trees meets the intent of the landscaping requirements. Therefore, staff concurs with the applicants request not to provide additional landscaping around the enclosure.

INFRASTRUCTURE AND COMMUNITY FACILITIES:

Water, Sewer and Drainage Services:

Provider: City of Killeen
Within Service Area: Yes
Feasibility Study or Service Commitment: There is a 12 inch water line and 6 inch wastewater line available to the site.

Transportation:

Existing conditions: Ingress/ Egress to the property is via Florence Road, which is classified as a Collector Street (70 feet R.O.W.) on the City's adopted Thoroughfare Plan.
Proposed Improvements: There are no planned transportation improvements as part of this zoning request.
Projected Traffic Generation: There will be no increase in traffic as a result of this consideration.

Environmental Assessment:

Topography/Regulated Floodplain/Floodway/Creek: The parcel is adjacent to an undeveloped drainage easement and a regulatory Special Flood Hazard Area (SFHA) to the north of this parcel. The base flood elevation (BFE) in this area is set at an elevation of 904 feet. This will require the lowest finish floor elevation to be set at a minimum elevation of 906 feet on this parcel. Currently, approximately three (3) acres of this parcel sheet flows to the east and into the right of way of Florence Road. Florence Road outfalls into the Trimmier Road Ditch located to the north of this parcel. Additionally, approximately 2.38 acres of this parcel sheet flows northwest across the parcel and then sheet flows over adjacent parcels until it reaches Trimmier Road Ditch. Trimmier Road Ditch flows into Little Nolan Creek and then into Nolan Creek prior to leaving the City. Both Little Nolan Creek and Nolan Creek are currently listed on the TCEQ's current 303(d) water quality list for impairment due to bacteria and concerns for near non-attainment for nutrients.

LAND USE ANALYSIS:

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

Plan Recommendation: The Comprehensive Plan does not address communication towers.

Consistency: The applicant's Conditional Use Permit request does not trigger a change to the Future Land Use Map (FLUM).

Public Notification: The staff notified nine surrounding property owners within a 200 feet notification boundary regarding this request. As of the date of this report, no letters in support or opposition have been received.

THE ALTERNATIVES CONSIDERED:

Which alternative is recommended?

Staff is not recommending any alternative other than the applicant's request.

Why?

The requested Conditional Use Permit (CUP) complies with Chapter 31 of the City of Killeen Code of Ordinances.

CONFORMITY TO CITY POLICY:

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

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

This zoning request does not involve the expenditure of city funds.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

The Planning and Zoning Commission, by a vote of 5 to 0, recommends approval of the applicant's request for a Conditional Use Permit (CUP) subject to the applicant's request of a reduction in the required setback from 110 feet to 50 feet with no additional landscaping around the enclosure and that the enclosure be setback 25 feet from the rear of the property.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Legal Department.

ATTACHED SUPPORTING DOCUMENTS:

