



## City of Killeen

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### Regular City Council Meeting Agenda

May 28, 2013

Killeen City Hall

101 North College Street

City Council Chambers

5:00 P.M

#### Call to Order and Roll Call

\_\_\_ Daniel A. Corbin, Mayor  
\_\_\_ Elizabeth Blackstone  
\_\_\_ Terry J. Clark  
\_\_\_ Jared Foster  
\_\_\_ Wayne Gilmore  
\_\_\_ Steve Harris  
\_\_\_ Jonathan Okray  
\_\_\_ Jose Segarra

\_\_\_ Glenn Morrison  
\_\_\_ City Manager  
\_\_\_ Kathryn H. Davis  
\_\_\_ City Attorney  
\_\_\_ Paula Miller  
\_\_\_ City Secretary  
\_\_\_ Sergeant-At-Arms

#### Invocation

#### Pledge of Allegiance

#### Approval of Agenda

#### Presentations

PR-1 External Services/Community Services – Summer Program

#### Consent Agenda

CA-1 Consider minutes of Regular City Council Meeting of May 14, 2013.

CA-2 Consider a memorandum/resolution authorizing a management agreement between the City of Killeen and Jester's for the Killeen Civic and Conference Center.

- CA-3 Consider a memorandum/resolution establishing a partnership to facilitate a used cooking oil collection program by entering into a Memorandum of Understanding between the City of Killeen and Central Texas College (Enactus).
- CA-4 Consider a memorandum/resolution authorizing the award of a professional services agreement with the Wallace Group to design the Septic Tank Elimination Program (STEP) Phase VIII Project.
- CA-5 Consider a memorandum/resolution for a mutual aid agreement with the Department of the Army for Fort Hood, Texas for emergency medical services with Carl R. Darnall Medical Center.

<h2>Public Hearings / Ordinances</h2>
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- PH-1 **HOLD** a public hearing and consider an ordinance amending the FY 2012-13 Annual Budget and Plan of Municipal Services of the City of Killeen by increasing the revenue and expenditure line items in the hotel occupancy tax fund to authorize expenditures related to downtown historic district markers.
- PH-2 **HOLD** a public hearing and consider an ordinance amending the FY 2012-13 Annual Budget and Plan of Municipal Services of the City of Killeen by increasing the General Fund Budget by \$13,159 in the parks division playscape capital outlay expenditure account.
- PH-3 **HOLD** a public hearing and consider a request for an ordinance by Yong K. and Hyo S. Chang (Case #Z13-11) to rezone approximately 0.5 acres, being part of the Thomas Robinett Survey, Abstract Number 686, from R-1 (Single-Family Residential District) to B-4 (Business District) for a mechanic shop and approximately 3.987 acres from 'A' (Agricultural District) to B-3 (Local Business District). The property is locally known as 3502, 3602 and 3702 Watercrest Road, Killeen, Texas. (Requires  $\frac{3}{4}$  majority vote for approval)
- PH-4 **HOLD** a public hearing and consider a request for an ordinance by Juanita L. Faucett & Troy M. Faucett Family Trust (Case #Z13-13) to rezone approximately 2.102 acres part of the W. H. Cole Survey, Abstract No. 201 from R-1 (Single-Family Residential District) to B-3 (Local Business District) for a bank. The property is located on the east right-of-way of S. W.S. Young Drive, approximately 769' north of Elms Road, Killeen, Texas.
- PH-5 **HOLD** a public hearing and consider a request for an ordinance by Clem & Frankie McClurkan (Case #Z13-14) to rezone approximately 8.167 acres part of the James D. Allcorn Survey, Abstract No. 25 from AR-1 (Agricultural Single-Family Residential District) to SR-1 (Suburban Residential Single-Family Residential District) for single family use. The property is located south of Fire Station #8 on East Trimmier Road across from the Spanish Oaks subdivision, Killeen, Texas. (Requires  $\frac{3}{4}$  majority vote for approval)
- PH-6 **HOLD** a public hearing and consider a request for an ordinance by Mind Spring, LLC (Case #Z13-15) to rezone part of Lot 3 and 4, Block 15, Killeen Original Town from HOD (Historic Overlay District) to HOD (Historic Overlay District) with CUP (Conditional Use Permit) for on premises sale and consumption of alcohol. The property is locally known as 310 E. Avenue D, Killeen, Texas.

- PH-7 **HOLD** a public hearing and consider a request for an ordinance by Jessie M. Kern Estate, Clayton Winkler Executor (Case #Z13-17) to rezone approximately 2.638 acres, being part of Thomas Robinett Survey, Abstract No. 686 from R-1 (Single-Family Residential District) to B-3 (Local Business District) for retail commercial use. The property is located on the south right-of-way of Watercrest Road and is locally known as 4102 Watercrest Road, Killeen, Texas.

## Adjournment

### CLOSED MEETINGS

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.

### AMERICANS WITH DISABILITIES ACT

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.

## Future Workshop Items

The following items have been scheduled for workshop discussion on the dates shown. The final scheduling of these items is dependent upon the presenters/interested parties being available on the dates projected.

### June 4, 2013 (Workshop)

- Quarterly Briefing/Update – Aviation
- Quarterly Briefing/Update – Public Works
- Quarterly Financial Investment Report
- Briefing Internal Audit Process

### June 18, 2013 (Workshop)

- Briefing/Update – Internal Services – New Organizational Structure

## 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.

- Killeen PRCA Rodeo, May 23-25, 2013, 7:30 p.m., Killeen Rodeo Grounds
- Central Texas Memorial Day Ceremony, May 27, 2013, 10:00 a.m. – 12:00 p.m., Veteran's Cemetery
- Budget Town Hall Meeting, May 29, 2013, 6:00 p.m., Killeen City Council Chambers City Hall
- Music Night of Hope, May 31, 2013, 6:00 p.m., Killeen Arts & Activities Center
- Korean War Veterans Associations Banquet, July 27, 2013, 6:15 p.m., Club Hood, Fort Hood

**City of Killeen**  
Regular City Council Meeting  
Killeen City Hall  
May 14, 2013  
5:00 p.m.

Presiding: Mayor Daniel A. Corbin

Attending: Mayor Pro-Tem Michael Lower, Councilmembers Elizabeth Blackstone, Terry Clark, Jared Foster, Wayne Gilmore, Jonathan Okray, and Jose Segarra

Also attending were City Manager Glenn Morrison, City Attorney Kathryn Davis, City Secretary Paula Miller, and Sergeant-at-Arms David Cole

Mayor Corbin gave the invocation, and Councilmember Blackstone led everyone in the pledge of allegiance.

**Approval of Agenda**

Mayor Pro-Tem Lower moved to approve the agenda as written, seconded by Councilmember Clark. The motion was unanimously approved.

**Consent Agenda**

CA-1 Consider minutes of Regular City Council Meeting of April 23, 2013.

CA-2 Consider a memorandum/resolution [13-044R] approving equipment leases through the state cooperative, Texas Association of School Boards Buyboard for the Golf Course.

It is recommended to acquire this equipment through two leases: one for forty-six months at a total cost of \$109,831.00; the second for sixty months at a total cost of \$72,009.00 with a \$1.00 buy-out at the end of the lease.

CA-3 Consider a memorandum/resolution [13-045R] authorizing Change Order No. 9 to the Downtown Streetscaping and Andy K. Wells Trail Extension Project with The Fain Group, Inc.

This change order provides for the cost of reconstructing the north curb and gutter and driveway approaches along Avenue G.

CA-4 Consider a memorandum/resolution [13-046R] authorizing Change Order No. 10 to the Downtown Streetscaping and Andy K. Wells Trail Extension Project with The Fain Group, Inc.

This change order is to cover the increased cost of replacing asphalt with concrete at intersections at 4<sup>th</sup> Street, Gray Street, 8<sup>th</sup> Street, Avenue C, and Avenue D.

CA-5 Consider a memorandum/resolution [13-047R] authorizing the award of a

construction contract (Bid 13-18) for the 2012 Sidewalk Improvements FM 3470 Project (Part I) to Cody Stanley Construction, LLC.

The City has identified an area along Stan Schlueter Loop where children cannot safely walk to school. This project will add a sidewalk along FM 3470. The cost of the project is \$145,258.75, to be paid from the Child Safety Escrow Fund.

CA-6 Consider a memorandum/resolution [13-048R] authorizing the award of a professional services agreement with HDR Engineering to design the Lift Station No. 23 expansion project.

The 2012 Water and Wastewater Master Plan included expansion of Lift Station #23 from .65 mgd to 2.5 mgd in order to handle the growth on the north side of Reeces Creek and west of Bunny Trail. Following negotiation for a professional services agreement, staff recommends HDR Engineering to design the expansion.

CA-7 Consider a memorandum/resolution [13-049R] for bid recommendation – Bid No. 13-23 Lift Station No. 1 Diversion Structure and Gravity Main.

Bids for this project were opened on April 17, and staff recommends awarding the bid to the low bidder, McLean Construction.

CA-8 Consider a memorandum/resolution [13-050R] approving TCEQ Air Monitoring Site Agreement Amendment at Skylark Field.

In May 2008, the Council approved a five-year agreement with TCEQ for an 800-square foot area at Skylark Field for an EPA mandated air monitoring unit. Staff recommends approval of this agreement for a five-year term from May 27, 2013, to May 27, 2018.

CA-9 Consider a memorandum/resolution [13-051R] awarding Bid No. 13-24 for Killeen Fire Department Uniforms.

Staff recommends awarding this bid for uniforms to Miller Uniform & Emblems for a one-year period with an additional two one-year terms at the option of the City.

Mayor Pro-Tem Lower moved to approve the above items on the Consent Agenda, seconded by Councilmember Gilmore. The motion was approved unanimously.

### **Public Hearings / Ordinances**

PH-1 **HOLD** a public hearing and consider a request for an ordinance by Min Tae and Un Yong Kim (Case #Z13-09) to rezone a portion of Lot 1, Block 8, Roberts Addition Section 3, from B-5 (Business District) to B-5 (Business District) with a CUP (Conditional Use Permit) for a communication tower. The property is locally known as 2901 W. Elms Road, Killeen, Texas (requires  $\frac{3}{4}$  majority vote for approval).

The caption of the ordinance was read as follows:

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM B-5 (BUSINESS DISTRICT) TO B-5 (BUSINESS DISTRICT) WITH A CONDITIONAL USE PERMIT (CUP); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

This rezoning request is submitted on a fifty-foot by fifty-foot portion of 2901 W. Elms Road for a one-hundred-foot monopole tower to be located 205 feet east of the west property line and 165 feet north of the south property line. The Planning and Zoning Commission recommended approval of the request with four conditions: (1) the monopole will be constructed as a stealth tower; (2) any construction within the area zoned for the tower shall be located outside any fire lanes to protect public safety access; (3) any additional construction on the property, located in or outside of this area, that alters the drainage pattern or calculations will require the site to come into compliance with drainage standards; and (4) prior to permitting, applicant must provide a dimensioned/scaled as-built survey including the requested zoning area, existing and proposed structures, fences, infrastructure, public easements, and fire lanes.

Mayor Corbin opened the public hearing. Andy Campin appeared in support of the request. The antennas will be flush-mounted. With no one else appearing, the public hearing was closed.

Councilmember Segarra moved to approve the ordinance [13-034], seconded by Councilmember Blackstone. The motion was approved unanimously.

PH-2 **HOLD** a public hearing and consider a request for an ordinance by Cha Park and Son Park (Case #Z13-10) to rezone part of Lot 1, Block 1, Cha Addition, from B-5 (Business District) to RC-1 (General Business and Alcohol Sales District) for on premises sale and consumption of alcohol. The property is locally known as 4524 South W. S. Young Drive, Killeen, Texas.

The caption of the ordinance was read as follows:

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM B-5 (BUSINESS DISTRICT) TO RC-1 (RESTAURANT AND ALCOHOL SALES DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

This rezoning request is submitted to allow a restaurant to be located on the site, and the request is for the footprint of the building. The applicant understands that if he does not secure a tenant and there is no restaurant, the zoning will be downgraded to B-4. The Planning and Zoning Commission recommended approval of the request, limited to the footprint of the building.

Mayor Corbin opened the public hearing. Son Park appeared in support of his request. With no one else appearing, the public hearing was closed.

Councilmember Okray moved to approve the ordinance [13-035], seconded by Mayor Pro-Tem Lower. The motion was approved unanimously.

PH-3 **HOLD** a public hearing and consider a request for an ordinance by Stephen Hahn (Case #Z13-12) to rezone a portion of Lot 3, Block 1, La Mer Addition, Phase Two, from B-5 (Business District) to B-C-1 (General Business and Alcohol Sales District) to allow for use as a wine bar. The property is locally known as 403 E. Stan Schlueter Loop (FM 3470), Suite #306, Killeen, Texas.

The caption of the ordinance was read as follows:

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM B-5 (BUSINESS DISTRICT) TO B-C-1 (GENERAL BUSINESS AND ALCOHOL SALES DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

This rezoning request is submitted for Suite 306 for a wine bar. The area is shown as general commercial on the Comprehensive Plan. The Planning and Zoning Commission recommended approval of the request, limiting it to Suite 306 and the back patio area.

Mayor Corbin opened the public hearing. Kevin Stewart, 2013 Sandy Point, Harker Heights, appeared in support of the request. He emphasized there is no exterior access to the patio area. With no one else appearing, the public hearing was closed.

Councilmember Gilmore moved to approve the ordinance [13-036], seconded by Mayor Pro-Tem Lower. The motion was approved 6-1 (Councilmember Okray in opposition).

PH-4 **HOLD** a public hearing and consider the creation of a new zoning district "*NBD*" *Neighborhood Business District* for Killeen Code of Ordinances, Chapter 31.

The caption of the ordinance was read as follows:

AN ORDINANCE AMENDING CHAPTER 31 OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; CREATING ARTICLE IV, DIVISION 12B, DISTRICT "NBD" NEIGHBORHOOD DISTRICT, BY CREATING THE DISTRICT NAME, ZONING REGULATIONS AND REQUIREMENTS THEREIN; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

This proposed zoning classification resulted from a joint meeting between the City Council and the Planning and Zoning Commission. The Commission held several workshops and held public hearings regarding the proposed NBD Neighborhood Business District. The purpose is to provide limited commercial uses to serve the needs of residents in the immediate area of the business. Section 31-316.2 lists businesses that are excluded, rather than those that are allowed. There are screening and buffer requirements between the NBD area and residential areas, and it provides architectural regulations.

Mayor Corbin opened the public hearing. With no one appearing, the public hearing was closed.

Mayor Pro-Tem Lower moved to approve the ordinance [13-037], seconded by Councilmember Blackstone. Councilmember Blackstone moved to amend the motion to exclude bowling alleys, seconded by Councilmember Okray. A vote was taken on the amendment, and it was unanimously approved. A vote was then taken on the motion as amended, and it was approved unanimously.

#### **Ordinances / Resolutions**

OR-1 Consider an ordinance amending Chapter 18, Nuisances, of the Killeen Code of Ordinances.

The caption of the ordinance was read as follows:

AN ORDINANCE AMENDING CHAPTER 18 OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN; ARTICLE I, SECTION 18-1, DEFINITIONS, ARTICLE III, SECTIONS 18-21, HIGH WEEDS, GRASS, OR BRUSH; SECTION 18-22, DANGEROUS WEEDS OVER 48 INCHES HIGH; SECTION 18-28, FILL DIRT; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

This code amendment continues the City's efforts to improve Killeen. Section 18-1 addresses open storage. Section 18-21 addresses high weeds and grass. Property under two acres must not have grass or weeds that exceed twelve inches. With property over two acres, grass and weeds shall not exceed twelve inches within fifty feet along any street or right-of-way or adjacent to a lot occupied by a residence or business. There is an exception for property for which a current agricultural exemption is filed with Bell County. If property adjoins public rights-of-way, weeds or grass shall not exceed twelve inches; however, the requirement does not apply to a right-of-way behind any private property that has a real property line adjacent to a street classified as an arterial or collector.

The ordinance provides an exception for those areas that have slopes greater than a three-foot rise per one-foot run unless it would create a fire or health hazard, and it does not apply to portions of property designated as wetlands as defined and regulated in Chapter 32.

Section 18-28 requires fill dirt to be leveled at least once every thirty days, rather than the previous six months. It does not apply to top soil and gravel piled, stored for sale, or lawfully permitted for development or state-permitted material storage properties. Requirements in Chapters 12, 26, and 32 must be met before the placement of fill dirt materials.

James Ralston, 408 Yates Road, expressed his concern that the City was adding more enforcement requirements without enforcing those already in effect.

Mayor Pro-Tem Lower expressed his concern that mowing large acreages could be a hardship and wanted the ordinance to apply to those properties zoned agricultural.

Mayor Pro-Tem Lower moved to approve the ordinance [13-038] with the addition to 18-21(b)(2) of an exception for property zoned agriculture, seconded by Councilmember Segarra. The motion was approved unanimously.

OR-2 Consider an ordinance canvassing the returns and declaring results of May 11, 2013 General and Special Elections.

The caption of the ordinance was read as follows:

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, CANVASSING RETURNS AND DECLARING THE RESULTS OF A GENERAL ELECTION FOR THE ELECTION OF FOUR DISTRICT COUNCILMEMBERS AND OF A SPECIAL ELECTION TO CONSIDER AMENDMENTS TO THE HOME RULE CHARTER.

Mayor Corbin appointed Councilmember Blackstone as chair and Councilmembers Okray and ~~Segarra~~ Foster to canvass election results with City Secretary Miller, and then called a recess.

Following the recess, Councilmember Blackstone as chair of the canvass committee reported 1,320 people voted at the City's May 11 General and Special elections and reported the following results:

Councilmember, District 1	
Wayne Gilmore	210 Total Received
Councilmember, District 2	
Jose Segarra	200 Total Received
Councilmember, District 3	
Terry J. Clark	316 Total Received
Mike Lower	256 Total Received
Councilmember, District 4	
Steve Harris	101 Total Received
Proposition 1	
For	961 Total Received
Against	290 Total Received
Proposition 2	
For	972 Total Received

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Against	291 Total Received
Proposition 3	
For	960 Total Received
Against	286 Total Received
Proposition 4	
For	870 Total Received
Against	353 Total Received
Proposition 5	
For	1,030 Total Received
Against	217 Total Received
Proposition 6	
For	1,027 Total Received
Against	232 Total Received
Proposition 7	
For	1,028 Total Received
Against	223 Total Received
Proposition 8	
For	669 Total Received
Against	577 Total Received
Proposition 9	
For	875 Total Received
Against	366 Total Received
Proposition 10	
For	795 Total Received
Against	449 Total Received
Proposition 11	
For	916 Total Received
Against	330 Total Received
Proposition 12	
For	1,045 Total Received
Against	204 Total Received
Proposition 13	
For	1,056 Total Received
Against	180 Total Received
Proposition 14	
For	919 Total Received
Against	326 Total Received
Proposition 15	
For	791 Total Received
Against	421 Total Received
Proposition 16	
For	743 Total Received
Against	462 Total Received
Proposition 17	
For	774 Total Received
Against	407 Total Received

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May 14, 2013 – Page 8

Proposition 18	
For	951 Total Received
Against	245 Total Received
Proposition 19	
For	890 Total Received
Against	304 Total Received
Proposition 20	
For	633 Total Received
Against	526 Total Received
Proposition 21	
For	897 Total Received
Against	287 Total Received
Proposition 22	
For	742 Total Received
Against	443 Total Received
Proposition 23	
For	892 Total Received
Against	302 Total Received
Proposition 24	
For	726 Total Received
Against	460 Total Received
Proposition 25	
For	885 Total Received
Against	289 Total Received
Proposition 26	
For	845 Total Received
Against	343 Total Received
Proposition 27	
For	754 Total Received
Against	430 Total Received
Proposition 28	
For	638 Total Received
Against	545 Total Received
Proposition 29	
For	900 Total Received
Against	272 Total Received
Proposition 30	
For	901 Total Received
Against	271 Total Received
Proposition 31	
For	986 Total Received
Against	206 Total Received
Proposition 32	
For	930 Total Received
Against	249 Total Received
Proposition 33	

For	941 Total Received
Against	233 Total Received

Mayor Corbin reported Wayne Gilmore was elected District 1 Councilmember, Jose Segarra was elected District 2 Councilmember, Terry J. Clark was elected District 3 Councilmember, and Steve Harris was elected District 4 Councilmember, and that all Propositions were duly approved.

Mayor Pro-Tem Lower moved to approve the ordinance [13-039], seconded by Councilmember Gilmore. The motion was approved unanimously.

### **Special Recognitions**

Mayor Corbin presented a plaque to Mayor Pro-Tem Lower, and Mayor Pro-Tem Lower expressed appreciation to the citizens of Killeen for allowing him to serve.

### **Oath of Office & Certificate of Election**

City Secretary Miller administered the oath of office to newly-elected Councilmembers Wayne Gilmore, Jose Segarra, Terry J. Clark, and Steve Harris, and then presented Certificates of Election to each of the newly-elected Councilmembers.

### **Standards of Conduct**

The Mayor and Councilmembers signed the Standards of Conduct while City Manager Morrison read the Standards.

### **Call to Order and Roll Call**

Presiding: Mayor Daniel A. Corbin

Attending: Councilmembers Elizabeth Blackstone, Terry Clark, Jared Foster, Wayne Gilmore, Steve Harris, Jonathan Okray, and Jose Segarra

Also attending were City Manager Glenn Morrison, City Attorney Kathryn Davis, City Secretary Paula Miller, and Sergeant-at-Arms David Cole

### **Ordinances / Resolutions**

OR-1 Consider a memorandum/resolution [13-052R] designating a Mayor Pro-Tem.

Councilmember Okray moved to nominate Elizabeth Blackstone to serve as Mayor Pro-Tem. There were no other nominations. The Council voted on the nomination, and it was approved unanimously.

**Adjournment**

With no further business, upon motion being made by Councilmember Okray, seconded by Mayor Pro-Tem Blackstone, and unanimously approved, the meeting was adjourned at 7:15 p.m.

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Daniel A. Corbin, Mayor

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Paula Miller, City Secretary

Regular 5-28-13  
Item CA-2  
CCM/R                     

## CITY COUNCIL MEMORANDUM FOR RESOLUTION

### AGENDA ITEM

### RENEWAL OF MANAGEMENT AGREEMENT BETWEEN THE CITY OF KILLEEN & JESTERS

### ORIGINATING DEPARTMENT

### COMMUNITY SERVICES CIVIC & CONFERENCE CENTER

### BACKGROUND INFORMATION

The City of Killeen holds a "Mixed Beverage" license from the Texas Alcoholic Beverage Commission for the Special Events Center Complex to provide alcoholic beverage services to its clients. The license includes; the Killeen Civic & Conference Center, Special Events Building and Rodeo Arena. The City of Killeen obtained Mixed Beverage and Beverage Cartage permits in April 2005, and added a Catering permit in 2011 in order to provide alcoholic beverage service to other facilities.

### DISCUSSION/CONCLUSION

The current Management Agreement is between the City of Killeen and Jesters. The agreement was for a period of two years, renewable biannually. The City recommends renewing this contract for three years.

### FISCAL IMPACT

We will maintain the terms of the original agreement, which requires the City of Killeen to pay Jesters 40% of the gross sales for their management contract.

