



City of Killeen

Regular City Council Meeting Agenda

August 13, 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	___ Glenn Morrison
___ Elizabeth Blackstone	___ City Manager
___ Terry J. Clark	___ Kathryn H. Davis
___ Jared Foster	___ City Attorney
___ Wayne Gilmore	___ Dianna Barker
___ Steve Harris	___ City Secretary
___ Jonathan Okray	___ Sergeant-At-Arms
___ Jose Segarra	

Invocation

Pledge of Allegiance

Approval of Agenda

Consent Agenda

- CA-1 Consider minutes of Regular City Council Meeting of July 30, 2013.
- CA-2 Consider a memorandum/resolution to continue membership in The Cooperative Purchasing Network (TCPN) purchasing cooperative.
- CA-3 Consider a memorandum/resolution authorizing membership into the National Joint Powers Alliance (NJPA) purchasing cooperative.
- CA-4 A. Consider a request submitted by D and SC Enterprises, Inc. (Case #13-019P: Prairie View Estates, Phase Three) for a preliminary plat of approximately 28.099 acres, being part of the W. H. Cole Survey, Abstract No. 200. The property is located along the north right-of-way of Chaparral Road, east of the Soldiers Hospitality House, Killeen, Texas.

B. Consider a memorandum/resolution for a City/Owner Agreement-in-Principal to construct a portion of the Yowell Creek Tributary Gravity Sanitary Sewer Interceptor (2012 Water & Wastewater Master Plan Project 11S) as a part of the Prairie View Estates Phase Three Subdivision.

Public Hearings / Ordinances

PH-1 A. **HOLD** a public hearing and consider a request to amend the Comprehensive Plan's future land use map (FLUM) (Case FLUM Z13-24) from 'Suburban Residential' to 'Suburban Commercial' for approximately 1.39 acres located at the intersection of Trimmier Road and Kelley Lane, Killeen, Texas.

B. **HOLD** a public hearing and consider an ordinance requested by Gary Ray Kelley 2012 Trust (Case #Z13-24) to rezone approximately 1.39 acres out of the Moses T. Martin Survey, Abstract No. 963 from 'A' (Agricultural District) to B-3 (Local Business District) for an office complex. The property is located south of Stagecoach Road between Kelley Lane and Trimmier Road, Killeen, Texas.

PH-2 **HOLD** a public hearing on the FY 2013-14 proposed Annual Budget and Plan of Municipal Services.

Ordinances / Resolutions

OR-1 Consider a memorandum/resolution setting the Preliminary Tax Rate for the FY 2013-14 Annual Budget and Plan of Municipal Services and setting the dates to hold public hearings on the proposed tax increase (if a proposed tax increase is approved).

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.

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.

- 50th Anniversary of the March on Washington, August 26, 2013, 6:00 p.m., Killeen Arts and Activities Center
- USO Fort Hood Benefit Gala, September 6, 2013, 7:00 p.m., Killeen Civic and Conference Center
- Greater Killeen Chamber of Commerce Banquet, September 12, 2013, 6:00 p.m., Killeen Civic and Conference Center
- Hispanic American Chamber of Commerce Banquet, September 21, 2013, 6:00 p.m., Courtyard Marriott – Killeen

City of Killeen
Regular City Council Meeting
Killeen City Hall
July 30, 2013 at 5:00 p.m.

Presiding: Mayor Daniel A. Corbin

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

Also attending were City Manager Glenn Morrison, Deputy City Attorney Traci Briggs, City Secretary Dianna Barker, and Sergeant-at-Arms Roy Clayton.

Councilmember Harris gave the invocation, and Mayor Pro-Tem Blackstone led everyone in the pledge of allegiance.

Approval of Agenda

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

Consent Agenda

- CA-1 Consider minutes of Regular City Council Meeting of July 9, 2013.
- CA-2 Consider minutes of Regular City Council Meeting of July 16, 2013.
- CA-3 Consider a memorandum/resolution authorizing Change Order No. 3 to the Cunningham Road Widening Construction contract with Dixon Paving.
This change order will reduce the expenditure for this project in the 2011 CO Bond, Cunningham Road account, 343-3490-800.58-39. The total cost of the changes is a net decrease of \$162,768.30 for a total contract price of \$2,710,505.50.
- CA-4 Consider a memorandum/resolution authorizing Change Order No. 1 for The Landing at Clear Creek Phase I with WBW Development, LLC.
This change order in the amount of \$27,580.00 will add traffic signals and street striping at the Mohawk Drive and Clear Creek Road intersection.
- CA-5 Consider a memorandum/resolution authorizing the contract award for Bid 13-27 for the A.K. Wells Trail Extension – West a.k.a 2012 CDBG Trail Extension project.
Two bids were received, Myers Concrete Construction out of Wimberly, Texas and Alpha Constructors, Inc. out of Temple, Texas. Staff recommends awarding a construction contract to Alpha Constructors, Inc., lowest bidder, in the amount of \$167,926.30 and to authorize the City Manager to execute all necessary contract documents.

- CA-6 Consider a memorandum/resolution approving a Contract Amendment to the Professional Services Agreement with Jacobs Engineering Group Inc. for the design of South Nolan Creek major drainage capital improvement projects.
This resolution would provide design and related services for the South Nolan Creek Major Drainage CIP Projects in the amount of \$58,430.00.
- CA-7 Consider a request by JYKM Splawn Ranch, LLC, for a final plat of approximately 4 acres, being part of the W. H. Cole Survey, Abstract No. 200. The property is located on the northeast intersection of SH 195 and Splawn Ranch Drive, Killeen, Texas.
This plat request would replat a 4 acre tract into one lot, one block, for retail development to include a gas station and convenience store. Planning & Zoning has approved the plat and it does meet all subdivision regulations.
- CA-8 Consider a memorandum/resolution for the procurement of two (2) vehicles total, for the Fire Department and Building Inspection Division.
This resolution would authorize the purchase of two city vehicles, one suburban for the fire department and one ½ ton pickup for the Building Inspection division for a total cost of \$96,408.00.
- CA-9 Consider a memorandum/resolution approving the abandonment of a 10' utility easement located in Lot 8A, Block 1, amended plat of Lot 8, Block 1, Replat of Killeen Mall Subdivision. The applicant is requesting abandonment in order to construct a 6,882 sq. foot shell building that will house a future Aspen Dental Clinic and Mattress Firm store in order to avoid encroachment upon existing easement.
- CA-10 Consider a memorandum/resolution authorizing the award of a construction contract for the Stagecoach Road Reconstruction, Phase II project to McLean Construction.
Three bids came in on this project, McLean Construction, James Construction Group, and Anderson Columbia. McLean Construction is low bidder at \$17,171,171.10. The contract is for infrastructure for Stagecoach Road.

Motion was made by Mayor Pro-Tem Blackstone to approve Consent Agenda items 1 through 6 and 8 through 10. Motion was seconded by Councilmember Gilmore. Motion carried unanimously.

Consent Agenda #7: The plat was approved 5 to 2 with Councilmember Okray and Councilmember Harris in opposition.

Public Hearings / Ordinances

- 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 relating to the downtown street projects by increasing various capital improvement beginning fund balance accounts in the amount of \$202,069 by decreasing various capital improvement revenue accounts in the amount of \$136,936 and by increasing various capital improvement expense accounts in the amount of \$2,557,897.

The caption was read as follows:

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 RELATING TO THE DOWNTOWN STREET PROJECTS BY INCREASING VARIOUS CAPITAL IMPROVEMENT BEGINNING FUND BALANCE ACCOUNTS IN THE AMOUNT OF \$202,069, BY DECREASING VARIOUS CAPITAL IMPROVEMENT REVENUE ACCOUNTS IN THE AMOUNT OF \$136,936 AND BY INCREASING VARIOUS CAPITAL IMPROVEMENT EXPENSE ACCOUNTS IN THE AMOUNT OF \$2,557,897; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

Staff comments: This is a matter of housekeeping. The budget amendment will place funds in their appropriate account.

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

Motion was made by Councilmember Okray to approve ordinance 13-055. Motion was seconded by Mayor Pro-Tem Blackstone. The motion carried unanimously.

PH-2 HOLD a public hearing and consider an ordinance amending the FY 2012-13 City of Killeen Annual Budget and Plan of Municipal Services of the City of Killeen by increasing the Court Security Fund Budget for the purchase of security cameras for the interior and exterior of the Killeen City Hall Annex.

The caption was read as follows:

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 ACCOUNT 241-0000-417.61-35 CAPITAL OUTLAY/EQUIPMENT IN THE CITY OF KILLEEN COURT SECURITY FEE FUND IN THE AMOUNT OF \$49,027; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

Staff comments: The increase in this account would pay for interior and exterior cameras. The money comes from court costs. The court recommends purchasing the equipment from CWS.

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

Motion was made by Councilmember Harris to approve ordinance 13-056. Motion was seconded by Councilmember Segarra. The motion carried unanimously.

PH-3 HOLD a public hearing and consider an ordinance requested by AJH Timber Ridge Estates, LLC (Case #Z13-21) to rezone part of Lots 1-5, Block 17, Timber Ridge Estates, Phase Three, from R-1 (Single Family Residential District) to NBD (Neighborhood Business District) and RT-1 (Residential Townhouse Single Family District), the property is locally known as 6010, 6100, 6102, 6104 and 6106 Boxelder Trail, Killeen, Texas.

The caption 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 R-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO RT-1 (RESIDENTIAL TOWNHOUSE SINGLE-FAMILY DISTRICT) AND NBD (NEIGHBORHOOD BUSINESS DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff comments: Staff received no opposition to this rezoning from neighbors.

Mayor Corbin opened the public hearing.

Citizen comments: Mr. Weekly spoke in opposition of the rezoning.

The public hearing was closed.

Motion was made by Mayor Pro-Tem Blackstone to approve ordinance 13-057. Motion was seconded by Councilmember Okray. The motion carried unanimously.

PH-4 HOLD a public hearing and consider a petition submitted by Glenn and Patricia Collins requesting the extension of the corporate city limits of the City of Killeen, by annexing 1.339 acres located along the west right-of-way of SH 195, directly west of the intersection of SH 195 and FM 2484.

Staff comments: The property owners are working with the city to look at economic development along this corridor. Property owners are willing to do voluntary annexation as long as it's covered by a development agreement. It is requested that this item be placed on the August 20th workshop agenda and the regular council meeting for August 27th. This property will be zoned agricultural upon annexation.

Mayor Corbin opened the public hearing.

Citizen comments: Mr. David Olson, a representative of Mitchell & Associates, spoke in support of the request.

With no other comments submitted, the public hearing was closed.

Motion was made by Councilmember Clark to accept the petition and direct staff to prepare an ordinance to affect the annexation. Motion was seconded by Councilmember Okray; motion carried unanimously.

PH-5 **HOLD** a public hearing on the FY 2013-14 proposed Annual Budget and Plan of Municipal Services.

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

Motion was made by Mayor Pro-Tem Blackstone to set the preliminary hearing on the proposed budget and plan of municipal services and to set the preliminary tax rate for August 13th. Motion was seconded by Councilmember Segarra; motion carried 6 to 1 with Councilmember Okray abstaining.

Ordinances / Resolutions

OR-1 Consider an ordinance authorizing the creation of Bell County Municipal District No. 2 and entering into a consent and development agreement associated with the same.

The caption was read as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN CONSENTING TO AND AUTHORIZING THE CREATION OF BELL COUNTY MUNICIPAL DISTRICT NO. 2 SUBJECT TO THE TERMS AND CONDITIONS OF A CONSENT AND DEVELOPMENT AGREEMENT; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

Staff comments: The purpose of this action item is to seek City Council's approval of an ordinance and an incorporated consent and development agreement consenting to the creation of Bell County Municipal Utility District Number 2 as presented by local developer, Mr. Bruce Whitis. If approved, the consent and development agreement will directly control the development of approximately 1373 acres of property located south of the City limits in the City's extraterritorial jurisdiction. Staff went over the legal ramifications, benefits and commitments.

Staff recommends that the City Council adopt the ordinance based upon the legal constraints and benefits indicated previously.

Citizen comments: Mr. Dick Young applauds this project but is concerned about wording being ambiguous and doesn't like the process the MUD is being developed by.

Councilmember Segarra moved to approve the ordinance 13-058, seconded by Councilmember Gilmore. -----

Motion was made by Councilmember Okray to amend wording to reflect a commitment by the city of a cap of \$1.25M. Motion was seconded by Councilmember Harris; motion failed 5 to 2 with Councilmember Okray and Councilmember Harris in favor.

Motion was made by Councilmember Harris to lay Ordinance OR-1 on the table. Motion was seconded by Councilmember Okray; motion failed 4 to 3 with Councilmember Harris, Councilmember Okray, and Councilmember Clark in favor.

---- Motion carried 4 to 3 with Councilmember Okray, Councilmember Harris, and Councilmember Clark opposing.

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 7:00 p.m.