Maps and Photos
Minutes
Ordinance

Figure 1. Aerial Map - Location

Figure 2. Street View

Figure 3. Zoning Map

Figure 4. Site Plan

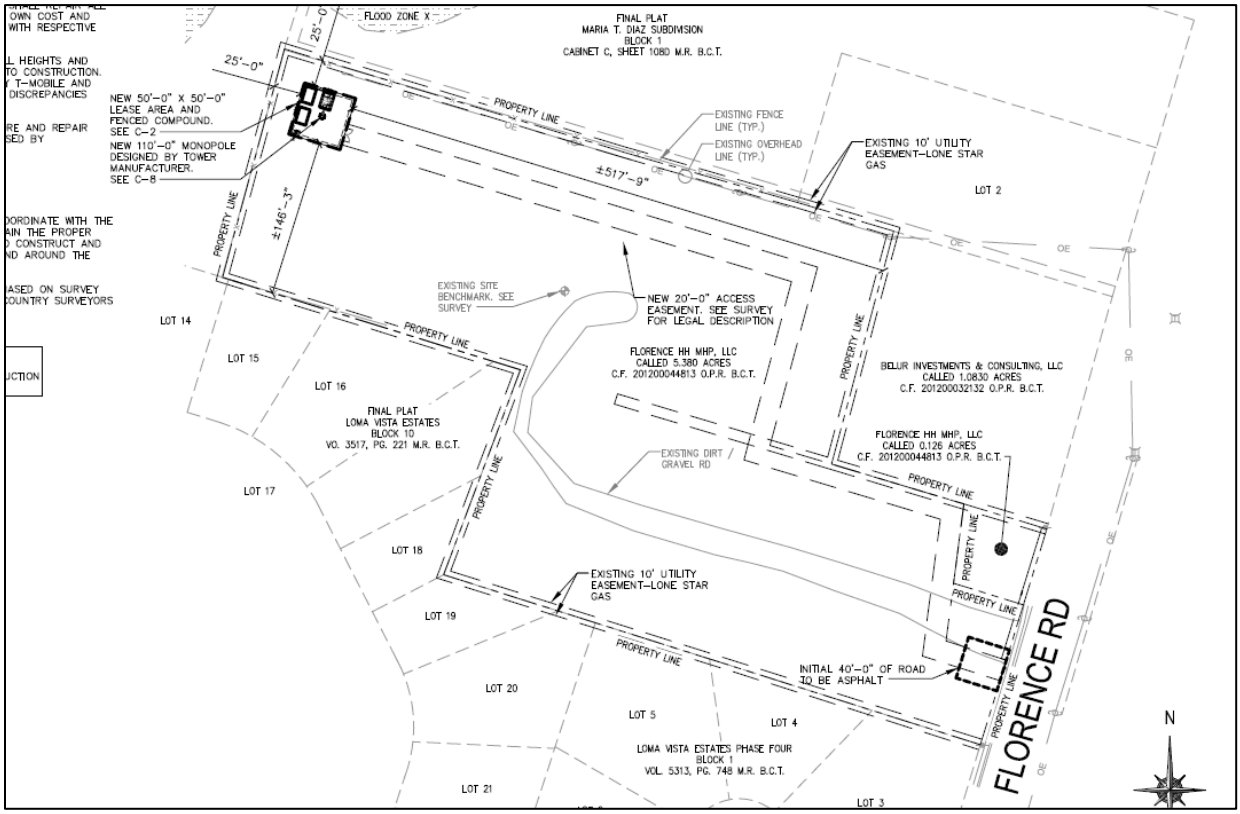


Figure 5. Site Plan - Compound

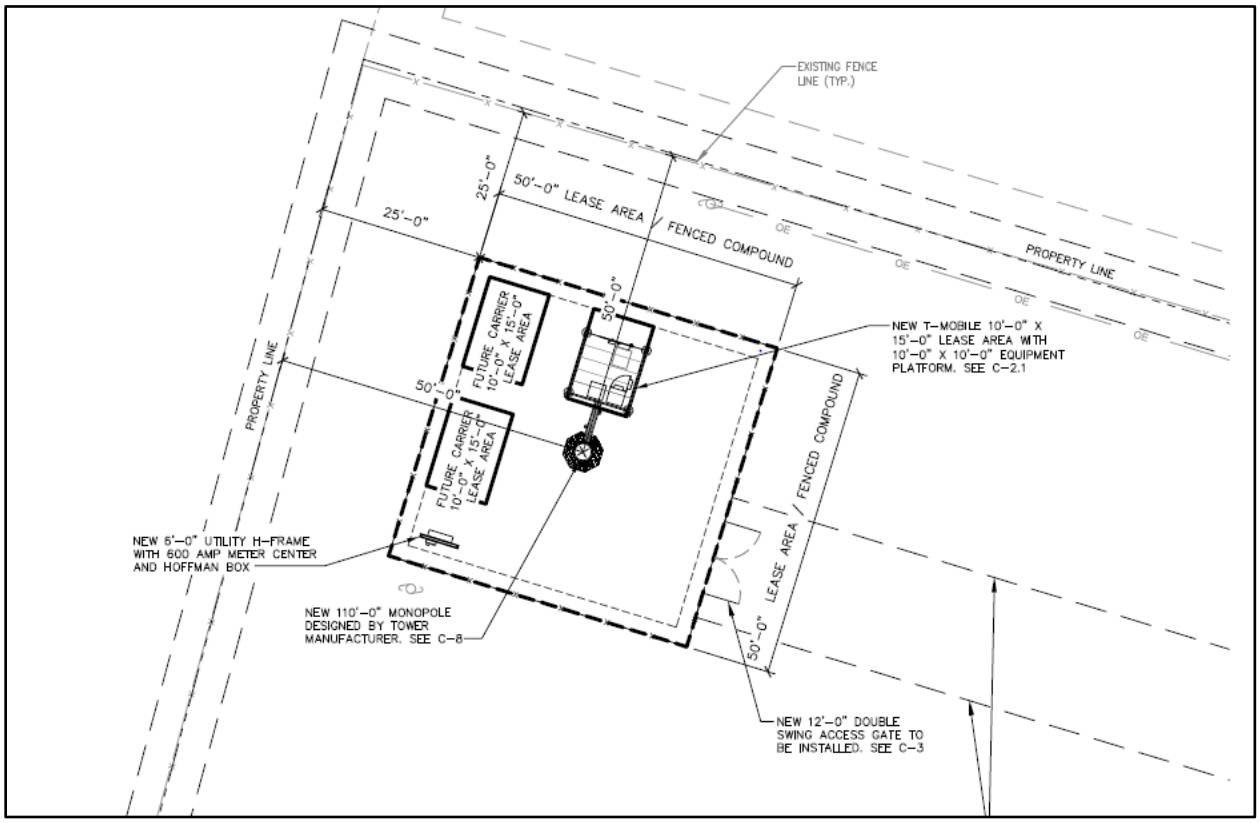


Figure 6. Aerial Map - Fall Radius

Figure 7. Cell Towers - Proximity Map

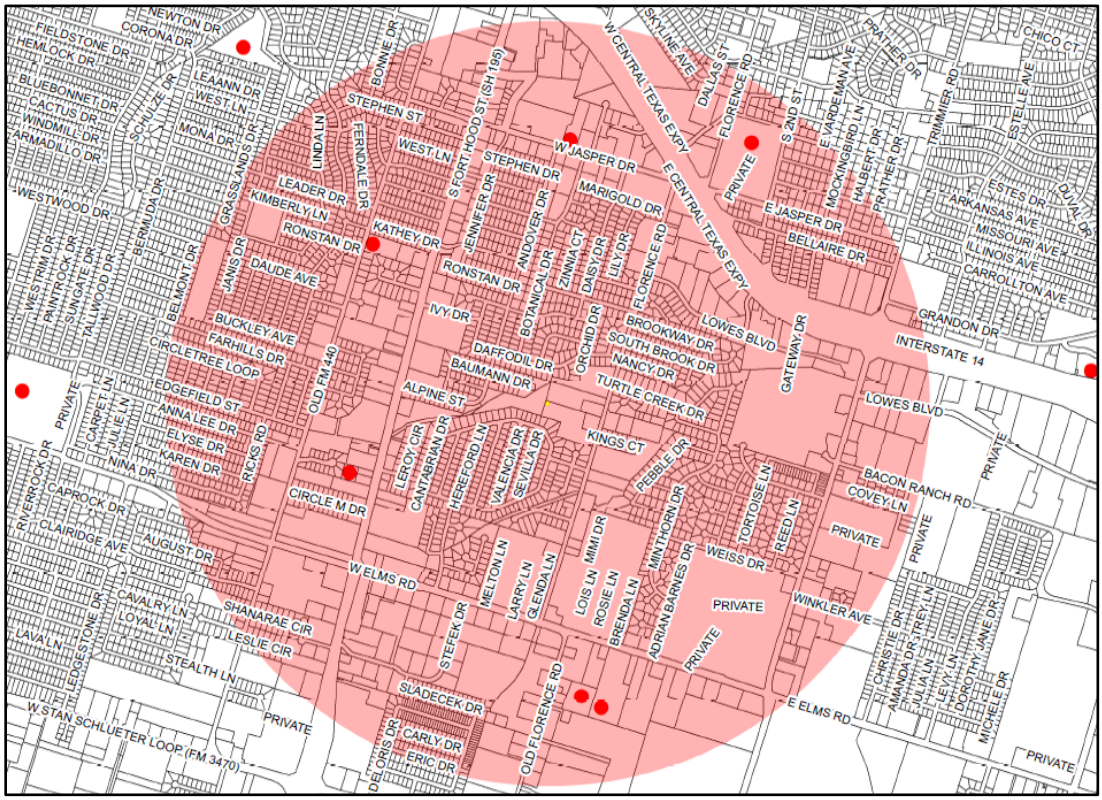
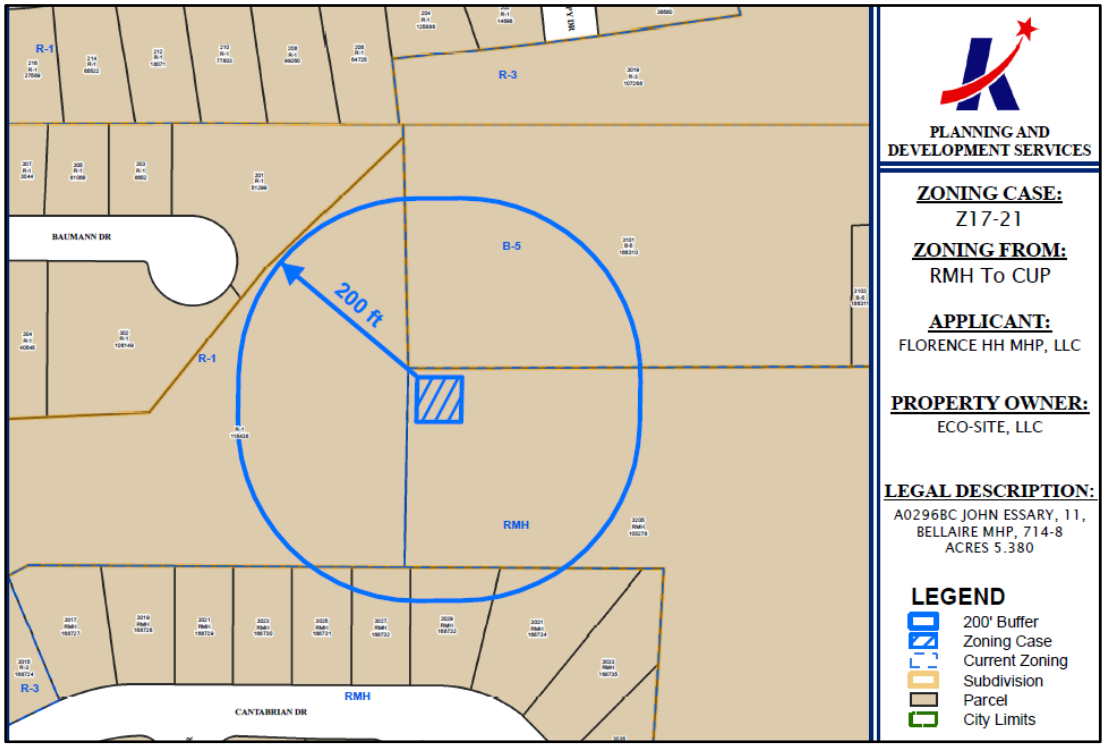


Figure 8. Location Map - 200 ft. Buffer



MINUTES
PLANNING AND ZONING COMMISSION MEETING
SEPTEMBER 18, 2017

CASE #Z17-21
"RMH" to "RMH" w/CUP

HOLD a public hearing and consider a request submitted by Florence HH MPH, L.L.C. to rezone approximately 0.06 acre (2,501 sq. ft.), being out of the John Essary Survey, Abstract No. 296, from "RMH" (Residential Mobile Home District) to "RMH" with a Conditional Use Permit (CUP) for a 110' tall monopole communication tower. The subject area is located at 3205 Florence Road, Killeen, Texas.

Vice Chair Dorroh requested staff comments.

Senior Planner, Wallis Meshier, stated that this a request for a conditional use permit for a monopole cell tower, 110 feet in height with a 10 ft. lightning rod on top, for an overall height of 120 ft. It will be enclosed by a 50 ft. by 50 ft. fence enclosure, which is proposed to be located approximately 10 feet from the side and rear property lines. Staff recommended approval of the Conditional Use Permit for a communication facility, as proposed by the applicant, with the following additional conditions:

- the tower shall be set back at least fifty (50) feet from the side and rear property lines. The fence enclosure shall be set back at least twenty-five (25) feet from the rear property line and at least ten (10) feet from the side property line.

- the applicant shall provide all outstanding documentation as required by Sec. 31-609(b) prior to approval of the Conditional Use Permit by the City Council.

Mr. W. Bebb Francis, III, 112 E. Pecan Street, Suite 550, San Antonio, Texas and Mr. David Oros, 3801 S. Capital of Texas Hwy, Austin, Texas, 78704, were present to represent this request.

Vice Chair Dorroh opened the public hearing. With no one requesting to speak, the public hearing was closed.

Commissioner Peters motioned to recommend approval of the request. Commissioner Harkin seconded the motion. The motion passed 5-0

Vice Chair Dorroh stated that the 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 JOHN ESSARY SURVEY, ABSTRACT 296, CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM "RMH" (RESIDENTIAL MOBILE HOME DISTRICT) TO "RMH" WITH A CONDITIONAL USE PERMIT (CUP); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Eco-Site, L.L.C. 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 0.058 acre out of the John Essary Survey, Abstract 296, for property generally located in the northwest corner of the property locally known as 3205 Florence Road, Killeen, Texas, from "RMH" (Residential Mobile Home District) to "RMH" with a Conditional Use Permit (CUP), said request having been duly recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 18th day of September 2017, with the following conditions:

- the tower shall be set back a minimum of 50 feet from the adjacent "R-1" zoned tract to the west;
- the enclosure shall be set back 25 feet from the rear property line;
- the landscaping requirements for the enclosure shall be waived;

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 17th day of October 2017, 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 ¾ majority opinion that the applicant's zoning 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 0.058 acre out of John Essary Survey, Abstract 296, for property locally known as 3205 Florence Road, Killeen, Texas, be changed from "RMH" (Residential Mobile Home District) to "RMH" with a Conditional Use Permit (CUP) subject to the conditions as recommended by the Planning and Zoning Commission.

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 17th day of October 2017, 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 #17-21
Ord. #17-___

ZONING CASE #Z17-21
"RMH" TO "RMH" WITH CUP

PH-17-045

October 3, 2017

ZONING CASE #Z17-21

- Request is to rezone 0.06 acre from "RMH" (Residential Mobile Home district) to "RMH" with a Conditional Use Permit (CUP).
- CUP is needed for a proposed 110 ft. monopole tower.
- Site is located on the west side of Florence Road, north of Granada Drive, south of Turtle Creek Drive.
- Address is 3205 Florence Road.

Exhibit 1. Aerial Map - Location

Site is approx. 50 ft. wide x 50 ft. deep

Located approximately 750 ft. from Florence Road

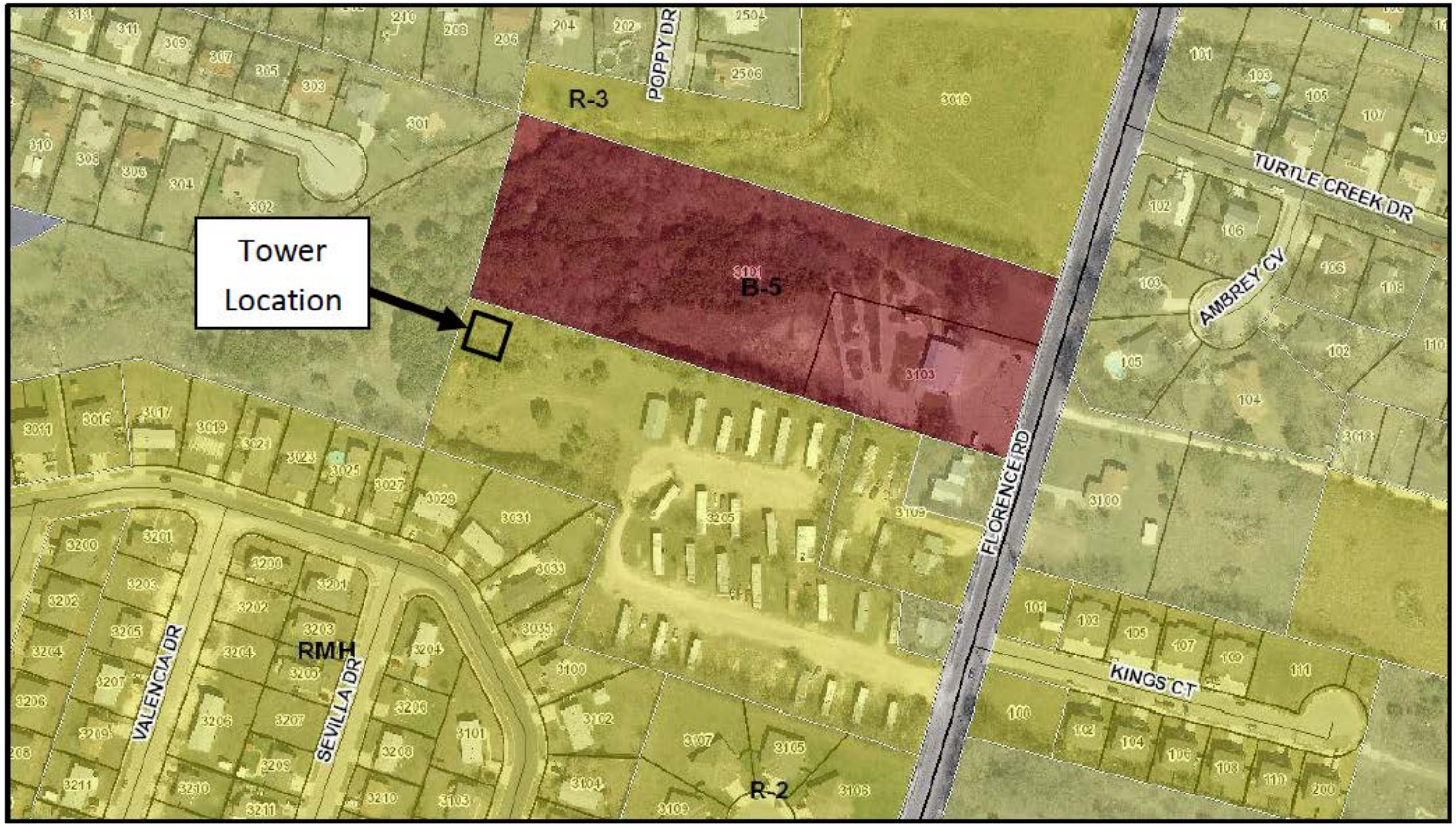


Exhibit 2. Zoning Map

To the West - “R-1”

To the North - “B-5”