### RECOMMENDATION

Staff recommends City Council approval for the City Manager to renew the Management agreement between the City of Killeen and Jesters for a period of three years, and that the City Manager is expressly authorized to execute any and all change orders within the amounts set by state and local law.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:**

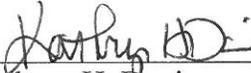
That the above stated staff recommendations are hereby approved and authorized.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas this \_\_\_\_\_ day of \_\_\_\_\_, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Paula A. Miller  
CITY SECRETARY

## MANAGEMENT SERVICES AGREEMENT

This MANAGEMENT SERVICES AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 2013, is entered by and between the City of Killeen Civic & Conference Center Complex, a municipal corporation, whose mailing address is P. O. Box 1329, Killeen, Texas, 76540-1329 (hereinafter called "Permittee"), and Jester's, whose mailing address is 1310 South Fort Hood Road, Killeen, Texas 76541 (hereinafter called "Manager"), upon the following terms and conditions:

### RECITALS

WHEREAS, Permittee is the owner of the Killeen Civic & Conference Center Complex located at 3601 South W.S. Young Drive, Suites A, B & C, in Killeen, Texas, 76542 (the "Center"); and

WHEREAS, Manager, by virtue of its operation of the Complex, has sufficient staff, expertise, and knowledge to provide certain operating, accounting, and other services to Permittee in connection with Permittee's service of alcoholic beverages to its members and their guests at the Complex.

NOW, THEREFORE, in consideration of the covenants and mutual benefits contained herein, the parties agree as follows:

1. *Appointment.* Permittee hereby grants Manager the exclusive right to provide management services for the operation of Permittee's mixed beverage service at the Complex, including the service of beverages, both alcoholic and non-alcoholic, (the "Operation") at the Complex. Manager will provide such services during the term of this Agreement in accordance with the terms and conditions herein contained.

The performance of all activities by Manager hereunder shall be in the name of and for the account of Permittee. It is expressly understood and agreed between the parties hereto that Permittee shall at all times maintain control of its operations and employees. Permittee shall retain the right to purchase alcoholic beverages for use at the Complex.

2. *Term and Termination.*

2.1 *Term.* Subject to the terms of Section 2.2 below, this Agreement shall begin on March 14, 2013 and shall continue for a period of three (3) years. An extension of the contract period may be granted if agreed between both parties in writing.

2.2 *Termination.* This Agreement may be terminated at any time by either Permittee or Manager upon ninety (90) days written notice given to the other party.

3. *Management of Operation.* Manager will provide management, supervision, and direction of the Operation in a manner that is in accordance with standards comparable to those prevailing in other first-class mixed beverage operations in Texas. Such management services will include, without limitation, serving beverages, both alcoholic and non-alcoholic, to Permittee's customers in accordance with their needs, maintaining all records and financial

information required by the Texas Alcoholic Beverage Commission , and submitting same to the Commission pursuant to their requests; negotiating on behalf of Permittee service contracts required in the ordinary course of business; advising and consulting with Permittee personnel regarding operational matters; and generally providing day-to-day supervision and direction for the Operation.

4. *Maintenance of Inventories; Procurement.* Manager will order sufficient inventories of all alcoholic beverages, beverage mixers and supplies. Such items and services will be purchased from dependable suppliers at competitive prices, taking into account the quality and quantity required by Permittee for the necessary and proper maintenance of the Operation.

Permittee shall pay for the cost of procurement of all alcoholic beverages. Permittee shall retain full authority and control over the purchase and storage of alcoholic beverages. Permittee shall pay for the cost of procurement of all other beverages, supplies, equipment, and outside services which are directly related to the service of alcoholic beverages.

Permittee shall deliver its initial inventory of alcoholic beverages to Manager upon the date of commencement of this Agreement for Manager's use in the Operation in accordance with the terms hereof. Costs of alcoholic beverages used in the Operation on a monthly basis shall be determined by adding purchases made during each Accounting Period, as defined in Section 7 below, to the opening inventory for that Accounting Period and then subtracting the value of ending inventory for that Accounting Period. Inventory on hand at the Complex upon termination of this Agreement shall be delivered to Permittee at no further cost.

Manager shall conduct a monthly inventory and provide ending inventory balances to Permittee within 5 days of completion of the inventory. Permittee will be given sufficient notice of each upcoming inventory and will be present at each inventory. Each monthly inventory shall fully report spills and/or breakage of alcoholic beverages, and sufficient documentation of the spills and/or breakage shall be appended to each monthly inventory

5. *Personnel.* Manager will designate an Operation manager and such other employees necessary to perform services for the benefit of Permittee. Manager will train, supervise, direct, discipline, and, if necessary, discharge personnel working at the Operation in accordance with Manager's personnel policies.

6. *Cleaning; Maintenance; Repairs.* Manager will be responsible for maintaining the Operation and all equipment and fixtures related thereto in good condition and repair. Manager will provide cleaning service as needed to support functions when necessary for the Operation to operate according to the highest sanitary standards and in compliance with all applicable health and sanitation laws and regulations.

7. *Accounting; Monthly Operating Statement; Audit.* Permittee will keep and maintain complete and accurate books of account, and all tax records and returns incident to the service of alcoholic beverages at the Center, including the gross receipts tax on service charges on mixed beverages and sales and use tax on complimentary drinks for the Operation. Such books and records will reflect the gross receipts of all service charges. All such records and books will be kept and prepared in accordance with generally accepted accounting principles and

comply with the record keeping requirements of the Commission.

Within thirty (30) days after the close of each calendar month (each such calendar month being hereinafter referred to as an "Accounting Period"), Permittee will furnish Manager with an operating statement showing in reasonable detail the results of the Operation during such prior Accounting Period, including a balance sheet and income statement. Permittee will also submit payment of the Management Fee for such Accounting Period or Partial Accounting Period along with the required operating statements.

Manager shall have the right to audit all of Permittee's accounts, books, and records related to this agreement at any time upon reasonable notice. Manager and Permittee will keep all financial books, accounts, and records of receipts and disbursements relating to the Operation for three (3) years, and will make same available for examination for Manager/Permittee or its auditors during normal business hours. The City Auditor will audit Permittee's accounts, books and records at least annually.

Permittee and Manager shall at all times absolutely comply with all laws, ordinances, rules, and regulations of any governmental authority, including, without limitation, the Commission.

8. *Utilities.* Permittee will provide, or cause to be provided, all utility services, including gas, electricity, hot and cold running water, heat, air conditioning, and all other services needed for the efficient, economical, and sanitary running of the Operation.

9. *Licenses and Permits.* Permittee will obtain and maintain in full force and effect all licenses and permits as are necessary to run the Operation. Permittee will be responsible for the keeping of records and preparation and filing of reports required by the Texas Alcoholic Beverage related to the purchase, storage, and service of alcoholic beverages at the Complex. The operations and business of Permittee and Manager shall at all times be in compliance with the Code, as amended, and all rules and regulations of the Commission. Purely by way of example and not by limitation, Manager specifically agrees that it will not serve any inebriated or underage person at the Complex.

10. *TABC Certification.* All persons involved in the service, dispensing, or delivery of alcoholic beverages in the Operation shall hold a currently-effective certificate issued by the Commission evidencing his/her successful completion of a Commission-certified Seller Training Program in accordance with the provisions of Section 106.14 of the Code and the rules of the Commission promulgated thereunder. Manager agrees that (a) any new employees who do not hold such a currently-effective certificate on the date of employment shall successfully complete a Commission-certified Seller Training Program within thirty (30) days of such date, and (b) it will comply with all other applicable provisions of the Code and Rules to insure that Permittee is at all times in full compliance with the requirements of the Code and the Commission's rules to obtain the benefits afforded under Section 106.14, as same may be amended from time to time.

11. *Cash Receipts.* Manager will collect and be accountable for all cash receipts from the Operation. Manager is responsible for any losses that occur between collection of the cash and delivery of the cash to Permittee. Notwithstanding anything herein to the contrary, all cash and other receipts collected by the Manager from the Operation shall be delivered to Permittee

on a daily basis at a designated location. Cash receipts shall be supported by sales reports (register tapes), which shall be date-stamped and signed by Manager's staff. Immediately after tallying the receipts for an event, Manager shall send notice of the amount collected to Permittee via e-mail.

12. *Operating Expenses.* The term "Operating Expenses" as used in this Agreement shall mean all direct costs and expenses incurred in connection with the Operation whatsoever, including, without limitation, the Management Fee required under Section 13 herein below, exclusive of salaries, wages, benefits, and other costs of Manager's employees working in the Operation; including the costs of inventories, beverages, supplies, equipment, utensils, and goods (including the cost of replacement), services, repair, replacement and maintenance of equipment; office expenses; all taxes or charges levied or assessed with respect to the Operation, including gross receipts taxes, sales and use taxes, and taxes levied or assessed on wages, salaries, beverages, services, goods, and Manager's property, if any, used or sold in the Operation; and any penalties, fines, interest, fees, charges, and other expenses incurred by Manager; licenses or permit fees, including renewal fees, or other charges attributable to the Operation; and professional fees, including accounting and legal fees. Notwithstanding the foregoing, Operating Expenses shall not include any penalties, fines, interest, fees, or charges assessed against Permittee and/or Manager based upon its violation of the terms of this Agreement, the Code or any other law, ordinance, rule, or regulation of any governmental authority.

12.1 *All Actions on Permittee's Behalf.* It is understood and agreed that everything done by Manager in the performance of its obligations hereunder, and all expenses incurred pursuant thereto, shall be and on behalf of Permittee and for Permittee's account.

13. *Management Fee.* Permittee agrees to pay Manager as compensation the following percentages of the gross receipts realized by Permittee for alcoholic beverage service charges at the Complex (the "Management Fee") during the previous calendar month:

- (a) Forty Percent (40%) of Gross Receipts realized by Permittee for alcoholic beverage service charges at the Complex (including service charges collected on behalf of Permittee hereunder);

As used herein, the term "gross receipts" shall mean all monies paid or payable to Permittee for alcoholic beverage service charges at the Complex under the alcoholic beverage licenses or permits issued to Permittee by the Commission for its operations at the Complex.

14. *Insurance.*

14.1 *Insurance Coverage.* Permittee will secure and maintain at all times during the term of this Agreement, liquor liability insurance with a separate liability limit of \$1,000,000 either as a separate policy or endorsement. Forty Percent (40%) of the cost of the liquor liability insurance shall be reimbursed by Manager annually. The annual cost will be prorated over a 12 month period and any months the management fee does not exceed \$1000.000 the Manager shall not be responsible for reimbursement. Permittee shall cause Manager to be at all times named as an additional insured on such policies.

14.2 *Policies.* All policies of insurance shall be written by solvent insurance companies admitted to do business in the State of Texas that has at least an “A” rating with AM Best.

15. *Events of Default; Notice.* The following events shall be deemed an event of default (“Event of Default”) under this Agreement:

- (a) Any violation or default by either party of any requirement under the Code for which it is responsible hereunder, or the violation of any law, ordinance, rule, or regulation of any governmental authority;
- (b) The failure by either party to perform or observe the covenants, terms, and conditions of this Agreement.

Upon the occurrence of an Event of Default by one party under the terms of this Agreement, the other party shall give the defaulting party written notice of its intention to terminate this Agreement unless the Event of Default is cured on or before the expiration of thirty (30) days from the receipt of such notice. If the defaulting party fails or refuses to cure the Event of Default on or before the expiration of the thirty (30) day period, this Agreement shall be terminated at the end of such period without further notice or demand.

No waiver by the parties hereto of any default or breach of any term or agreement of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term or agreement contained herein.

16. *Repayment.* During the most recent audit, it was determined that the sales during the audit period were approximately \$25,000 (twenty-five thousand dollars) more than the amount of cash that was turned in to Permittee. Permittee agrees to assume 60% responsibility for this loss (\$15,000) and Manager agrees to assume 40% responsibility for this loss (\$10,000). Manager agrees to repay its portion in equal monthly payments over the course of a year. Permittee will withhold \$833.33 from twelve consecutive month’s management fee.

16. *Miscellaneous.*

16.1 *Exhibits.* All exhibits, attachments, annexed instruments, and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied in full length herein.

16.2 *Captions.* The captions or headings of paragraphs in this Agreement are inserted for convenience only and shall not be considered in construing the provisions hereof if any questions of intent should arise.

16.3 *Assignment.* This Agreement shall not be assignable without the prior written consent of the non-assigning party.

16.4 *Notices.* Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to either party hereto at its respective address set out above, or at such other address as it has theretofore

specified by written notice delivered in accordance herewith.

16.5 *Governing Law.* THIS AGREEMENT IS PERFORMABLE IN BELL COUNTY, TEXAS, AND IS BEING EXECUTED AND DELIVERED IN THE STATE OF TEXAS, AND THE LAWS OF SUCH STATE SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT.

16.6 *Attorneys' Fees.* If either party brings an action at law or in equity to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover its attorneys' fees and all court costs in addition to all other relief. "Prevailing party" shall include, without limitation, a party who obtains substantially the relief or result sought by it from the other party in any such action irrespective of whether such relief or result is obtained prior to or following full adjudication on the merits.

16.7 *Entirety; Amendments.* This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Complex, and may be amended or supplemented only by an instrument in writing executed by the parties.

16.8 *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of the Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from the contract.

16.9 *Time of the Essence.* It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement.

16.10 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

EXECUTED as of the date first written above.

PERMITTEE:

City of Killeen  
a municipal corporation  
Civic & Conference Center Complex

By \_\_\_\_\_  
Glenn Morrison, City Manager

MANAGER:

Jester's

By \_\_\_\_\_  
Sam Halabi  
Co-Owner

By \_\_\_\_\_  
Younes Halabi  
Co-Owner

**Regular** 5-28-13  
**Item #** CA-3  
**CCM/R** \_\_\_\_\_

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM**

**AUTHORIZE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF KILLEEN AND CENTRAL TEXAS COLLEGE (ENACTUS) ESTABLISHING A PARTNERSHIP TO FACILITATE A USED COOKING OIL COLLECTION PROGRAM**

**ORIGINATING DEPARTMENT**

**CITY ATTORNEY/PUBLIC WORKS**

**BACKGROUND INFORMATION**

As part of the City's long-standing effort to combat fat, oil and grease (FOG) accumulation in the City's wastewater system, City staff has been working with the local Central Texas College chapter of Enactus to establish a used cooking oil recycling program. Enactus is an entrepreneurial program that brings together businesses in the community with local governments and other entities in an effort to expand the businesses' positive impact on the local environment.

**DISCUSSION/CONCLUSION**

Enactus, formerly known as SIFE (Students in Free Enterprise), is an international non-profit organization associated with Central Texas College that brings together students and academic and business leaders who are committed to using the power of entrepreneurial action to improve the quality of life and standard of living for people in the community.

In this instance, Enactus' objective is to establish a joint partnership ("Operation Liquid Gold") between entities in the Greater Killeen/ Fort Hood area to assist in the establishment of a systematic approach for the collection and recycling of fats, oils, and grease (FOG), specifically used cooking oil. As part of the proposed Memorandum of Understanding (MOU), Enactus will supply marketing materials highlighting the effects of FOG in the City's sanitary sewer collection system and the benefits of used cooking oil recycling. As a second focus of the group's activities (economic stimulation), Enactus has also coordinated with a small business (Centex Grease Recovery) for the collection and removal of FOG materials collected through the program.

The attached MOU provides that Enactus will: 1) Commit resources to promote an awareness of the City's established FOG program; 2) Educate Killeen area residents and business owners relating to the adverse effects of the disposal of used cooking oil in the sanitary sewer system and facilitate the location of collection points to recover used cooking oil; and 3) Utilize students to create a list of business locations that may benefit from the recycling efforts established by

the program. In turn, the City will: 1) Establish a used cooking oil recycling outlet at its established Recycling Center; and 2) Cooperate with Enactus in its efforts to educate the Citizens of Killeen as to the adverse effects of the introduction of FOG into the System

**FISCAL IMPACT**

There is no fiscal impact associated with this action.

**RECOMMENDATION**

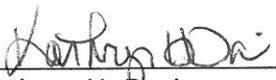
Recommend that the City Council authorize the City Manager to execute the attached Memorandum of Understanding between Central Texas College Enactus and the City of Killeen.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the \_\_\_\_ day of \_\_\_\_\_, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Paula A. Miller  
CITY SECRETARY

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF KILLEEN AND CENTRAL TEXAS COLLEGE**

Central Texas College Enactus, an international non-profit organization ("Enactus"), and the City of Killeen, a municipal corporation and body politic of the State of Texas ("City"), mutually desire to establish a cooperative agreement to assist in the minimization of the harmful effects of the introduction of Fats, Oils, and Greases ("FOG") into the community's sanitary wastewater collection system in order to preserve the natural environment, minimize treatment costs to the Citizens of Killeen, and generally enhance the quality of life in the City of Killeen and Greater Fort Hood Area. Accordingly, the City Manager of the City of Killeen and Central Texas College, hereby establish this Memorandum of Understanding ("MOU") by and between the Parties during Central Texas College's 2013-2014 school year.

**WHEREAS**, the City hereby acknowledges that the introduction of FOG into the City's sanitary wastewater collection system ("System") detrimentally affects the operation and efficiency of the same, including representing the primary cause of all System blockages and overflows that, in turn, leads to increased maintenance and operations costs, potentially adverse natural and human environmental concerns, and the potential degradation of the quality of life in the Greater Fort Hood Area, and,

**WHEREAS**, the City desires to minimize the adverse effects of the introduction of FOG by establishing programs and cooperative efforts with local organizations to educate the Citizens of the adverse effects associated with the same, and,

**WHEREAS**, Central Texas College Enactus is a local chapter of an international non-profit organization dedicated to bringing together students and academic and business leaders committed to using the power of entrepreneurial action to improve the quality of life and standard of living for people in the community, and,

**WHEREAS**, Enactus has developed and presented the City with a request to create a cooperative effort between the parties to minimize the adverse effects of the introduction of FOG, specifically used cooking oil (or yellow grease) into the System, and,

**WHEREAS**, Enactus has proposed "Operation Liquid Gold" to complete various activities to effectuate a net reduction of the FOG in the System through an educational community awareness campaign aimed at the collection and recycling of used cooking oil in both residential and commercial settings.

**WHEREAS**, the City and Enactus specifically agree that Enactus is the sole participant from Central Texas College and nothing herein obligates Central Texas College beyond the role of Enactus. Other than the undertakings and agreements herein made by Enactus, Central Texas College owes no duty and has made no promises to the City and is thus not bound by this MOU to the City in any manner. The parties explicitly agree that any alleged or real breach of this MOU by Enactus is not a breach of any duty owed by Central Texas College.

NOW, THEREFORE, THE CITY OF KILLEEN AND ENACTUS HEREBY ACKNOWLEDGE THE RESPECTIVE PARTIES' UNDERSTANDING OF THE FOLLOWING:

I. Enactus hereby agrees to:

- A. Commit resources to promote an awareness of the City's established FOG program.
- B. Educate Killeen area residents and business owners relating to the adverse effects of the disposal of used cooking oil in the system and facilitate the location of collection points to recover used cooking oil.
- C. Utilize students to create a list of business locations that may benefit from the recycling efforts established by the program.
- D. Obtain City consent prior to the distribution of any marketing material that references this Understanding, contains any City logo, or otherwise evidences the City's support of Enactus activities.

II. The City hereby agrees to:

- A. Establish a used cooking oil recycling outlet at its established Recycling Center and maintain the existence of said outlet until such time that the City determines to discontinue the same, if necessary.
- B. Cooperate with Enactus in its efforts to educate the Citizens of Killeen as to the adverse effects of the introduction of FOG into the System, including the distribution of approved marketing materials through utility fliers and other media, as available.

Executed in duplicate originals on this the \_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF KILLEEN

ENACTUS

\_\_\_\_\_  
Glenn Morrison  
CITY MANAGER

*18/50*

\_\_\_\_\_  
Michele J. Carter  
Contracting Officer

ATTEST:

\_\_\_\_\_  
Paula A. Miller  
CITY SECRETARY

Regular 5-28-13  
Item # CA-4  
CCM/R                     

**CITY COUNCIL MEMORANDUM FOR RESOLUTION**

**AGENDA ITEM**

**AUTHORIZE THE AWARD OF A PROFESSIONAL SERVICES AGREEMENT WITH THE WALLACE GROUP TO DESIGN THE SEPTIC TANK ELIMINATION PROGRAM (STEP) PHASE VIII PROJECT**

**ORIGINATING DEPARTMENT**

**PUBLIC WORKS**

**BACKGROUND INFORMATION**

In 2002, the City implemented the Septic Tank Elimination Program (STEP) to connect properties served by septic sewer systems to the City sanitary sewer system. The construction of STEP I-VI is complete, and STEP VII will be complete by the end of June. STEP VIII will bring City sanitary sewer to the homes in Prairie View Estates Subdivision Phase I. The Prairie View Estates Subdivision is located northeast of the Chaparral Road and West Trimmier Road intersection.

**DISCUSSION/CONCLUSION**

The Wallace Group has extensive experience with the design of sanitary sewer systems. Their proposal includes: topographic and easement survey, preliminary design, a related follow-on final design, bidding documents, construction administration, record document development, and construction staking. After negotiating a fair and reasonable price for The Wallace Group's engineering service, staff recommends approval of their proposal to design the STEP Phase VIII Project for a total amount of \$74,070.00.

**FISCAL IMPACT**

Funding for this project is available in the amount of \$74,070.00 through Account Number 550-9590-495.62-98 of the Water and Sewer Fund.

**RECOMMENDATION**

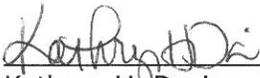
Recommend that the City Council authorize the City Manager to enter into an agreement with The Wallace Group for a professional services agreement for the design and contract administration of the STEP Phase VIII Project in the amount of \$74,070.00, and that the City Manager is expressly authorized to execute any and all change orders within the amounts set by state and local law.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the \_\_\_\_ day of \_\_\_\_\_, 2013, 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**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Paula A. Miller  
CITY SECRETARY

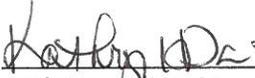


**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this the \_\_\_\_ day of \_\_\_\_\_, 2013, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, § 551.001 *et seq.*

**APPROVED**

\_\_\_\_\_  
Daniel A. Corbin  
MAYOR

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kathryn H. Davis  
CITY ATTORNEY

**ATTEST:**

\_\_\_\_\_  
Paula A. Miller  
CITY SECRETARY



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
CARL R. DARNALL ARMY MEDICAL CENTER  
36000 DARNALL LOOP  
FORT HOOD, TEXAS 76544-4752

Annex # 1

MEMORANDUM OF AGREEMENT  
BETWEEN  
CARL R. DARNALL ARMY MEDICAL CENTER  
AND  
CITY OF KILLEEN, TEXAS

SUBJECT: Emergency Medical Service (EMS) Mutual Aid Agreement.

1. **Purpose.** To establish a cooperative agreement and relationship between the parties to provide Advanced Life Support (ALS)/ambulance coverage to the assigned personnel at Fort Hood, Texas, and their family members, retirees, and the citizens within the area responsibility of the Killeen Texas Fire/Emergency Medical Services.

2. **References.**

- a. Department of Defense (DOD) Instruction 6055.06, DOD Fire and Emergency Services (F&ES) Program, 21 December 2006.
- b. DOD Regulation 6025-18, DOD Health Information Privacy regulation, 24 January 2003.
- c. DOD Instruction 4000.19, Inter-service and Intra-governmental Support, dated 9 August 1995.
- d. Army Regulation 40-68, Clinical Quality Management, 26 February 2004.
- e. Army Regulation 40-3, Medical, Dental and Veterinary Care, 22 February 2008. Rapid Action Review (RAR), 12 March 2010.
- f. Army Regulation, 420-1, Chapter 25, Fire and Emergency Services, (RAR) 002, 24 Aug 2012.
- g. Memorandum for Commanders, MEDCOM Regional Medical Commands, Emergency Medical Services (EMS), 9 Mar 2010.
- h. Army Regulation 58-1, Management, Acquisition and Use of Administrative Motor Vehicles, 10 August 2004.