Daniel A. Corbin, Mayor

Dianna Barker, City Secretary

Regular 8-13-13
Item # CA-2
CCM/R _____

CITY COUNCIL MEMORANDUM FOR RESOLUTION

AGENDA ITEM

**Continued Membership in TCPN
Purchasing Cooperative**

ORIGINATING DEPARTMENT

Support Services / Purchasing Division

BACKGROUND INFORMATION

The Cooperative Purchasing Network provides an organizational and administrative structure for the purchase of goods and services. Its purpose is to obtain substantial savings for member school districts and public entities through high volume purchasing. Authority for such agreements is given in Texas Local Government Code, Title 8, Subchapter F, Section 271.102. Purchasing through a cooperative program enhances the City's buying power and can, over time, lower costs. In addition to purchases and job order contract access, TCPN provides access to local vendors for office equipment, IT needs, HVAC maintenance companies, etc.

DISCUSSION/CONCLUSION

Attached for your review and approval is an updated interlocal membership agreement between the City of Killeen and The Cooperative Purchasing Network. The last agreement on file was signed September 13, 2005.

FISCAL IMPACT

No fiscal impact. Membership is free to the City of Killeen.

RECOMMENDATION

Staff recommends that the council approve continued membership in The Cooperative Purchasing Network (TCPN) and authorize the City Manager to execute the interlocal membership agreement.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this the 13th day of August, 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:

Dianna Barker
CITY SECRETARY

INTERLOCAL AGREEMENT

Region 4 Education Service Center

Contracting Parties

City of Killeen
School District or Public Entity

County-District Number

Region 4 Education Service Center

101 - 950
County-District Number

This agreement is effective July, 8th 2013 and shall be automatically renewed unless either party gives sixty (60) days prior written notice of non-renewal. This agreement may be terminated with or without cause by either party upon (60) days prior written notice, or may also be terminated for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

Statement of Services to be Performed:

Authority for such services is granted under Government Code, Title 7, Chapter 791 Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102. The purpose of this cooperative is to obtain substantial savings for member school districts and public entities through volume purchasing.

Role of the Purchasing Cooperative:

1. Provide for the organizational and administrative structure of the program.
2. Provide staff time necessary for efficient operation of the program.
3. Receive quantity requests from entities and prepare appropriate tally of quantities.
4. Initiate and implement activities related to the bidding and vendors selection process.
5. Provide members with procedures for ordering, delivery, and billing.
6. Fully comply with all applicable state rules and regulations related to competitive procurement and cooperative purchasing in the State of Texas.

Role of the Member School District or Public Entity:

1. Commitment to participate in the program as indicated by an authorized signature in the appropriate space below.
2. Designate a contact person for the cooperative.
3. Commit to purchase products and services that become part of the official products and services list when it is in the best interest of the member entity.
4. Prepare purchase orders issued to the appropriate vendor from the official award list provided by the Purchasing Cooperative.

5. Issue any and all contracts, purchase orders, or other applicable authorizations for purchase (Purchase Orders) made on behalf of TCPN vendors. This agreement, however, does not obligate Member to purchase any commodities and/or services under any TCPN contract.
6. Accept shipments of products ordered from vendors in accordance with standard purchasing procedures.
7. Pay vendors in a timely manner for all goods and services received.

General Provisions

1. The parties agree to comply fully with all applicable federal statutes, rules and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.
2. It is the sole responsibility of each Member Agency to follow their state procurement statutes as it pertains to cooperative purchasing, or joint power agreements, with in-state or out-of-state public agencies.
3. This Agreement shall be governed by the law of the State of Texas and venue shall be in the county in which the administrative offices of Region 4 ESC are located, which is Harris County, Texas.
4. If any term(s) or provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.
5. Before any party may resort to litigation, any claims, disputes or other matters in questions between the Parties to this Agreement shall be submitted to nonbinding mediation.
6. No party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees and agents as a result of this agreement being executed or the performance of the functions and obligations describe herein.
7. This Agreement incorporates all agreements, covenants and understandings between the parties concerning subject matter in the Agreement. No prior agreement of understanding, verbal or otherwise, by the parties or their agents, shall be valid or enforceable unless embodied in this agreement.
8. TCPN makes the contract available to the Member "as is" and is under no obligation to revise the terms, conditions, scope, prices, and/or any other requirements of the contract for the benefit of the Member.
9. Region 4 ESC may amend this Agreement, provided that written notice is given to the Member no less than 60 days prior to the date that the change will take effect.
10. All forms of written notice, under this agreement, shall be made by first class mail, postage prepaid and delivered to the parties of the agreement.
11. Member agrees to cooperate in compliance with any reasonable request for information and/or records made by the Cooperative. Breach of this provision may be grounds for termination after 10 days written notice to the Member.

Regular 8-13-13
Item # CA-3
CCM/R _____

CITY COUNCIL MEMORANDUM FOR RESOLUTION

AGENDA ITEM

Membership into the National Joint Powers Alliance (NJPA) Purchasing Cooperative

ORIGINATING DEPARTMENT

Support Services / Purchasing Division

BACKGROUND INFORMATION

In accordance with Texas Local Government Code 271.102, purchases made through a purchasing cooperative satisfy the city's legal bidding requirements. In addition, purchasing through a cooperative program enhances the City's buying power and can lower costs. Utilizing a cooperative to conduct on-line auctions is a great way to generate more revenue for items deemed no longer necessary or surplus. The Killeen Police Department, in order to better perform internal and external checks and balances, requires that when seized items are sold, bidder information is searchable long after monies have changed hands. In rare instances, stolen items have been reported long after sales are final.

DISCUSSION/CONCLUSION

The City of Killeen is currently a member of several purchasing cooperatives: the Texas Procurement and Support Services, the Central Texas Purchasing Cooperative, the Houston-Galveston Area Council (HGAC), the Texas BuyBoard Purchasing Cooperative and The Cooperative Purchasing Network (TCPN). The Killeen Police Department requires extensive tracking capabilities long after sales are final, which the current cooperative auction member cannot do. The volume of surplus equipment can be better managed if the police department has the option of utilizing the National Joint Powers Alliance (NJPA) cooperative and the auction services available through it. There is no contract or obligation to the city to utilize vendors registered in this cooperative. NJPA has additional vendors that the city may also utilize in the future.

FISCAL IMPACT

No fiscal impact. Membership is free to the City of Killeen.

RECOMMENDATION

Staff recommends the City Council approve the agreement with NJPA, and authorize the City Manager to execute the same, allowing various departments to securely sell and track items on-line.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this the 13 day of August, 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:

Dianna Barker
CITY SECRETARY

**MEMBERSHIP AGREEMENT
PARTICIPATING MEMBER**



This Agreement, made and entered into this 2nd day of July, 2013, by and between National Joint Powers Alliance®, hereinafter referred to as "NJPA" and City of Killeen hereinafter referred to as the "Applicant".

Witneseth:

That for a good and valuable consideration of the premises, mutual terms, covenants, provisions, and conditions hereafter set forth, it is agreed by and between the parties as follows:

Whereas, the NJPA is created by Minnesota Statute §123A.21 (with membership further defined in M.S. §471.59) to serve cities, counties, towns, public or private schools, political subdivisions of Minnesota or another state, another state, any agency of the State of Minnesota or the United States including instrumentalities of a governmental unit and all non-profits; and

Whereas, NJPA's purpose as defined in M.S. §123A.21 is to assist in meeting specific needs of clients which could be better provided by NJPA than by the members themselves; and

Whereas, the NJPA Board of Directors has established the ability for an "Applicant" desiring to participate in NJPA contracts and procurement programs to become a Participating Member; and

Whereas, the NJPA Board of Directors has determined that Participating Members will have no financial or organizational liability to NJPA or to its organizational activities;

Now Therefore, it is hereby stipulated and agreed that the "Applicant" Agency desires to be a Participating Member of NJPA with contract purchasing benefits, in accordance with terms and conditions of the applicable contract(s), and that NJPA hereby grants said Membership to said "Applicant."

Term:

This continuing agreement shall remain in force or until either party elects to dissolve the Agreement by written notice.

THEREFORE, IN WITNESS THEREOF,

the parties hereto have executed this Agreement the day and year written above.

National Joint Powers Alliance®
202 12th Street NE, P.O. Box 219
Staples, MN 56479

Member Name:

By _____
AUTHORIZED SIGNATURE
Its City Manager
TITLE
DATE

AUTHORIZED SIGNATURE

TITLE

DATE

Please indicate an address to which your membership materials may be delivered. Thank you.

P.O. Box 1329, Killeen, TX 76540
ADDRESS
254-501-7729
PHONE
kjessie@killeentexas.gov
EMAIL ADDRESS
City of Killeen
ORGANIZATION TYPE

For membership questions contact:
Duff Erholz
Phone: 218-894-5490
Fax: 218-894-3045
Email: duff.erholz@njpacoop.org

**JOINT EXERCISE OF POWERS
AGREEMENT**



This Agreement is Between the National Joint Powers Alliance® (NJPA) and

City of Killeen
(participating governmental agency)

Agreement. The participants in this Joint Exercise of Powers Agreement, hereinafter referred to as the Agreement, agree to jointly or cooperatively exercise certain powers common to them for the procurement of various goods and services by the participants. The term "governmental agency" as defined and used in this Agreement, includes any city, county, town, school district, education agency, post-secondary institution, governmental agency or other political subdivision of any agency of any state of the United States or any other country that allows for the Joint Exercise of Powers, and includes any instrumentality of a governmental agency. For the purpose of this section, an instrumentality of a governmental agency means an instrumentality having independent policy making and appropriating authority.

Purpose. The purpose of this Agreement is to allow for the cooperative efforts to provide for contract and vendor relationships to purchase supplies, materials, equipment or services (hereinafter referred to as goods and services,) as a result of the current and active competitive bidding process exercised by a legal qualifying bidding agency on behalf of governmental and other qualifying agencies. Qualified customers may forgo the competitive bidding process as a result of this action and process provided on the agencies behalf. Reference the Uniform Municipal Contracting Law MN Statute 471.345 subd 15. This provision is made possible as a result of the purchasing contract development through a national governmental agency association's purchasing alliance.

Whereas, parties to this Agreement are defined as governmental agencies in their respective states;

and Whereas, this Agreement is intended to be made pursuant to the various Joint Exercise of Powers Acts of the states or nations of the respective participating governmental agencies which authorizes two or more governmental agencies to exercise jointly or cooperatively powers which they possess in common;

and Whereas, the undersigned Participating Governmental Agency asserts it is authorized by Intergovernmental Cooperation Statutes to enter into an agreement with NJPA to cooperate in procurement of goods and services; and Whereas, NJPA asserts it is a Minnesota Service Cooperative created and governed under Minnesota Statute §123A.21 authorized by Minnesota Statute §471.59 to "jointly or cooperatively exercise any power common to the contracting parties";

and Whereas, the undersigned Participating Governmental Agency and NJPA desire to enter into a "Joint Exercise of Powers Agreement" for the purpose of accessing available purchasing contracts for goods and services from each other which can be most advantageously done on a cooperative basis;

Now Therefore, it is mutually agreed as follows:

1. The Parties to this agreement shall provide in a cooperative manner access to each other's purchasing efforts to procure supplies, equipment, materials and services hereinafter referred to as "goods and services";
2. The Parties to this Agreement will adhere to any and all applicable laws pertaining to the purchasing of goods and services as they pertain to the laws of their state or nation,
3. Either Party to this Agreement may terminate their participation in this Agreement upon thirty (30) days written notice,
4. Neither Party to this Agreement claims any proprietary interest of any nature whatsoever in any of the other participants in this Agreement
5. Each party agrees that it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law;

5/29/2012

**JOINT EXERCISE OF POWERS
AGREEMENT**



- 6. Both Parties to this Agreement agree to abide by all of the general rules and regulations and policies of the participating agencies that they are receiving goods and services from;
- 7. Both Parties to this Agreement agree to strict accountability of all public funds disbursed in connection with this joint exercise of powers;
- 8. Both Parties to this Agreement agree to provide for the disposition of any property or surplus moneys (as defined by the participant) acquired as a result of this joint exercise of powers in proportion to the contributions of the governing bodies and;
- 9. Both Parties to this Agreement acknowledge their individual responsibility to gain ratification of this agreement through their governing body.

This Agreement allows for the NJPA to provide procurement contracts on behalf of all qualified participating agencies pursuant to the Uniform Municipal Contracting law, MN Statute §471.345 Subd 15.

ORGANIZATION INFORMATION (Required Fields)**

Applicant Name: ** City of Killeen
 Address: ** 101 N. College Street
 City, State, Zip ** Killeen, TX 76541
 Federal ID Number: _____
 Contact Person: ** Karlene Jessie
 Title: ** Purchasing Manager
 E-mail: ** Kjessie@Killeentexas.gov
 Phone: _____
 Website: _____

Reference:
Minnesota Joint Exercise of Powers
M.S. 471.59

Participating Agency
Joint Exercise of Powers Authority
granted under State Statute

THE UNDERSIGNED PARTIES HAVE AGREED THIS DAY TO THE ABOVE CONDITIONS.