Exhibit 3. Street View

View from Florence Road facing west toward the subject area

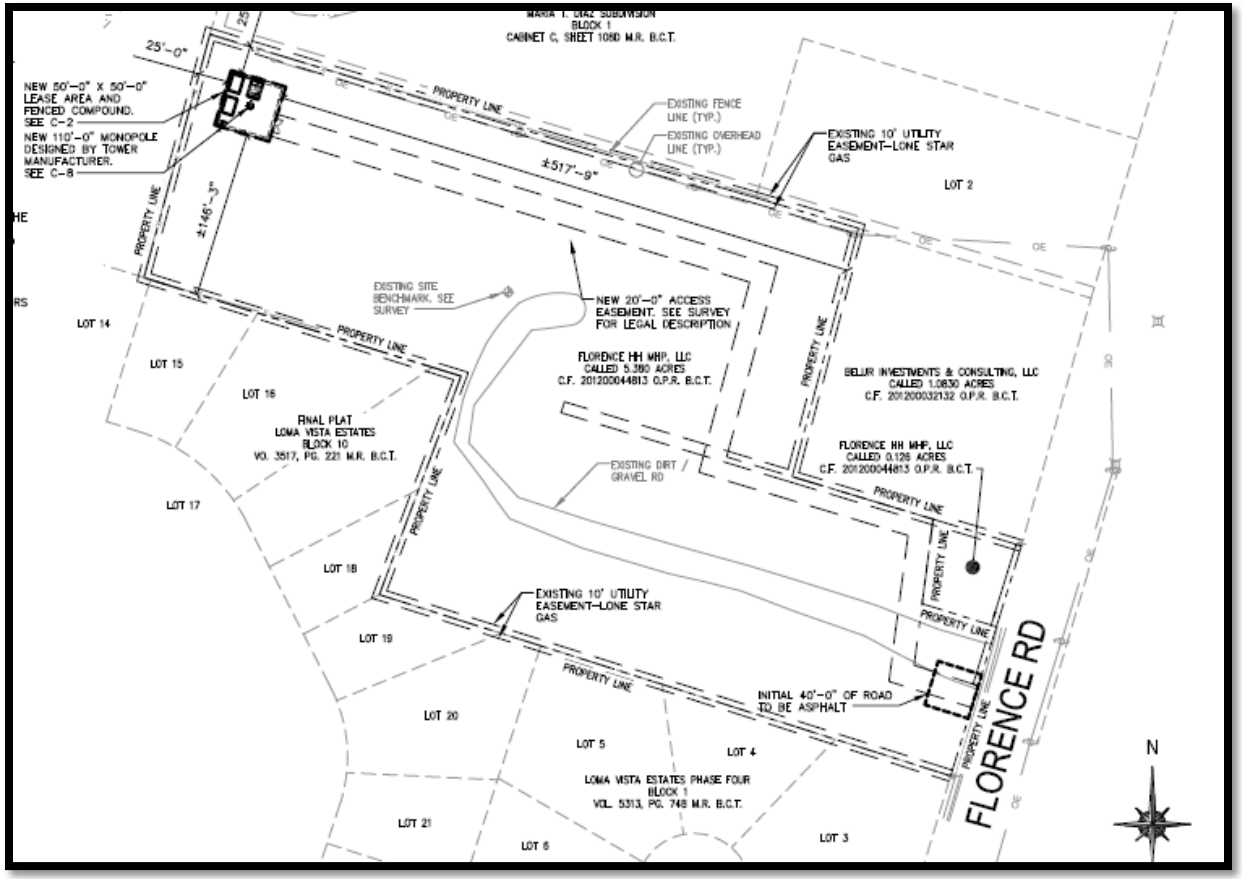


Exhibit 4A. Proposed Site Plan

Proposed 25 ft. wide easement from Florence Rd.

First 40 ft. will be asphalt

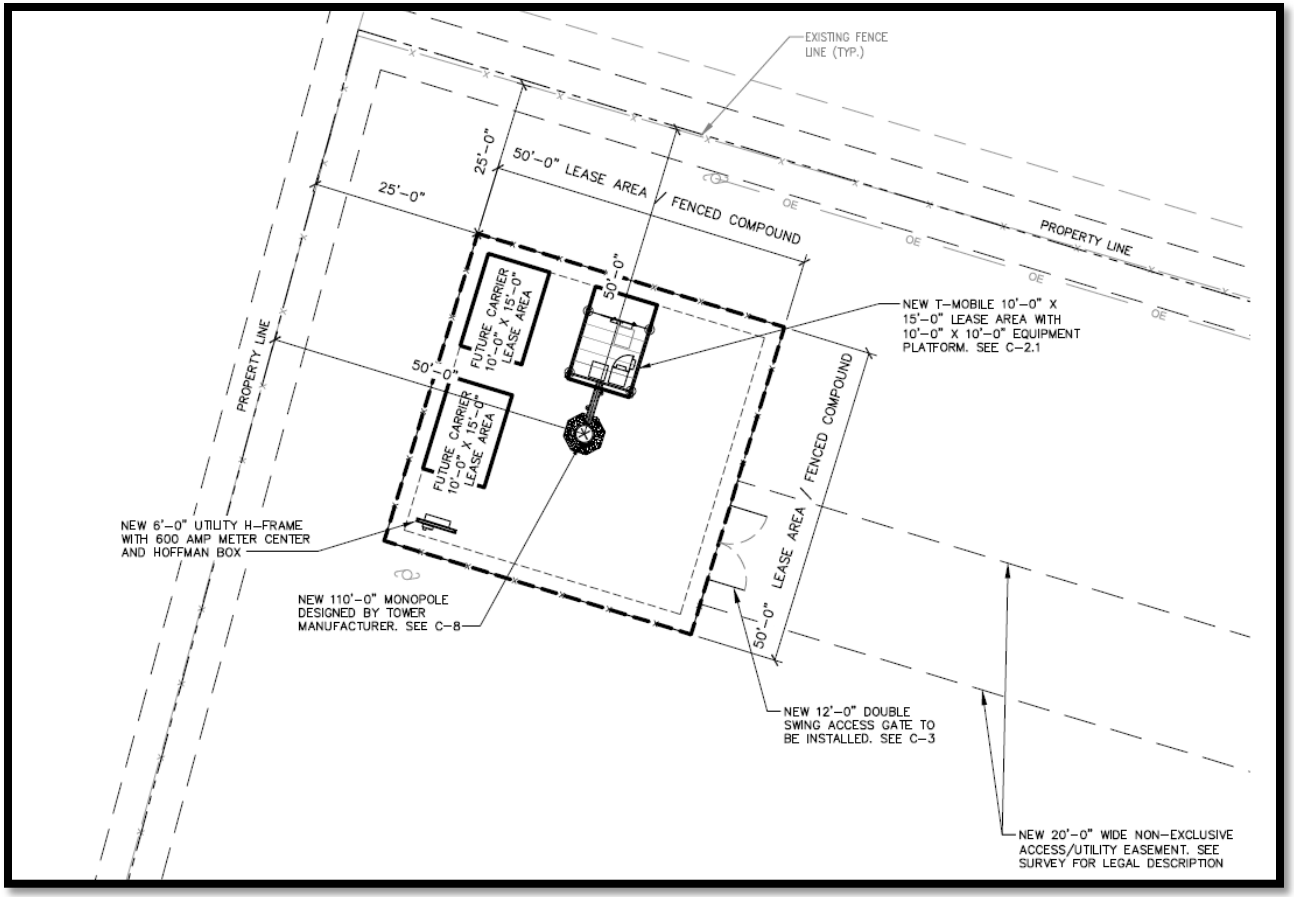
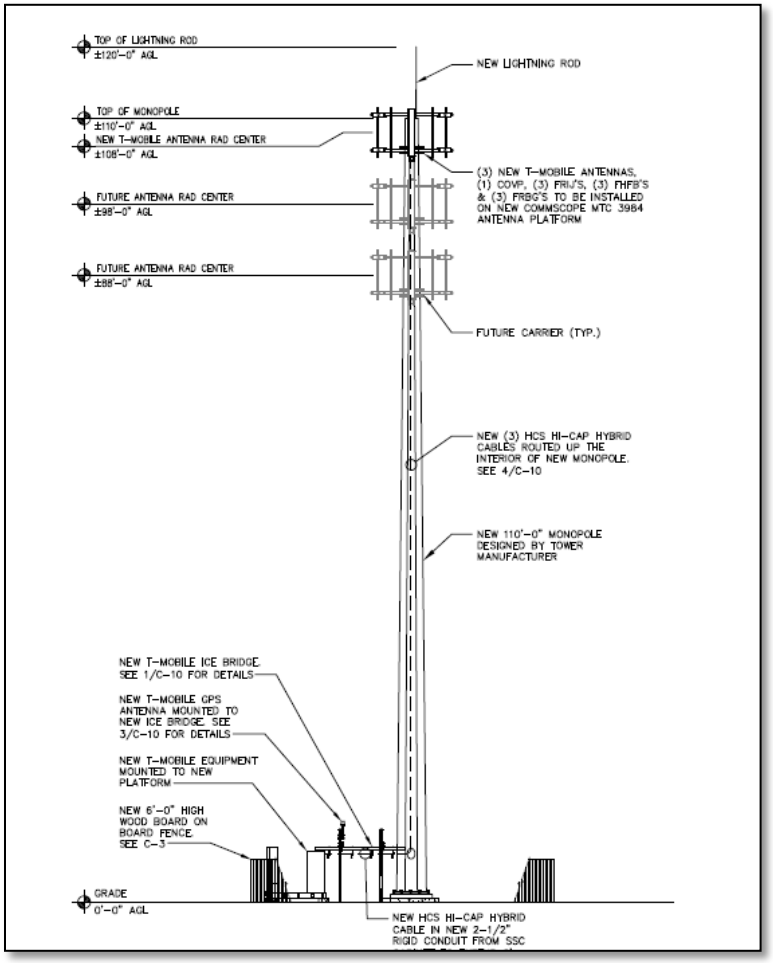