SUBJECT: Emergency Medical Service (EMS) Mutual Aid Agreement.

3. **Problem.** The potential exists for the demand of ALS/ambulance coverage which exceeds the capability of either service.

4. **Scope.**

a. Both parties agree to provide EMS to either party when requested by the ambulance dispatcher of said party providing the recipient of the request has the available personnel and equipment. Neither organization is obligated to procure additional equipment or other resources to support this agreement or to deplete their current resources in order to respond to the request for assistance.

b. The party extending EMS mutual aid will act in accordance with their licensure level and function under their agency's medical treatment protocols and/or under the direction of the physician at the receiving medical treatment facility (MTF).

c. This agreement does not make the requesting agency liable for any charges incurred during any period of assistance to include the event of a disaster (natural or man-made).

5. **Duties and Responsibilities.**

a. CRDAMC EMS will respond to requests for assistance from Killeen Texas Fire/Emergency Medical Services, if resources are available, it does not detract from the CRDAMC mission and/or when any of the following conditions exist:

(1) The requesting agency does not have sufficient ALS vehicles to transport patients.

(2) A disaster has occurred in the local community and there is an immediate need for medical attention to prevent undue suffering or loss of life.

(3) All other resources have been utilized.

b. Fort Hood Communications Center will be the point of contact for requests and will ensure support is based on the availability of resources and approved by the Commander or his/her designee.

c. Available information regarding location and nature of the incident (s) when requesting mutual aid, in addition to number and severity of patients and other pertinent information will be relayed to the responding crew (s) as it becomes available to the Fort Hood Communications Center.

SUBJECT: Emergency Medical Service (EMS) Mutual Aid Agreement.

d. In the event that Killeen Texas Fire/Emergency Medical Services requests CRDAMC EMS to provide emergency transportation to a non-beneficiary of the military health system, billing procedures will be in accordance with current TRICARE billing and reimbursement policies.

e. Killeen Texas Fire/Emergency Medical Services will respond to requests from CRDAMC EMS, if resources are available, and/or when any of the following conditions exist:

(1) The requesting agency does not have sufficient ALS vehicles to transport patients.

(2) A disaster has occurred on federal property and there is an immediate need for medical attention to prevent undue suffering or loss of life.

(3) All other resources have been utilized.

f. In the event that CRDAMC EMS requests Killeen Texas Fire/Emergency Medical Services to provide emergency transportation for a beneficiary of the military health system, (active duty, retiree or family member), billing procedures will be in accordance with current TRICARE billing and reimbursement policies.

g. Killeen Texas Fire/Emergency Medical Services will process claims for patients with other health insurance in the usual and customary manner for reimbursement.

**6. Privacy of Protected Health Information (PHI).** Each covered entity (health care provider) that is a part of this Memorandum of Understanding (MOA) is bound by the US Department of Health and Human Services (HHS) Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 ("Privacy Rule") developed by HHS pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or the DOD 6025.18-R, DOD Health Information Privacy Regulation, 24 January 2003, as applicable, which are incorporated into this MOA by reference. This MOA constitutes a satisfactory assurance to each covered entity that the other will safeguard the protected health information of any patient and that all parties will comply with privacy standards as required by law.

**7. Effective Date.** This agreement becomes effective upon the signature of both parties and remains in effect until terminated. Termination will be upon 90 days notification by either party of the proposed termination date.

SUBJECT: Emergency Medical Service (EMS) Mutual Aid Agreement.

CARL R. DARNALL ARMY MEDICAL  
CENTER

KILLEEN TEXAS  
FIRE/EMERGENCY MEDICAL  
SERVICES

\_\_\_\_\_  
PATRICK D. SARGENT  
COL, MS  
Commanding

\_\_\_\_\_  
GLENN MORRISON *KMD*  
City Manager  
City of Killeen, Texas

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET AND PLAN OF MUNICIPAL SERVICES OF THE CITY OF KILLEEN BY INCREASING REVENUE AND EXPENDITURE LINE ITEMS IN THE HOTEL OCCUPANCY TAX FUND TO AUTHORIZE EXPENDITURES RELATED TO DOWNTOWN HISTORIC DISTRICT MARKERS**

**ORIGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT SERVICES**

**BACKGROUND INFORMATION**

The City of Killeen was accepted into the Certified Local Government (CLG) program in 2010 by the U.S. Department of the Interior. The CLG program is a local, state and federal government partnership for historic preservation designed to help cities and counties protect a wide range of historic properties. The program offers 50 percent reimbursable grants to help sustain an effective local preservation program.

The City received \$2,338.37 in redirected funds from the Texas Historical Commission (THC) as a result of a local cash over-match on the Historical Outreach Videos CLG grant project completed in September 2012 (*see attached letter from the THC*). The THC encourages using these funds to further historic preservation endeavors.

**DISCUSSION/CONCLUSION**

The redirected funds could be used to commemorate the anticipated achievement of Downtown Killeen's listing on the National Register of Historic Places. The Texas State Board of Review approved the downtown district nomination to the National Register of Historic Places on January 19, 2013. It is anticipated that the THC will submit the final nomination to the Keeper of the National Register at the National Park Service (NPS) by June 2013. Upon NPS's receipt of the nomination, it is posted in the Federal Register and, in most cases, listed within 45 days.

Historical district markers are in line with the Heritage Preservation Board's goals and objectives to support programs that promote heritage tourism in the community and preservation education and awareness in the City.

The estimated budget for one (1) double-sided cast aluminum historical marker measuring 24" wide by 24" high is \$2,338. The budget is based on a preliminary quote from The Southwell Company of San Antonio, Texas and allows for a potential five percent (5%) increase in price that is dependent upon when the marker can be ordered after the anticipated listing in the Federal Register.

**FISCAL IMPACT**

This budget amendment acknowledges the acceptance of the redirected funds received from the Texas Historical Commission in the amount of \$2,338 to be budgeted in revenue account #214-0000-382.65-15; and authorizes the expenditure of the same amount from the hotel occupancy tax expenditure account #214-0000-531.55-58.

**RECOMMENDATION**

Staff recommends that the City Council approve the attached ordinance authorizing the additional revenue of \$2,338 and the additional expenditure of \$2,338 for a downtown National Register of Historic Places marker.

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN AMENDING THE FY2012-13 ANNUAL BUDGET AND PLAN OF MUNICIPAL SERVICES OF THE CITY OF KILLEEN BY INCREASING THE HOTEL OCCUPANCY TAX FUND EXPENDITURE ACCOUNT (214-0000-531.55-58) AND THE TEXAS HISTORICAL COMMISSION GRANT REVENUE ACCOUNT (214-0000-382.65-15) BY \$2,338 EACH; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, a budget for operating the Hotel Occupancy Tax Fund of the City of Killeen for the Fiscal Year October 1, 2012 to September 30, 2013, has been adopted by City Council, in accordance with the City Charter; and

**WHEREAS**, it is the desire of the Killeen City Council to increase the Hotel Occupancy Grant Revenue account due to the acceptance of the Certified Local Government Grant; and

**WHEREAS**, the need for the additional funds within the Hotel Occupancy Tax budget requires a budget amendment;

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

**SECTION I.** That Ordinance 12-069 adopting a budget for operating the municipal government of the City of Killeen for the Fiscal Year October 1, 2012 to September 30, 2013, be amended as to the portion of said budget as follows,

**General Fund Budget**

<b>Account Number</b>	<b>Account Name</b>	<b>Original Budget</b>	<b>Budget Increase</b>	<b>Amended Budget</b>
214-0000-382.65-15	Texas Historical Commission (revenue)	\$0	\$2,338	\$2,338
214-0000-531.55-58	Historic Preservation (expense)	\$0	\$2,338	\$2,338

**SECTION II.** That the City Council finds that the public notice and public hearing requirements of Section 56 of the City Charter have been complied with prior to the enactment of this ordinance.

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

**SECTION IV.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**SECTION V.** That this ordinance shall be effective after its passage and publication according to the law.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas this \_\_\_\_\_ day of \_\_\_\_\_, 2013, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, 551.001 *et seq.*

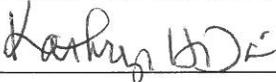
**APPROVED**

\_\_\_\_\_  
Daniel A. Corbin, MAYOR

**ATTEST:**

\_\_\_\_\_  
Paula A. Miller, CITY SECRETARY

**APPROVED AS TO FORM:**

  
\_\_\_\_\_

Kathryn H. Davis, CITY ATTORNEY

**TEXAS HISTORICAL COMMISSION**

*real places telling real stories*

December 17, 2012

Ms. Jill Hall  
Senior Planner / Heritage Preservation Officer  
City of Killeen  
P.O. Box 1329  
Killeen, TX 76540

*RE: Redirected Funds for 2011 Certified Local Government Award of \$ 2,338.37 for the City of Killeen, Bell County, Texas (TX-11-022).*

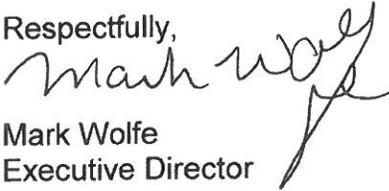
Dear Ms. Hall,

The Texas Historical Commission is pleased to announce the allocation of \$ 2,338.37 in redirected federal funds to the City of Killeen in conjunction with your participation in the FY 2011 Certified Local Government (CLG) Program. The U.S. Department of the Interior, National Park Service, provided funding for this grant under the provisions of the National Historic Preservation Act of 1966.

This funding is available to your CLG community because your completed 2011 grant project has demonstrated a sufficient cash over-match for this additional funding. These redirected monies can be used to help further offset the costs incurred by your 2011 CLG grant project or used to satisfy other historic preservation priorities in your community. No further action or coordination with our office is necessary.

Thank you for your participation in this federal program and for your community's leadership in their efforts to preserve the irreplaceable heritage of Texas. **If you have any questions, please contact Matt Synatschk, CLG State Coordinator, at 512.463.7812.**

Respectfully,



Mark Wolfe  
Executive Director

CC: The Honorable Daniel A. Corbin, Mayor, City of Killeen



**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**ORDINANCE AMENDING THE FY 2012-2013 ANNUAL BUDGET AND PLAN OF MUNICIPAL SERVICES OF THE CITY OF KILLEEN BY INCREASING THE GENERAL FUND TO AUTHORIZE PLAYGROUND ITEMS AT GREEN AVENUE PARK AND FARMERS MARKET**

**ORIGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT**

**BACKGROUND INFORMATION**

The City Council authorized the use of Community Development Block Grant (CDBG) funds on June 26, 2012 to include \$21,841 for a new playground structure and supporting materials, such as decorative fencing and new sidewalk access, at Green Avenue Park and Farmers Market (Ordinance 12-023).

On January 6, 2012, \$13,159 in TML insurance payout funds were deposited into the General Fund.

**DISCUSSION/CONCLUSION**

The first phase of Green Avenue Park and Farmers Market construction was completed in the summer of 2012 with a new pavilion to host a local farmers market and provide community event space, landscaping, lighting, seating, sidewalks, resurfaced parking lot, and free wireless internet access. Currently there are not areas for active recreation at the park which would provide an outlet for neighboring residents and for children while parents are shopping at the farmers market.

Anticipated cost breakdown for a new playscape with supporting items:

Estimated Cost

<b>Project</b>	<b>Cost</b>
Playscape	\$26,000
Ornamental Fencing (200 ft installation included)	\$4,850
Sidewalk Access	\$4,150
	<b>Total \$35,000</b>

The funding for the Green Avenue Park and Farmers Market improvements would consist of \$21,841 in CDBG funds and \$13,159 in City funds, provided the budget amendment is approved.

**FISCAL IMPACT**

This budget amendment would authorize the expenditure of \$13,159 from the General Fund account #010-3025-425.61-37.

**RECOMMENDATION**

Staff recommends that the City Council approve the attached ordinance authorizing the additional expenditure of \$13,159 for playground items at Green Avenue Park and Farmers Market.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS AMENDING THE FY 2012-2013 ANNUAL BUDGET AND PLAN OF MUNICIPAL SERVICES OF THE CITY OF KILLEEN BY INCREASING THE GENERAL FUND BUDGET BY \$13,159 IN ACCOUNT NUMBER 010-3025-425-61-37; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, a budget for operating the General Fund of the City of Killeen for the Fiscal Year October 1, 2012 to September 30, 2013, has been adopted by City Council, in accordance with the City Charter; and

**WHEREAS**, the need for the additional funds within the general fund budget requires a budget amendment;

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

**SECTION I.** That Ordinance 12-069 adopting a budget for operating the municipal government of the City of Killeen for the Fiscal Year October 1, 2012 to September 30, 2013, be amended as to the portion of said budget as follows,

**General Fund Budget**

<b>Account Number</b>	<b>Account Name</b>	<b>Original Budget</b>	<b>Budget Increase</b>	<b>Amended Budget</b>
010-3025-425-61-37	Capital Outlay/Playscape	\$0	\$13,159	\$13,159

**SECTION II.** That the City Council finds that the public notice and public hearing requirements of Section 56 of the City Charter have been complied with prior to the enactment of this ordinance.

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

**SECTION IV.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**SECTION V.** That this ordinance shall be effective after its passage and publication according to the law.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas this \_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 2013, at which meeting a quorum was present, held in  
accordance with the provisions of V.T.C.A., Government Code, 551.001 *et seq.*

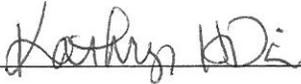
**APPROVED**

\_\_\_\_\_  
Daniel A. Corbin, MAYOR

**ATTEST:**

\_\_\_\_\_  
Paula A. Miller, CITY SECRETARY

**APPROVED AS TO FORM:**

  
\_\_\_\_\_

Kathryn H. Davis, CITY ATTORNEY

**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**ZONING CASE #Z13-11 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT) TO B-4 (BUSINESS DISTRICT) AND 'A'(AGRICULTURAL DISTRICT) TO B-3 (BUSINESS DISTRICT)**

**ORIGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT SERVICES**

**Nature of the Request**

Olympic Real Estate, on behalf of Yong K. and Hyo S. Chang, submits this request to rezone approximately 0.5 acres, being part of the Thomas Robinett Survey, Abstract Number 686, from R-1 (Single-Family Residential District) to B-4 (Business District) for a mechanic shop and approximately 3.987 acres from 'A' (Agricultural District) to B-3 (Local Business District). The property is locally known as 3502, 3602 and 3702 Watercrest Road, Killeen, Texas.

**A building or premises in the district "B-3" local business district shall be used only for the following purposes:**

- (1) Any use permitted in the "B-2" district.
- (2) Bank, savings and loan or other financial institution.
- (3) Day camp.
- (4) Hospital, home or center for the acute or chronic ill.
- (5) Mortuary or funeral chapel.
- (6) Appliance (household) sales and repair service.
- (7) Bakery or confectionery: engaged in preparation, baking, cooking and selling of products at retail on the premises, with six (6) or less employees.
- (8) Boat and accessory sales, rental and service.
- (9) Bowling alleys.
- (10) Cleaning or laundry (self-service).
- (11) Cleaning, pressing and dyeing: with six (6) or less employees.
- (12) Florist, garden shop, greenhouse or nursery office (retail): no growing of plants, shrubs or trees out-of-doors on premises; no outside display or storage unless behind the required front yard or the actual setback of the principal building, whichever is greater.
- (13) General food products, retail sales, such as supermarkets, butcher shops, dairy stores, seafood sales or health food sales.
- (14) Cafeteria or catering service.
- (15) Marine supplies, sales and service.
- (16) Office, general business.
- (17) Restaurant or café (with drive-in or pick-up service).
- (18) Tennis or swim club.
- (19) Small animal clinic or pet grooming shop.
- (20) Hotel or motel.
- (21) Job printing. Not more than seventeen (17) inches by twenty-five (25) inches page size.
- (22) Gasoline service station, auto laundry or car wash.

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

**A building or premises in the district "B-4" business district shall be used only for the following purposes:**

- (1) Any use permitted in the "B-3" district.
- (2) Antique shop.
- (3) Secondhand goods store. No outside display, repair or storage.
- (4) Auto sales. Where the major business is the showroom display and sale of new automobiles by an authorized dealer and used car sales, repair work and storage facilities on the same premises shall be purely incidental; provided, that the area allowed for the repair and storage of cars shall not be nearer than twenty (20) feet from the required front line of the principal building.
- (5) Auto sales. Used cars; no salvage, dismantling or wrecking on premises; no display of vehicles in required front yard.
- (6) Commercial parking (public garage or parking lot).
- (7) Auto upholstery or muffler shop.
- (8) Auto repair (garage).
- (9) Cold storage plant (locker rental).
- (10) Bakery or confectionery, wholesale.
- (11) Bomb shelter (as a principal use).
- (12) Building material or lumber sales (no outside storage).
- (13) Cleaning, pressing, and dyeing:
  - a. No direct exterior exhaust from cleaning plant permitted.
  - b. Dust must be controlled by either bag or filter and separator or precipitator so as to eliminate the exhausting of dust, odor, fumes or noise outside the plant.
- (14) Florist, garden shop, greenhouse or nursery (retail).
- (15) Ballpark, stadium, athletic field (private).
- (16) Wholesale offices.
- (17) Lodges or fraternal organizations.
- (18) Philanthropic institutions (not elsewhere listed).
- (19) Cabinet, upholstery, woodworking shop.
- (20) Plumbing, electrical, air conditioning service shop (no outside storage).
- (21) Trade or business school.
- (22) Sale of beer and/or wine only for off-premises consumption only.
- (23) Garment manufacturing in a space of four thousand (4,000) square feet or less, with all loading and unloading off-street.

**Applicant/Property Owner:** Yong K. and Hyo S. Chang

**Property Location:** The property is located along the south right-of-way of Watercrest Road, south of the t-intersections of Lakecrest and Lakeridge Drives and Watercrest Road. The property is locally known as 3502, 3602 and 3702 Watercrest Road, Killeen, Texas.

**Legal Description:** Thomas Robinett Survey, Abstract Number 686, Killeen, Texas.

### **Annexation/ Zoning/ Plat Case History:**

- This property was annexed into the City of Killeen on October 19, 1999, per ordinance 99-84.
- The subject property was rezoned to 'A' (Agricultural District) and R-1 (Single Family Residential District) on July 11, 2000, per ordinance # 00-54.
- The property is unplatted.

### **Character of the Area:**

**Existing Land Use(s) on the Property:** At the time that this site was annexed into the city, it was the site of Huskey Stables, which was established in 1965 and offered boarding and riding. Currently there are several industrial type metal buildings on the site, and the depth of the property is approximately 199'. There are residential uses in the vicinity of this site.

**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: Public water and sanitary sewer will be required for future development of this site.

#### **Transportation:**

Existing conditions: The site is located along the south right-of-way of Watercrest Road, which is classified as a 90' minor arterial on the City's Thoroughfare Plan.

Proposed Improvements: Undetermined.

Projected Traffic Generation: Undetermined.

### **Environmental Assessment**

**Topography:** The site has elevations ranging from 912' to 938'.

**Regulated Floodplain/Floodway/Creek:** The southeast portion of the subject property lies within a FEMA regulatory special flood hazard area (SFHA). Rainforest Creek is an AE zone, which is categorized as a high risk area with established base flood elevations.

#### **Land Use Analysis**

**Land Use Plan:** The property is designated as 'General Commercial' on the future land use map (FLUM) of the Comprehensive Plan.

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

**Consistency:** This request is consistent with the plan.

Staff notified fifty-six (56) surrounding property owners within a 200' notification boundary. Staff received protests from thirteen (13) property owners within the 200' notification area, who own twenty (20) percent of the area of those lots or land immediately adjacent to the subject site. In accordance with Killeen Code of Ordinances Section 31-39(d), the zoning request shall not become effective except by the favorable vote of three-fourths (3/4) of all the members of the city council.

### **Recommendation**

The Planning and Zoning Commission recommended disapproval by a vote of 4 to 2. In his motion, Commissioner Steine stated that his concerns were incompatibility between the residentially zoned areas (Pharr v. Tippett) and the applicant's proposal. Staff received a 20% protest from the surrounding property owners, and approval of this request will require an affirmative vote from a 3/4 majority of the City Council.

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT) TO B-4 (BUSINESS DISTRICT) AND 'A' (AGRICULTURAL DISTRICT) TO B-3 (LOCAL BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Olympic Real Estate, on behalf of Yong K. and Hyo S. Chang, submits this request for an amendment of the zoning ordinance of the City of Killeen by changing the classification of approximately 0.5 acres, from R-1 (Single-Family Residential District) to B-4 (Business District) for a mechanic shop and approximately 3.987 acres from 'A' (Agricultural District) to B-3 (Local Business District), said request having been duly presented and recommended for disapproval by the Planning and Zoning Commission of the City of Killeen on the 13th day of May 2013, 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 28th day of May 2013, 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  $\frac{3}{4}$  majority opinion that the request should be approved;

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

**SECTION I.** That the zoning classification of the following described tract be changed from R-1 (Single-Family Residential District) to B-4 (Business District) for a mechanic

shop and approximately 3.987 acres from 'A' (Agricultural District) to B-3 (Local Business District), for property being part of the Thomas Robinett Survey, Abstract Number 686. The property is locally known as 3502, 3602 and 3702 Watercrest Road, Killeen, Texas.

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

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

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

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 28th day of May 2013, 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:**

\_\_\_\_\_  
**Daniel A. Corbin, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Paula A. Miller, CITY SECRETARY**

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
**Kathryn H. Davis, City Attorney**

Case #13-11  
Ord #13-\_\_\_

**PLANNING AND ZONING COMMISSION MEETING  
MINUTES  
MAY 13, 2013**

**CASE #Z13-11  
R-1 TO B-4 AND A TO B-3**

**HOLD a public hearing and consider a request by Yong K. and Hyo S. Chang to rezone approximately 0.5 acre, being part of the Thomas Robinett Survey, Abstract Number 686, from R-1 (Single-Family Residential District) to B-4 (Business District) for a mechanic shop and approximately 3.987 acres from 'A' (Agricultural District) to B-3 (Local Business District). The property is locally known as 3502, 3602 and 3702 Watercrest Road, Killeen, Texas.**

Chairman Frederick requested staff comments.

City Planner McIlwain stated that this request by Olympic Real Estate, on behalf of Yong K. and Hyo S. Chang, submitted this request to rezone approximately 0.5 acres, being part of the Thomas Robinett Survey, Abstract Number 686, from R-1 (Single-Family Residential District) to B-4 (Business District) for a mechanic shop and approximately 3.987 acres from 'A' (Agricultural District) to B-3 (Local Business District). The property is located along the south right-of-way of Watercrest Road, south of the t-intersections of Lakecrest and Lakeridge Drives and Watercrest Road. The property is locally known as 3502, 3602 and 3702 Watercrest Road, Killeen, Texas.

The southeast portion of the subject property lies within a FEMA regulatory special flood hazard area (SFHA). Rainforest Creek is an AE zone, which is categorized as a high risk area with established base flood elevations.

The property is designated as 'General Commercial' on the future land use map (FLUM) of the Comprehensive Plan. The Comprehensive Plan calls for a wide range of commercial retail and service uses, at varying scales and intensities depending on the site. This request is consistent with the plan.

Staff notified fifty-six (56) surrounding property owners within a 200' notification boundary. Six letters in opposition were received along with a petition signed by 14 property owners within the 200 foot boundary.