Member Name:	National Joint Powers Alliance®
By _____	_____
AUTHORIZED SIGNATURE	AUTHORIZED SIGNATURE
Its <u>City Manager</u>	_____
TITLE	TITLE
<u>2nd July, 2013</u>	_____
DATE	DATE

Completed applications may be returned to:

National Joint Powers Alliance ®
 202 12TH Street NE
 Staples, MN 56479

Duff Erholtz
 Phone: 218-894-5490
 Fax: 218-894-3045
 E-mail: duff.erholtz@njpacoop.org

CITY COUNCIL MEMORANDUM FOR RESOLUTION

AGENDA ITEM

**Case #13-019P Prairie View Estates,
Phase Three**

ORIGINATING DEPARTMENT

Planning and Development Services

BACKGROUND INFORMATION

Mitchell & Associates, Inc. submits this request on behalf of D and SC Enterprises, Inc. for *Prairie View Estates, Phase Three*, being a preliminary plat consisting of 28.099 acres out of the W. H. Cole Survey, Abstract No. 200, Killeen, Texas. The property is located on the north right-of-way of Chaparral Road, east of the Soldiers Hospitality House. The property is zoned R-1 (Single Family Residential District) and the applicant is platting the property into 64 lots and three blocks for residential development.

DISCUSSION/CONCLUSION

The Staff Review Committee met in a correction validation meeting and concurred that the plat meets the requirements of the City's subdivision regulations.

FISCAL IMPACT

There is a pending City/Owner Agreement for the over sizing of sewer infrastructure associated with this plat (Yowell Creek Tributary Gravity Sanitary Sewer Interceptor- Water and Wastewater Master Plan 11S). That City/Owner Agreement is being presented as part of this plat submittal as an 'A' and 'B' item.

RECOMMENDATION

The Planning and Zoning Commission approved plat case #13-019P: Prairie View Estates, Phase Three by a vote of 7 to 0.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this the 13th day of August, 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:

Dianna Barker
CITY SECRETARY

**MINUTES
PLANNING AND ZONING COMMISSION MEETING
JULY 22, 2013**

**CASE #13-019P
PRAIRIE VIEW ESTATES, PHASE THREE**

Consider a plat submitted by D and SC Enterprises, Inc. for a preliminary plat of approximately 28.099 acres, being part of the W. H. Cole Survey, Abstract No. 200. The property is located along the north right-of-way of Chaparral Road, east of the Soldiers Hospitality House, Killeen, Texas

Commissioner Butler motioned to approve the consent agenda, Commissioner DeHart seconded the motion. The motion passed 6-0. Vice Chair Langford Stepped away from the dais for discussion on CA-2 and did not vote.

Chairman Frederick stated that the consent agenda is approved and PH-2 will be heard by city council on August 13, 2013.



CITY OF KILLEEN
PLAT APPLICATION

CASE #:
13-019P

Plat Name Prairie View Estates Phase Three

Type: Preliminary Final Replat Minor Amended

Name(s) of Property Owner (s): D and Sc Enterprises, Inc.

Address: 2110 Southport Drive

City: Killeen State: Texas Zip: 76542

Home Phone: N/A Business Phone: Cell Phone: 254-290-1042

Type of Ownership: Sole Ownership Partnership Corporation Other

Recorded Copy of Warranty Deed: Is a copy of the appropriate deed(s) attached? YES / NO

Name of Developer: Same As Above

Address: Same As Above

City: Same As Above State: Same As Above Zip: Same as Above-

Name of Engineer/Surveyor: Mitchell & Associates, Inc.

Address: 102 N College

City: Killeen State: Texas Zip: 76540

Home Phone: N/A Business Phone: (254) 634-5541 Cell Phone: N/A

Is the Property: Within City Limits Within ETJ (5.0 miles)

Proposed Land Use: Single Family Residential

Total Acreage: 28.099 Number of Lots: 64 Current Zoning: R-1 Proposed Zoning R-1

Is there a simultaneous rezoning of any part of this property? No

Address/ Location of Property to be Platted: 3954 Chapparral Road

Legal Description: 28.099 acre tract of land in Bell County, Texas, part of the W.H. Coles Survey, Abstract No. 200

Replats and Amendments: During the preceding five (5) years, was the platted property limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot? Yes/No During the preceding five (5) years, was any lot in the preceding plat limited by deed restrictions to residential use for not more than two residential units per lot? Yes/No Attach a copy of applicable deed restrictions or a (notarized) letter from the applicant stating that no deed restrictions apply.

What is the reason for the replat / amendment? N/A

Owner(s) must initial:

DC I hereby certify that all fees/charges owed by me/us to the City concerning any prior plats and/or subdivisions have been paid in full as of the date of this application.
DC I understand that attendance at the Development Review Committee meeting is mandatory. My failure to attend or my agent's failure to attend will result in rescheduling the meeting of the Development Review Committee and delay processing of the application.
DC I understand that I must obtain approval from both Planning and Zoning Commission and City Council (except in the case of minor plats) prior to the plat being recorded with the Clerk of Bell County.

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: Mitchell & Associates, Inc.

Mailing Address: P.O. Box 1088 / 102 N College

City : Killeen State: Texas Zip: 76540

Home Phone: () N/A Business Phone: (254) 634-5541

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; 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. If 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 [Handwritten Signature] Title Agent ENGINEER

Printed/Typed Name of Agent Mitchell & Associates, Inc. Date 6/7/2013

Signature of Property Owner [Handwritten Signature] Title President

Printed/Typed Name of Property Owner Rodney Scott Cospoer Date 6/7/13

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

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



**PLANNING AND
DEVELOPMENT SERVICES**

PLAT CASE:

#13-019P

SUBDIVISION NAME:

PRAIRIE VIEW ESTATES
PHASE THREE

PROPERTY OWNER:

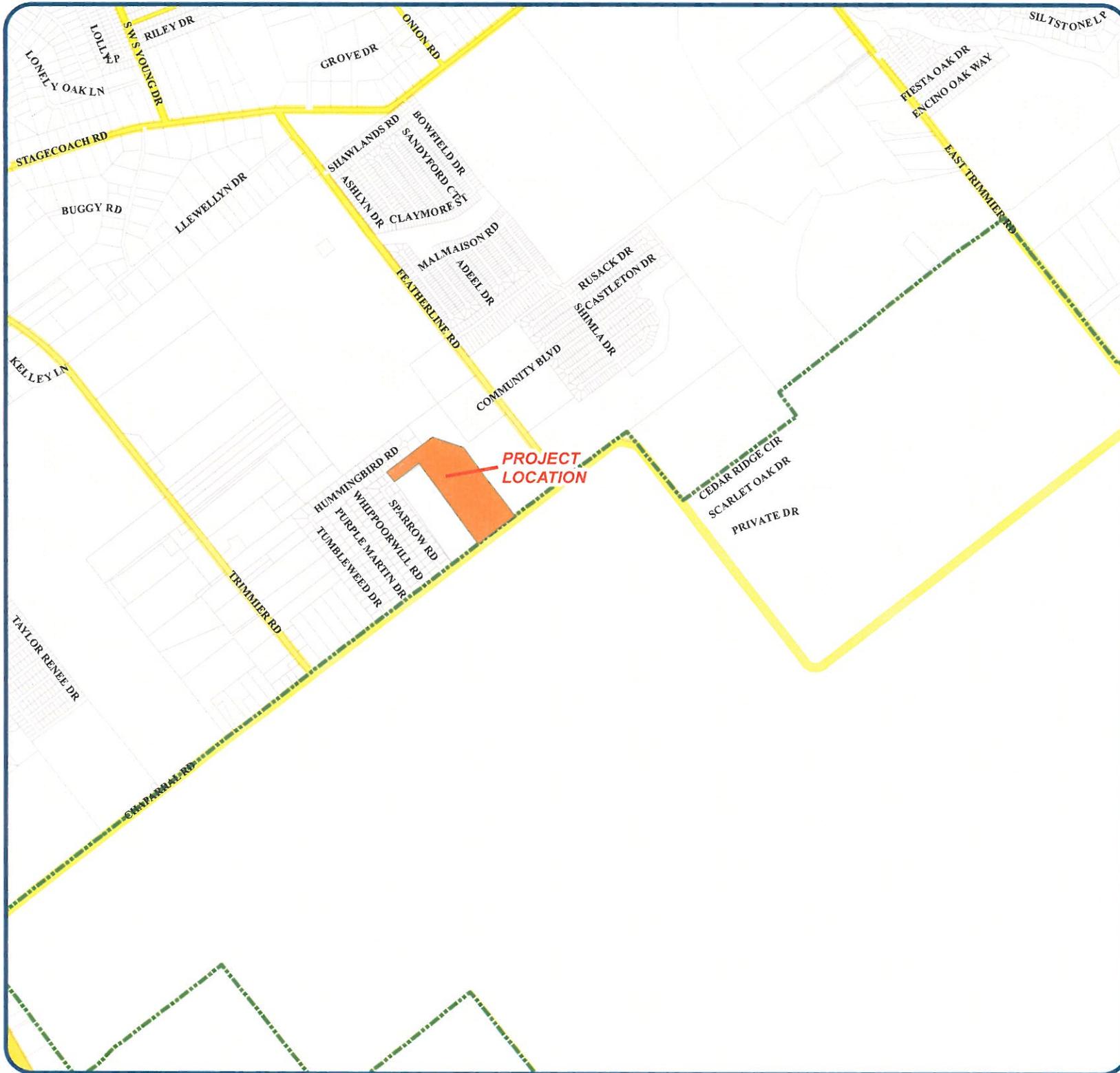
D & SC ENTERPRISES, INC

Legend

-  Production.GISADMIN.PlatCases2013 selection
-  City Limits
-  Production.GISADMIN.Parcel



Date: 7/24/2013



Regular 08-13-13
Item # CA-4B
CCM/R _____

CITY COUNCIL MEMORANDUM FOR RESOLUTION

AGENDA ITEM

City/Owner Agreement for Construction of a Portion of the Yowell Creek Tributary Gravity Sanitary Sewer Inceptor as a part of the Prairie View Estates, Phase Three Subdivision

ORIGINATING DEPARTMENT

Public Works/Engineering

BACKGROUND INFORMATION

The developer of the Prairie View Estates, Phase Three Subdivision has agreed to participate with the City of Killeen to increase the size of certain public infrastructure. The subdivision abuts Chaparral Road to the south; the Soldier's Hospitality House property to the west; the Prairie View Estates, Phase Two Subdivision and Featherline Road electric transmission substation (Oncor Electric Delivery Killeen Switching Station) to the north; and undeveloped property reserved by the developer to the east.

DISCUSSION/CONCLUSION

Process Summary

Section 26-85 of the Killeen Code of Ordinances defines the process wherein the City may enter into an agreement with a developer to construct public improvements, not including a building, related to land development. Under such an agreement, the developer constructs the improvements and the City participates in project costs within prescribed limits.

To begin the process, the developer submits a letter of intent seeking City cost participation - in this specific case, for the material over-sizing of a sanitary sewer main. The request for City cost participation must be in association with a proposed subdivision of land. Through review of appropriate documentation, City staff and the developer come to a mutual understanding of project scope and over-sizing (i.e., not infrastructure required to support a development itself, but additional material and labor required to meet a defined public need or provide a regional benefit).

The developer performs the public improvement project under the terms and conditions of an agreement-in-form approved by the City Attorney. This standard form agreement conforms to Local Government Code requirements for City participation and was adopted by City Council Resolution (CCM/R 02-112R). In support of the proposed agreement, the developer must provide a detailed quantity take-off presenting the differential costs for over-sizing public

infrastructure. This is accomplished by a standard form of cost tabulation requested by Public Works staff to evaluate whether the developer-proposed project costs are reasonable and reflect current industry standards.

The developer must clearly delineate public benefits and provide discrete over-sizing costs for the proposed project. A project evaluation is performed by Public Works/Engineering staff, which includes a vetting of all proposed unit costs and rates. The sources of construction cost data for review and comparison include other recent city-owner agreement costs for similar work (among local developers), as well as bid tabulations from recent similar capital improvement projects advertised by the City. On occasion, staff evaluation of project costs includes a review of regional or national cost indices for infrequently-performed or unique construction. City staff may also pursue best-value negotiations with the developer that may include, but not necessarily be limited to, alternate utility alignments or alternate materials.

Once a mutual project understanding is achieved, the proposed project and cost participation summary is submitted to the developer for concurrence. Under past standing protocol, an owner-executed agreement is forwarded directly to the City Council for consideration. Agreements are often considered concurrent with a plat application for the subdivision in which the proposed project would be constructed; however, Killeen Code of Ordinances Section 26-85(b)(5) allows consideration of a city-owner agreement at any time during the development process.

Project Summary

The 2012 Water and Wastewater Master Plan includes a gravity sanitary sewer interceptor to support development within the upper portion of the Yowell Creek Tributary basin west of Featherline Road and north of Chaparral Road, and to receive future diverted flow from the City's lift station on the Texas A&M University - Central Texas campus (Lift Station No. 20). The uppermost portion of the gravity interceptor serving this basin extends through the Prairie View Estates Subdivision, and adjoins the existing 18-inch diameter gravity sanitary sewer interceptor within Yowell Ranch east of the subdivision. The line connects to a 27-inch diameter gravity sanitary sewer interceptor, then a 30-inch diameter gravity sanitary sewer interceptor, which flows to the Bell County Water Control & Improvement District No. 1 South Wastewater Treatment Plant.

Design and construction of 2012 Water and Wastewater Master Plan Project 11S is targeted for completion in the 2016 - 2018 bond project cycle. However, current development in the Yowell Creek Tributary basin warrants consideration of accelerating this project. The benefits of design and construction of Project 11S at this time include conveyance of required project utility easements through the platting process at no additional costs to the City; leveraging favorable construction material pricing and labor rates; and providing public utility service coincident with active, ongoing building construction. In addition, the portion of Project 11S to be constructed as part of the Prairie View Estates, Phase Three Subdivision would be designed to serve the full build out of the Yowell Creek Tributary basin west of Featherline Road and north of Chaparral Road.