Exhibit 4B. Proposed Site Plan

Enclosure (fence) - 25 ft. from side and rear property lines

Center of tower - 50 ft. from side and rear property lines



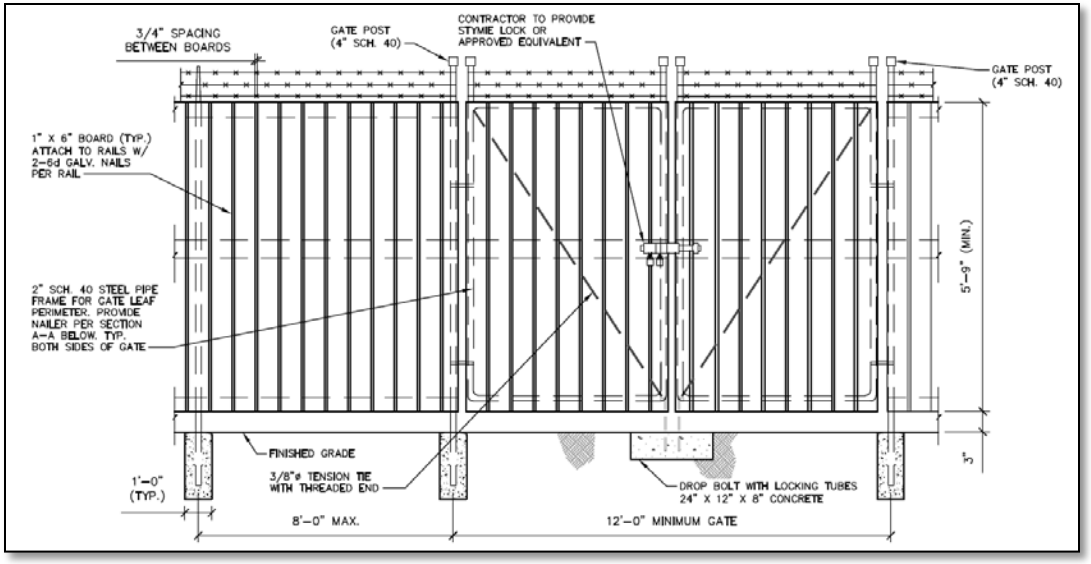


Exhibit 5. Elevation Drawings

Exhibit 6. Cell Towers - Fall Radius Map

Proposed tower: 110 ft. + 10 ft. lighting rod = 120 ft. total

Setback: Approximately 50 ft. from side and rear property lines

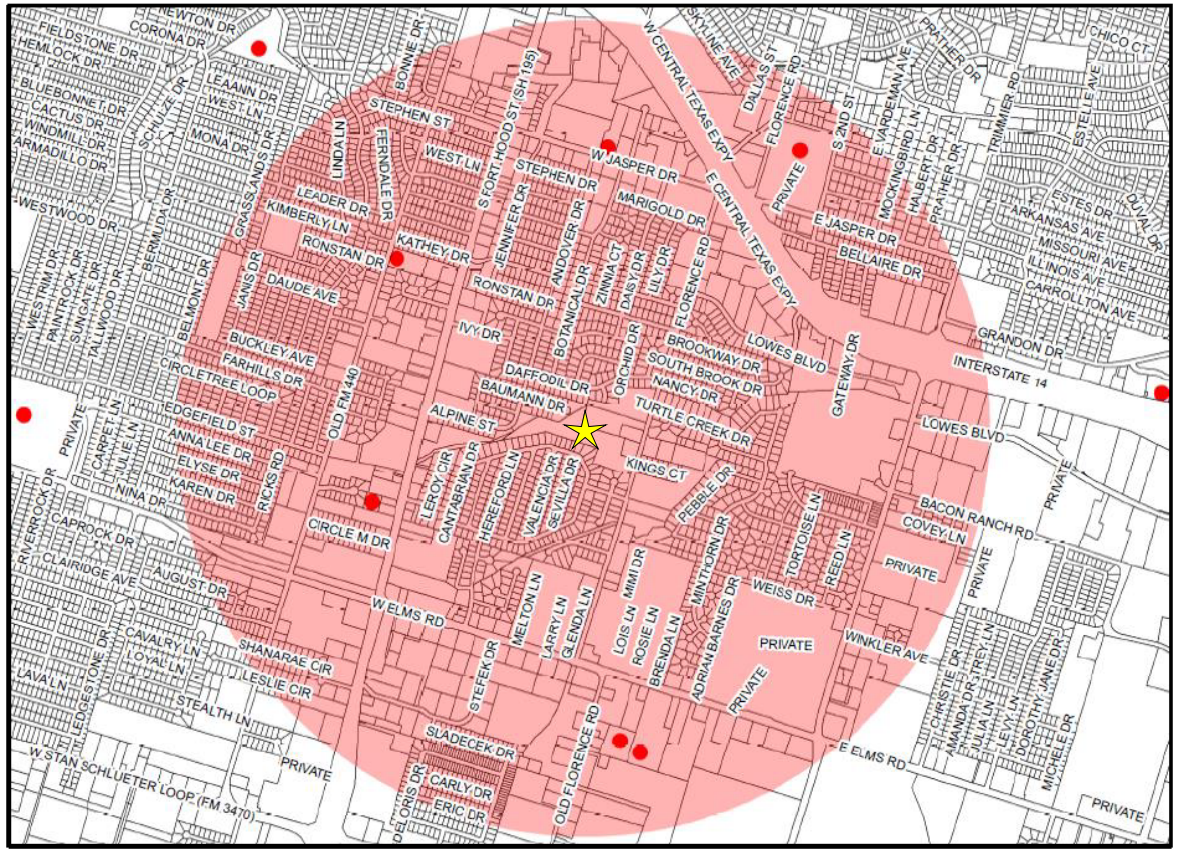


Exhibit 7. Cell Tower Proximity Map

Six (6) cell towers within 1 mile of proposed cell tower

Closest is approximately 2,800 ft. away

Applicant has stated that colocation on existing tower is not feasible

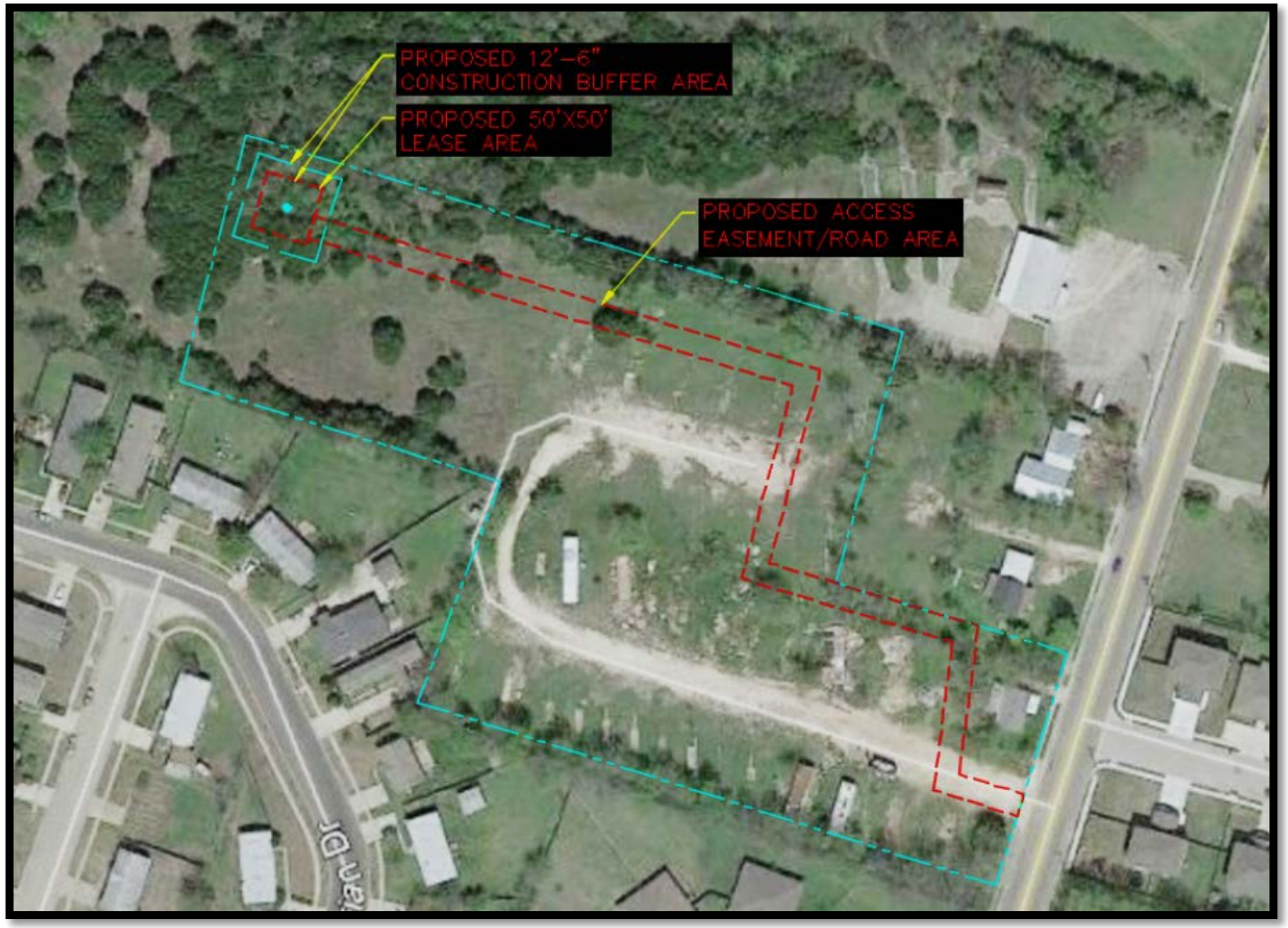


Exhibit 9. Proposed Landscape Buffer

31. 609(a)(6)

Use of existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or in supplement towards meeting landscaping requirements.

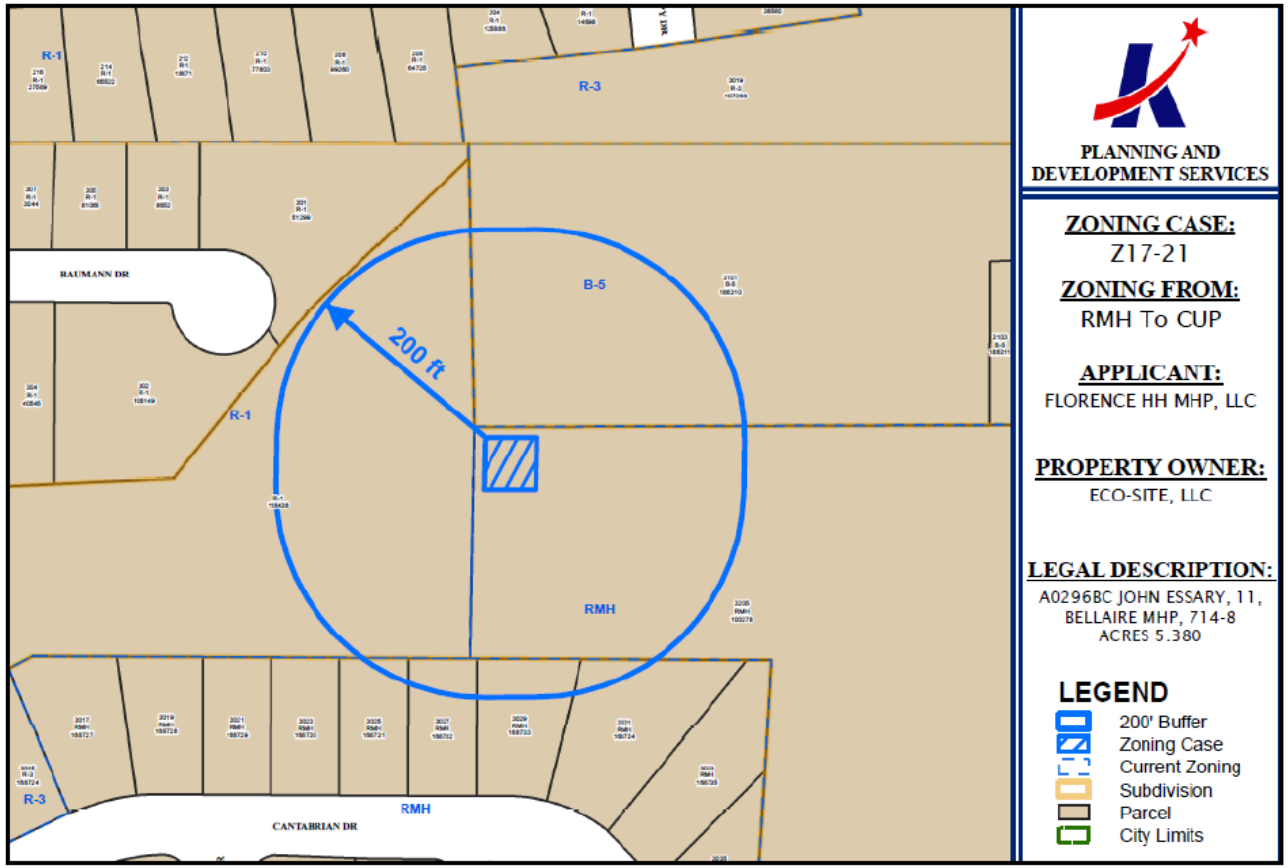


Exhibit 8. Location Map - 200 ft. Buffer

Seven (7) surrounding property owners notified

Approx. 100 ft. wide x 200 ft. deep

Locally known as 5102 East Veterans Memorial Boulevard

City of Killeen

Legislation Details

File #:	PH-17-046A	**Version:**	1	**Name:**	FLUM 17-22
Type:	Ordinance/Public Hearing			**Status:**	Public Hearings
File created:	9/14/2017			**In control:**	City Council Workshop
On agenda:	10/3/2017			**Final action:**	

Title: HOLD a public hearing and consider an ordinance requested by the Planning staff (FLUM#Z17-22) to amend the Comprehensive Plan's Future Land Use Map (FLUM) from an 'Estate' designated area to a 'General Residential' designated area for approximately 2.673 acres, being part of the Robert Cunningham Survey, Abstract No. 199. The subject property is generally located along the west right-of-way of Cunningham Road, north of Hope Lane and west of Fawn Drive, Killeen, Texas.

Sponsors: Planning & Development Dept

Indexes:

Code sections:

Attachments:
- Staff Report
- Maps and Photos
- Minutes
- Ordinance
- Presentation

Date	Ver.	Action By	Action	Result

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STAFF REPORT

DATE: **October 3, 2017**

TO: **Ronald L. Olson, City Manager**

FROM: **Ray Shanaa, AICP, Executive Director of Planning and Development Services**

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

BACKGROUND AND FINDINGS:

The Planning staff is requesting an amendment to the Comprehensive Plan's Future Land Use Map (FLUM) to change an area currently designated as 'Estate' to a 'General Residential' designated area for approximately 2.673 acres, being part of the Robert Cunningham Survey, Abstract No. 199. The subject property is generally located along the west right-of-way of Cunningham Road, north of Hope Lane and west of Fawn Drive, Killeen, Texas. The property is currently owned by Lagan Construction, Inc.