Staff recommended approval of the applicant's request for B-3 (Local Business District) and B-4 (Business District). When this site was annexed into the city, it was the site of Huskey Stables, which was established in 1965 and offered boarding and riding. Currently there are several industrial type metal buildings on the site, and the depth of the property is approximately 199'. While the depth of the tract is essentially twice that of a standard R-1 sized parcel, the level of service of Watercrest Road is not conducive to residential development fronting along its right-of-way. The FLUM does encourage commercial and

retail operations along this corridor, and this site is appropriately sized to yield a complimentary scaled development.

Mr. Dong Kim, 613 S. Roy Reynolds Drive, Harker Heights, was present to represent this request.

Chairman Frederick opened the public hearing.

Ms. Andrea Frediani, 3508 Viewcrest Dr. and Mr. James Bittle, 3600 Viewcrest Dr. spoke in opposition to the request. The property in question is surrounded on all sides by residentially zoned property. The concerns voiced were lack of privacy, increase in noise, additional lighting, and children crossing the road. They would like to keep the current peace and quiet that is already there. Ms. Frediani also stated that there is a daycare center adjacent to the property and also a home based daycare in the vicinity. A request for B-1 zoning would be preferable since the customers and uses for that type of property would not significantly interfere with our use of our property.

Commissioner Steine motioned to recommend disapproval of the request on the grounds that it is incompatible with the surrounding neighborhood. Commissioner Dorroh seconded the motion. The motion passed 4-2 with Commissioners Hicks and Butler in opposition to the motion to disapprove.

Chairman Frederick stated that this will be forwarded to city council on May 28, 2013 with a recommendation to disapprove.



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

CASE #: 213-11

## City of Killeen Zoning Change Application

General Zoning Change    Special Use Permit    Specific Use Permit

Name(s) of Property Owner: Yong K. and Hyo S. Chang  
 Current Address: 2703 Hezekiah Dr.  
 City: Killeen State: TX Zip: 76542-4598  
 Home Phone: ( ) \_\_\_\_\_ Business Phone: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

Name of Applicant: Olympic Real Estate / Dong Soo Kim  
(If different than Property Owner)

Address: 605 N. Gray St. #4  
 City: Killeen State: TX Zip: 76541

Home Phone: (254) 621-0070 Business Phone: (254) 628-4653 Email: hehrrkckim@gmail.com

Address/Location of property to be rezoned: 2602 Watercrest Rd.

Legal Description: A0680C T Robinett, 66, 67-2, Acres 4.487  
Metes & Bounds   or   Lot(s)   Block   Subdivision

Has the property been platted?   YES    NO

Type of Ownership:  Sole Ownership    Partnership    Corporation    Other

Present Zoning: R1   Present Use: \_\_\_\_\_

Proposed Zoning: B3/B4   Proposed Use: Mechanic Shop

Specific/Special Use Permit for: \_\_\_\_\_

This property was conveyed to owner by deed dated 11/21/2005 and recorded in Volume, 5951  
 Page 112, of the Bell County Deed Records. (Attached)

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

**APPOINTMENT OF AGENT**

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

Name of Agent: Dong Soo Kim dba Olympic Real Estate

Mailing Address: 605 N. Gray St. #4

City: Killeen State: TX Zip: 76541

Home Phone: (254) 681-0070 Business Phone: (254) 622-4653 Email: thebrokerkim@gmail.com

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

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

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

Signature of Agent [Signature] Title Broker

Printed/Typed Name of Agent Dong Soo Kim Date 3-14-13

Signature of Applicant [Signature] Title Broker

Printed/Typed Name of Applicant Dong Soo Kim Date 3-14-13

Signature of Property Owner Yong K CHANG Title owner

Printed/Typed Name of Property Owner Yong K. Chang Date 3-14-13

Signature of Property Owner ~~Ch. Yong K. Chang~~ Hyo Suk Chang Title owner

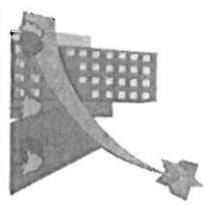
Printed/Typed Name of Property Owner Hyo S. Chang Date 3-14-13

Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_

Printed/Typed Name of Property Owner \_\_\_\_\_ Date \_\_\_\_\_

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





**PLANNING AND DEVELOPMENT SERVICES**

**ZONING CASE:**  
#Z13-11

**ZONING FROM:**

R1 TO B4  
&  
A TO B3

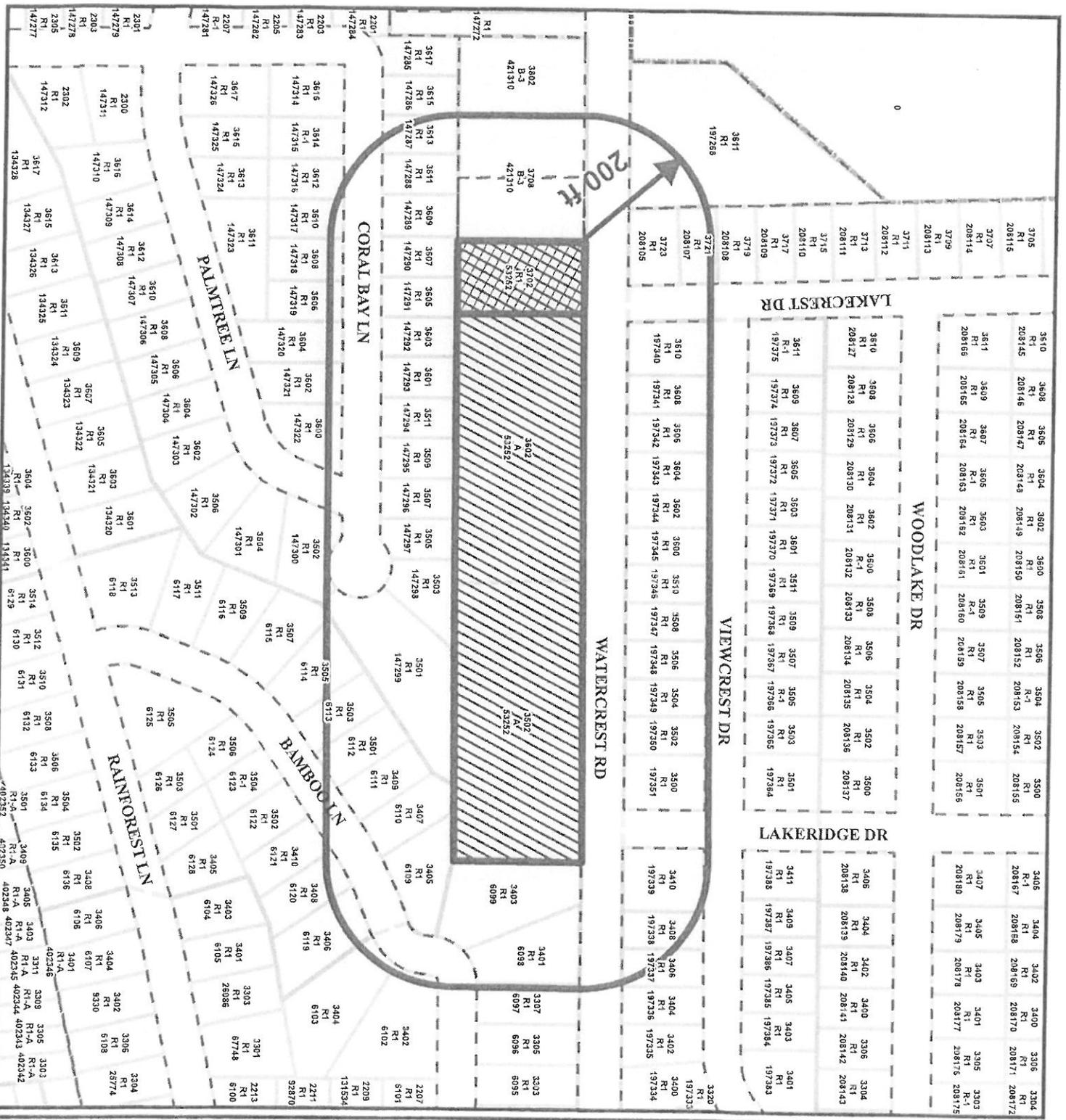
**PROPERTY OWNER:**

CHANG, YONG K ETUX HYO S

**LEGEND**

-  200 Foot Buffer #Z13-11
-  ZONING - R1 TO B4
-  ZONING - A TO B3
-  Current Zoning
-  Subdivision
-  Parcel
-  City Limits

Date: 4/4/2013



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

YOUR NAME: <u>Romeo Susit</u>	PHONE NUMBER:
CURRENT ADDRESS: <u>3609 Viewcrest Dr Killeen, TX</u>	
ADDRESS OF PROPERTY OWNED: <u>Same</u>	
COMMENTS:	R-1 to B-3 & B-4
SIGNATURE: <u>Romeo Susit</u>	SPO #Z13-11/00

P.O. BOX 1329 · KILLEEN, TEXAS 76540-1329 254 501 7630 254 501 7628 FAX  
WWW.CI.KILLEEN.TX.US

*rec'd 4/22/13*

RECEIVED  
APR 22 2013  
PLANNING

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

YOUR NAME: <u>William Brader</u>	PHONE NUMBER: <u>254-681-0636</u>
CURRENT ADDRESS: <u>3510 Viewcrest Dr.</u>	
ADDRESS OF PROPERTY OWNED: <u>3510 Viewcrest Dr.</u>	
COMMENTS:	R-1 to B-3 & B-4
SIGNATURE: <u>[Signature]</u>	SPO #Z13-11/09

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WWW.CI.KILLEEN.TX.US

*rec'd 4/22/13*

RECEIVED  
APR 22 2013  
PLANNING

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

YOUR NAME: <u>ANDREA FREDIANI</u>	PHONE NUMBER: <u>(512) 304-4323</u>
CURRENT ADDRESS: <u>3508 Viewcrest Drive, Killeen, TX 76549</u>	
ADDRESS OF PROPERTY OWNED: <u>3508 Viewcrest Drive, Killeen</u>	
COMMENTS: <u>I protest rezoning of this property to anything other than B-1 due to infringement upon my ability to</u>	R-1 to B-3 & B-4
SIGNATURE: <u>Andrea Frediani</u>	SPO #Z13-11/12

P.O. BOX 1329 · KILLEEN, TEXAS 76540-1329 254 501 7630 254 501 7628 FAX  
WWW.CI.KILLEEN.TX.US

*rec'd 4/22/13*

RECEIVED  
APR 22 2013  
PLANNING

use and enjoy my property as well as increased traffic, increased crime and invasion of my privacy which, due to existing city ordinances, cannot be mitigated by other means except denial of this rezoning request.

CUT HERE

YOUR NAME: <u>Julio Rivera</u>	PHONE NUMBER: <u>554-3048</u>
CURRENT ADDRESS: <u>3401 Bamboo LN 254-768-1286</u>	
ADDRESS OF PROPERTY OWNED: <u>Killeen TX 76549</u>	
COMMENTS: <u>I support the Mechanic Shop</u>	<u>R-1 to B-3 &amp; B-4</u>
SIGNATURE: <u>Julio Rivera</u>	SPO #Z13-11/

RECEIVED

PO BOX 1329 · KILLEEN, TEXAS 76540-1329 · 254.501.7630 · 254.501.7628 FAX  
WWW.CIKILLEEN.TX.US

APR 19 2013

PLANNING

To whom I may concern,  
I'm very happy to know that we are going to have a mechanic shop in this area we really need it in this area

Attachments

CUT HERE

(254)317-3670

YOUR NAME: <u>James E. Bittle</u>	PHONE NUMBER:
CURRENT ADDRESS: <u>3600 Viewcrest Dr. Killeen, TX. 76549</u>	
ADDRESS OF PROPERTY OWNED: <u>3600 Viewcrest Dr.</u>	
COMMENTS: <u>BOUGHT HOME IN 2000, BRAND NEW, THIS IS A TRUE RESIDENTIAL NEIGHBORHOOD</u>	<u>R-1 to B-3 &amp; B-4</u>
SIGNATURE: <u>James E. Bittle</u>	SPO #Z13-11/

RECEIVED

PO BOX 1329 · KILLEEN, TEXAS 76540-1329 · 254.501.7630 · 254.501.7628 FAX  
WWW.CIKILLEEN.TX.US

PLANNING

Speaking as a surviving heart patient, and a disabled veteran, I enjoy the peace of mind, quiet atmosphere. I feel that with the yase areas in our growing town, and county the business should seek another area. I enjoy living where I live, but with a auto repair shop in my back yard.

4/15/13

To Whom it may concern,

This letter is to show that I Kristie Boehm, property owner of 3501 coral Bay Ln Killeen Tx 76549 an opposed to the rezoning of 3702, 3502, and 3602 Water crest Rd. The Property of 3502 Watercrest is right behind my property. I very much do not want a business in my backyard. Not to mention the added noise, traffic, and theft that it would bring.

This change in the area would make my home less valuable and less desirable if I choose to put it on the market. Please take my opposition into consideration!

Thank you  
Sincerely

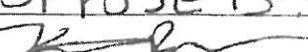
Kristie Boehm



503-798-1429

RECEIVED  
APR 19 2013

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

YOUR NAME: Kristie Boehm	PHONE NUMBER: 503-798-1429
CURRENT ADDRESS: 590 Loar Rd Silverton OR 97381	
ADDRESS OF PROPERTY OWNED: 3501 coral Bay Ln 76549	
COMMENTS: OPPOSED!!!	R-1 to B-3 & B-4
SIGNATURE: 	SPO #Z13-11/ 27

If surrounding property owners want to oppose a zoning change request that has not been acted upon by City Council, complete the following form and submit it to the Planning Department prior to the City Council meeting. (Staff recommends that you submit this form as early as possible and before the Planning and Zoning Commission's recommendation to City Council.) Original signatures and addresses/tax identification numbers must be submitted to the Planning Department in order to be valid.

RECEIVED  
APR 22 2013  
PLANNING

The petition will be subject to the following state law.

**Per Section 211.006(d) of the Texas Local Government Code:**

"If a proposed change to a regulation or boundary [zoning] is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

1. the area of the lots or land covered by the proposed change; or
2. the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area."

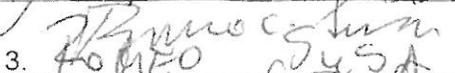
Zoning Case # and Description: CASE # 213-11 3702 WATERCREST R-1 to B-4  
3502 & 3602 WATERCREST A/H to B-3

I, ANDREA L. FREDIANE, do hereby verify that I collected the information contained on this document and that the persons whose names are listed hereon did sign this document in my presence and that I witnessed their signature for the purposes stated herein.

  
Signature of Person Collecting Names

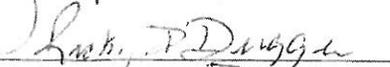
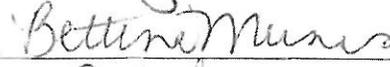
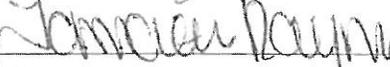
3508 Viewcrest Drive (284) 304-9323 MrsFred@het.net.com  
Address KILLEEN, TX 76549 Telephone Number E-Mail Address

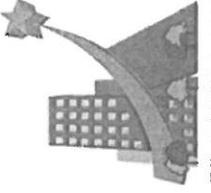
We, the undersigned owners of property within 200' of the property that is the subject of this zoning case, oppose the requested zoning change because (attach additional pages if necessary): Rezoning of these properties will infringe upon adjacent property owners' ability to enjoy and fully utilize their properties. If approved, the new zoning will lead to increased traffic, increased crime, and invasion of the privacy of the property owners due to the geography of the land. Due to existing City of Killeen ordinances, this invasion of privacy cannot be mitigated by any other means except denial of this rezoning request.

Property Owner Signature	Printed Name	Address or Tax ID #
1. 	Nathan E. Brooks	370 Viewcrest Dr 76549
2. 	James E. Bittle	3600 Viewcrest Dr. Killeen, TX
3. 	Romeo C. Suga	3604 Viewcrest Dr Killeen, TX
4. 	ANDREA L. FREDIANE	3508 Viewcrest Drive Killeen, TX 76549
5. 	Helen Crooks	3502 Viewcrest Dr Killeen TX 76549

(Continued →)

# CASE 213-11

Property Owner Signature	Printed Name	Address or Tax ID #
6. 	Lirkie L. Spencer	3505 Coral Bay Ln
7. 	Joseph W. Parrish	3507 Coral Bay Lane
8. 	Ricky D. Digger	3509 Coral Bay
9. 	Hollayal Dean	3604 Coral Bay
10. 	Bettina Munn	3613 Coral Bay
11. 	Madeleen Pineda	3405 Bamboo Lane
12. <del></del>	<del>Jenevise Anthony</del>	<del>3600 Coral Bay Ln</del>
13. 	Felisha Walker	3406 Viewcrest Dr
14. 	Tamara Rayner	3406 Bamboo Lane
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		
26.		
27.		



# PLANNING AND DEVELOPMENT SERVICES

## 20% OPPOSITION MAP

### ZONING CASE:

#Z13-11

### ZONING FROM:

R1 TO B4  
&  
A TO B3

### PROPERTY OWNER:

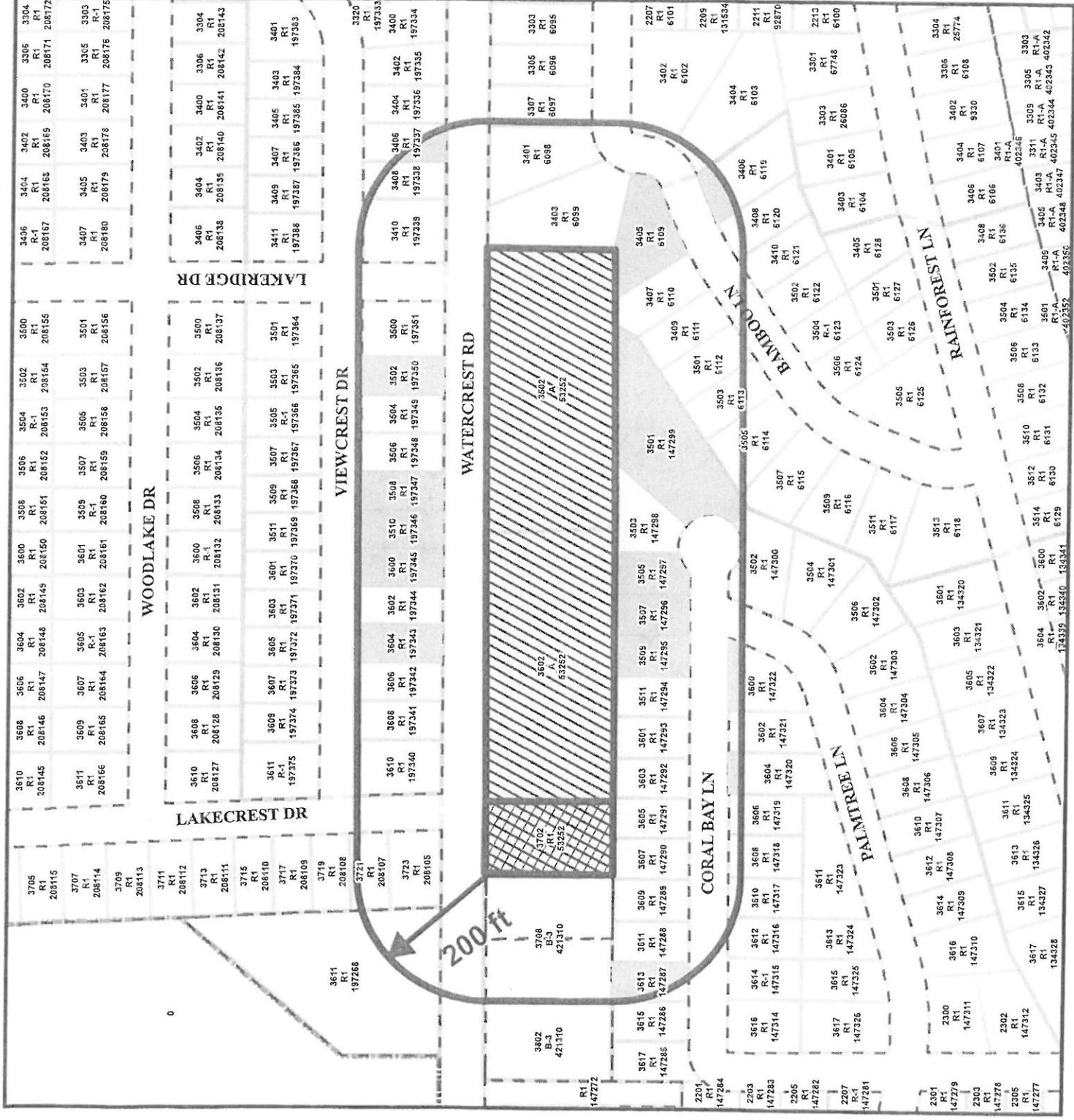
CHANG, YONG K ETUX HYO S

### LEGEND

- 200 Foot Buffer #Z13-11
- Parcels in Opposition - 20%
- ZONING - R1 TO B4
- ZONING - A TO B3
- Current Zoning
- Subdivision
- Parcel
- City Limits



Date: 5/14/2013



## CONSIDERATIONS

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

### **A. General Factors to Consider:**

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

### **B. Conditional Use Permit (if applicable)**

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

### **C. Conditions to Consider**

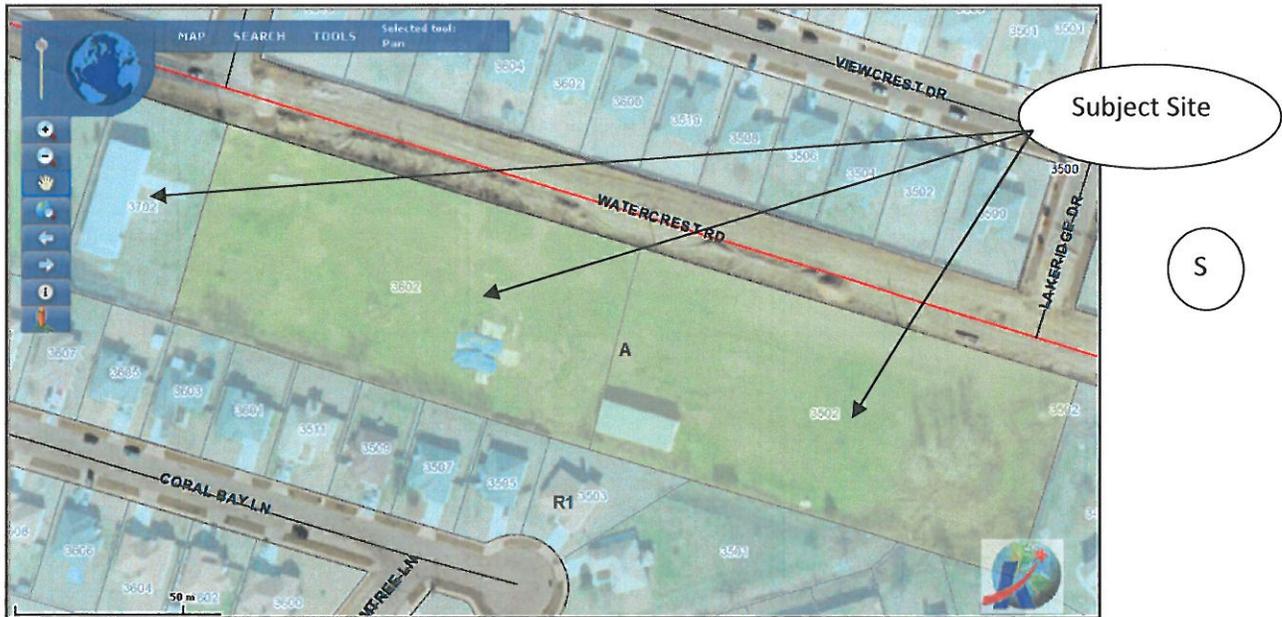
1. Occupation shall be conducted only by members of family living in home.
2. No outside storage or display
3. Cannot change the outside appearance of the dwelling so that it is altered from its residential character.
4. Cannot allow the performance of the business activity to be visible from the street.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

## Zoning Case Z13-11

### Figure 1. Street View



### Figure 2. Zoning Map



**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**ZONING case #Z13-13 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT) TO B-3 (BUSINESS DISTRICT)**

**ORIGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT SERVICES**

**Nature of the Request**

This request is to rezone approximately 2.102 acres from R-1 (Single Family Residential District) to B-3 (Local Business District). The applicant is rezoning the property to allow for a First Texas Bank branch.