In accordance with the City's Development Code, a developer is required to provide (at the developer's sole cost) sanitary sewer mains sized to fully serve the proposed development. For the Prairie View Estates, Phase Three Subdivision, the largest required sewer main is 6-inches in

diameter. The attached City/Owner Agreement reflects the cost to construct 4,367 linear feet of 10/12/18-inch diameter gravity interceptor with appurtenances (\$231,239.13). The project costs were reviewed by staff and found to reflect prevailing construction costs.

FISCAL IMPACT

Funding in the amount of \$231,239.13 for the extension of the 10/12/18-inch diameter gravity interceptor is available in 2007 Water & Bond Project Account 386-3495-800.54-63.

RECOMMENDATION

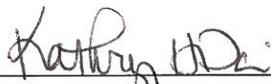
Recommend that the City Council agree to construct a 10/12/18-inch diameter gravity interceptor in association with the Prairie View Estates, Phase Three Subdivision; and to authorize the City Manager to execute a City/Owner Agreement for these public improvements.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this the 13th day of August, 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:

Dianna Barker
CITY SECRETARY

**CITY OF KILLEEN
COUNTY OF BELL
STATE OF TEXAS**

**§ CITY/OWNER AGREEMENT-IN-PRINCIPAL
§ TO OVERSIZE SELECTED SANITARY
§ SEWER INFRASTRUCTURE IN
§ ASSOCIATION WITH THE PRAIRIE VIEW
§ ESTATES, PHASE THREE SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the **CITY OF KILLEEN** is authorized by law to approve development plats within its corporate limits and its extraterritorial jurisdiction; and

WHEREAS, **D&SC ENTERPRISES, INC**, has submitted and obtained final plat approval of **PRAIRIE VIEW ESTATES, PHASE THREE**, a subdivision development, by the City Council of Killeen; and

WHEREAS, the Killeen Code of Ordinances requires the completion of certain public improvements in connection with development to safeguard the health, safety and general welfare of the community,

WHEREAS, these improvements promote the orderly and planned development of public infrastructure within the City, and are intended to overcome the detrimental effects of inadequate and over-taxed public infrastructure; and

WHEREAS, the City has identified a gravity sanitary sewer interceptor to support development within the upper portion of the Yowell Creek Tributary sanitary sewer drainage basin in its adopted 2012 Water and Wastewater Master Plan; and

WHEREAS, the benefits of said Public Improvements are to the Owner, the City, and the Public; and

WHEREAS, the City's purposes in entering into this Agreement are to encourage development in an equitable manner, and to minimize the City's costs associated with the design and construction of public transportation, drainage, and sanitary sewer infrastructure; and

WHEREAS, the parties to this Agreement wish to provide for the protection of the rights and interests of the respective parties and to document for posterity a record of their agreement so that the public interest of the citizens of the City of Killeen is well served;

NOW, THEREFORE, AND IN CONSIDERATION OF, the mutual covenants and obligations herein expressed, the parties hereto agree as follows:

RECITALS

1. Parties. The parties to this City/Owner Agreement (hereinafter “Agreement”), are the **City of Killeen**, a municipal corporation, (hereinafter “City”), acting by and through its City Manager, whose address is 101 North College Ave., Killeen, Texas, 76541, and **D&SC Enterprises, Inc.**, whose address is 2110 Southport Drive, Killeen, Texas, 76542, (hereinafter “Owner”).
2. Project. Owner is the owner of land included in the development project (hereinafter “Project”), more fully described by metes and bounds in **Exhibit A**, attached hereto and incorporated herein for all intents and purposes.

OBLIGATIONS OF OWNER

3. Improvements. Owner agrees to construct as described in **Exhibit B**, attached hereto and incorporated herein for all intents and purposes (collectively the “Public Improvements”), through the Project area **Prairie View Estates, Phase Three** (Exhibit A) according to the standards and specifications in effect at time of construction. Owner agrees to construct and dedicate the Public Improvements as an independent obligation on its part, regardless of City’s performance under this Agreement.
4. Performance Bond. Owner shall provide a Performance Bond as specified in **Exhibit D**, “Development Process”.
5. Maintenance Bond. Upon completion of the Project and prior to the acceptance of the Project by City for maintenance, Owner shall submit to City a maintenance bond, in the amount equal to fifteen percent (15%) of the total cost to construct all streets and drainage in the Project and ten percent (10%) of the total cost to install all the water and sewer lines in the Project, executed by a corporate surety duly authorized to do business in this State, payable to the City and approved by the City as to form, to guarantee the maintenance of the Public Improvements for a period of one (1) year after completion and acceptance by City. In lieu of the maintenance bond, Owner may submit either an irrevocable letter of credit or cash bond payable to City in a face amount equal to that stated above for a surety bond, and approved by City as to form. “Maintenance” is defined for purposes of this paragraph as any repair, removal, replacement, or other work necessitated by defects in the original construction of the Public Improvements.
6. Compliance with Law. Owner agrees that nothing herein shall negate the applicability of future health and safety regulations which are not currently a part of the laws concerning subdivisions.
7. Easements. Owner agrees to dedicate any and all easements necessary to the Project which are located on Owner’s property. Owner agrees to grant a right-of-way for all sewer and water lines that City may desire to construct or cause to be constructed in the aforementioned streets, alleys, roads, courts, avenues, drives, public ways, and parks in said Project. Such easements shall be dedicated before beginning construction.

8. Conveyance/Dedication. Owner agrees to dedicate to City all the streets, alleys, roads, courts, avenues, drives, public ways, bridges, water and sewer lines, sidewalks, drainage courses, parks, and all other improvements in said Project, exclusive, however, of those portions of the streets, alleys, roads, courts avenues, drives, public ways, bridges, water and sewer lines, sidewalks, drainage courses, and parks, lying outside of the City's limits as fixed by the legislature of Texas, which shall be dedicated to the public. Any and all dedications will not be effective until City takes formal action to accept the dedication(s) by letter of acceptance. Upon formally accepting the dedication, and after expiration of the 1-year maintenance bond required by City Ordinance and described in Exhibit D, City shall maintain same at its expense as provided for in the Killeen Code of Ordinances as part of the public ways of the City within the City's limits. The following are specifically excluded from conveyance or dedication and are expressly excluded from warranty: all encumbrances and other matters of record and all matters visible or apparent on the ground that a true and correct survey would reveal.
9. Warranty. Owner hereby gives express warranty that the Public Improvements will be constructed in accordance with the City's standards and specifications and shall be free from defects. Owner further indemnifies City for all claims, expenses, and liability arising in connection with any and all defects. This express warranty and indemnification shall be limited to a period of one (1) year after acceptance by City of the last completed Public Improvement. If there is a defect in construction or materials, City reserves the right to require an extension of the one-year warranty as a condition for final acceptance of the public improvements.
10. Inspections. Owner agrees that any and all work performed regarding the Public Improvement was or shall be inspected by the City's designated Engineer or inspector to ensure the quality of work and materials. The City shall have no duty to inspect the work of any contractor or subcontractor of the Owner except with regard to the Public Improvements and shall have no duty with regard to workplace safety at Project.
11. Insurance. No later than ten (10) days after the effective date of this Agreement and before the commencement of construction of the Public Improvements, Owner agrees to provide to City a certificate of insurance listing City of Killeen as an additional insured on its commercial general liability insurance policy.

CITY'S OBLIGATIONS

12. Acceptance/Certification. The acceptance of the Public Improvements, upon completion, is subject to approval of the City's designated Engineer.
13. Payment. Upon acceptance of **Prairie View Estates, Phase Three**, a "Participation Cost" as set forth in **Exhibit C** shall be paid by the City. Notwithstanding anything contained in this Agreement, City shall not reimburse that portion(s) of costs which together exceed thirty percent (30%) of the costs of the Public Improvements. If upon a final accounting it is determined that the City paid more than 30%, Owner agrees to refund to the City that portion above 30% within 30 days of City's written request for reimbursement. It is mutually agreed and understood that City will pay no interest to

Owner on the said total cost of the constructions and installations mentioned in Exhibit C. Notwithstanding any of these provisions, State law allows participation by the City at a level not to exceed one-hundred percent (100%) of any costs associated with over sizing any project improvement.

14. Defects During Warranty Period. City shall notify Owner in writing upon discovery of defects in the Public Improvements. Owner shall remedy defects within thirty (30) days after receiving notice of such from City. City may in its sole discretion grant additional time for remedy of defects where required by nature of the defect, provided that Owner commence work within thirty (30) days after receiving notice as described above and continue diligently to complete the repair work.

GENERAL TERMS AND CONDITIONS

15. Specifications. It is understood among the Parties that the technical requirements and specifications for the Project shall be in accordance with those established by the City's designated Engineer. It is further understood that designs for the Project shall be provided by Owner and must be approved by City's designated Engineer. Such approval shall not be unreasonably withheld.
16. Objectives. In the negotiation and acceptance of any term or condition, the parties hereby agree that the objectives to be fulfilled are the development of the Project and the orderly development in all the areas in its vicinity capable of development by reason of its location, topography, and pressure planes, subject to reasonable engineering efforts, so that the public interest of the City of Killeen will be well served.
17. Independent Obligation. Owner's obligation to construct and complete the Public Improvements as to which the City is making cost participation is not conditioned upon commencement of work in the subdivision or upon the sale of lots.
18. Binding Agreement. The terms and conditions set out in this Agreement shall be binding upon the parties hereto, and upon the heirs, successors, executors, administrators, personal representatives, and assigns of Owner and City.
19. Governing Law. In any dispute between the parties, it is hereby agreed that the laws of the State of Texas shall control and the venue shall be in Bell County, Texas.
20. Effective Date. This Agreement is effective upon signature by the last party to sign it.
21. Failure to Cure Defects. If Owner fails to remedy defects within thirty (30) days or within additional time granted by City, City may take any and all action to perform the work to remedy defects, including contracting with another party for the repair work or using City maintenance crews to perform the repair work, as City deems appropriate. Owner shall reimburse City for costs of remedying defects or alternatively, City may draw upon the Owner's security described below and in Exhibit D.
22. Default. The following occurrences shall constitute defaults on the part of Owner:

- (1) Owner's failure to begin or complete work on the Public Improvements within the prescribed time;
 - (2) Owner's failure to construct Public Improvements in accordance with the requirements of Exhibit B;
 - (3) Owner's failure to cure defects within the time period prescribed;
 - (4) Owner's abandonment of the Project as evidenced by his failure to perform work for a period of one hundred eighty (180) days;
 - (5) Owner's insolvency, appointment of receiver, or filing of a voluntary or involuntary bankruptcy petition; or
 - (6) The commencement of a foreclosure proceeding against the Project property, or a conveyance in lieu of foreclosure.
23. Rights Upon Default. Upon default by Owner, City reserves all remedies available at law or in equity, including but not limited to: (1) an action to recover damages for breach of this Agreement; (2) an action to seek specific performance; (3) an action to seek injunctive relief; (4) an action to rescind this Agreement and final plat approval; and (5) drawing upon the Owner's security described below and in Exhibit D. City shall be entitled to recover all expenses and reasonable attorney's fees in the event of litigation. All remedies provided by this Agreement are cumulative of rights provided at law or in equity.
24. Forms of Security. In order to guarantee completion of the Public Improvements and the faithful performance of this Agreement, the Owner, no later than ten (10) days after the effective date of this Agreement and before the commencement of the construction of the Public Improvements, shall deliver to the City the following: a performance bond in the penal sum of one hundred (100) percent of the cost to complete the Public Improvements, insuring full completion of the public improvements described in Exhibit D to this Agreement.
25. Waiver. City waives none of its rights with respect to this Agreement unless that right is expressly waived in writing herein. Nothing herein shall constitute an implied waiver of City's sovereign immunity.
26. Severability. If any provision of this Agreement is held by the courts to be illegal or unenforceable, that provision shall be severed from the Agreement and shall not render invalid the remaining provisions of this Agreement.
27. Entire Agreement. The provisions herein constitute the full extent of the Agreement among the parties concerning the construction of Public Improvements in this Project, and no parole evidence shall be allowed to contradict the terms hereof. Any amendment to or modification of this Agreement shall be by the written, mutual consent of the parties hereto.
28. Assignment. No obligation contained herein shall be transferred or assigned without the written, mutual consent of the parties hereto.
29. Attorney's Fees. Should any party hereto bring suit in court to enforce the terms hereof, it is agreed that the losing party or parties shall pay to the successful party or parties costs

and reasonable attorney's fees. If relief is granted to all parties, each will bear its own costs in their entirety.

Executed this _____ day of _____, 2013.

CITY OF KILLEEN

D&SC ENTERPRISES, INC.