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

The 'Estate' designation encourages the following development types:

- Detached residential dwellings
- Public/ institutional
- Parks and public spaces

If approved, the 'General Residential' designation encourages the following development types:

- Detached residential dwellings as a primary focus
- Attached housing types subject to compatibility and open space standards (e.g., duplexes, townhomes, and 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

THE ALTERNATIVES CONSIDERED:

Which alternative is recommended? Why?

The items below should be reviewed and addressed when a Future Land Use Map amendment is being considered:

- **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 request would affect approximately 2.673 acres and should be considered a minor 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 subject tract is part of a larger area (19.077 total acres) owned by Lagan Construction, Inc. that contains property currently zoned as "R-1" (Single-Family Residential District). The property has dual zoning. Staff is interested in reconciling the FLUM to make it consistent with the current zoning of the prevailing property owned by Lagan Construction, Inc. The current zoning was applied to the property on December 16, 2008, per ordinance no. 08-103. The current FLUM designation of 'Estate' has been in place for the property since the Comprehensive Plan's adoption on November 9, 2010.***

- **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, and 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, and 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. No objections were voiced during the public hearing for this matter.***

CONFORMITY TO CITY POLICY:

This FLUM amendment request conforms to the city's policy as detailed in the Comprehensive Plan.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

The proposed FLUM amendment does not involve the expenditure of city funds.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

The Planning and Zoning Commission recommended (by a vote of 4 to 1, with Commissioner Harkin in opposition) approval of amending the FLUM from 'Estate' to 'General Residential' for the 2.673 acres as requested by staff. During the meeting, staff advised the Commission that it would bring the remainder of the Lagan-owned property back to them for consideration at a later date. Commissioner Harkin's preference is for the entirety of the Lagan Construction Inc.-owned area to be considered all at once instead of this smaller tract being brought forward individually. It shall be noted that, in this particular instance, the subject property and surrounding area are designated as 'Estate' on the FLUM, a significant amount of land within the quadrant of Hope Lane, Onion Road, Stagecoach Road, and Cunningham Road that is zoned as "R-1". Therefore, development is allowed to occur in conformance with the current zoning of the land even if it is not consistent with the community character as detailed in the Comprehensive Plan.

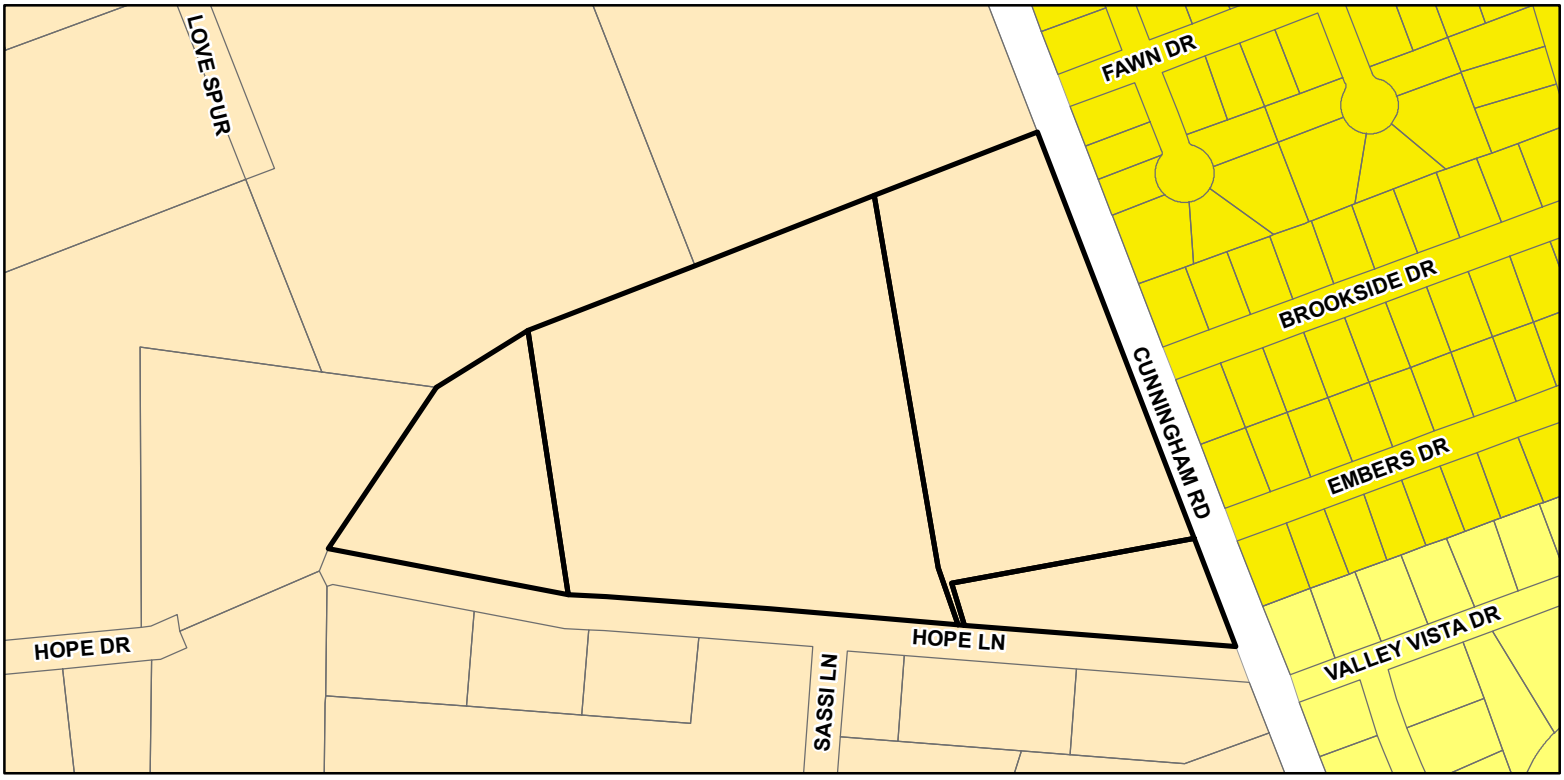
DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning staff.

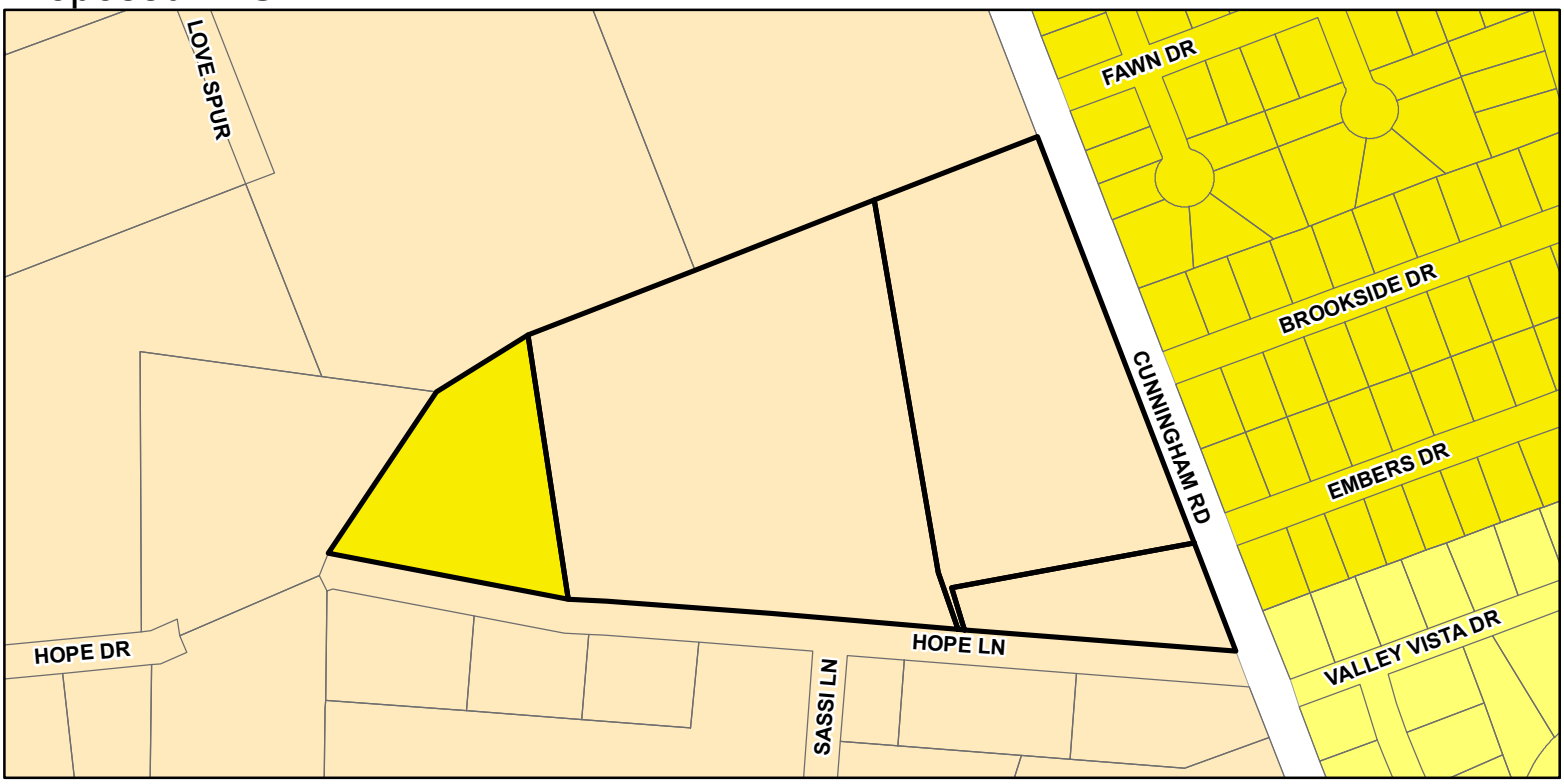
ATTACHED SUPPORTING DOCUMENTS:

Maps & Photos:
Minutes
Ordinance

Current FLUM



Proposed FLUM



Legend

- Urban Center (U)
- Urban (U)
- University Village (UV)
- Planned Development (PD)
- Multi-Family Residential (MFR)
- Industrial (I)
- Neighborhood Conservation (GC)
- Residential Mix (R-MIX)
- Four-Plex Residential (RQ)
- General Residential (GR)
- Residential-Commercial Mix (RC-MIX)
- General Commercial (GC)
- Suburban Residential (SR)
- Suburban Commercial (SC)
- Business Park (BP)
- Estate (E)
- Parks-Recreation (P-R)
- Rural (R)

MINUTES
PLANNING AND ZONING COMMISSION MEETING
SEPTEMBER 18, 2017

FLUM #Z17-22
'ESTATE' TO 'GENERAL RESIDENTIAL'

A. HOLD a public hearing and consider a request submitted by Lagan Construction, Inc., to amend the Comprehensive Plan's Future Land Use Map (FLUM) to change an area currently designated as 'Estate' to a 'General Residential' designation for approximately 2.673 acres, being out of the Robert Cunningham Survey, Abstract No. 199. The property is located north of Hope Lane and approximately 1,200 ft. west of Cunningham Road, Killeen, Texas.

Vice Chair Dorroh requested staff comments.

City Planner, Tony McIlwain, stated that the Planning staff is requesting an amendment to the Comprehensive Plan's Future Land Use Map (FLUM) to change an area currently designated as 'Estate' to a 'General Residential' designated area for approximately 2.673 acres, being part of the Robert Cunningham Survey, Abstract No. 199. The subject property is generally located along the west right-of-way of Cunningham Road, north of Hope Lane and west of Fawn Drive, Killeen, Texas. The property is currently owned by Lagan Construction, Inc.