**District Descriptions:**

A building or premises in the district "B-3" local business district shall be used only for the following purposes:

- Any use permitted in the "B-2" district.
- Bank, savings and loan or other financial institution.
- Day camp.
- Hospital, home or center for the acute or chronic ill.
- Mortuary or funeral chapel.
- Appliance (household) sales and repair service.
- Bakery or confectionery: engaged in preparation, baking, cooking and selling of products  
at retail on the premises, with six (6) or less employees.
- Boat and accessory sales, rental and service.
- Bowling alleys.
- Cleaning or laundry (self-service).
- Cleaning, pressing and dyeing: with six (6) or less employees.
- Florist, garden shop, greenhouse or nursery office (retail): no growing of plants, shrubs or trees out-of-doors on premises; no outside display or storage unless behind the required front yard or the actual setback of the principal building, whichever is greater.
- General food products, retail sales, such as supermarkets, butcher shops, dairy stores, seafood sales or health food sales.
- Cafeteria or catering service.
- Marine supplies, sales and service.
- Office, general business.
- Restaurant or café (with drive-in or pick-up service).
- Tennis or swim club.
- Small animal clinic or pet grooming shop.
- Hotel or motel.

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

**Applicant/Property Owner:** Juanita L. Faucett & Troy M. Faucett Family Trust

**Property Location:** The property is located on the east right-of-way of S. W.S. Young Drive, immediately north of the Brookside Apartments.

**Legal Description:** Being a 2.102 acre tract of land out of the W.H. Cole Survey, Abstract No. 201, Bell County, Texas.

**Zoning/ Plat Case History:**

- There have been no recent rezones on record for this property.
- The property has not been platted.

**Character of the Area:**

**Existing Land Use(s) on the Property:** Vacant

**Historic Properties:** None

**Infrastructure and Community Facilities**

**Emergency Response:**

Fire District: 6

Fire Response Zone: 6-6

Miles from Fire Station: Less than 1/2 mile from Fire Station No. 6, which is located at 2001 E. Elms Road.

**Water, Sewer and Drainage Services:**

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: There is adequate water supply for anticipated development. There is adequate sewer capacity for anticipated development.

**Transportation:**

Existing conditions: The tract has direct access to S. W.S. Young Drive, which is classified as a 90' minor arterial on the city's Thoroughfare Plan.

Proposed Improvements: None proposed as part of this development.

Projected Traffic Generation: Minimal.

## **Environmental Assessment**

**Topography:** The property slopes downward in a southeasterly orientation; elevations range from 872' on the western property boundary to 864' on the eastern property boundary.

**Regulated Floodplain/Floodway/Creek:** This property is not within any FEMA special flood hazard area.

## **Land Use Analysis**

**Land Use Plan:** This area is designated as General Residential on the future land use map (FLUM).

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

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

## **Public Notification**

The staff notified four (4) surrounding property owners regarding this request. Staff received one response of support from Michael Linneman, the owner of 3402 S. W.S. Young Drive, Killeen, Texas.

## **Recommendation**

The Planning and Zoning Commission recommended approval of the applicant's request by an unanimous vote. The property has direct frontage on a major roadway (W.S. Young) and the development of single-family housing at this location is unlikely. The existing properties north of the subject site are zoned either B-2 (Retail Business District) or B-3, and consists of the First Baptist Church, professional uses and office spaces. Therefore the zoning request does not constitute a marked departure from the zoning of surrounding non-commercial properties.

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT) TO B-3 (LOCAL BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Juanita L. Faucett and Troy M. Faucett Family Trust, submits this request for an amendment of the zoning ordinance of the City of Killeen by changing the classification of approximately 2.102 acres, being part of the W. H. Cole Survey, Abstract No. 201, from R-1 (Single-Family Residential District) to B-3 (Local Business District), said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 13th day of May 2013, 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 28th day of May 2013, 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 request should be approved;

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

**SECTION I.** That the zoning classification of the following described tract be changed from R-1 (Single-Family Residential District) to B-3 (Local Business District), for property being part of the W. H. Cole Survey, Abstract No. 201. The property is located

on the east right-of-way of S. W.S. Young Drive, approximately 769' north of Elms Road, Killeen, Texas.

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

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

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

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 28th day of May 2013, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

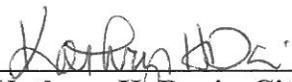
**APPROVED:**

\_\_\_\_\_  
**Daniel A. Corbin, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Paula A. Miller, CITY SECRETARY**

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
**Kathryn H. Davis, City Attorney**

Case #13-13  
Ord #13-\_\_

**MINUTES  
PLANNING AND ZONING COMMISSION MEETING  
MAY 13, 2013**

**CASE #Z13-13  
R-1 TO B-3**

**HOLD a public hearing and consider a request by Juanita L. Faucett & Troy M. Faucett Family Trust to rezone approximately 2.102 acres part of the W. H. Cole Survey, Abstract No. 201 from R-1 (Single-Family Residential District) to B-3 (Local Business District) for a bank. The property is located on the east right-of-way of S. W.S. Young Drive, approximately 769' north of Elms Road, Killeen, Texas.**

Chairman Frederick requested staff comments.

Senior Planner Ferenc stated that this request is to rezone approximately 2.102 acres from R-1 (Single Family Residential District) to B-3 (Local Business District). The applicant is rezoning the property to allow for a First Texas Bank branch. The property is located on the east right-of-way of S. W.S. Young Drive, immediately north of the Brookside Apartments.

This area is designated as General Residential on the future land use map (FLUM). General Residential encompasses detached residential dwelling units, attached housing types, planned developments, as well as parks and public/ institutional places. The comprehensive plan considers General Residential to be of a medium intensity category/character, and states that "neighborhood-scale commercial uses are expected to emerge over time and should be encouraged on sites and in locations within (or near the edge of) General Residential areas that are best suited to accommodate such uses while ensuring compatibility with nearby residential uses."

The staff notified four (4) surrounding property owners regarding this request. Staff received one response in support

Staff recommended approval of B-3 (Local Business District) zoning at this location for the First Texas Bank. The property has direct frontage on a major roadway (W.S. Young) and the development of single-family housing at this location is unlikely. The existing properties north of the subject site are zoned either B-2 (Retail Business District) or B-3, and consists of the First Baptist Church, professional uses and office spaces. Therefore the zoning request does not constitute a marked departure from the zoning of surrounding non-commercial properties.

Mr. David Barr was present to represent this request.

Chairman Frederick opened the public hearing.

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

Commissioner Dorroh motioned to recommend approval of this request. The motioned was seconded by Vice Chair Langford. The motioned passed unanimously.

Chairman Frederick stated that this will be forwarded to City Council on May 28, 2013, with a recommendation to approve.



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

CASE # 13-13

## City of Killeen Zoning Change Application

[ ] General Zoning Change [ ] Conditional Use Permit

Name(s) of Property Owner: Juanita L. Faucett & Troy M Faucett Family Trust

Current Address 4902 Lakeshore Dr.

City: Killeen State: TX Zip: 76543

Home Phone: 254-699-6632 Business Phone: ( ) Cell Phone: ( )

Email: \_\_\_\_\_

Name of Applicant: First Texas Bank  
(If different than Property Owner)

Address: P O Box 609

City: Killeen State: TX Zip: 76540

Home Phone: ( ) - Business Phone: 254-634-2132 Cell Phone: 254-681-9202

Email: Pat@firsttexasbank.com

Address/Location of property to be rezoned: 2.102 on So. W. S. Young

Legal Description: 2.102 ac. out of the W. H. Cole Survey Abst. 201  
(see attached)

Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan?  YES  NO

Type of Ownership: \_\_\_\_\_ Sole Ownership  Partnership  Corporation \_\_\_\_\_ Other

Present Zoning: R1 Present Use: Vacant land

Proposed Zoning: B3 Proposed Use: Bank

Conditional Use Permit for: \_\_\_\_\_

This property was conveyed to owner by deed dated 7-18-2002 and recorded in Volume 4739  
Page 392-5 Instrument Number 037510 of the Bell County Deed Records.  
(Attached)

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

## APPOINTMENT OF AGENT

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

Name of Agent: Patton Kaufman  
Mailing Address: P. O. Box 609  
City: Killeen State: TX Zip: 76540  
Home Phone: ( ) \_\_\_\_\_ Business Phone: (254) 6342132 Email: Pat@firstttexasbank.com

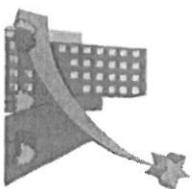
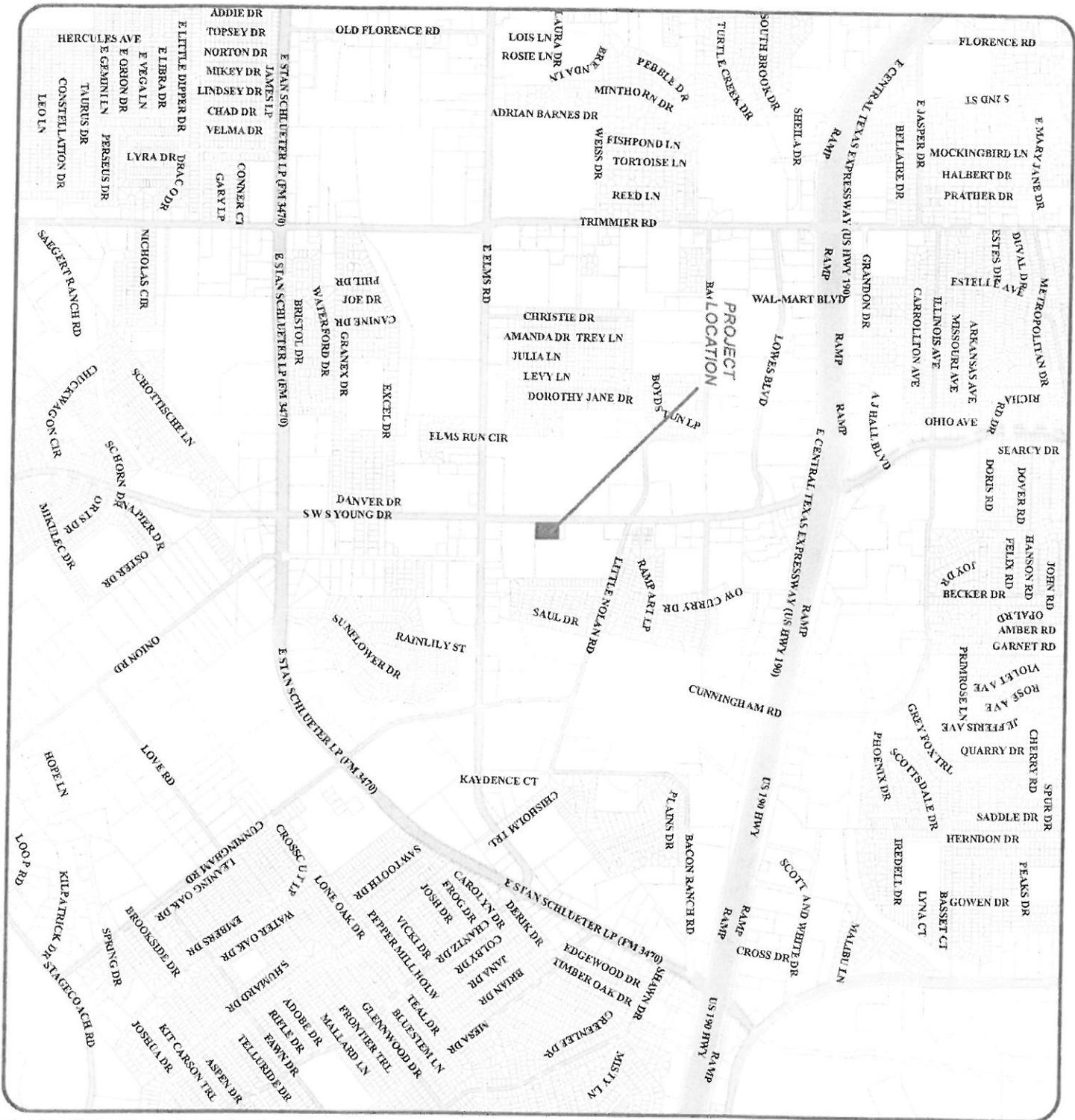
I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

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

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

Signature of Agent <u><i>Patton Kaufman</i></u>	Title <u>President</u>
Printed/Typed Name of Agent <u>Patton Kaufman</u>	Date <u>4-8-13</u>
Signature of Applicant _____	Title _____
Printed/Typed Name of Applicant _____	Date _____
Signature of Property Owner <u><i>Juanita L. Faucett</i></u>	Title <u>4-10-13</u>
Printed/Typed Name of Property Owner <u>Juanita L. Faucett</u>	Date <u>Individually</u>
Signature of Property Owner <u><i>Juanita L. Faucett</i></u>	Title <u>4-10-13</u>
Printed/Typed Name of Property Owner <u>Juanita L. Faucett</u>	Date <u>Trustee</u>
Signature of Property Owner <u><i>David [unclear]</i></u>	Title <u>Broker/Agent</u>
Printed/Typed Name of Property Owner <u>Juanita L. Faucett</u>	Date <u>4-10-13</u>

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



**PLANNING AND DEVELOPMENT SERVICES**

**ZONING CASE:**  
#Z13-13

**ZONING FROM:**  
R1 TO B3

**PROPERTY OWNER:**  
FAUCETT, TROY M  
FAMILY TRUST ETAL

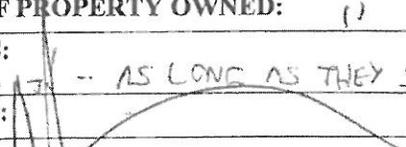
- Legend**
- Zoning Case
  - City Limits
  - Parcel

Date: 4/18/2013





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

YOUR NAME: MICHAEL R. LINNEMANN	PHONE NUMBER: 535-6186
CURRENT ADDRESS: 3402 S. WS YOUNG, KILLEEN	
ADDRESS OF PROPERTY OWNED: ( )	
COMMENTS: ALL FOR -- AS LONG AS THEY SERVE BEER	R-1 to B-3
SIGNATURE: 	SPO #Z13-13/02

RECEIVED  
MAY 06 2013  
PLANNING

## CONSIDERATIONS

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

### A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

### B. Conditional Use Permit (if applicable)

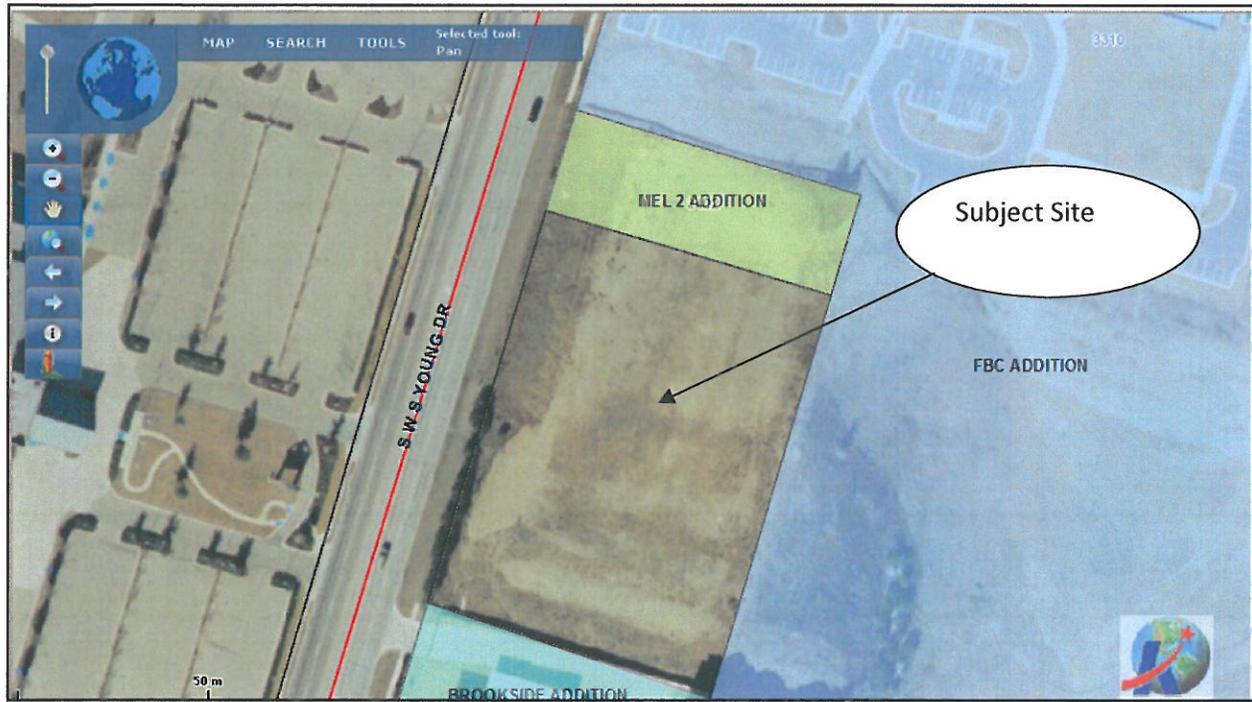
Whether the use is in harmonious with and adaptable to buildings, structures and use of abutting property and other property in the vicinity of the premises under construction.

### C. Conditions to Consider

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

# Zoning Case Z13-13

**Figure 1. Zoning Map**



**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**ZONING case #Z13-14 AR-1 (Agricultural Single-Family Residential District) to SR-1 (Suburban Residential Single-Family District)**

**ORIGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT SERVICES**

**Nature of the Request**

This request is to rezone from 'A-R1' (Agricultural Single-Family Residential District) to 'SR-1' (Suburban Residential Single-Family District) approximately 8.167 acres as part of the James D. Allcorn Survey, Abstract No. 25. The property is located south of Fire Station #8 on the west right-of-way of East Trimmier Road, Killeen, Texas.

**SR-1 Use regulations:**

A building or premises in a "SR-1" suburban residential single-family district shall be used only for the following purpose:

- (1) Single-family detached dwellings.
- (2) Home occupations, accessory uses and buildings as permitted in section 31-186(13).

**Applicant/Property Owner:** Clement and Frankie McClurkan

**Property Location:** The property is located south of Fire Station #8 on the west right-of-way of East Trimmier Road.

**Legal Description:** The property is part of the James D. Allcorn Survey, Abstract No. 25.

**Annexation/ Zoning/ Plat Case History:**

- The property was annexed into the City of Killeen effective May 1, 2004, per ordinance no. 04-12.
- The property was zoned A-R1 (Agricultural Single Family Residential District) on April 26, 2005, per ordinance #05-31.
- The property has not been platted.

**Character of the Area:**

**Existing Land Use(s) on the Property:** Undeveloped parcel of land.

**Historic Properties:** None

**Infrastructure and Community Facilities**

**Emergency Response:**

Fire Protection District: City of Killeen, Fire District 8

Fire Response Zones: 8-1

Miles from Fire Station: Approximately 0.10 miles from Fire Station 8, which is located at 7252 East Trimmier Road, Killeen, Texas.

**Water, Sewer and Drainage Services:**

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment:

This report provides advice on the availability of public water, sanitary sewer, and drainage utility services to the subject property. The existing potable water main serving the property is a 2-inch diameter Class pipe. The main was originally installed on behalf of West Bell County Water Supply Corporation. This public asset was acquired by the City of Killeen through a TCEQ-approved Sale/Transfer/Merger and amended CCN application in 2008. In accordance with 30 TAC §290.44(c), the maximum number of domestic customer service connections to a 2-inch diameter main is 10. This main is adequate to provide domestic service flows only; it is inadequate to provide fire flow. It is unknown how many existing domestic service connections extend from this main. The presence of existing potable water service taps to the subject property is unknown. If existing domestic water service taps are in place, these taps may be used to support existing development on the property - to include mobile homes. If the property is re-platted into subdivided residential lots, the developer will be required to extend a public water main to the property that provides adequate domestic and fire flows in accordance with the City of Killeen Code of Ordinances and other applicable development criteria.

While the drainage basin that includes the subject property is served by public sanitary sewer infrastructure, the gravity interceptor serving the basin is located several hundred feet south of the subject property. If the property is subdivided into individual lots, the developer will be required to extend a public sanitary sewer main to the property in accordance with the City of Killeen Code of Ordinances and other applicable development criteria.

The property is currently in rural/homestead use. The property is largely in an undeveloped state. Public storm drainage infrastructure is limited to public rights-of-way and detention of post development storm water run-off may be required. The tract does not lie within a FEMA regulatory special flood hazard area. East Trimmier Road is a rural section road with a bar ditch profile.

Public Works - Engineering staff advised the re-zoning applicant to evaluate the public infrastructure serving the existing single-family residential subdivision to the east of the subject property. Staff encouraged the owner to explore extension of public water, sanitary sewer, drainage, transportation, and pedestrian infrastructure in an integrated and mutually-beneficial manner should he seek to develop his property into a residential subdivision.

The property owner and his agents are cautioned that unknown or unforeseen site conditions may require remedial action to provide safe and adequate water, sewer, or drainage service to the property. Further, City of Killeen development regulations require that capacity analyses related to development of the property are the sole responsibility of the owner. The owner or his agents, acting as the permit applicant for re-development of the subject property, shall coordinate tie in to all publicly dedicated infrastructure with the Public Works Department.

## **Transportation:**

Existing conditions: The property is located west of East Trimmier Road, a rural section road with a bar ditch profile. The City's Thoroughfare Plan classifies East Trimmier Road as a 70' collector.

Proposed Improvements: Staff anticipates residential development with additional local streets.

Projected Traffic Generation: Moderate upon build out.

## **Environmental Assessment**

**Topography:** The subject site is relatively flat. This property drains southeast into Yowell Creek near its confluence with Chaparral Creek and from that point east into Trimmier Creek. The distance from this site and the confluence with the Trimmier Creek is approximately 2 creek miles. Trimmier Creek and its tributaries are currently listed on the TCEQ's 2010 303(d) water quality list for bacteria impairment and for concerns for near-nonattainment for impaired macrobenthic community.

**Regulated Floodplain/Floodway/Creek:** The tract does not lie within a FEMA regulatory special flood hazard area.

## **Land Use Analysis**

**Comprehensive Plan:** The subject area is within the 'Suburban Residential' designation of the Comprehensive Plan's Future Land Use Map (FLUM). Under Local Government Code section 213, the comprehensive plan is recognized under state law as the city's document for long range growth and development.

**Plan Recommendation:** The 'Suburban Residential' character encourages detached residential dwellings, planned developments to provide for other housing types (e.g., townhouse, patio) in a suburban character setting, public/institutional, parks and public spaces. The characteristics of this designation include:

- Larger baseline minimum lot sizes to allow for larger front yards, building setbacks, and side yard separation
- Less noticeable accommodation of vehicles
- Encourages smaller lot sizes in exchange for greater open space set asides
- Encourages conservation design or cluster development

**Consistency:** The rezone is consistent with the FLUM.

## **Public Notification**

The staff notified seven (7) surrounding property owners within a 200' notification boundary regarding this request. Staff received a total of two (2) protests that represent twenty-nine percent (29%) of the land within the notification boundary. The responses were received from Donald F. and Su K. Smith of 7388 East Trimmier Road and Douglas and Sandra Blackwell of 7354 East Trimmier Road.