BY: _____
Glenn Morrison
CITY MANAGER

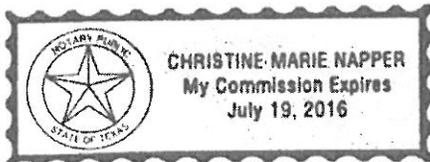
BY: Rodney Scott Cosp
Rodney Scott Cosp
PRESIDENT

ATTEST:

BY: _____
Dianna Barker
CITY SECRETARY

STATE OF TEXAS §
COUNTY OF BELL §

This instrument was acknowledged before me on this 31 day of July, 2013,
by Christine Marie Napper



Christine Marie Napper
Notary Public, State of Texas

Exhibits:

- A – Property Description – Field Notes
- B – Public Improvements To Be Constructed By Owner
- C – City Participation Cost
- D – Development Process

EXHIBIT A

**PROPERTY DESCRIPTION –
FIELD NOTES**

PRAIRIE VIEW ESTATES, PHASE THREE

All construction and remedial actions to take place in existing City of Killeen right-of-way and in accordance with the attached field notes (two pages) for Prairie View Estates, Phase Three, entitled Exhibit A.

PRAIRIE VIEW ESTATES
PHASE THREE
28.099 ACRES

FIELD NOTES for a 28.099 acre tract of land in Bell County, Texas, being part of the W. H. Cole Survey, Abstract No. 200, and the land herein described being part of a called 67.12 acre tract conveyed to D & SC Enterprises, Inc., of record in Volume 6023, Page 193, Official Public Records of Real Property, Bell County, Texas (O.P.R.R.P.B.C.T.), and being more particularly described as follows:

BEGINNING at a 3/8" iron rod with cap stamped "M&ASSOC KILLEEN" found on the present north right-of-way line of Chaparral Road at the southwest corner of said 16.79 acre tract, being the southeast corner of a called 16.117 acre tract conveyed to Cadence International, of record in Volume 4407, Page 732, O.P.R.R.P.B.C.T., for the southwest corner of this tract;

THENCE N. 18° 52' 00" W., 789.58 feet, with the west line of said 67.12 acre tract and the east line of said 16.117 acre tract, to a 3/8" iron rod with cap stamped "M&ASSOC KILLEEN" found at an angle corner of said 67.12 acre tract and said 16.117 acre tract, for an angle corner of this tract;

THENCE N. 19° 22' 15" W., with the west line of said 67.12 acre tract and the east line of said 16.117 acre tract, at a distance of 700.34 feet, pass a 3/8" iron rod with cap stamped "M&ASSOC KILLEEN" found at an interior corner of said 67.12 acre tract and the northeast corner of said 16.117 acre tract, continuing on same course over and across said 67.12 acre tract, for a total distance in all of 728.65 feet, for an interior corner of this tract;

THENCE S. 69° 25' 47" W., 467.85 feet, over and across said 67.12, to a 1/2" iron rod with cap stamped "Harmon" found at the northwest corner of said 16.117 acre tract, being at the southeast terminus of Sparrow Road and the northeast corner of Lot 15, Block 6, as shown on the plat of Prairie View Estates Phase II, of record in Cabinet D, Slide 160-A, Plat Records of Bell County, Texas, for the northerly southwest corner of this tract;

THENCE N. 20° 28' 06" W., 59.92 feet, with the east terminus of Sparrow Road, to a 1/2" iron rod with cap stamped "Harmon" found at the northeast terminus of said Sparrow Road and the southeast corner of Lot 25, Block 1, said Prairie View Estates Phase II, for an angle corner of this tract;

THENCE N. 20° 00' 27" W., 135.72 feet, with the east line of said Lot 25, to a 5/8" iron rod with cap found at the northeast corner of said Lot 25, being on the south line of Lot 5, Block 1, said Prairie View Estates Phase II, for the northwest corner of this tract;

THENCE N. 69° 27' 35" E., with the south line of said Block 1, at a distance of 676.94 feet, pass a 1/2" iron rod found at the southeast corner of said Block 1, continuing on same course over and across said 67.12 acre tract, for a total distance in all of 875.67 feet, for the northeast corner of this tract;

THENCE S. 54° 10' 53" E., 498.77 feet, over and across said 67.12 acre tract, to a 1/2" iron rod with cap stamped "M&Assoc Killeen" set for an angle corner of this tract;

THENCE S. 19° 22' 21" E., 603.74 feet, over and across said 67.12 acre tract, to a 1/2" iron rod with cap stamped "All County" found at the northwest corner of a called 3.260 acre tract conveyed to Brazos Electric Power Cooperative, Inc., of record in Document No. 2008-43050, O.P.R.R.P.B.C.T., for an angle corner of this tract;

THENCE S. 20° 34' 15" E., 399.93 feet, with the west line of said 3.260 acre tract, to a 1/2" iron rod found at the southwest corner of said 3.260 acre tract, for an angle corner of this tract;

THENCE S. 20° 05' 38" E., 299.90 feet, over and across said 67.12 acre tract, to a 1/2" iron rod with cap stamped "M&Assoc Killeen" set on the north right-of-way line of said Chaparral Road and the south line of said 67.12 acre tract, for the southeast corner of this tract;

THENCE S. 69° 54' 28" W., 708.95 feet, with the north right-of-way line of said Chaparral Road and the south line of said 67.12 acre tract, to the POINT OF BEGINNING and containing 28.099 acres of land.

The bearings for the above description are based on the Texas Plane Coordinate System, Central Zone, NAD 83 (CORS 96), per Leica Texas SmartNet GPS observations..

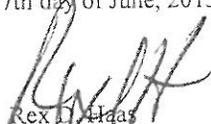
See accompanying drawing.

STATE OF TEXAS

COUNTY OF BELL

KNOW ALL MEN BY THESE PRESENTS, that I, Rex D. Haas, Registered Professional Land Surveyor, do hereby certify that I did cause to be surveyed on the ground, the above described tract and that this description is true and correct to the best of my knowledge and belief. Survey completed on the ground April 25, 2013.

IN WITNESS THEREOF, my hand and seal this the 7th day of June, 2013.


Rex D. Haas
Registered Professional
Land Surveyor, No. 4378



S:\Subdivisions\Prairie View Estates Phase Three 12-116-D\Paperwork\Prairie View Est 3 FN.doc
Mitchell & Associates, Inc., 102 N. College St. Killeen, Texas 76541 (254)-634-5541

EXHIBIT B

PUBLIC IMPROVEMENTS TO BE CONSTRUCTED BY OWNER

PRAIRIE VIEW ESTATES, PHASE THREE

The Public Improvements to be oversized by the Owner as a part of this Agreement include the following infrastructure:

- Constructing 4,367 linear feet of 10/12/18-inch diameter gravity sanitary sewer interceptor main with appurtenances.

These Public Improvements shall be in accordance with the approved construction drawings entitled Prairie View Estates, Phase Three, which are made a part of this Agreement.

EXHIBIT C

CITY PARTICIPATION COST

PRAIRIE VIEW ESTATES, PHASE THREE

Upon inspection of the Public Improvements listed in Exhibit B of this Agreement, and upon City's determining that they are acceptable to the City, the City shall pay Owner one hundred percent (100%) of the installed cost of said Public Improvements identified in Exhibit B of this Agreement.

The specific items for City Cost Participation in this Agreement are described herein:

ITEM DESCRIPTION	CITY'S COST
<u>Sanitary Sewer Infrastructure</u>	
Install sanitary sewer main to 10/12/18-inch diameter gravity interceptor to serve the upper portion of the Yowell Creek Tributary basin and project Engineering and Surveying costs	<u>\$231,239.13</u>
Total Cost to Oversize Sanitary Sewer Main	\$231,239.13
TOTAL CITY COST IN PROJECT	\$231,239.13

EXHIBIT D

DEVELOPMENT PROCESS

PRAIRIE VIEW ESTATES, PHASE THREE

1. Owner shall post with the City a Performance Bond executed by a corporate surety or corporate sureties duly authorized to do business in this State, payable to City and approved by City as to form, for construction included in the approved construction plans, in the sum of **To Be Determined**. A power of attorney shall be attached to the bond evidencing that the agent signing the bond has authority to sign the bonds on behalf of the surety. The bond shall be released upon completion and final acceptance by the City of the public improvements.
2. The approved plat with required notations shall be recorded following receipt of the Performance Bond.
3. The Public Improvements shall be completed to the satisfaction of the City prior to the City's making any cost participation in the construction thereof, and prior to the issuance to Owner of a Certificate of Occupancy for any building or structure built on the premises of the Project.
4. Upon completion of the Public Improvements, prior to their being accepted for maintenance by the City, Owner shall post, or cause to be posted, a Maintenance Bond executed by a corporate surety or sureties duly authorized to do business in Texas. Said Maintenance Bond shall be payable to City and approved by City as to form, to guarantee the maintenance of the Public Improvements for a period of one (1) year after completion and City's acceptance of them. If there is a defect in construction or materials, City reserves the right to require an extension of the one-year warranty as a condition of final acceptance of the Public Improvements.
5. In lieu of a maintenance bond, Owner may submit either an Irrevocable Letter of Credit payable to City and approved by City as to form, or a Cash Bond payable to City and approved by City as to form.

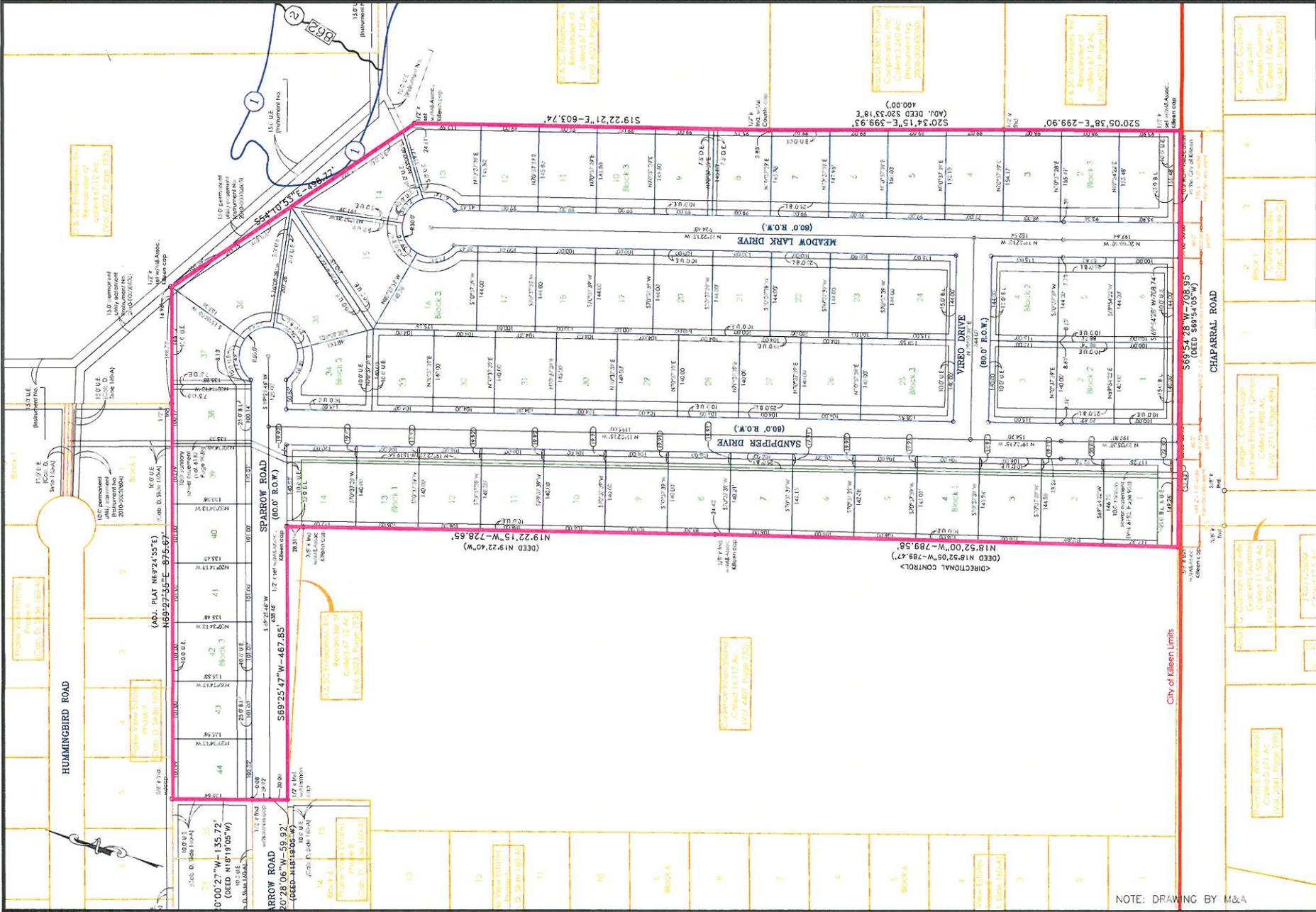
**ENGINEER'S OPINION OF PROBABLE COST FOR
PRAIRIE VIEW ESTATES, PH 3
SANITARY SEWER OVERSIZING
CITY OF KILLEN, BELL COUNTY, TEXAS**