Staff recommended that the FLUM be amended from 'Estate' to 'General Residential' for 2.673 acres owned by Lagan Construction. While the subject property and surrounding area is designated as 'Estate' on the FLUM, a significant amount of land within the quadrant of Hope Lane, Onion Road, Stagecoach Road and Cunningham Road is zoned as "R-1". The current FLUM 'Estate' designation matches the existing community character of the area, but not the existing zoning for the majority of the property in the area.

Vice Chair Dorroh opened the public hearing.

Ms. Michelle Lee, Killeen Engineering & Surveying, Ltd., 2901 E. Stan Schlueter Loop, Killeen, Texas, spoke in support of the amendment.

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

Commissioner Latham motioned to recommend approval of the request 'General Residential'. Commissioner Cooper seconded the motion. The motion passed 4-1 with Commissioner Harkin in opposition. Ms. Harkin stated that the entire remainder of the acreage be brought back all at one time.

Vice Chair Dorroh 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 'ESTATE' TO 'GENERAL RESIDENTIAL' FOR 2.673 ACRES OUT OF THE ROBERT CUNNINGHAM SURVEY, ABSTRACT NO. 199, FOR PROPERTY GENERALLY LOCATED ON THE WEST RIGHT-OF-WAY OF CUNNINGHAM ROAD, NORTH OF HOPE LANE AND WEST OF FAWN DRIVE, 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 from the Planning Staff for a revision to the Future Land Use Map (FLUM) of the Comprehensive Plan, to change 2.673 acres out of the Robert Cunningham Survey, Abstract No. 199, for property being generally located on the west right-of-way of Cunningham Road, north of Hope Lane and west of Fawn Drive, Killeen, Texas from 'Estate' to 'General Residential'; said revision having been duly presented and recommended for approval of 'General Residential' by the Planning and Zoning Commission of the City of Killeen on the 18th day of September 2017, 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 17th day of October 2017, 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 2.673 acres out of the Robert Cunningham Survey, Abstract No. 199, for property being generally located on the west right-of-way of Cunningham Road, north of Hope Lane and west of Fawn Drive, Killeen, Texas, be amended from 'Estate' to 'General Residential' as illustrated in Figure 1.

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 17th day of October 2017, 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

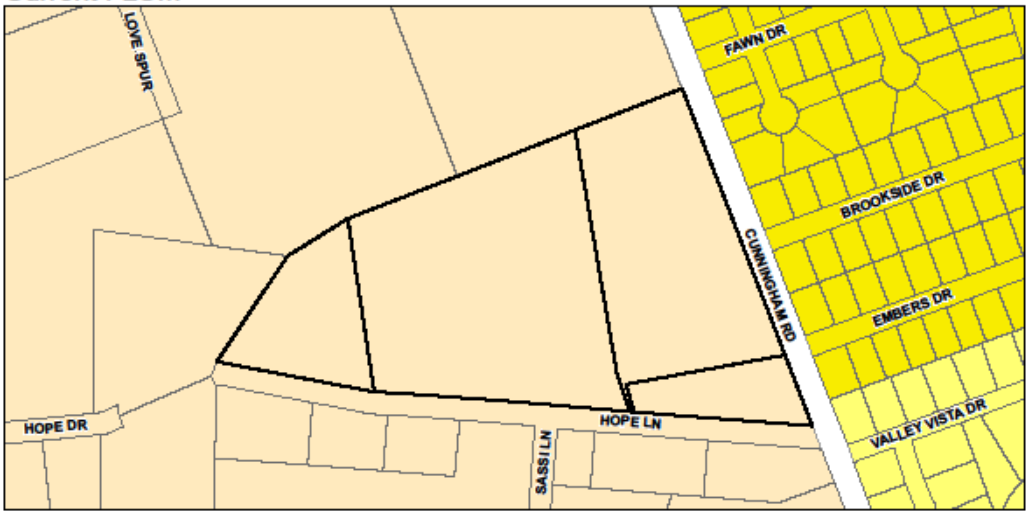
APPROVED AS TO FORM

_____

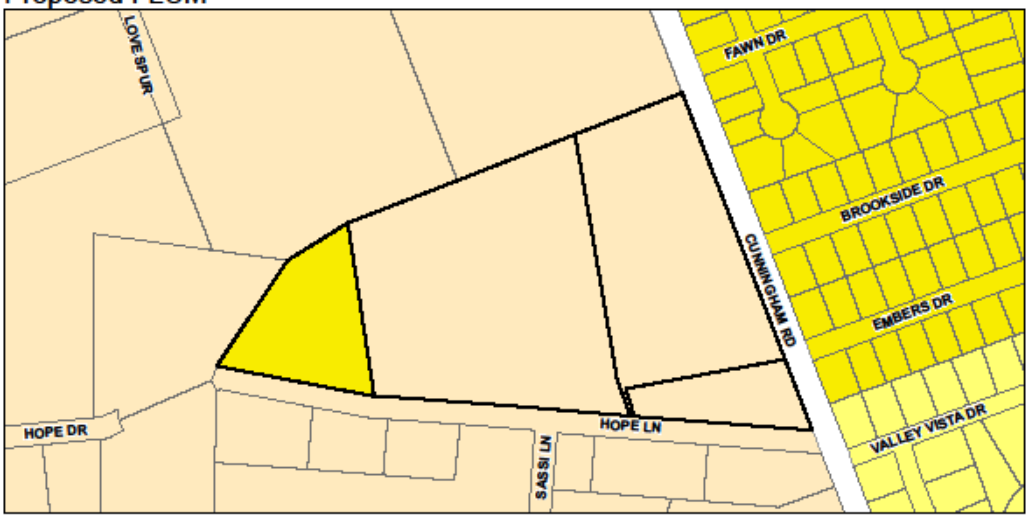
Kathryn H. Davis
CITY ATTORNEY
Case #: FLUM #Z17-22
Ord#:17-___

Figure 1.

Current FLUM



Proposed FLUM



Legend

- Urban Center (U)
- Urban (U)
- University Village (UV)
- Planned Development (PD)
- Multi-Family Residential (MFR)
- Industrial (I)
- Neighborhood Conservation (GC)
- Residential Mix (R-MIX)
- Four-Plex Residential (RQ)
- General Residential (GR)
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- General Commercial (GC)
- Suburban Residential (SR)
- Suburban Commercial (SC)
- Business Park (BP)
- Estate (E)
- Parks-Recreation (P-R)
- Rural (R)

FLUM CASE #17-22

"ESTATE" TO "GENERAL RESIDENTIAL"

PH-17-046A

October 3, 2017

Exhibit 1. Aerial Map

- Request is to change approx. 2.673 acres from “E” (Estate) to “GR” (General Residential).
- Site is located on the north side of Hope Lane, west of Sassi Lane.

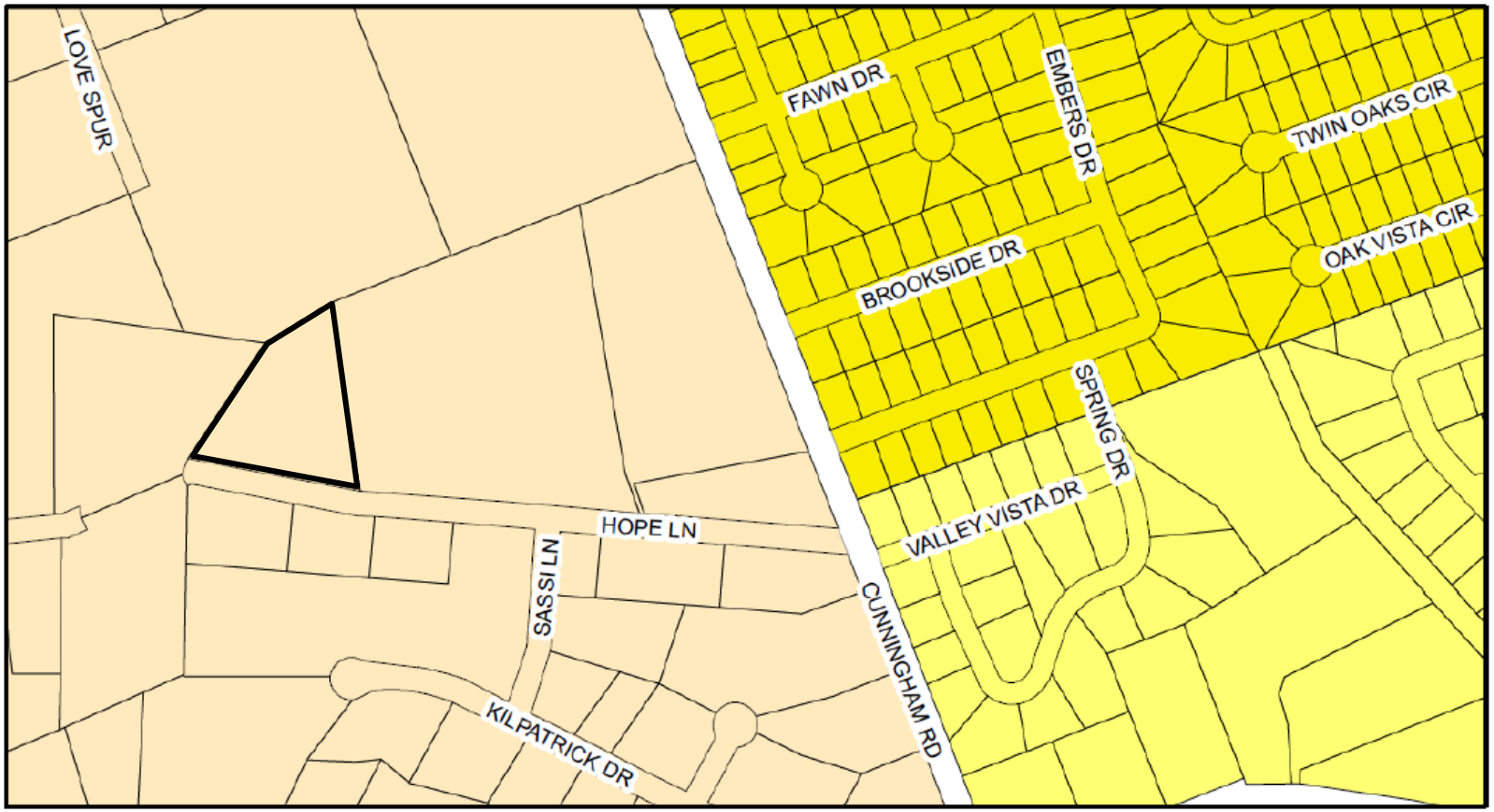

Exhibit 2. Current FLUM

- Request is to change approx. 2.673 acres from "E" (Estate) to "GR" (General Residential).
- Site is located on the north side of Hope Lane, west of Sassi Lane.