## Recommendation

The Planning and Zoning Commission recommends approval of the applicant's rezone request by a vote of 4 to 2 with Commissioners Hoover and Steine in opposition. The zoning designation is consistent with the Comprehensive Plan's future land use map.

Per the Killeen Code of Ordinances Section 31-39, a favorable vote of three-fourths of all members of City Council members is required to approve the rezone request as stated below:

(d) "*In case of protest.* Unless such proposed amendment, supplement, or change has been recommended for approval by the planning commission, or in case of a protest by the owners of twenty (20) percent or more of either the area of the lots included in such proposed change, or the area of those lots or land immediately adjacent thereto and extending two hundred (200) feet from that area, then such change shall not become effective except by the favorable vote of three-fourths (3/4) of all the members of the city council.

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM 'A-R1' (AGRICULTURAL SINGLE FAMILY RESIDENTIAL DISTRICT) TO 'SR-1' (SUBURBAN RESIDENTIAL SINGLE FAMILY DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Clement and Frankie McClurkan have presented to the City of Killeen a request for amendment of the zoning ordinance of the City of Killeen by changing the classification of 8.167 acres, being part of the James D. Allcorn Survey, Abstract No. 25, from 'A-R1' (Agricultural Single Family Residential District) to 'SR-1' (Suburban Residential Single Family District), said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 13th day of May 2013, 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 28th day of May 2013, 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 request should be approved;

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

**SECTION I.** That the zoning classification of the following described tract be changed from 'A-R1' (Agricultural Single Family Residential District) to 'SR-1' (Suburban Residential Single Family District), for 8.167 acres, being part of the James D.

Allcorn Survey, Abstract No. 25, and being located south of Fire Station #8 on the west right-of-way of East Trimmier Road, Killeen, Texas, by an affirmative vote of  $\frac{3}{4}$  of the City Council.

**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 28th day of May 2013, 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:**

\_\_\_\_\_  
**Daniel A. Corbin, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Paula A. Miller, CITY SECRETARY**

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
**Kathryn H. Davis, City Attorney**

Case #13-14  
Ord #13-\_\_

**MINUTES  
PLANNING AND ZONING COMMISSION MEETING  
MAY 13, 2013**

**CASE #Z13-14  
AR-1 TO SR-1**

**HOLD a public hearing and consider a request by Clem & Frankie McClurkan to rezone approximately 8.167 acres part of the James D. Allcorn Survey, Abstract No. 25 from AR-1 (Agricultural Single-Family Residential District) to SR-1 (Suburban Residential Single-Family District) for single family use. The property is located south of Fire Station #8 on East Trimmier Road across from the Spanish Oaks subdivision, Killeen, Texas.**

Chairman Frederick requested staff comments.

Senior Planner Jill Ferenc stated that this request is to rezone from 'A-R1' (Agricultural Single-Family Residential District) to 'SR-1' (Suburban Residential Single-Family District) approximately 8.167 acres as part of the James D. Allcorn Survey, Abstract No. 25. The property is owned by Clement and Frankie McClurkan and is located south of Fire Station #8 on the west right-of-way of East Trimmier Road.

The subject site is relatively flat. This property drains southeast into Yowell Creek near its confluence with Chaparral Creek and from that point east into Trimmier Creek. The distance from this site and the confluence with the Trimmier Creek is approximately 2 creek miles. Trimmier Creek and its tributaries are currently listed on the TCEQ's 2010 303(d) water quality list for bacteria impairment and for concerns for near-nonattainment for impaired macrobenthic community. The tract does not lie within a FEMA regulatory special flood hazard area.

The subject area is within the 'Suburban Residential' designation of the Comprehensive Plan's Future Land Use Map (FLUM). Under Local Government Code section 213, the comprehensive plan is recognized under state law as the city's document for long range growth and development.

The 'Suburban Residential' character encourages detached residential dwellings, planned developments to provide for other housing types (e.g., townhouse, patio) in a suburban character setting, public/institutional, parks and public spaces. The characteristics of this designation include:

- Larger baseline minimum lot sizes to allow for larger front yards, building setbacks, and side yard separation
- Less noticeable accommodation of vehicles
- Encourages smaller lot sizes in exchange for greater open space set asides
- Encourages conservation design or cluster development

The rezone is consistent with the FLUM.

The staff notified seven (7) surrounding property owners within a 200' notification boundary regarding this request, and received two responses in opposition.

Staff recommended approval of SR-1 zoning. The zoning designation is consistent with the Comprehensive Plan's future land use map.

Mr. Michael Lackmeyer was present to represent this request. He said that he has a contract on the property and the property is unique in the fact that it has many live oak trees and his vision for the land is to develop a small subdivision with approximately 25 homes and save as many trees as feasible.

Chairman Frederick opened the public hearing.

Mr. Donald Smith, 7388 East Trimmier Road, and Mr. Doug Blackwell, 7354 East Trimmier Road, spoke in opposition to the rezone. Their concerns were that additional housing would destroy the environment of the area i.e. wildlife. Additional 20 - 30 homes would affect property values and change the character of the land. With the many live oak trees deer and wild turkeys use the area as a habitat. Mr. Smith stated that as soon as the war is over the army will get smaller and that would also include Fort Hood.

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

Commissioner Butler motioned to recommend approval the request. Commissioner Hicks seconded the motion. The motion passed 4-2 with Commissioners Hoover and Steine in opposition.

Chairman Frederick stated that this request will be forward to City Council on May 28, 2013 with a recommendation to approve.



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

CASE #: \_\_\_\_\_

## City of Killeen Zoning Change Application

[ ] General Zoning Change [ ] Conditional Use Permit

Name(s) of Property Owner: JOHN & FRANKIE McCLOCKAN

Current Address: 7432 E. TRIMMER

City: KILLEEN State: TX Zip: 76542

Home Phone: ( ) \_\_\_\_\_ Business Phone: ( ) \_\_\_\_\_ Cell Phone: (214) 813 1232 *Mark McClockan*

Email: Johnmarkjeweler26@GMAIL

Name of Applicant: MIKE LACKMAYER  
(If different than Property Owner)

Address: W S YOUNG DR

City: Killeen State: TX Zip: \_\_\_\_\_

Home Phone: ( ) \_\_\_\_\_ Business Phone: ( ) \_\_\_\_\_ Cell Phone ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Address/Location of property to be rezoned: \_\_\_\_\_

Legal Description: See attached survey

Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan?  YES  NO

Type of Ownership:  Sole Ownership  Partnership  Corporation  Other

Present Zoning: AR 1 Present Use: \_\_\_\_\_

Proposed Zoning: S12 1 Proposed Use: HOUSES

Conditional Use Permit for: \_\_\_\_\_

This property was conveyed to owner by deed dated \_\_\_\_\_ and recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, Instrument Number \_\_\_\_\_ of the Bell County Deed Records. (Attached)

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

**APPOINTMENT OF AGENT**

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

Name of Agent: Michael R. Hackmeyer  
Mailing Address: 1201 South W. S. Young Dr, Suite K  
City: Killeen State: TX Zip: 76791  
Home Phone: ( ) 254 681-1577 Business Phone: ( ) 254 690 2223 Email: MRL Attorney @ AOL.com

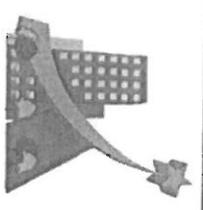
I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

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

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

Signature of Agent Michael R. Hackmeyer Title \_\_\_\_\_  
Printed/Typed Name of Agent Michael R. Hackmeyer Date April 11, 2013  
Signature of Applicant John Mark McCluskey Title \_\_\_\_\_  
Printed/Typed Name of Applicant John Mark McCluskey Date 4-11-13  
Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_  
Printed/Typed Name of Property Owner \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_  
Printed/Typed Name of Property Owner \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_  
Printed/Typed Name of Property Owner \_\_\_\_\_ Date \_\_\_\_\_

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



**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**

#Z13-14

**ZONING FROM:**

AR1 TO SR1

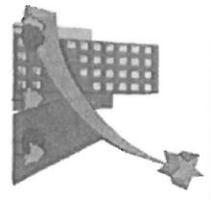
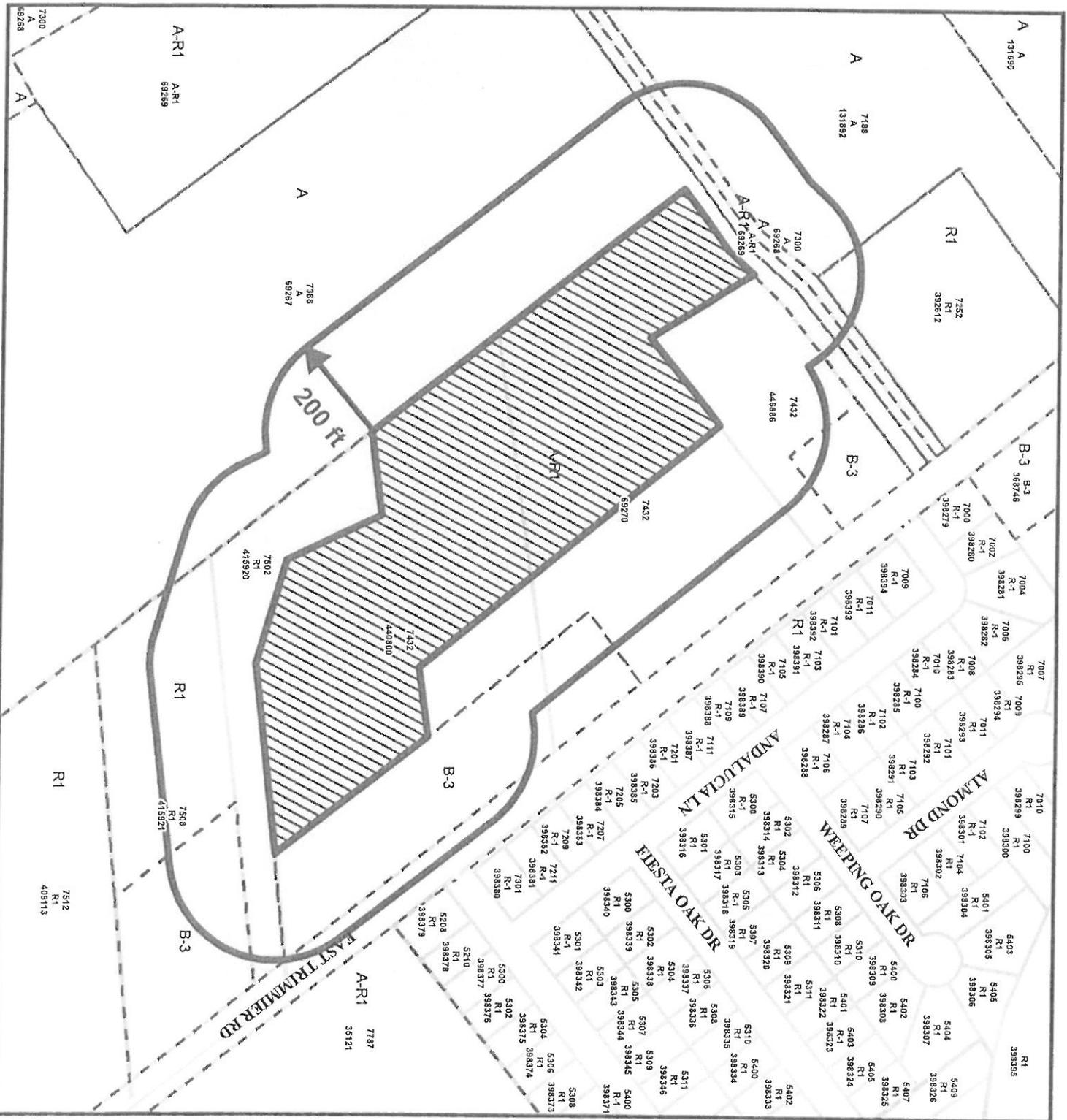
**PROPERTY OWNER:**

CLEM & FRANKIE MCCLURKAN

**Legend**  
 ■ Production GISADMIN\_ZoningCases2013  
 ■ Production GISADMIN\_Parcel  
 ■ City Limits



Date: 4/22/2013



**PLANNING AND DEVELOPMENT SERVICES**

**ZONING CASE:**  
#Z13-14

**ZONING FROM:**  
ARI TO SRI

**PROPERTY OWNER:**

CLEM & FRANKIE MCCLURKAN

- Legend**
- Buffer of 13-14
  - Zoning Case
  - Current Zoning
  - Subdivision
  - Parcel
  - City Limits

Date: 4/29/2013



2 13-14

## Points of Opposition

- Density

All houses on this side of road are on large acre lots. (From Yowell Ranch to Chaparral Rd)

Putting 20 to 30 houses will affect property values and the character of the community negatively.

This will be one street development with access being an issue.

This land has a dense population of live oak trees that cannot be replaced in a lifetime.

By taking these out you will destroy deer and turkey habitat, only to replace it with a row of homes

- Need

There are 20 lots and houses for sale right across the street.

Around 600 for sale in zip code 76542

The army is in the process of downsizing

While it remains to be seen if there will be a need for this housing in the future, there is no current need.

To: City of Killeen Planning & Development  
Services

254 501 7628

Re case # Z13-14

8.167 Acres

Attachments

CUT HERE

YOUR NAME: Donald F. and Su K. Smith	PHONE NUMBER: 337 660-8167
CURRENT ADDRESS: 7388 EAST Trimmer Rd, Killeen Texas 76542-4908	
ADDRESS OF PROPERTY OWNED: 27 Acres at above address beside request.	
COMMENTS: I would like to speak in opposition AR-1 to SR-1 to this request. will provide petition by 4:00 PM 13 MAY 13	
SIGNATURE: Donald J Smith	SPO #Z13-14/05

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

RECEIVED  
MAY 10 2013  
PLANNING

CUT HERE

YOUR NAME: Doug and Sandra Blackwell	PHONE NUMBER: (816) 377-2847
CURRENT ADDRESS: 7354 East Trimmer	
ADDRESS OF PROPERTY OWNED: 7354 East Trimmer	
COMMENTS: In opposition In opposition AR-1 to SR-1	
SIGNATURE: Doug Blackwell Sandra Blackwell	SPO #Z13-14/04

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

RECEIVED  
MAY 13 2013  
PLANNING

13 MAY 13

To: PLANNING and ZONING COMMISSION  
City of Killeen

RECEIVED  
MAY 13 2013  
PLANNING

1. My name is Donald F. Smith, I live at 7388 EAST Trimmer, Killeen, Texas. My cell phone is 337 660 8167. My e-mail is donald.smith33@us.army.mil.
2. I am a retired army officer with over 30 years service to my country. I enlisted as a private in 1960 and retired as a Lieutenant Colonel in 1992, since 1992 I have been an instructor in the Leaders Training Program, Joint Readiness Training Center, Fort Polk, LA, since then I have helped train Brigade Combat Team and Battalion Commanders and their staffs in preparing operations orders for their training at JRTC and during the last ten years deployment to Iraq and Afghanistan. This includes many Fort Hood units.
3. After over 51 years service to my country my wife and I bought a 27 acre farm on EAST Trimmer, where I plan to retire in a rural environment and raise some goats and fruit trees and allow her to continue her church missionary work overseas.
4. Currently my farm is surrounded by other farms or other people with five or more

acres. The environment is the main reason we bought this land in 2007. My wife move here then, while I continued to work at FORT POLK, LA. This rezoning will completely change to area on one side of my farm by allowing 15 to 25 homes to be within 20 feet of my property line (my home is only 25 feet from the line). The noise and houses overlooking any fence will completely disrupt the life style I was looking forward to when I retire again at the end of this year. It will disrupt the wild life that are currently here too.

5. Currently, the area in question is zoned for one acre lots, which would allow the large trees and other growth to remain and help keep the natural beauty of the area.

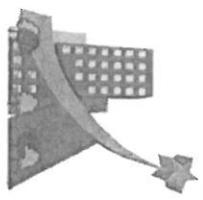
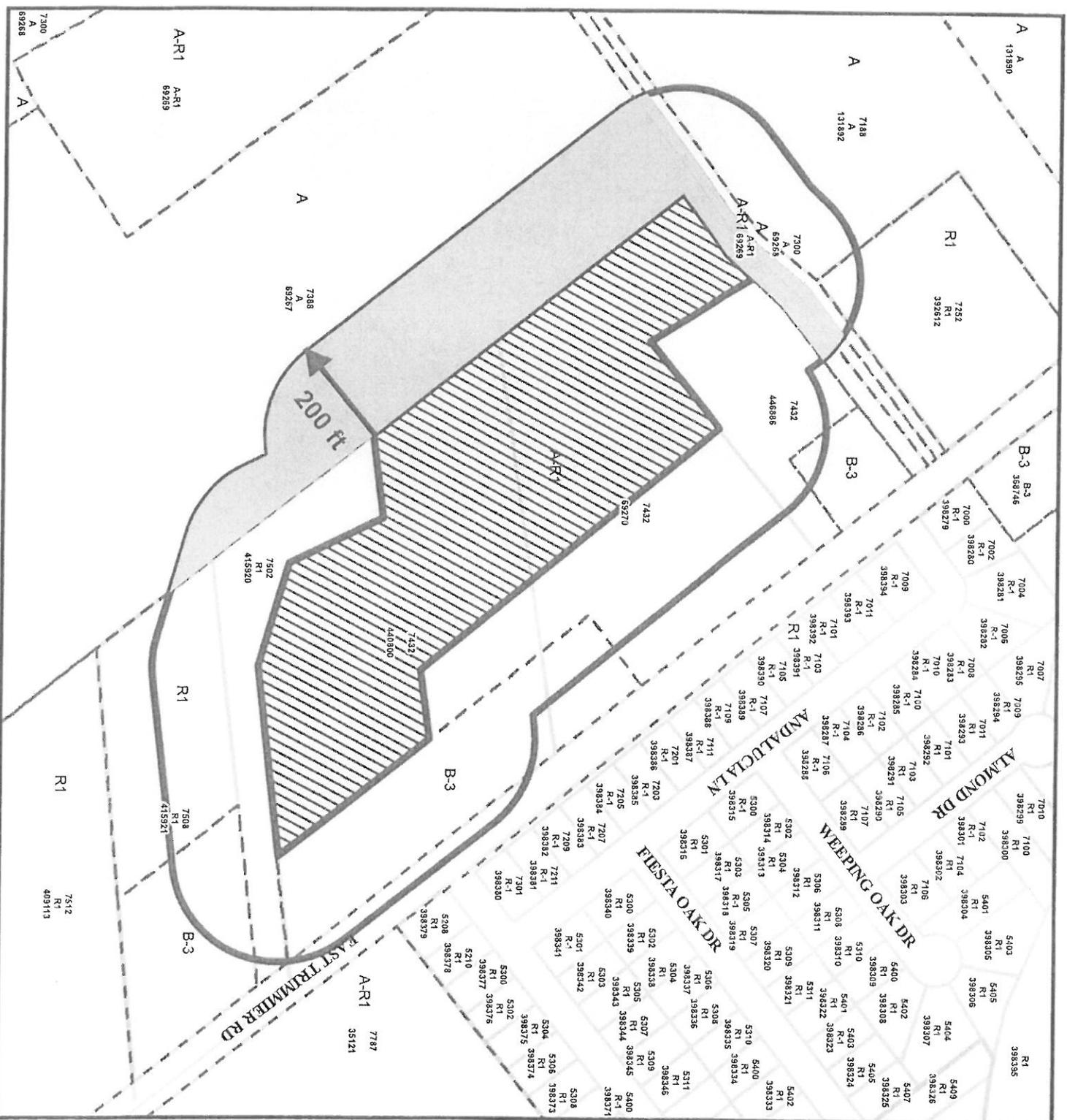
6. Currently all the new housing is on the other side of EAST Trimmier. Defeating this rezoning action would allow houses on that side of the road and farms and larger lots on my side of the road.

7. Many people in Killen have talked to me about Fort Hood receiving more soldiers from Germany and Korea. Many officers that have come through my course have ~~been~~ continued to be promoted to higher ranks. In conversations with them and reading military publications, I can say

most of the troops have already returned to the states. As the war ends the army will get smaller. It is safe to say Fort Hood may take part of that reduction. Is there really a need for more housing IN our area of EAST TRINITY?

8. I request that this zoning request be defeated, so me and my neighbors can continue to live in the rural environment we wanted when we move to this area.

Thank you,  
Donald F. Smith  
Donald F. Smith



**PLANNING AND DEVELOPMENT SERVICES**

**29% OPPOSITION MAP**

**ZONING CASE:**

#Z13-14

**ZONING FROM:**

AR1 TO SR1

**PROPERTY OWNER:**

CLEM & FRANKIE MCCLURKAN

- Legend**
- Parcels in Opposition - 29%
  - 200 Ft. Buffer
  - Zoning Case
  - Current Zoning
  - Subdivision
  - Parcel

Date: 5/14/2013



## CONSIDERATIONS

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

### A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

### B. Conditional Use Permit (if applicable)

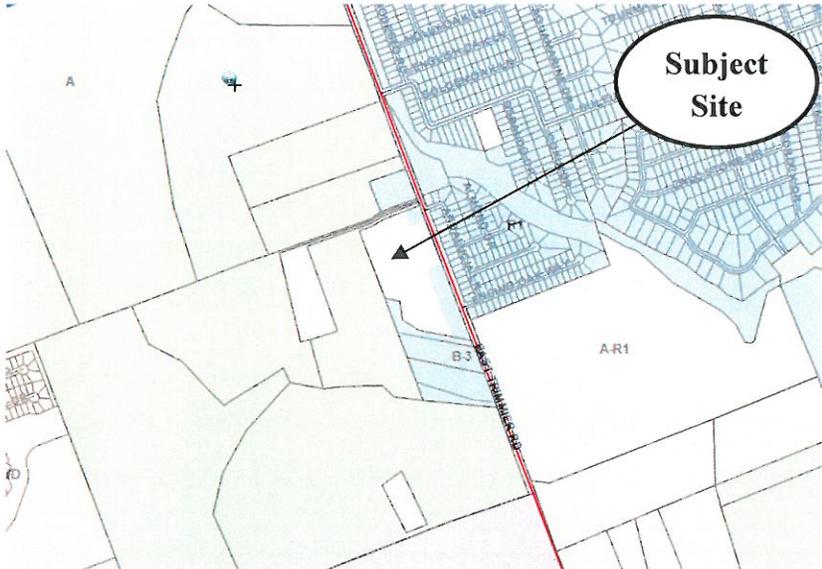
Whether the use is in harmonious with and adaptable to buildings, structures and use of abutting property and other property in the vicinity of the premises under construction.

### C. Conditions to Consider

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

Zoning Case Z13-14

**Figure 1. Zoning Map**



**Figure 2. Aerial Map**



**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**ZONING case #Z13-15  
HOD (HISTORIC OVERLAY District) TO HOD  
(HISTORIC OVERLAY DISTRICT) WITH CUP  
(CONDITIONAL USE PERMIT)**

**ORGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT**

**Nature of the Request**

This request is to rezone Lots 3-4, Block 15, Original Town of Killeen, from HOD (Historic Overlay District) to HOD with a CUP (Conditional Use Permit) to allow for use as a bar.