July 30, 2013

PREPARED BY : MITCHELL AND ASSOCIATES, 102 N. COLLEGE STREET, KILLEEN, TEXAS 76541

Item	Description	Quantity	Units	Unit Cost	Sub-Total
SUBDIVISION SANITARY SEWER IMPROVEMENTS					
1	6" SDR 26 PVC SEWER	4954	LF	\$25.00	\$123,850.00
2	18" SDR 26 PVC SEWER	34	LF	\$65.00	\$2,210.00
3	STANDARD 48" DIA. MANHOLE (ALL DEPTHS)	8	EA	\$5,500.00	\$44,000.00
4	WATERTIGHT 48" DIA MANHOLE (ALL DEPTHS)	4	EA	\$6,000.00	\$24,000.00
5	6" CLEANOUT	4	EA	\$1,000.00	\$4,000.00
6	REMOVE CLEANOUT & CONNECT TO EX MAIN	1	EA	\$2,000.00	\$2,000.00
Subtotal					\$200,060.00
OVERSIZED SANITARY SEWER IMPROVEMENTS					
1	6" SDR 26 PVC SEWER	1373	LF	\$25.00	\$34,325.00
2	10" SDR 26 PVC SEWER	1170	LF	\$35.00	\$40,950.00
3	12" SDR 26 PVC SEWER	199	LF	\$45.00	\$8,955.00
4	18" SDR 26 PVC SEWER	3072	LF	\$65.00	\$199,680.00
5	STANDARD 48" DIA. MANHOLE (ALL DEPTHS)	9	EA	\$5,500.00	\$49,500.00
6	WATERTIGHT 48" DIA MANHOLE (ALL DEPTHS)	5	EA	\$6,000.00	\$30,000.00
7	6" CLEANOUT	3	EA	\$1,000.00	\$3,000.00
8	10" CLEANOUT	1	EA	\$1,500.00	\$1,500.00
9	REMOVE CLEANOUT & CONNECT TO EX MAIN	1	EA	\$2,000.00	\$2,000.00
10	DEWATER AND CONNECT TO EX MANHOLE	1	EA	\$2,500.00	\$2,500.00
11	DISCONNECT AND PLUG EX 10" MAIN	1	LS	\$2,500.00	\$2,500.00
Subtotal					\$374,910.00
TOTAL SUBDIVISION SANITARY SEWER IMPROVEMENTS (+15% CONTINGENCY)					\$230,069.00
TOTAL OVERSIZED SANITARY SEWER IMPROVEMENTS (+15% CONTINGENCY)					\$431,146.50
DIFFERENTIAL COST					\$201,077.50
ENGINEERING FEES (15%)					\$30,161.63
CITY PARTICIPATION (DIFFERENTIAL COST + ENGINEERING FEES)					\$231,239.13

The Engineer's evaluations of the Owner's project budget and its opinions of construction costs as provided for herein will be made on the basis of the Engineer's experience and qualifications and will represent Engineer's best judgment as a qualified design professional familiar with the construction industry. Because, however, the Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over the competitive bidding process or future market conditions, the Engineer can not and does not guarantee or represent that proposals, bids, negotiated prices, or actual construction costs will not vary from the opinions of probable construction costs prepared or agreed upon by the Engineer.



DATE: 07/18/2013

LOTS: 64

APPROX: 28.09 acres

PRAIRIE VIEW ESTATES PHASE THREE

PLAT CASE #13-019P



CITY OF KILLEEN

PLANNING/MAPPING

P.O. BOX 1329
KILLEEN, TEXAS 76540-1329

NOTE: DRAWING BY M&A

CITY COUNCIL MEMORANDUM FOR ORDINANCE

AGENDA ITEM

Comprehensive Plan Future Land Use Map (FLUM) Amendment: 'Suburban Residential' to 'Suburban Commercial'

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

Nature of the Request

This consideration is a result of Gary Ray Kelley's (the applicant) request to rezone approximately 1.39 acres from 'A' (Agricultural District) to 'B-3' (Local Business District). The applicant is rezoning the property for a prospective office complex. It will be necessary to amend the Comprehensive Plan's future land use map (FLUM) to change a 'Suburban Residential' designated area to a 'Suburban Commercial' designated area. The property is part of the Moses T. Martin Survey, Abstract No. 963, and is located at the intersection of Trimmier Road and Kelley Lane, approximately 0.7 miles south of Stagecoach Road, Killeen, Texas.

Figure 1. Aerial Map

See Attachment

Figure 2. Future Land Use Map (FLUM)

See Attachment

Factors to Consider

Scope of Amendment: Is the proposed map change limited to one or a few parcels, or would it affect a much larger area? *The amendment would affect approximately 1.39 acres, and should be considered small scale.*

Change in Circumstances: What specific conditions (e.g., population size and/or characteristics, area character and building form, property/structure conditions, infrastructure or public services, market factors including need for more land in a particular designation, etc.) have changed sufficiently to render the current map designation(s) inappropriate or out-of-date? *The property owner intends to develop the property for future commercial use. The property has frontage along Trimmier Road, which is designated as a 90' minor arterial on the City's Thoroughfare Plan. This portion of Trimmier Road is a rural section road with a bar ditch profile of substandard composition. There are properties to the east and near south of the subject site, that are currently zoned for commercial use ('B-3' Local Business District).*

Adequate Information: Do City staff, the Planning and Zoning Commission, and/or City Council have enough and appropriate information to move ahead with a decision (e.g. utility capacity, potential traffic impacts, other public service implications, resident/stakeholder

concerns and input)? *Staff has sufficient information regarding utility capacity. Staff does not have any information from the applicant regarding traffic impacts; however the area has direct access to Trimmier Road.*

Stakeholder Input: What points, concerns, and insights have been raised by area residents, property owners, business owners, or others? *With the exception of listing this action as a public hearing item on the Planning and Zoning Commission's agenda, there is no public notice requirement for this amendment action; therefore, staff has not sought, nor received any stakeholder input.*

Land Use Plan

The 'Suburban Commercial' designation encourages the following development types: Range of commercial retail and service uses, at varying scales and intensities depending on the site; office (both large and/or multi-story buildings and small-scale office uses depending on the site); planned development to accommodate custom site designs or mixing of uses in a suburban character setting; public/institutional; and parks and public spaces.

The 'Suburban Commercial' designation has the following characteristics:

- Suburban character primarily from reduced site coverage relative to most commercial development.
- Especially at key community entries and along high-profile corridors, may also involve other criteria to yield less intensive and more attractive development outcomes relative to auto-oriented areas, including higher standards for landscaping (along street frontages and within parking areas), signs, and building design.
- May exclude some auto-oriented uses that, by their very nature, cannot achieve a suburban character.
- Near residential properties and areas, the permitted scale and intensity of non-residential uses should be limited to ensure compatibility (including adequate buffering/screening, criteria for placement and orientation of buildings and parking areas, height limits, and residential-in-appearance architectural standards).
- More opportunity for natural and/or swale drainage (and storm water retention/absorption) versus concentrated storm water runoff and conveyance in auto-oriented areas.

Recommendation

The Planning and Zoning Commission recommended approval of amending the FLUM from 'Suburban Residential' to 'Suburban Commercial' for this area with a unanimous vote.

The staff informed the Commission that an amendment to the FLUM for this property will allow for the designation of additional commercial areas in the southern part of the city. Currently, there is not a high degree of commercial designated area along the arterials located south of Stagecoach Road.

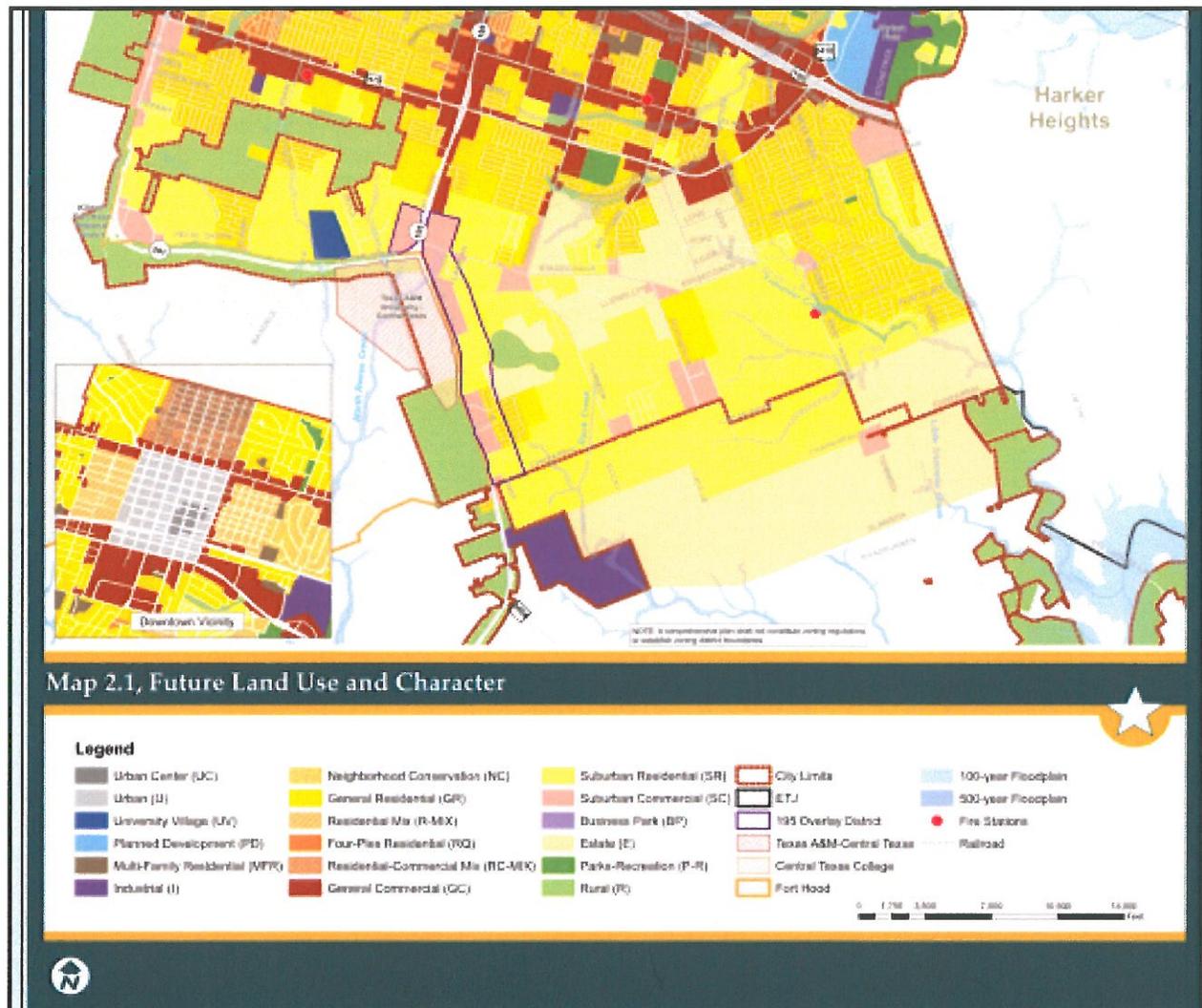
Attachment to FLUM 13-24

Figure 1. Aerial Map



KEY: Area requested for future land use amendment

Figure 2. Future Land Use Map



ORDINANCE _____

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP FROM 'SUBURBAN RESIDENTIAL' TO 'SUBURBAN COMMERCIAL' FOR APPROXIMATELY 1.39 ACRES OF LAND, LOCATED AT THE INTERSECTION OF TRIMMIER ROAD AND KELLEY LANE, APPROXIMATELY .7 MILE SOUTH OF STAGECOACH ROAD, KILLEEN, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to achieve orderly growth and fiscally prudent land development; and,

WHEREAS, the City Council finds that zoning regulations must be adopted in accordance with a comprehensive plan; and,

WHEREAS, the City Council has received a request from Gary Ray Kelley to revise the future land use map of the comprehensive plan to change approximately 1.39 acres from 'Suburban Residential' to 'Suburban Commercial'; and

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

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

SECTION I: That the land use designation of the following described tract be amended from 'Suburban Residential' to 'Suburban Commercial', for approximately 1.39 acres, being located at the intersection of Trimmier Road and Kelley Lane, approximately .7 mile south of Stagecoach 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 13th day of August, 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:

Dianna Barker
CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis
CITY ATTORNEY

Case #FLUM #Z13-24
Ord #13-__

**PLANNING AND ZONING COMMISSION MEETING
MINUTES
JULY 22, 2013**

**CASE #FLUM Z13-24
'A' TO B-3**

HOLD a public hearing and consider a request to amend the Comprehensive Plan's future land use map (FLUM) from 'Suburban Residential' to 'Suburban Commercial' for approximately 1.39 acres located at the intersection of Trimmier Road and Kelley Lane.

Chairman Frederick requested staff comments.

City Planner McIlwain stated that this is being considered as a result of Gary Ray Kelley's (the applicant) request to rezone approximately 1.39 acres from 'A' (Agricultural District) to B-3 (Local Business District). The applicant is rezoning the property for a prospective office complex. It will be necessary to amend the Comprehensive Plan's future land use map (FLUM) to change a 'Suburban Residential' designated area to a 'Suburban Commercial' designated area. The property is part of the Moses T. Martin Survey, Abstract No. 963, and is located at the intersection of Trimmier Road and Kelley Lane, approximately .7 mile south of Stagecoach Road, Killeen, Texas.

The factors to consider included the Scope of the Amendment, Changes in Circumstances, and Consistency with the Plan and if there was Adequate Information regarding the request to change the FLUM.