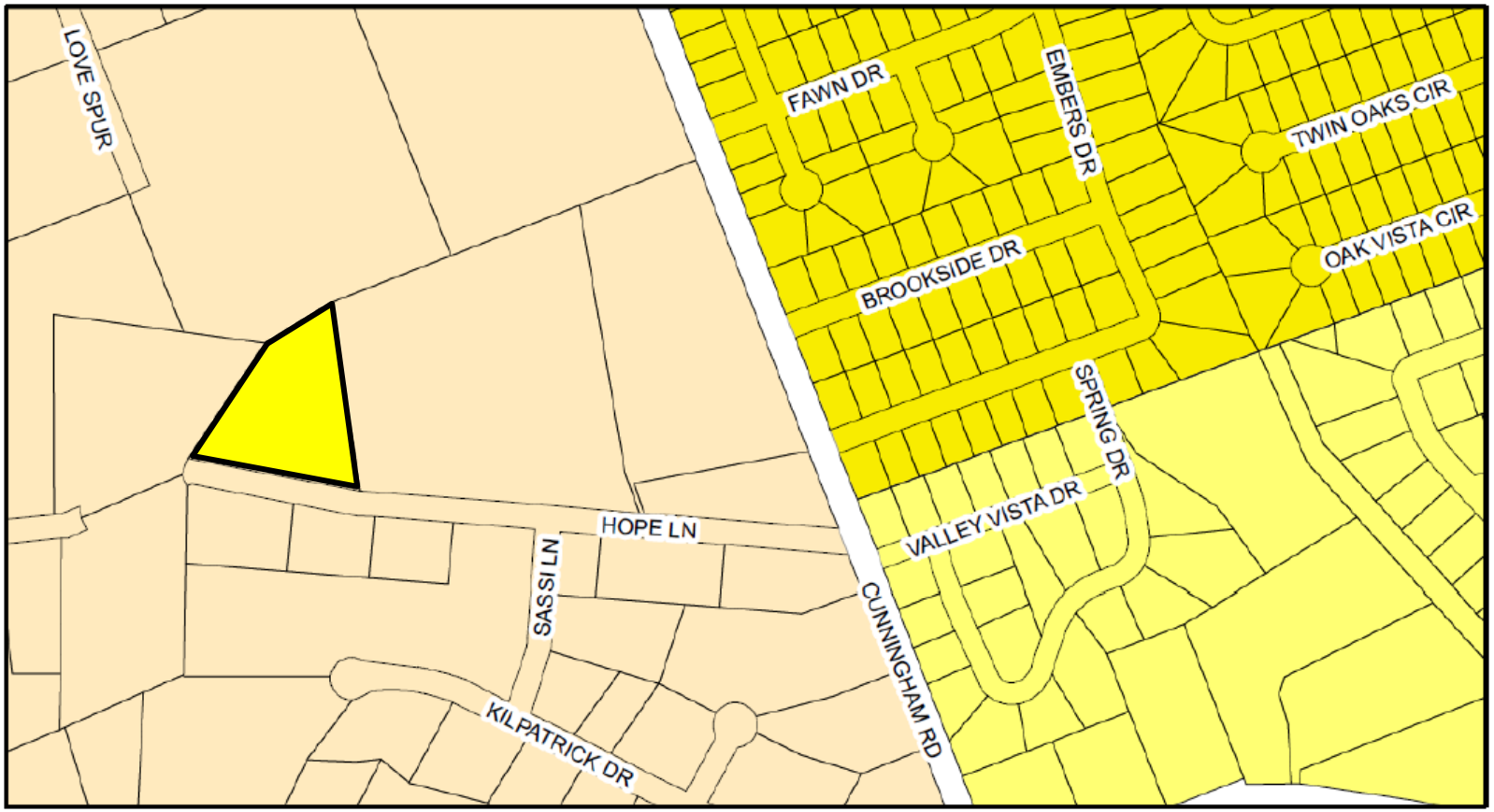

Exhibit 3. Proposed FLUM

- Request is to change approx. 2.673 acres from "E" (Estate) to "GR" (General Residential).
- Site is located on the north side of Hope Lane, west of Sassi Lane.

City of Killeen

Legislation Details

File #:	PH-17-046B	**Version:** 1	**Name:**	Zoning 17-22	
Type:	Ordinance/Public Hearing		**Status:**	Public Hearings	
File created:	9/14/2017		**In control:**	City Council Workshop	
On agenda:	10/3/2017		**Final action:**		
Title:	HOLD a public hearing and consider an ordinance requested by Lagan Construction, Inc., (Case#Z17 -22) to rezone approximately 2.673 acres out of the Robert Cunningham Survey, Abstract No. 199, from “A” (Agricultural District) to “R-1” (Single-Family Residential District). The property is located north of Hope Lane, approximately 1,200 feet west of Cunningham Road, Killeen, Texas.				
Sponsors:	Planning & Development Dept				
Indexes:					
Code sections:					
Attachments:	Staff Report Maps and Photos Minutes Ordinance Presentation				

Date	Ver.	Action By	Action	Result

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STAFF REPORT

DATE: **October 3, 2017**

TO: **Ronald L. Olson, City Manager**

FROM: **Ray Shanaa, AICP, Executive Director of Planning and Development Services**

SUBJECT: **ZONING CASE #Z17-22 "A" (AGRICULTURAL DISTRICT) TO "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT)**

BACKGROUND AND FINDINGS:

This request is submitted by Lagan Construction, Inc. to rezone approximately 2.673 acres out of the Robert Cunningham Survey, Abstract No. 199, from "A" (Agricultural District) to "R-1" (Single-Family Residential District). The property is located north of Hope Lane, approximately 1,200 feet west of Cunningham Road, Killeen, Texas.

District Descriptions:

A building or premise in a district "R-1" single-family residential district shall be used only for the following purposes:

(1) One-family dwellings
(2) Churches or other places of worship
(3) Colleges, universities, or other institutions of higher learning
(4) Country clubs or golf courses, but not including miniature golf courses, driving ranges, or similar forms of commercial amusement
(5) Farms, nurseries or truck gardens, limited to the proportion and cultivation of plants, provided no retail or wholesale business is conducted on the premises and provided further that no poultry or livestock other than normal household pets shall be housed within one hundred (100) feet of any property line
(6) Parks, playgrounds, community buildings, and other public recreational facilities, owned and/or operated by the municipality or other public agency
(7) Public buildings, including libraries, museums, and police and fire stations
(8) Real estate sales offices during the development of residential subdivisions, but not to exceed two (2) years. Display residential houses with sales offices, provided that, if such display houses are not moved within a period of one (1) year, specific permission must be obtained from the city council for such display houses to remain on their locations
(9) Schools, public elementary or high
(10) Schools, private with curriculum equivalent to that of a public elementary or high school
(11) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work
(12) Water supply reservoirs, pumping plants, and towers

(13) Accessory buildings and uses, incident to the uses in this section and located on the same lot therewith, not involving the conduct of a retail building
(14) A subdivision entry sign, when such sign is located on a lot that abuts a subdivision boundary and fronts on a street entering the subdivision
(15) Cemetery

Property Specifics

Applicant/Property Owner: Lagan Construction, Inc.

Property Location: The property is located north of Hope Lane, approximately 1,200 feet west of Cunningham Road, Killeen, Texas.

Legal Description: Approximately 2.673 acres, being out of the Robert Cunningham Survey, Abstract No. 199, Killeen, Texas

Zoning/ Plat Case History:

- The current zoning was applied to the property on December 16, 2008, per ordinance no. 08-103.

- The subject property is not platted; however, the applicant has submitted a plat, Gilbert Estates, which includes this tract of land. That plat is currently under review by staff, pending City Council action on this item.

Character of the Area

Existing Land Use(s) on the Property: Vacant

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: Water, sanitary sewer, and drainage utility services will need to be extended at the time of development.

Transportation:
Existing conditions: This property is contiguous to Hope Lane, an unimproved local street.
Proposed Improvements: During the subdivision/ development process, a public right-of-way will have to be platted, constructed and accepted by the City of Killeen to facilitate access to this tract.
Projected Traffic Generation: The Gilbert Estates plat illustrates this tract of land being subdivided into eight (8) residential lots. These lots will generate seventy-six (76) total vehicle trips per day with six (6) peak AM trips and eight (8) peak PM trips. [Note: this data is sourced from the Institute of Transportation Engineer (ITE) Trip Generation Rates-9th Edition, provided

through Spack Consulting]. This will not negatively affect the level of service standard for a local residential street

Environmental Assessment

Topography/Regulated Floodplain/Floodway/Creek: Approximately 0.03 acre of the approximate 2.673 acres in this zoning case are located within a FEMA regulatory Special Flood Hazard Area (SFHA). Current City Codes require the establishment of a creek buffer zone (CBZ) along the unnamed tributary to Trimmier Creek at the time of platting. Currently, sheet flow runoff on this development enters the natural, unnamed tributary to Trimmier Creek in the southwest corner of the property. Runoff then flows south approximately 700 feet before entering Trimmier Creek. Trimmier Creek is currently listed on the TCEQ's current 303(d) water quality list for concerns for near non-attainment for macrobenthic community. The applicant has been advised that the current Drainage Design Manual (DDM) and Infrastructure Design and Development Standards Manual (IDDSM) will apply for new development on this site.

Land Use Analysis

Plan Recommendation: The 'Estate' designation encourages the following development types:

- Detached residential dwellings with a minimum one(1)-acre lot size
- Public/ institutional
- Parks and public spaces

Consistency: This zoning request is not consistent with the Comprehensive Plan; however, the Planning staff has submitted a concurrent FLUM amendment request for 'General Residential' for this property.

Public Notification

The staff notified five (5) surrounding property owners regarding this request. Staff has received no protests at this time.

THE ALTERNATIVES CONSIDERED:

Which alternative is recommended?

Staff recommends approval of the applicant's request.

Why?

The request for "R-1" (Single-Family District) is consistent with the zoning of the adjacent property owned by Lagan Construction, Inc., as well as multiple residential properties to the south of the subject area.

CONFORMITY TO CITY POLICY:

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

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

This zoning request does not involve the expenditure of city funds.

Is this a one-time or recurring expenditure?

This is not applicable.

Is this expenditure budgeted?

This is not applicable.

If not, where will the money come from?

This is not applicable.

Is there a sufficient amount in the budgeted line-item for this expenditure?

This is not applicable.

RECOMMENDATION:

The Planning and Zoning Commission recommended (by a vote of 4 to 1, with Commissioner Harkin in opposition) approval of the zoning change as requested by the applicant.

DEPARTMENTAL CLEARANCES:

This item has been reviewed by the Planning staff.

ATTACHED SUPPORTING DOCUMENTS:

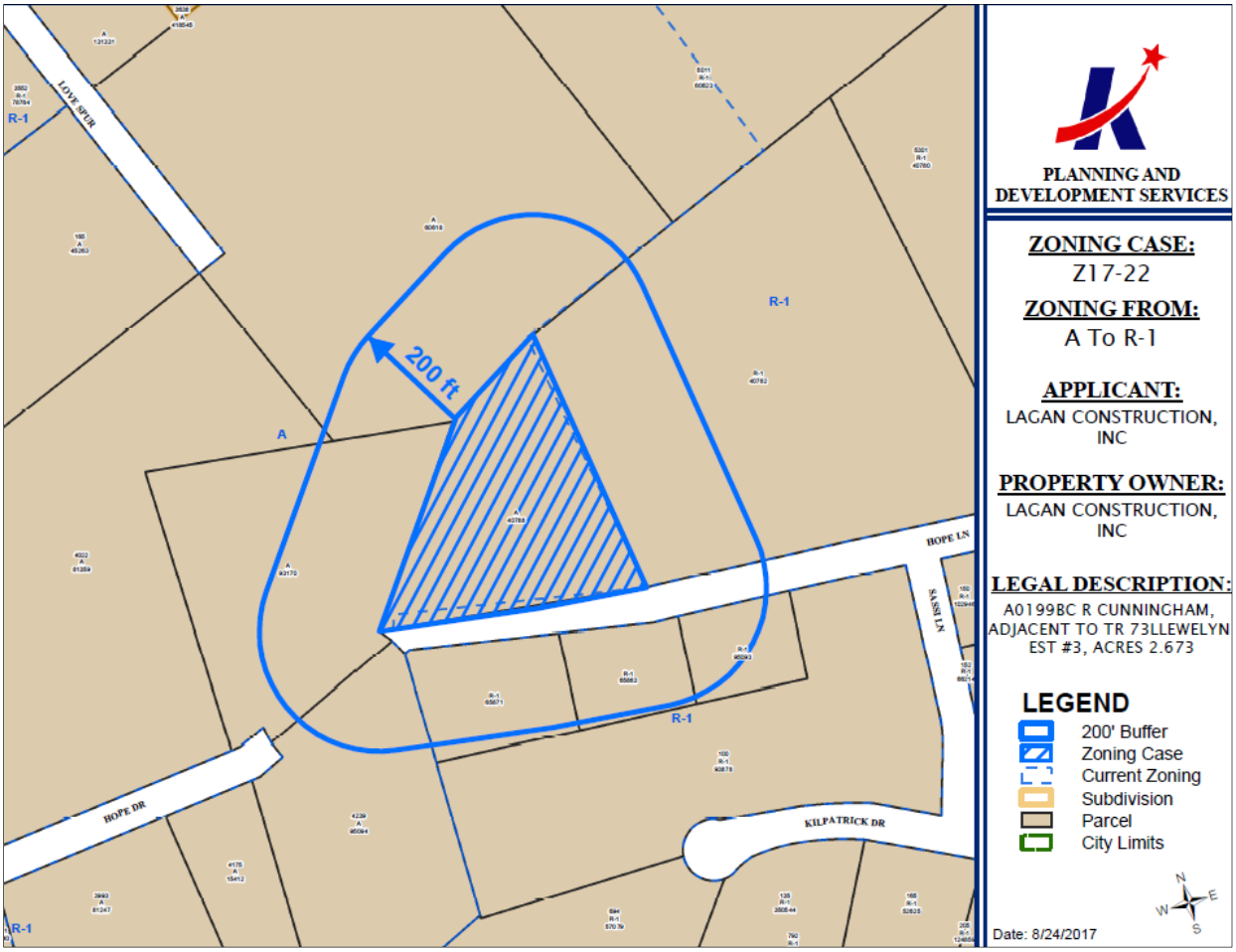
Maps & Photos
Minutes
Ordinance

Figure 1. Aerial View- Location

Figure 2. Street View (facing west)

Figure 3. Zoning Map

Figure 4. Location Map - 200 ft. Buffer



MINUTES
PLANNING AND ZONING COMMISSION MEETING
SEPTEMBER 18, 2017

CASE #Z17-22
"A" to "R-1"

B. HOLD a public hearing and consider a request submitted by Lagan Construction, Inc. to rezone approximately 2.673 acres, being out of the Robert Cunningham Survey, Abstract No. 199, from "A" (Agricultural District) to "R-1" (Single-Family Residential) for residential development. The property is located north of Hope Lane and approximately 1,200 ft. west of Cunningham Road, Killeen, Texas.