**HOD District Descriptions:**

The historic overlay district (HOD) is intended to establish and provide for the protection, preservation, and enhancement of buildings, structures, sites and areas of architectural, historical, archaeological, or cultural importance or value. The HOD is envisioned as a tool to help stabilize and improve property values; to encourage neighborhood conservation; to foster civic pride and past accomplishments; to protect and enhance city attractions for tourists and residents; to strengthen the economy; and to promote the use of historical and cultural landmarks for the general welfare of the community. Additionally, the historic overlay district is intended to help promote the development of a downtown consistent with the community objectives identified in the downtown action agenda.

The following standards or requirements shall apply to the historic overlay district:

- A. Any regulations for the HOD shall apply to all properties or structures wholly contained within that district, and to those portions of any property within the district.
- B. Because the HOD is an overlay district, the regulations for the underlying zoning district shall remain in effect, except as otherwise provided in the zoning ordinance.
- C. In case of any conflict between the regulations applicable in the underlying zoning district, and the regulations of the HOD, the regulations of the HOD will take precedence, even where the applicable regulation may not be a higher standard.
- D. The findings adopted by the city council for a historic overlay district shall define the scope of the city's interest in protecting the historic resources in the district and shall provide the guidelines to be used by the heritage preservation officer or heritage preservation board, along with any applicable design guidelines in considering whether to grant or deny an order of design compliance.

**Conditional Use Permit:**

The city council by an affirmative majority vote may by ordinance grant a conditional use permit as provided in section 31-456 of this chapter for any business land use or any use identified in the **"full list"** of the Killeen downtown action agenda for a specific parcel in the district and

may impose appropriate conditions and safe guards to assure that these land uses are compatible with the character of the district setting and buildings. Conditional use permits granted shall be considered permanent provided the property owner remains in continuous compliance with any conditions or safeguards imposed.

**Applicant/Property Owner:** Mind Spring, LLC

**Property Location:** The property is located east of the intersection of E. Avenue D and S. Gray Street and is locally known as 310 E. Avenue D, Killeen, Texas.

**Legal Description:** Lots 3-4, Block 15, Original Town of Killeen

**Annexation/ Zoning/ Plat Case History:**

There is no recent zoning or platting activity for this property.

**Character of the Area:**

**Existing Land Use(s) on the Property:** Vacant building within Killeen's downtown.

**Historical Assessment:**

Property is within a district that was approved by the State Board of Review on January 19, 2013 for listing on the National Register of Historic Places.

Date of Construction: 1915

Date of Alteration: 1960

Historical Details: Medium priority historic resource with corbelled brick at cornice level and storefront completely altered.

**Infrastructure and Community Facilities**

**Emergency Response:**

Fire Protection District: City of Killeen, Central Fire District

Fire Response Zone: C-2

Miles from Fire Station: Approximately 1 mile from the Central Fire Station, which is located at 201 N. 28<sup>th</sup> Street, Killeen, Texas.

**Water, Sewer and Drainage Services:**

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: Water infrastructure is available with adequate size and pressure. Sewer infrastructure is immediately accessible to the subject property.

**Transportation:**

Existing conditions: Downtown streetscaping improvements are currently under construction. E. Avenue D is classified as a 60' local street on the City's Thoroughfare Plan.

Proposed Improvements: None

Projected Traffic Generation: No new impact.

## **Environmental Assessment**

**Topography:** The property is flat.

**Regulated Floodplain/Floodway/Creek:** The tract does not lie within a FEMA regulatory special flood hazard area.

## **Land Use Analysis**

**Comprehensive Plan:** The property is designated as 'Urban Center' on the future land use map (FLUM) of the Comprehensive Plan.

**Plan Recommendation:** The Comprehensive Plan calls for mixed uses within individual structures, attached residential, live/work units, commercial, retail, office, entertainment, and public/institutional spaces.

**Consistency:** The request is consistent with the Comprehensive Plan.

## **Public Notification**

The staff notified twenty-two (22) surrounding property owners within a 200' notification boundary regarding this request and received two (2) responses in opposition from Chong Suk Hunter of 329 E. Avenue D and Erwin R. Hunter of 334 E. Avenue D.

## **Recommendation**

The Planning and Zoning Commission recommends approval of the applicant's rezone request by a unanimous vote.

Staff advised the Planning and Zoning Commission that the Texas Alcohol and Beverage Commission (TABC) code provides that a city may:

"...enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within:

- (1) 300 feet of a church, public or private school, or public hospital;
- (2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007." (Sec. 109.33. SALES NEAR SCHOOL, CHURCH, OR HOSPITAL).

The city has chosen to enact the "300 feet" requirement for several zoning districts where on-premise sales and consumption is allowed. The city has not enacted this 300' requirement within the HOD. The HOD does not negate the underlying uses allowed in the B-5 zoning district, but it allows for pubs and taverns as identified in the full list of the Downtown Action Agenda adopted by City Council in February 2007 (Resolution 07-023R). No additional restrictions have been enacted that would impose a 300 feet buffer in the HOD; therefore, pubs and taverns that are approved for a conditional use permit may site anywhere in the HOD.

**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 ‘HOD’ (HISTORIC OVERLAY DISTRICT) TO ‘HOD’ (HISTORIC OVERLAY DISTRICT) WITH A ‘CUP’ (CONDITIONAL USE PERMIT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Mind Spring, LLC have presented to the City of Killeen a request for amendment of the zoning ordinance of the City of Killeen by changing the classification of Lots 3-4, Block 15, of the Original Town of Killeen, from ‘HOD’ (Historic Overlay District) to ‘HOD’ with a ‘CUP’ (Conditional Use Permit) to allow for use as a bar, said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 13th day of May 2013, 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 28th day of May 2013, 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 request should be approved;

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

**SECTION I.** That the zoning classification of the following described tract be changed from ‘HOD’ (Historic Overlay District) to ‘HOD’ with a ‘CUP’ (Conditional

Use Permit) to allow for use as a bar, for Lots 3-4, Block 15, of the Original Town of Killeen and being locally addressed as 310 E. Avenue D, Killeen, Texas.

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

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

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

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 28th day of May 2013, 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:**

\_\_\_\_\_  
**Daniel A. Corbin, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Paula A. Miller, CITY SECRETARY**

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
**Kathryn H. Davis, City Attorney**

Case #13-15  
Ord #13-\_\_

**MINUTES  
PLANNING AND ZONING COMMISSION MEETING  
MAY 13, 2013**

**CASE #Z13-15  
HOD TO HOD W/CUP**

**HOLD a public hearing and consider a request by Mind Spring, LLC to rezone part of Lot 3 and 4, Block 15, Killeen Original Town from HOD (Historic Overlay District) to HOD (Historic Overlay District) with CUP (Conditional Use Permit) for on premises sale and consumption of alcohol. The property is locally known as 310 E. Avenue D, Killeen, Texas.**

Chairman Frederick requested staff comments.

Senior Planner Jill Ferenc stated that this request is to rezone Lots 3-4, Block 15, Original Town of Killeen, from HOD (Historic Overlay District) to HOD with a CUP (Conditional Use Permit) to allow for use as a bar.

The historic overlay district (HOD) is intended to establish and provide for the protection, preservation, and enhancement of buildings, structures, sites and areas of architectural, historical, archaeological, or cultural importance or value. The HOD is envisioned as a tool to help stabilize and improve property values; to encourage neighborhood conservation; to foster civic pride and past accomplishments; to protect and enhance city attractions for tourists and residents; to strengthen the economy; and to promote the use of historical and cultural landmarks for the general welfare of the community. Additionally, the historic overlay district is intended to help promote the development of a downtown consistent with the community objectives identified in the downtown action agenda.

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- B. Because the HOD is an overlay district, the regulations for the underlying zoning district shall remain in effect, except as otherwise provided in the zoning ordinance.
- C. In case of any conflict between the regulations applicable in the underlying zoning district, and the regulations of the HOD, the regulations of the HOD will take precedence, even where the applicable regulation may not be a higher standard.
- D. The findings adopted by the city council for a historic overlay district shall define the scope of the city's interest in protecting the historic resources in the district and shall provide the guidelines to be used by the heritage preservation officer or heritage preservation board, along with any applicable design guidelines in considering whether to

grant or deny an order of design compliance.

The city council by an affirmative majority vote may by ordinance grant a conditional use permit as provided in section 31-456 of this chapter for any business land use or any use identified in the **“full list”** of the Killeen downtown action agenda for a specific parcel in the district and may impose appropriate conditions and safe guards to assure that these land uses are compatible with the character of the district setting and buildings. Conditional use permits granted shall be considered permanent provided the property owner remains in continuous compliance with any conditions or safeguards imposed.

The property is designated as ‘Urban Center’ on the future land use map (FLUM) of the Comprehensive Plan.

The Comprehensive Plan calls for mixed uses within individual structures, attached residential, live/work units, commercial, retail, office, entertainment, and public/institutional spaces.

The request is consistent with the Comprehensive Plan.

The staff notified twenty-two (22) surrounding property owners within a 200’ notification boundary regarding this request. Staff has received two responses in opposition.

Staff recommended approval of the applicant’s conditional use permit request.

The Texas Alcohol and Beverage Commission (TABC) code provides that a city may:

“...enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within:

- (1) 300 feet of a church, public or private school, or public hospital;
- (2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007.”  
(Sec. 109.33. SALES NEAR SCHOOL, CHURCH, OR HOSPITAL).

The city has chosen to enact the “300 feet” requirement for several zoning districts where on-premise sales and consumption is allowed. The city has not enacted this 300’ requirement within the HOD. The HOD does not negate the underlying uses allowed in the B-5 zoning district, but it allows for pubs and taverns as identified in the full list of the Downtown Action Agenda adopted by City Council in February 2007 (Resolution 07-023R). No additional restrictions have been enacted that would impose a 300 feet buffer in the Historic Overlay District, therefore pubs and taverns, approved for a conditional use permit, may site anywhere in the Historic Overlay District.

Mr. Steve Cockrell, 308 E. Avenue D, was present to represent this request.

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

hearing was closed.

Commissioner Dorroh motioned to recommend approval of the request. Commissioner Steine seconded the motion. The motion passed unanimously.

Chairman Frederick stated that this request will be forwarded to City Council on May 28, 2013 with a recommendation to approve



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

CASE #: 1315

## City of Killeen Zoning Change Application

[ ] General Zoning Change     Conditional Use Permit

Name(s) of Property Owner: MIND SPRING LLC

Current Address: 3610-2 Josey LN. #223

City: Carmilton State: TX Zip: 75007

Home Phone: ( ) \_\_\_\_\_ Business Phone: 504 450 3938 Cell Phone: 805 747 5804

Email: gene cockrell@yahoo.com

Name of Applicant: Stephen Cockrell  
(If different than Property Owner)

Address: P.O. Box 1167

City: Killeen State: Texas Zip: 76540

Home Phone: ( ) \_\_\_\_\_ Business Phone: ( ) \_\_\_\_\_ Cell Phone: 805 747 5804

Email: gene cockrell@yahoo.com

Address/Location of property to be rezoned: 308 E Ave D Killeen

Legal Description: Killeen original town Block 15 Lot 3-4 Bell County

Metes & Bounds of Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan?  YES  NO

Type of Ownership: \_\_\_\_\_ Sole Ownership \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation  Other LLC

Present Zoning: B-5 Present Use: Storage

Proposed Zoning: CUP Proposed Use: Late hours bar

Conditional Use Permit for: Late hours bar / alcohol Sales

This property was conveyed to owner by deed dated 15 MAR 2010 and recorded in Volume \_\_\_\_\_  
Page \_\_\_\_\_ Instrument Number \_\_\_\_\_ of the Bell County Deed Records.  
(Attached) DOC number 00009267 - Bell Co. Deed Records

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

**APPOINTMENT OF AGENT**

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

Name of Agent: Stephen Cockrell

Mailing Address: 308 E Ave D

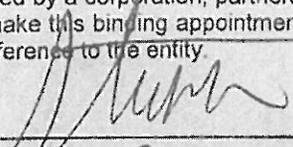
City: Killeen State: TX Zip: 76541

Home Phone: ( ) \_\_\_\_\_ Business Phone: 305 747 5804 Email: gemcockrell  
@yahoo.com

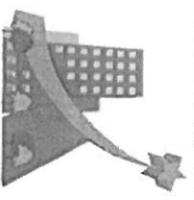
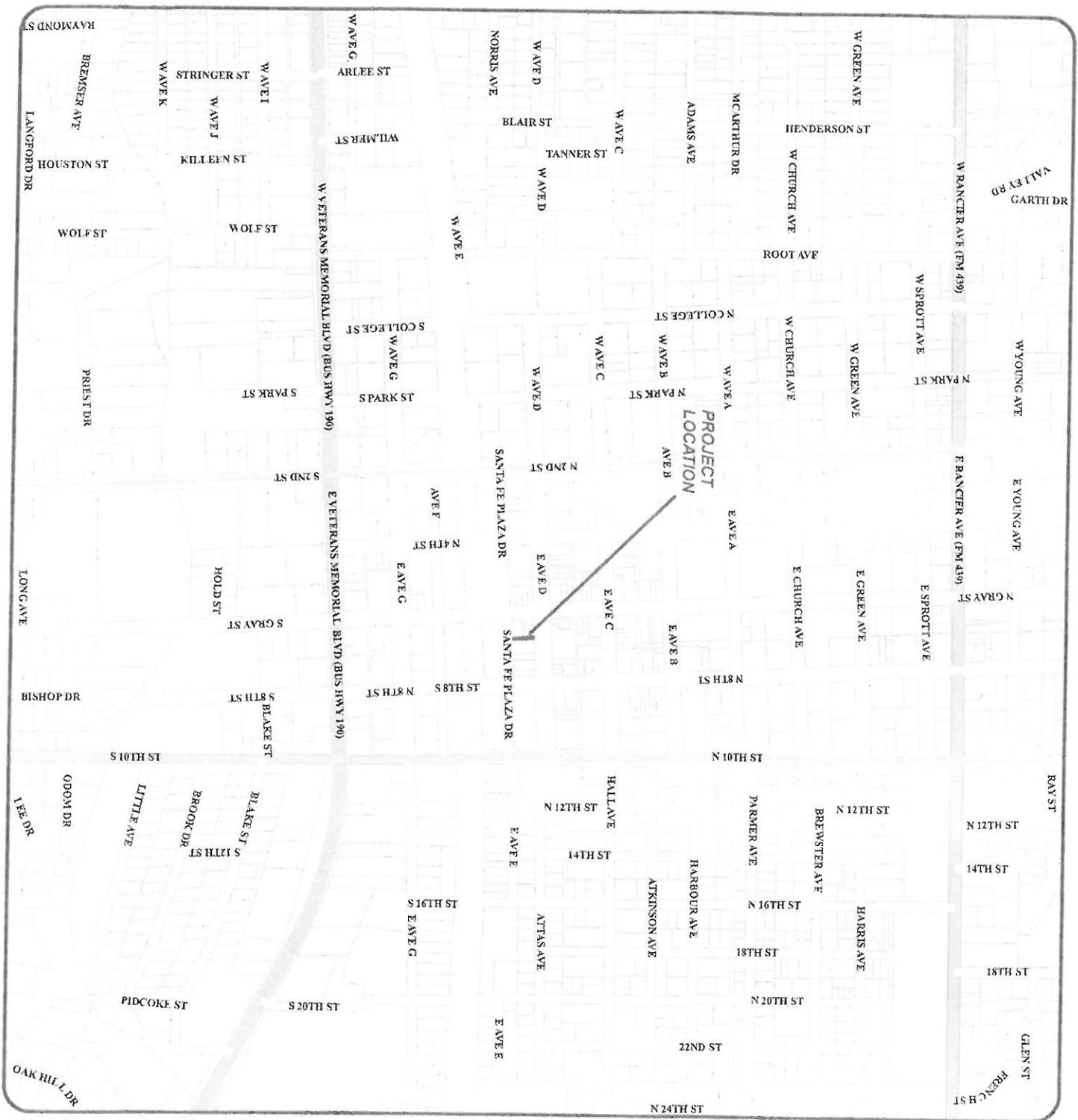
I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

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

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

Signature of Agent  Title \_\_\_\_\_  
Printed/Typed Name of Agent Stephen Cockrell Date \_\_\_\_\_  
Signature of Applicant \_\_\_\_\_ Title \_\_\_\_\_  
Printed/Typed Name of Applicant \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_  
Printed/Typed Name of Property Owner \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_  
Printed/Typed Name of Property Owner \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Property Owner \_\_\_\_\_ Title \_\_\_\_\_  
Printed/Typed Name of Property Owner \_\_\_\_\_ Date \_\_\_\_\_

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



**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**

#Z13-15

**ZONING FROM:**

HOD TO HOD W/ CUP

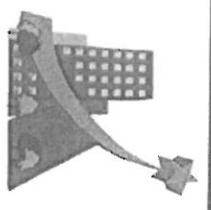
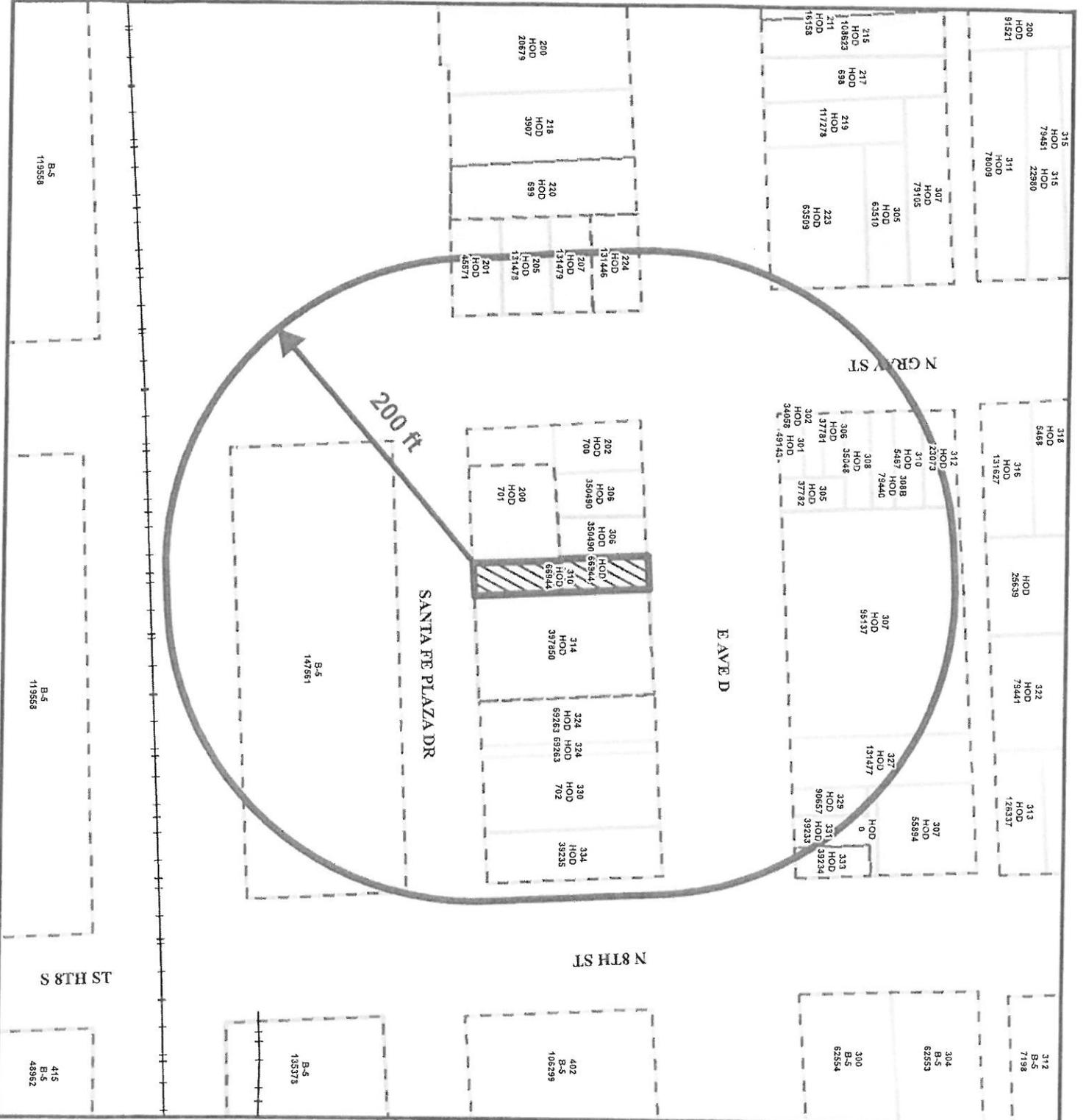
**PROPERTY OWNER:**

MIND SPRING LLC

Legend  
 City Limits  
 Parcel  
 Zoning Case# 2013

Date: 4/18/2013





**PLANNING AND DEVELOPMENT SERVICES**

**ZONING CASE:**

#Z13-15

**ZONING FROM:**

HOD TO HOD W/ CUP

**PROPERTY OWNER:**

MIND SPRING LLC

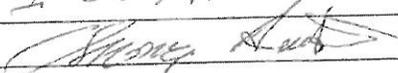
- LEGEND**
- 200 Ft. Buffer
  - Zoning Case
  - Current Zoning
  - Subdivision
  - Parcel
  - City Limits

Date: 4/18/2013



Attachments

CUT HERE

YOUR NAME: CHONG SUK Hunter	PHONE NUMBER: 289 7813
CURRENT ADDRESS: 5819 Greenforest cir Killeen TX 76543	
ADDRESS OF PROPERTY OWNED: 329 E AVE D Killeen TX 76541	
COMMENTS: I Dis Approve THIS	HOD to HOD w/CUP
SIGNATURE: 	SPO #Z13-15/15A

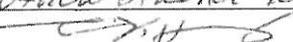
PO BOX 1329 KILLEEN, TEXAS 76540-1329 - 254 501 7630 - 254 501 7628 FAX  
WWW.CI.KILLEEN TX US

RECEIVED

MAY 08 2013

PLAIN

CUT HERE

YOUR NAME: Edwin R. Hunter	PHONE NUMBER: 289 6702
CURRENT ADDRESS: 5819 Greenforest cir Killeen TX 76543	
ADDRESS OF PROPERTY OWNED: 334 E AVE D Killeen TX 76541	
COMMENTS: I Strongly Approse THE CHANGE THAT WILL ALLOW Alcohol to be Sold, THERE IS TOO MANY BARS & clubs	HOD to HOD w/CUP
SIGNATURE: 	SPO #Z13-15/14

Down Town Now, upstairs club, Tanks Pub, Karaoke club,

PO BOX 1329 KILLEEN, TEXAS 76540-1329 - 254 501 7630 - 254 501 7628 FAX  
WWW.CI.KILLEEN TX US

RECEIVED

MAY 08 2013

PLAIN

## CONSIDERATIONS

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

### A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

### B. Conditional Use Permit (if applicable)

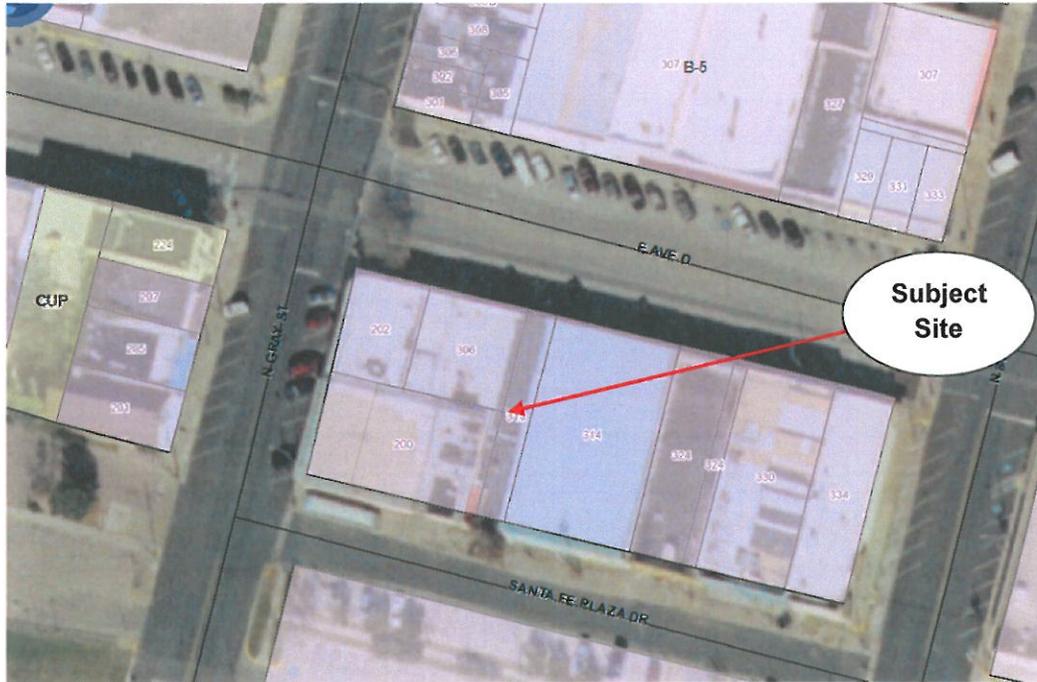
Whether the use is in harmonious with and adaptable to buildings, structures and use of abutting property and other property in the vicinity of the premises under construction.