Staff recommended approval of amending the FLUM from 'Suburban Residential' to 'Suburban Commercial' for this area. An amendment to the FLUM for this property will allow for the designation of additional commercial areas in the southern part of the city. Currently, there isn't a high degree of commercial designated areas along the arterials located south of Stagecoach Road.

Chairman Frederick opened the public hearing.

Mr. Robert Mitchell spoke in support of the amendment to the FLUM. The applicant's intention is to have general commercial with retail activity.

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

Vice Chair Langford motioned to recommend approval of the amendment to the FLUM. Commissioner Dorroh seconded the motion. The motion passed 7 to 0.

Chairman Frederick stated that this will be heard by City Council on August 13, 2013 with a recommendation to approve the amendment to the FLUM.

CITY COUNCIL MEMORANDUM FOR ORDINANCE

AGENDA ITEM

ZONING CASE #Z13-24 'A' (Agricultural District) to B-3 (Local Business District)

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

Nature of the Request

This request, submitted by Gary Ray Kelley, is to rezone approximately 1.39 acres from 'A' (Agricultural District) to B-3 (Local Business District). The applicant is rezoning the property for a prospective office complex.

District Descriptions:

A building or premises in a 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 confectionary: 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.

Property Specifics

Applicant/Property Owner: Gary Ray Kelley

Property Location: The property is located at the intersection of Trimmier Road and Kelley Lane, approximately .7 mile south of Stagecoach Road, Killeen, Texas.

Legal Description: The property is part of the Moses T. Martin Survey, Abstract No. 963.

Zoning/Plat Case History: The property has retained its initial zoning of 'A' (Agricultural District) since being annexed. The property has not been platted.

Character of the Area

Existing Land Uses(s) on the Property: This site is currently undeveloped. The area is characterized by acreage tracts, some of which have businesses on them.

Figure 1. Zoning Map

See Attachment

Figure 2. Street Map

See Attachment

Historic Properties: None

Infrastructure and Community Facilities

Emergency Response:

Fire Protection District: City of Killen, fire District 5.

Fire Response Zone: 5-4

Miles from Fire Station: Approximately .88 mile from Fire Station No. 5.

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: The existing potable water main serving the property is a 6-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 Certificate of Convenience and necessity (CCN) application in 2008. The main is adequate to provide domestic service flows; however, it is unknown what level of fire flow could be provided from the main for commercial development. If existing domestic water service taps are in place that have served the property, these taps may be used to support existing development on the property-to include a mobile home. If the property is platted for the purpose of a development permit, the developer would 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 of Ordinances and other applicable development criteria. A permit applicant is solely responsible for, and shall perform and submit the results of all required testing of the public water mains to confirm adequate flow and pressure exists to support any Code-mandated fire protection measures.

The only option currently available for sanitary sewer service is a private onsite sanitary sewer facility (anaerobic or aerobic). Public sanitary sewer infrastructure near the subject property along this portion of Trimmier Road is a pressurized force main that cannot be tapped with a

gravity service. The City's current adopted Water & Sewer Master Plan does not include an immediate project to extend a public gravity interceptor to serve the sanitary sewer basin along Trimmier Road south of Stagecoach Road. This basin is projected for sparse development within the current and next Master Plan project cycle. However, the City will re-evaluate gravity sanitary sewerage options for portions of the drainage basin south of Stagecoach Road as development concepts are presented and in association with future capital improvement projects (e.g., Trimmier Road improvements, an unfunded CIP).

Long term, the City will provide a gravity sanitary sewer interceptor that flows to the south in the Trimmier Road drainage basin south of Stagecoach Road. The existing force main within Trimmier Road may be used to meet part of this gravity flow need. However, this force main was laid at inconsistent slope. The City's Master Plan Sanitary Sewer projects involve construction of a primary gravity interceptor to serve a specific basin that typically parallels the largest watercourse in the particular basin. A developer is required to extend a collection main from the interceptor to his property in accordance with the City of Killeen Code of Ordinances and other applicable development criteria.

The property is currently in agricultural use and is in an undeveloped state. Public storm drainage infrastructure is limited to public rights-of-way and detention of post development stormwater run-off may be required.

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

Transportation:

Existing Conditions: Trimmier Road is classified as a 90' minor arterial on the City's Thoroughfare Plan. This portion of Trimmier Road is a rural section road with a bar ditch profile of substandard composition. Kelley Lane is a local street.

Proposed Improvements: The City will seek additional right-of-way to satisfy the Thoroughfare Plan through the platting process.

Projected Traffic Generation: Minimal.

Environmental Assessment

Topography: The natural elevation contours range from 946' to 958' on the site.

Regulated Floodplain/Floodway/Creek: This tract is not within any FEMA special flood hazard area (SFHA).

Land Use Analysis

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

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: Not consistent; this request will require an amendment to the future land use map.

Public Notification

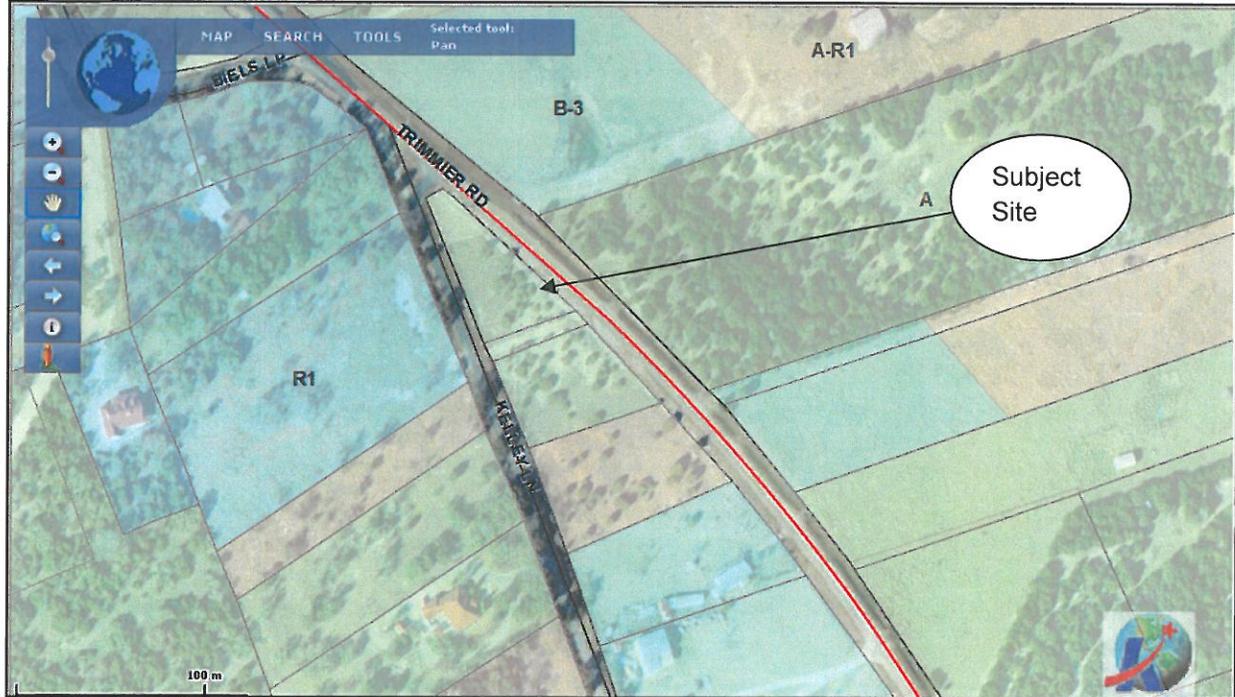
The staff notified nine (9) surrounding property owners regarding this request. Staff has received no protests.

Recommendation

The Planning and Zoning Commission recommended approval of the B-3 (Local Business District) by a vote of 7 to 0. The area is largely of a rural character with large acreage tracts. However, while the development is sparse, there are existing B-3 zoned areas along this segment of Trimmier road. The existing homesteads have large front setbacks, which help mitigate noise and light concerns. The B-3 zoning request is not inconsistent with the zoning of surrounding lands, and those allowable uses within this district are restrictive in nature so as to not present any adverse impacts to the community.



Figure 1. Zoning Map



**PLANNING AND ZONING COMMISSION MEETING
MINUTES
JULY 22, 2013**

**CASE #Z13-24
'A' TO B-3**

HOLD a public hearing and consider a request submitted by the Gary Ray Kelley 2012 Trust to rezone approximately 1.39 acres out of the M. T. Martin Survey, Abstract No. 963, from 'A' (Agricultural District) to B-3 (Local Business District) for an office complex. The property is located south of Stagecoach Road between Kelley Lane and Trimmier Road, Killeen, Texas.

Chairman Frederick requested staff comments.

City Planner McIlwain stated that this request submitted by Gary Ray Kelley is to rezone approximately 1.39 acres from 'A' (Agricultural District) to B-3 (Local Business District). The applicant is rezoning the property for a prospective office complex. The property is part of the Moses T. Martin Survey, Abstract No. 963, and is located at the intersection of Trimmier Road and Kelley Lane, approximately .7 mile south of Stagecoach Road, Killeen Texas.

The existing potable water main serving the property is a 6-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 Certificate of Convenience and Necessity (CCN) application in 2008. This main is adequate to provide domestic service flows; however, it is unknown what level of fire flow could be provided from the main for commercial development. If existing domestic water service taps are in place that have served the property, these taps may be used to support existing development on the property – to include a mobile home. If the property is platted for the purpose of a development permit, the developer would 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. A permit applicant is solely responsible for, and shall perform and submit the results of all required testing of the public water mains to confirm adequate flow and pressure exists to support any Code-mandated fire protection measures.

The only option currently available for sanitary sewer service is a private onsite sanitary sewer facility (anaerobic or aerobic). Public sanitary sewer infrastructure near the subject property along this portion of Trimmier Road is a pressurized force main that cannot be tapped with a gravity service. The City's current adopted Water & Sewer Master Plan does not include an immediate project to extend a public gravity interceptor to serve the sanitary sewer basin along Trimmier Road south of Stagecoach Road. This basin is projected for sparse development within the current and next Master Plan project cycle. However, the City

will re-evaluate gravity sanitary sewerage options for portions of the drainage basin south of Stagecoach Road as development concepts are presented and in association with future capital improvement projects (e.g., Trimmier Road improvements, an unfunded CIP).

Long term, the City will provide a gravity sanitary sewer interceptor that flows to the south in the Trimmier Road drainage basin south of Stagecoach Road. The existing force main within Trimmier Road may be used to meet part of this gravity flow need. However, this force main was laid at inconsistent slope. The City's Master Plan Sanitary Sewer projects involve construction of a primary gravity interceptor to serve a specific basin that typically parallels the largest watercourse in the particular basin. A developer is required to extend a collection main from the interceptor to his property under the City's development Code. If the property is platted for the purpose of development, the developer would 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 agricultural use and is 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.

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.

This area is designated as 'Suburban Residential' on the future land use map (FLUM).

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

This is not consistent with the FLUM and will require an amendment to the future land use map.

The staff notified nine (9) surrounding property owners regarding this request. Staff has received no protests.

Staff recommended that the Planning and Zoning Commission approve the B-3 zoning

request. The area is largely of a rural character with large acreage tracts. However, while the development is sparse, there are existing B-3 zoned areas along this segment of Trimmier Road. The existing homesteads have large front setbacks, which help mitigate noise and light concerns. The B-3 zoning request is not inconsistent with the zoning of surrounding lands, and those allowable uses within this district are restrictive in nature so as to not present any adverse impacts to the community.

Mr. Robert Mitchell, Mitchell & Associates, 102 N. College, Killeen, 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 7 to 0.

Chairman Frederick stated that this will be heard by City Council on August 13, 2013 with a recommendation to approve the B-3 zoning request.



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

CASE #: Z13-25A

City of Killeen Zoning Change Application

General Zoning Change Conditional Use Permit

Name(s) of Property Owner: GARY RAY KELLEY 2012 TRUST

Current Address: 405 LIBERTY STREET

City: KILLEEN State: TX Zip: 76543

Home Phone: () _____ Business Phone: () _____ Cell Phone: ⁽²⁵⁴⁾ 290-3469

Email: GARY KELLEY HOMES @ AOL.COM

Name of Applicant: GARY RAY KELLEY, TRUSTEE
(If different than Property Owner)

Address: 405 LIBERTY STREET

City: KILLEEN State: TX Zip: 76543

Home Phone: () _____ Business Phone: () _____ Cell Phone: ⁽²⁵⁴⁾ 290-3469

Email: GARY KELLEY HOMES @ AOL.COM

Address/Location of property to be rezoned: W. Trimmer

Legal Description: AD963BC M T MARTIN, 3-5, ACRES 1.39

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 X Other

Present Zoning: A Present Use: RAW LAND ; AGRICULTURE

Proposed Zoning: B3 Proposed Use: OFFICE COMPLEX

Conditional Use Permit for: NA

This property was conveyed to owner by deed dated 05/30/2013 and recorded in Volume _____, Page _____, Instrument Number 2013-0023139 of the Bell County Deed Records. (Attached)

Is this the first rezoning application on a unilaterally annexed tract?
Yes X (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: Mitchell & Associates, Inc.