City Planner, Tony McIlwain, stated that the property owner is Lagan Construction, Inc. and they would like to rezone for single family homes. The current zoning was applied to the property on December 16, 2008, per ordinance no. 08-103. This property is contiguous to Hope Lane, an unimproved road. The subject property is not platted; however, the applicant has submitted a plat, Gilbert Estates, which includes this tract of land. During the subdivision/ development process, a public right-of-way will have to be platted, constructed and accepted by the City of Killeen to facilitate access to this tract. The prospective Gilbert Estates plat illustrates this tract of land being subdivided into eight (8) residential lots. These lots will generate seventy-six (76) total vehicle trips per day with six (6) peak AM trips and eight (8) peak PM trips [note-this data is sourced from the Institute of Transportation Engineer (ITE) Trip Generation Rates-9th Edition, provided through Spack Consulting]. This will not negatively affect the level of service standard for a local residential street. Approximately 0.03 acres of the approximate 2.673 acres in this zoning case are located within a FEMA regulatory Special Flood Hazard Area (SFHA). Current City codes require the establishment of a creek buffer zone (CBZ) along the unnamed tributary to Trimmier Creek at the time of platting. Currently, sheet flow runoff on this development enters the natural unnamed tributary to Trimmier Creek in the south west corner of the property. Runoff then flows south approximately 700 feet before entering Trimmier Creek. Trimmier Creek is currently listed on the TCEQ's current 303(d) water quality list for concerns for near non-attainment for macrobenthic community. The applicant is advised that the area being zoned shall be platted prior to any new development on this parcel. As a result, the current DDM and IDDSM standards will apply for new development.

The staff notified five (5) surrounding property owners regarding this request. Staff had received no protests at the time of the meeting.

Staff recommended approval of the applicant's request for "R-1" zoning for the subject 2.673 acres site.

Vice Chair Dorroh opened the public hearing. With no one requesting to speak, the public hearing was closed.

Ms. Michelle Lee, Killeen Engineering & Surveying, Ltd., 2901 E. Stan Schlueter Loop, Killeen, Texas, was present to represent this request.

Commissioner Latham motioned to recommend approval of the request “R-1” (Single-Family Residential District). Commissioner Cooper seconded the motion. The motion passed 4-1 with Commissioner Harkin in opposition. Ms. Harkin stated that she would like the entire remainder of the acreage be brought back all at one time.

Vice Chair Dorroh 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" (AGRICULTURAL DISTRICT) TO "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Lagan Construction Inc. 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 2.673 acres out of the Robert Cunningham Survey, Abstract No. 199, for property generally located north of Hope Lane, approximately 1,200 west of Cunningham Road, Killeen, Texas, from "A" (Agricultural District) to "R-1" (Single-Family Residential District), said request having been duly presented to the Planning and Zoning Commission of the City of Killeen on the 18th day of September 2017, 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 17th day of October 2017, 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 majority opinion that the applicant's zoning 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 2.673 acres out of the Robert Cunningham Survey, Abstract No. 199, for property generally located north of Hope Lane, approximately 1,200 west of Cunningham Road, Killeen, Texas, be changed from "A" (Agricultural District) to "R-1" (Single-Family Residential District).

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 17th day of October 2017, 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 #17-22

Ord. #17-___

ZONING CASE #Z17-22

“A” TO “R-1”

PH-17-046B

October 3, 2017

Exhibit 1. Aerial Map

- Request is to rezone approx. 2.673 acres from “A” (Agricultural district) to “R-1” (Single-Family Residential district).
- Site is located on the north side of Hope Lane, west of Sassi Lane.

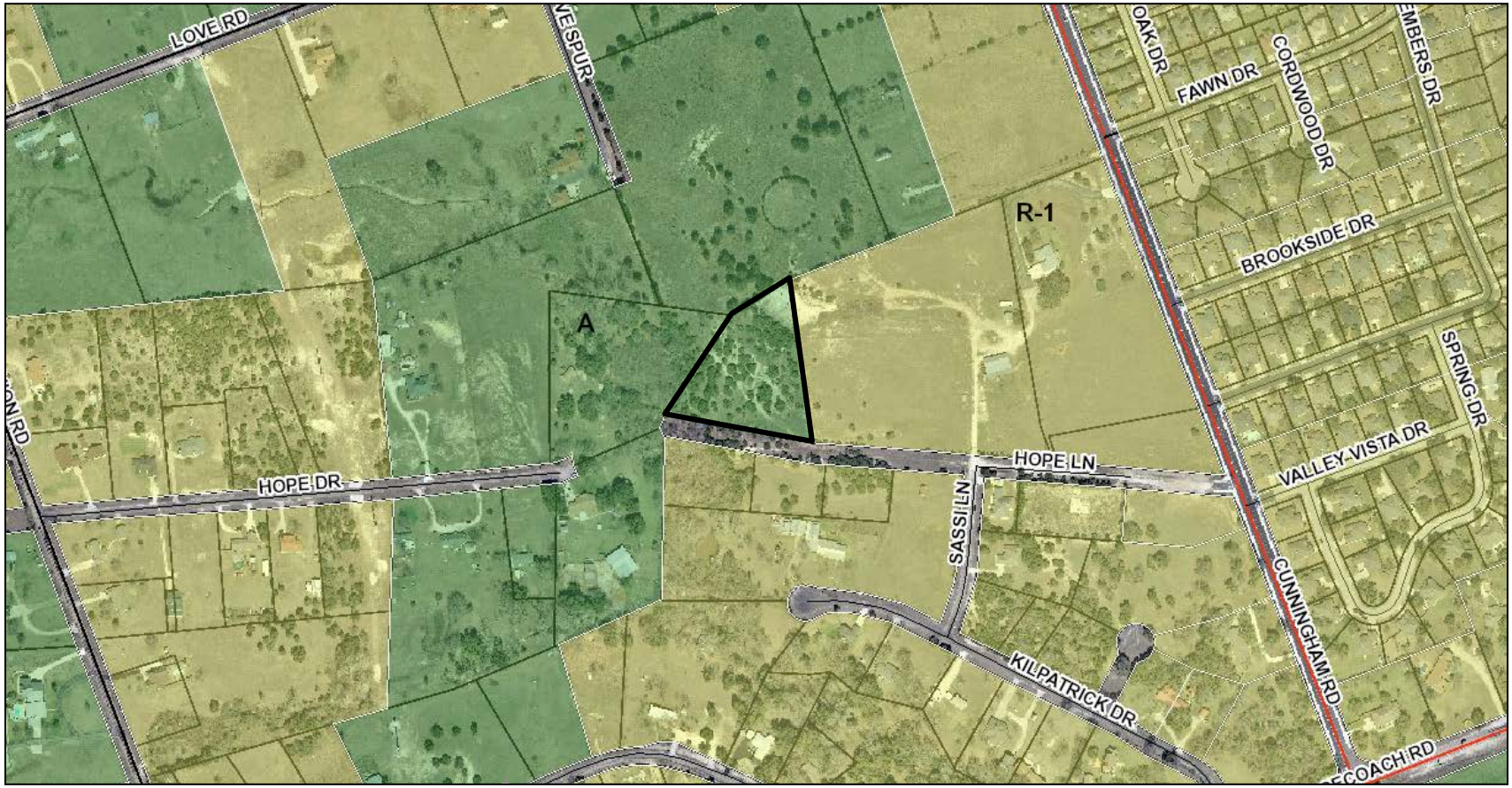


Exhibit 2. Zoning Map

- Request is to rezone approx. 2.673 acres from “A” (Agricultural district) to “R-1” (Single-Family Residential district).
- Site is located on the north side of Hope Lane, west of Sassi Lane.

Exhibit 3. Street View (facing west)

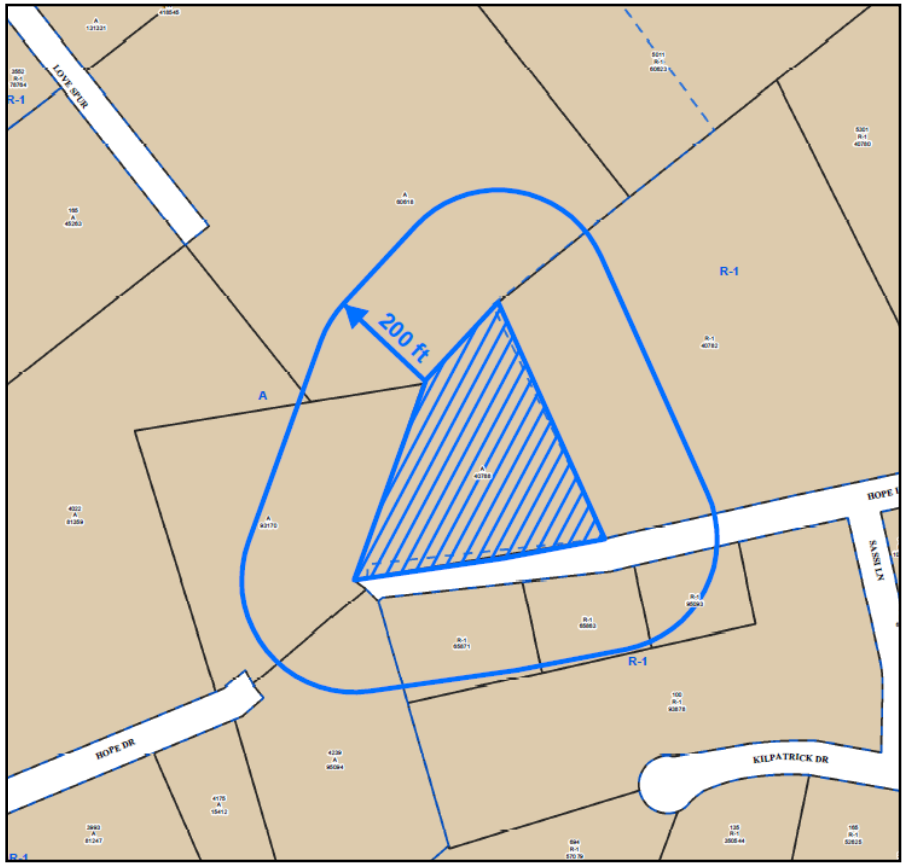


Exhibit 3. Street View

- Eight (8) surrounding property owners were notified.
- No letters in support or objection were received.