### C. Conditions to Consider

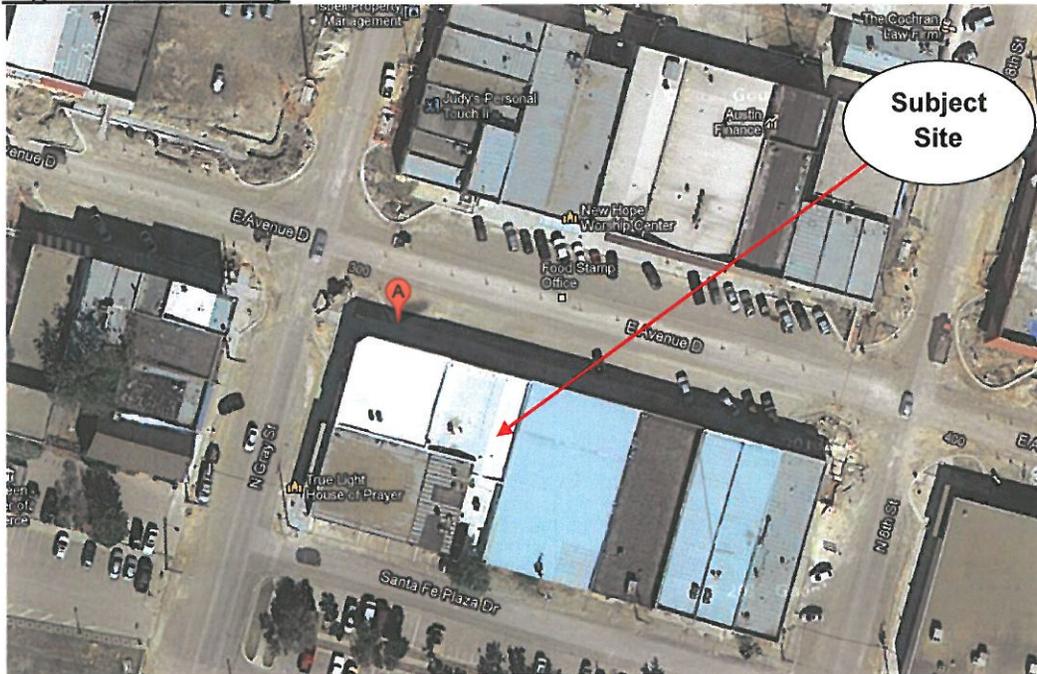
1. Occupation shall be conducted only by members of family living in home.
2. No outside storage or display
3. Cannot change the outside appearance of the dwelling so that it is altered from its residential character.
4. Cannot allow the performance of the business activity to be visible from the street.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

Zoning Case Z13-15

**Figure 1. Zoning Map**



**Figure 2. Aerial Map**



**CITY COUNCIL MEMORANDUM FOR ORDINANCE**

**AGENDA ITEM**

**ZONING case #Z13-17 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT) TO B-3 (BUSINESS DISTRICT)**

**ORIGINATING DEPARTMENT**

**PLANNING & DEVELOPMENT SERVICES**

**Nature of the Request**

Clayton Winkler, the Executor of the Jessie M. Kern Estate, submits this request to rezone approximately 2.638 acres, being part of the Thomas Robinett Survey, Abstract Number 686, from R-1 (Single-Family Residential District) to B-3 (Local Business District). The property is locally known as 4102 Watercrest Road, Killeen, Texas.

**A building or premises in the district "B-3" local business district shall be used only for the following purposes:**

- (1) Any use permitted in the "B-2" district.
- (2) Bank, savings and loan or other financial institution.
- (3) Day camp.
- (4) Hospital, home or center for the acute or chronic ill.
- (5) Mortuary or funeral chapel.
- (6) Appliance (household) sales and repair service.
- (7) Bakery or confectionery: engaged in preparation, baking, cooking and selling of products at retail on the premises, with six (6) or less employees.
- (8) Boat and accessory sales, rental and service.
- (9) Bowling alleys.
- (10) Cleaning or laundry (self-service).
- (11) Cleaning, pressing and dyeing: with six (6) or less employees.
- (12) Florist, garden shop, greenhouse or nursery office (retail): no growing of plants, shrubs or trees out-of-doors on premises; no outside display or storage unless behind the required front yard or the actual setback of the principal building, whichever is greater.
- (13) General food products, retail sales, such as supermarkets, butcher shops, dairy stores, seafood sales or health food sales.
- (14) Cafeteria or catering service.
- (15) Marine supplies, sales and service.
- (16) Office, general business.
- (17) Restaurant or café (with drive-in or pick-up service).
- (18) Tennis or swim club.
- (19) Small animal clinic or pet grooming shop.
- (20) Hotel or motel.
- (21) Job printing. Not more than seventeen (17) inches by twenty-five (25) inches page size.
- (22) Gasoline service station, auto laundry or car wash.

(23) Auto parts sales, new, at retail.

(24) A customarily incidental use: sale of beer and/or wine only for off-premises consumption only shall be considered a customarily incidental use in this district, but not in any residential district or any more restrictive business district.

(25) Theaters of general release.

(26) Mini/self storage facilities - a building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual compartmentalized and controlled access stalls or lockers for the storage of customer's goods or wares. No outside storage, sales, service, or repair activities, other than the rental of storage units shall be permitted onpremises.

**Applicant/Property Owner:** Clayton Winkler, the Executor of the Jessie M. Kern Estate

**Property Location:** The property is located along the south right-of-way of Watercrest Road, west of the t-intersection of Robinette Road. The property is locally known as 4102 Watercrest Road, Killeen, Texas.

**Legal Description:** Thomas Robinett Survey, Abstract Number 686, Killeen, Texas.

**Annexation/ Zoning/ Plat Case History:**

- This property was annexed into the City of Killeen on October 19, 1999, per ordinance 99-84.
- The subject property was rezoned to 'A' (Agricultural District) and R-1 (Single Family Residential District) on July 11, 2000, per ordinance # 00-54.
- The property is unplatted.

**Character of the Area:**

**Existing Land Use(s) on the Property:** The property consists of a residential structure.

**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: Municipal utilities are readily available to the property. The developer will have bore below Watercrest Road to access the existing sanitary sewer interceptor on the north side of the thoroughfare if an existing service or main stub out is not present.

**Transportation:**

Existing conditions: The site is located along the south right-of-way of Watercrest Road, which is classified as a 90' minor arterial on the City's Thoroughfare Plan.

Proposed Improvements: Undetermined.

Projected Traffic Generation: Undetermined.

**Environmental Assessment**

**Topography:** The site has elevations ranging from 928' to 944'.

**Regulated Floodplain/Floodway/Creek:** This property is not located within any FEMA regulatory special flood hazard area (SFHA). The property drains northwest into a box culvert that goes under Watercrest Road and from that point east into an unnamed tributary of Nolan Creek. The distance from this site and the confluence with the Nolan Creek is approximately 0.14 miles. This property has been inspected on more than one occasion for drainage concerns.

### **Land Use Analysis**

**Land Use Plan:** The property is designated as 'General Commercial' on the future land use map (FLUM) of the Comprehensive Plan.

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

**Consistency:** This request is consistent with the plan.

### **Public Notification**

Staff notified nine (9) surrounding property owners within a 200' notification boundary. Staff received no objections.

### **Recommendation**

The Planning and Zoning Commission recommended approval of the applicant's request for B-3 (Local Business District) zoning by a unanimous vote. The FLUM encourages commercial and retail operations along this corridor, and this site is appropriately sized to yield a complimentary scaled development.

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT) TO B-3 (LOCAL BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Clayton Winkler, the Executor of the Jessie M. Kern Estate, submits this request for an amendment of the zoning ordinance of the City of Killeen by changing the classification of approximately 2.638 acres, being part of the Thomas Robinette Survey, Abstract No. 686, from R-1 (Single-Family Residential District) to B-3 (Local Business District), said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 13th day of May 2013, 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 28th day of May 2013, 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 request should be approved;

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

**SECTION I.** That the zoning classification of the following described tract be changed from R-1 (Single-Family Residential District) to B-3 (Local Business District), for property being part of the Thomas Robinette Survey, Abstract No. 686. The property is located on the south right-of-way of Watercrest Road, and is locally known as 4102

Watercrest Road, Killeen, Texas.

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

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

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

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 28th day of May 2013, 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:**

\_\_\_\_\_  
**Daniel A. Corbin, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Paula A. Miller, CITY SECRETARY**

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
**Kathryn H. Davis, City Attorney**

Case #13-17  
Ord #13-\_\_

**PLANNING AND ZONING COMMISSION MEETING  
MINUTES  
MAY 13, 2013**

**CASE #Z13-17  
R-1 TO B-3**

**HOLD a public hearing and consider a request by Jessie M. Kern Estate, Clayton Winkler Executor, to rezone approximately 2.638 acres, being part of Thomas Robinett Survey, Abstract No. 686 from R-1 (Single-Family Residential District) to B-3 (Local Business District) for retail commercial use. The property is located on the south right-of-way of Watercrest Road and is locally known as 4102 Watercrest Road, Killeen, Texas.**

Chairman Frederick requested staff comments.

City Planner McIlwain stated that Clayton Winkler, the Executor of the Jessie M. Kern Estate, submits this request to rezone approximately 2.638 acres, being part of the Thomas Robinett Survey, Abstract Number 686, from R-1 (Single-Family Residential District) to B-3 (Local Business District). The property is locally known as 4102 Watercrest Road, Killeen, Texas.

This property is not located within any FEMA regulatory special flood hazard area (SFHA). The property drains northwest into a box culvert that goes under Watercrest Road and from that point east into an unnamed tributary of Nolan Creek. The distance from this site and the confluence with the Nolan Creek is approximately 0.14 miles. This property has been inspected on more than one occasion for drainage concerns.

The property is designated as 'General Commercial' on the future land use map (FLUM) of the Comprehensive Plan.

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

This request is consistent with the comprehensive plan.

Staff notified nine (9) surrounding property owners within a 200' notification boundary. Staff received one letter of no objection.

Staff recommended approval of the applicant's request for B-3 (Local Business District) zoning. Watercrest Road is not conducive to residential development fronting along its right-of-way. The FLUM does encourage commercial and retail operations along this corridor, and this site is appropriately sized to yield a complimentary scaled development.

Mr. Bob Gage, 9010 Overlook Blvd, Brentwood, TN, was present to represent this request. Mr. Gage said that a Dollar General store is planned for the site. The plan is to leave the existing row of trees along the south property line and install a 6' privacy fence along the residentially zoned property. He said that standard construction is a metal building on the front side of the building has split-face block facing.

Commissioner Butler asked if it would be possible to include split-face block on all sides that will front a street.

Mr. Gage said that he would review the budget for the development to see if it would be possible.

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

Vice Chair Langford motioned to recommend approval of the request. Commissioner Butler seconded the motion. The motion passed unanimously.

Chairman Frederick stated that this will be forward to City Council to be heard on May 28, 2013, with a recommendation to approve.



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

CASE #: 213-19

## City of Killeen Zoning Change Application

General Zoning Change [ ] Conditional Use Permit

Name(s) of Property Owner: Sessie M Kern do Clayton Winkler

Current Address: P.O. Box 10013

City: Killeen State: TX Zip: 76547-0013

Home Phone: ( ) \_\_\_\_\_ Business Phone: (254) 526-5567 Cell Phone: ( ) \_\_\_\_\_

Email: Ronaldparkley@hotmail.com

Name of Applicant: Jason Horowitz  
(If different than Property Owner)

Address: 9010 Overlook Blvd.

City: Brentwood State: TN Zip: 37027

Home Phone: (615) 370-0670 Business Phone: (615) 921-0043 Cell Phone ( ) \_\_\_\_\_

Email: jhorowitz@GBTRealty.com

Address/Location of property to be rezoned: 4102 Watercrest Rd.

Legal Description: See Attached

Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan? YES NO

Type of Ownership:  Sole Ownership  Partnership  Corporation  Other

Present Zoning: R-1 Present Use: Residential

Proposed Zoning: B-3 Proposed Use: Commercial-Retail Business

Conditional Use Permit for: \_\_\_\_\_

This property was conveyed to owner by deed dated 8-21-68 and recorded in Volume 1025, Page 201, Instrument Number N/A of the Bell County Deed Records. (Attached)

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

### APPOINTMENT OF AGENT

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

Name of Agent: Bob Gage  
 Mailing Address: 9010 Overlook Blvd.  
 City: Brentwood State: TN Zip: 37027  
 Home Phone: ( ) Business Phone: (615) 370-0670 Email: bgage@CBTRealty.com

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

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

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

Signature of Agent <u>[Signature]</u>	Title <u>Development Manager</u>
Printed/Typed Name of Agent <u>Bob Gage</u>	Date <u>4-12-13</u>
Signature of Applicant <u>[Signature]</u>	Title <u>Development Associate</u>
Printed/Typed Name of Applicant <u>Sason Horowitz</u>	Date <u>4-11-13</u>
Signature of Property Owner <u>Clayton Winkler</u>	Title _____
Printed/Typed Name of Property Owner <u>Clayton Winkler, Independent</u>	Date <u>4-15-13</u>
Signature of Property Owner <u>Executor Jessica M. Kern Estate</u>	Title _____
Printed/Typed Name of Property Owner _____	Date _____
Signature of Property Owner _____	Title _____
Printed/Typed Name of Property Owner _____	Date _____

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



**PLANNING AND  
DEVELOPMENT SERVICES**

**ZONING CASE:**  
#Z13-17

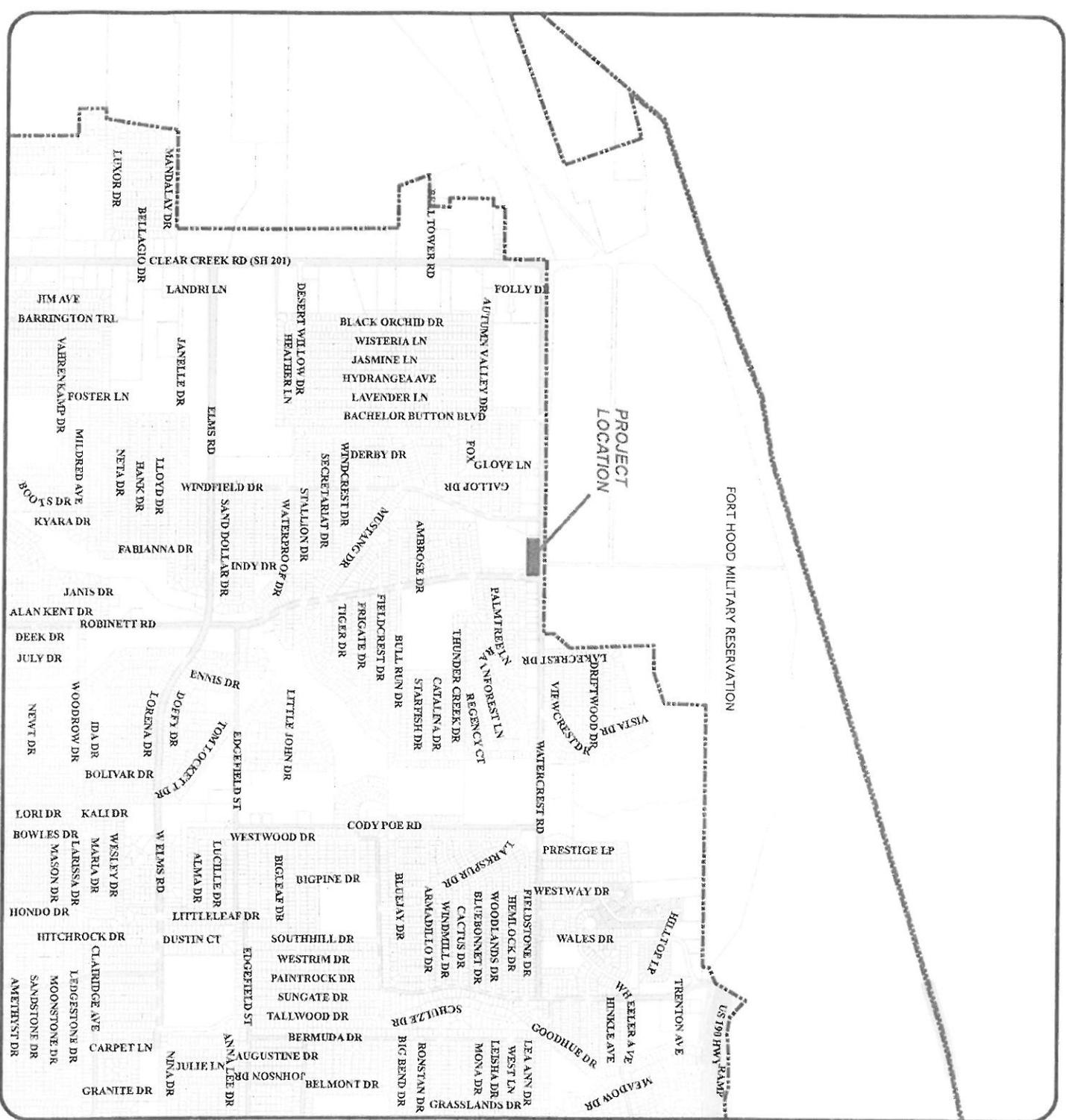
**ZONING FROM:**  
R1 TO B3

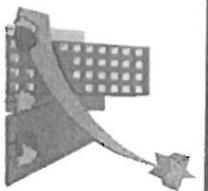
**PROPERTY OWNER:**  
JESSIE M. KERN ESTATE

**Legend**

- Zoning Case
- Parcel
- City Limits

Date: 4/24/2013





**PLANNING AND DEVELOPMENT SERVICES**

**ZONING CASE:**

#Z13-17

**ZONING FROM:**

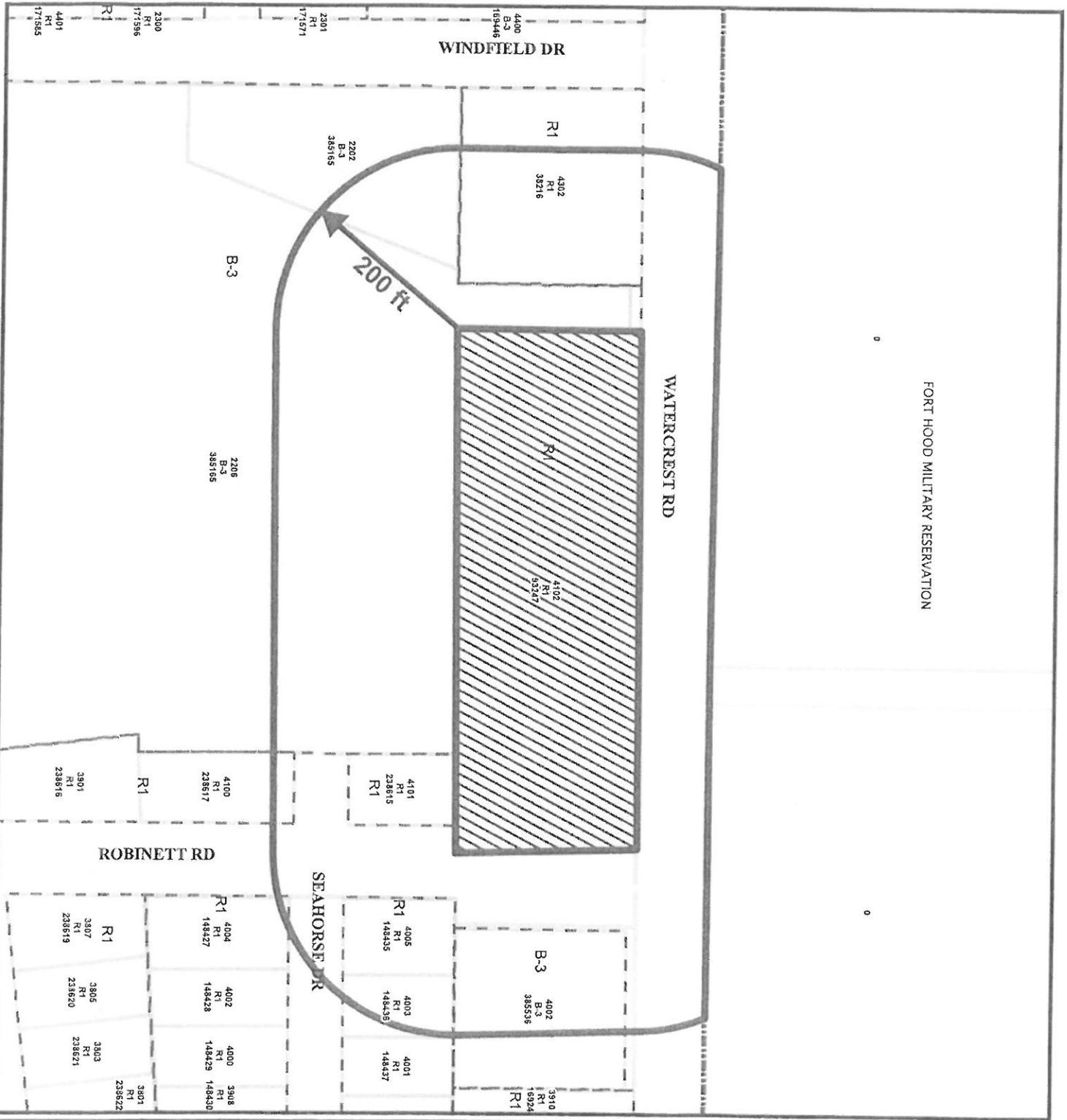
R1 TO B3

**PROPERTY OWNER:**

JESSIE M. KERN ESTATE

**Legend**

-  200 Ft. Buffer
-  Zoning Case
-  Current Zoning
-  Subdivision
-  Parcel
-  City Limits



## CONSIDERATIONS

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

### A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

### B. Conditional Use Permit (if applicable)

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

### C. Conditions to Consider

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

# Zoning Case Z13-17

## Figure 1. Zoning Map



## Figure 1. Street View