Mailing Address: 102 N College / P.O. Box 1088

City: Killeen State: Texas Zip: 76540

Home Phone: () N/A Business Phone: (254) 634-5541

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; 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. If 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 [Handwritten Signature] Title Agent

Printed/Typed Name of Agent Mitchell & Associates, Inc. Date 22 July 13

Signature of Property Owner [Handwritten Signature] Title Owner

Printed/Typed Name of Property Owner Ray Kelley Date 22 July 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 _____

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

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: SEE ATTACHED CERTIFICATE OF TRUST

Mailing Address: _____

City: _____ State: _____ Zip: _____ - _____

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

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 <u>Gary Ray Kelley Trustee</u>	Title <u>TRUSTEE</u>
Printed/Typed Name of Agent <u>GARY RAY KELLEY</u>	Date <u>06/14/2013</u>
Signature of Applicant <u>Gary Ray Kelley Trustee</u>	Title <u>TRUSTEE</u>
Printed/Typed Name of Applicant <u>GARY RAY KELLEY 2012 TRUST</u>	Date <u>06/14/2013</u>
Signature of Property Owner <u>Gary Ray Kelley Trustee</u>	Title <u>TRUSTEE</u>
Printed/Typed Name of Property Owner <u>GARY RAY KELLEY 2012 Trust</u>	Date <u>06/14/2013</u>
Signature of Property Owner <u>NA</u>	Title <u>NA</u>
Printed/Typed Name of Property Owner <u>NA</u>	Date <u>NA</u>
Signature of Property Owner <u>NA</u>	Title <u>NA</u>
Printed/Typed Name of Property Owner <u>NA</u>	Date <u>NA</u>

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

ORDINANCE _____

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

WHEREAS, Gary Ray Kelley has presented to the City of Killeen a request for amendment of the zoning ordinance of the City of Killeen by changing the classification of 1.39 acres, being out of the Moses T. Martin Survey, Abstract No. 963, from 'A' (Agricultural District) to B-3 (Local Business District), said request having been duly presented and recommended for approval of B-3 (Local Business District) zoning by the Planning and Zoning Commission of the City of Killeen on the 22nd day of July 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 30th day of July 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' (Agricultural District) to B-3 (Local Business District), for 1.39 acres, being out of the Moses T. Martin Survey, Abstract No. 963. The property is located at the

intersection of Trimmier Road and Kelley Lane, approximately .7 mile south of Stagecoach 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 13th day of August 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

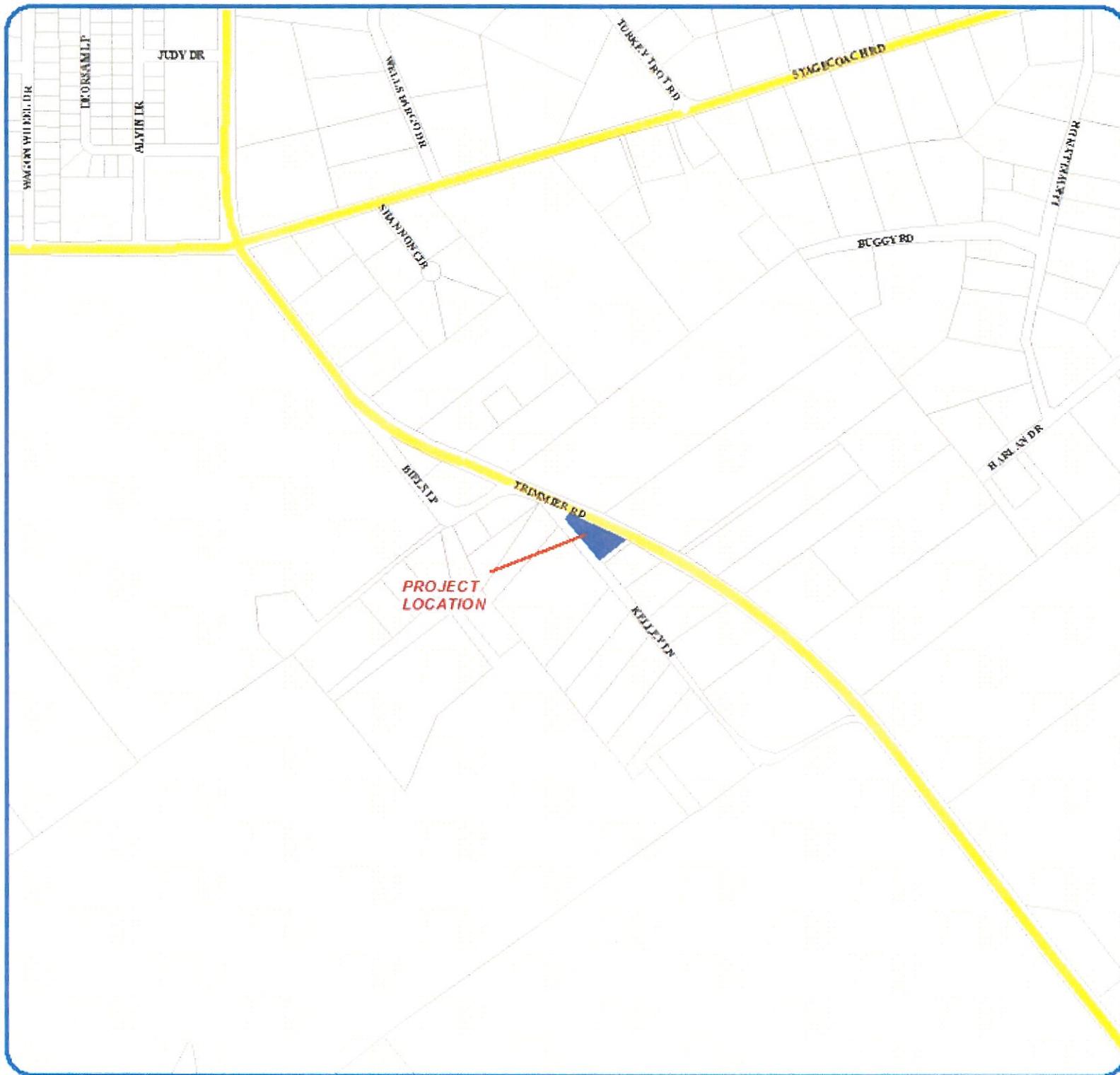
ATTEST:

Dianna Barker, CITY SECRETARY

APPROVED AS TO FORM

Kathryn H. Davis, City Attorney

Case #13-24
Ord #13-__



**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

#Z13-24

ZONING FROM:

A TO B-3

PROPERTY OWNER:

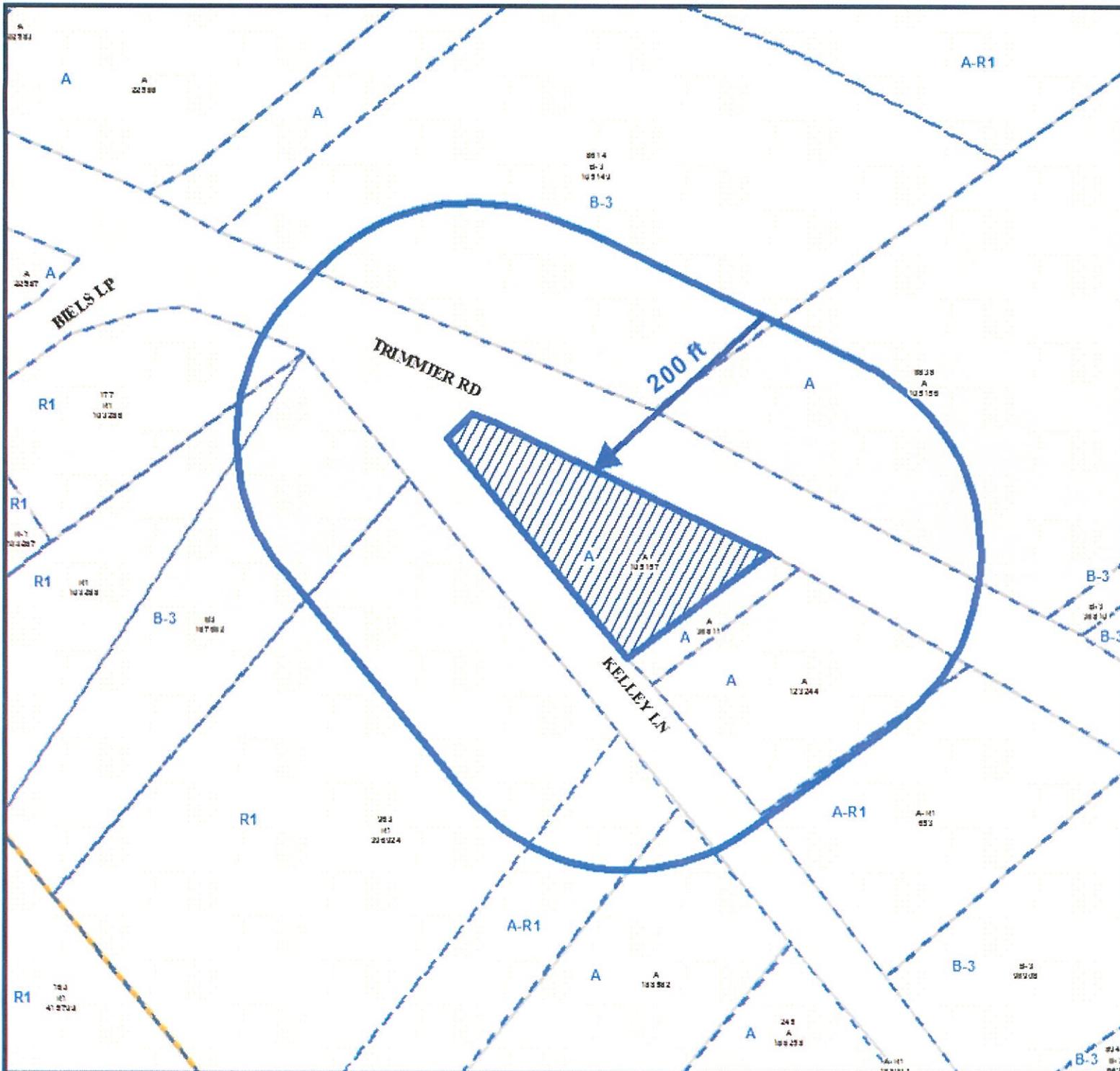
GARY RAY KELLY
2012 TRUST

Legend

-  Zoning Cases 2013
-  City Limits
-  Parcel



Date 6/26/2013



PLANNING AND DEVELOPMENT SERVICES

ZONING CASE:

#Z13-24

ZONING FROM:

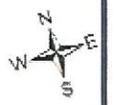
A TO B-3

PROPERTY OWNER:

GARY RAY KELLY
2012 TRUST

LEGEND

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



Date: 6/26/2013

CONSIDERATIONS

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

A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

B. Conditional Use Permit (if applicable)

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

C. Conditions to Consider

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

Regular 8-13-13
Item # OR-1
CCM/R _____

CITY COUNCIL MEMORANDUM FOR RESOLUTION

AGENDA ITEM **Set the Preliminary Tax Rate for the FY 2013-14 Budget/Vote on Preliminary Tax Rate**

ORIGINATING DEPARTMENT **Finance**

BACKGROUND INFORMATION

Truth-In-Taxation laws require that a governing body must publish notices and hold public hearings if a proposed tax rate exceeds the lower of the effective tax rate or the rollback rate. The following tax rates are relevant to the Proposed FY 2013-14 Budget. These proposed tax rates are per \$100 Valuation.

Effective Tax Rate	.7315
Current Tax Rate	.7428
Notice and Hearing Tax Rate	>.7315
Preliminary Budget Tax Rate	.7428
Rollback Tax Rate	.7902

The City Council now must set a preliminary tax rate for the FY 2013-14 Proposed Budget. The preliminary tax rate is the maximum tax rate that can be adopted for the FY 2013-14 Budget. The preliminary tax rate can be lowered when the final tax rate is set. If the preliminary tax rate is equal to or less than .7315, no additional meetings will be required and the tax rate will be adopted on September 10, 2013.

If the preliminary tax rate exceeds .7315, the Council must take a record vote and schedule (2) two public hearings on the preliminary tax rate. The first publication must run at least (7) seven days before the public hearing on the tax rate. The first public hearing will be held on August 27, 2013. The second public hearing cannot be held any earlier than the third day after the date of the first hearing. The second meeting will be held on September 3, 2013 in order to adopt the tax rate at the September 10, 2013 City Council meeting. The tax rate must be adopted no sooner than (3) three days (September 6, 2013) and no more than 14 days (September 17, 2013) after the second public hearing.

Per City Charter Section 59, the budget must be adopted no later than September 20, 2013. If the council takes no action on or prior to this date, the budget as submitted by the city manager shall be deemed to have been finally adopted by the council.

DISCUSSION/CONCLUSION

The preliminary tax rate needs to be set. The tax rate reflected in the Proposed Budget is 0.7428.

RECOMMENDATION

The City Council set a preliminary tax rate at _____ per \$100 valuation. This rate represents the preliminary tax rate for the FY 2013-14 Annual Budget and Plan of Municipal Services. Once set, this Preliminary Tax Rate will be the maximum tax rate allowed by law for the FY 2013-14 Budget. The Council may elect to lower the preliminary tax rate at a later date; however, it cannot be raised.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this the 13 day of August, 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:

Dianna Barker
CITY SECRETARY