

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, OCTOBER 12, 2010, 6:00 P.M.

CITY HALL COUNCIL CHAMBERS

800 JUNCTION HIGHWAY, KERRVILLE, TEXAS

Agenda Item:
(Staff)

- 2A. Approval of the minutes of the city council meetings held on September 23, and September 28, 2010.

CITY COUNCIL MINUTES
OF A SPECIAL MEETING

KERRVILLE, TEXAS
SEPTEMBER 23, 2010

On Thursday, September 23, 2010, the Kerrville City Council special meeting was called to order by Mayor Wampler at 6:00 p.m., in the city hall council chambers, 800 Junction Highway, Kerrville, Texas.

MEMBERS PRESENT:

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT: None

STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Mike Erwin	Director of Finance
Travis Cochran	Director of Information Technology
Charlie Hastings	Director of Public Works
John Young	Police Chief
Mindy Wendele	Director of Business Programs
Robert Ojeda	Fire Chief
Kim Meisner	Director of General Operations

DISCUSSION AND ACTION:

Regarding the proposed development by Hunter Equity located at the southwest corner of Guadalupe Street and Junction Highway.

Mr. Parton noted Hunter Equity had discussions with staff and was planning to submit a proposal for a mixed use development at the southwest corner of Guadalupe Street and Junction Highway, including a public river trail project. Zoning for the development was proposed to be Planned Development District (PDD) in order to allow the developer to have flexibility in project development; this project could set the standard for future development along the river. Mr. Parton noted staff was in the process of reviewing ordinances and regulations that could impact and/or prohibit Hunter Equity's ability to construct such a development, for example:

- The Water Code prohibited development within the Upper Guadalupe River Authority (UGRA) flood control easement, which included a portion of Hunter Equity's property.
- FEMA (Federal Emergency Management Agency) regulations prohibited construction of habitable structures in floodways.
- Various zoning, water quality, and environmental issues limited construction along the river.

Council also discussed the following:

- How to balance development in the river corridor, and protect the river and maintain water quality.
- Want to facilitate the rivertrail, and need to address ordinances that currently prohibited such development.
- Not let city ordinances get in the way of the development; potential economic generator for the city.
- City lacking in land use and zoning regulations; need to address development standards along the river and, to the extent the city can, try to accommodate Hunter Equity's plans for their development. ZOIC could provide input and a recommendation regarding zoning along the river.
- The proposed Hunter Equity development gives the city the opportunity to be selective in the type of development allowed along the river.
- The potential rivertrail as conceptually presented by Hunter Equity could be a great asset to the city and to his development; there was enthusiasm to move forward.
- Council should be careful in changing the rules for one developer as any change would affect all future development.

Mr. Parton recommended that council authorize staff to review and make recommendations regarding possible amendments:

- Water Code to eliminate or mitigate the conflict of permanent and habitable structures within the UGRA flood control easement.
- FEMA floodplain management and its affect on construction of habitable structures.
- City subdivision standards.
- Work with ZOIC regarding zoning and land use issues.
- Address water quality and environmental issues, particularly with regard to drainage and parking lot maintenance issues.

The consensus of the council was to move forward with Mr. Parton's recommendation.

Adjournment: The meeting adjourned at 6:23 p.m.

APPROVED: _____

David Wampler, Mayor

Brenda G. Craig, City Secretary

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
SEPTEMBER 28, 2010

On September 28, 2010, the Kerrville City Council meeting was called to order by Mayor Wampler at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Reverend Patty Edwards, Unity Church of the Hill Country, followed by the Pledge of Allegiance led by John David Lipscomb.

MEMBERS PRESENT:

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT:

T. Scott Gross	Councilmember
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STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Travis Cochrane	Director of Information Technology
Mindy Wendele	Director of Business Programs
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
Kevin Coleman	Director of Development Services
Malcolm Matthews	Director of Parks and Recreation
Mike Wellborn	Director of Engineer

VISITORS PRESENT: List on file in city secretary's office.

1. VISITORS/CITIZENS FORUM: No one spoke.

2. CONSENT AGENDA:

Mr. Motheral moved for approval of items 2A through 2E; Mr. Allen seconded the motion and it passed 4-0:

2A. Approval of the minutes of the city council meetings held on September 14, 2010.

2B. Resolution No 035-2010 authorizing the transfer of ownership of Kerrville Police Department K-9 Officer "Boy." It was noted that Boy would be retired and transferred to his police trainer.

2C. Resolution No. 031-2010 authorizing the waiver for Hill Country Home Opportunity Council, Inc. of various fees associated with the construction of homes; said waiver to remain in effect through September 30, 2011, or the construction of ten homes, whichever occurs first.

2D. Resolution No. 032-2010 authorizing the waiver for Habitat for Humanity Kerr County Affiliate, Inc. of various fees associated with the construction of homes; said waiver to remain in effect through September 30, 2011, or the construction of nine homes, whichever occurs first.

2E. Authorize the execution of the Administrative Services Contract between the City of Kerrville and the Economic Improvement Corporation for FY11.

END OF CONSENT AGENDA

3. FISCAL YEAR 2011 BUDGET ORDINANCES, SECOND READING:

3B. Ordinance No. 2010-19 adopting the annual budget for the fiscal year 2011; providing appropriations for each department and fund; containing a cumulative clause; and containing a savings and severability clause. Mayor Wampler read the ordinance by title only.

Mr. Erwin noted the total proposed budget was \$37,972,742 including changes detailed in Schedule A of the ordinance; maintained same FY10 tax rate of \$0.5625, down from the effective tax rate of \$0.5753; revenue exceeded expenditures; and did not include any use of reserve funds. He noted no changes to the ordinance since first reading.

Mr. Allen moved for approval of Ordinance No. 2010-19 on second and final reading; Ms. Keeble seconded the motion and it passed 4-0.

3A. Ordinance No. 2010-20 levying an ad valorem tax for the use and the support of the municipal government for the City of Kerrville, Texas, for the fiscal year 2011; providing for apportioning each levy for specific purposes; and providing when taxes shall become due and when same shall become delinquent if not paid. Mayor Wampler read the ordinance by title only.

Mr. Erwin noted the proposed tax rate was \$0.5625, the same as FY10: \$0.489 was for maintenance and operations; \$0.0735 was for debt service. He noted no changes since first reading.

Mr. Motheral moved for approval of Ordinance No. 2010-20 on second and final reading; Ms. Keeble seconded the motion and it passed 4-0.

4. ORDINANCES, SECOND READING:

4A. Ordinance No. 2010-18 amending the budget for fiscal year 2010 to allocate surplus funds remaining within the main street fund and to make amendments to funding for various capital improvement projects. Mayor Wampler read the ordinance by title only.

Mr. Erwin noted the ordinance amended the FY10 budget by adopting changes detailed in Schedule A including the use of EIC funds in the business programs department, and the reallocation of unspent capital project funds. He noted no changes to the ordinance since first reading.

Mr. Motheral noted that he had filed a conflict of interest affidavit at first reading on September 14, and he again recused himself and left the meeting.

Mr. Keeble moved for approval of Ordinance No. 2010-18 on second and final reading; Mr. Allen seconded the motion and it passed 3-0-1 with Councilmembers Allen, Keeble, and Wampler voting in favor of the motion; no one voted against the motion; and Mr. Motheral abstained.

4B. Ordinance No. 2010-17 approving a negotiated resolution between the Atmos Cities Steering Committee ("ACSC or "Steering Committee") and Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or Company") regarding the company's third rate review mechanism ("RRM") filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; requiring the company to reimburse cities' reasonable ratemaking expenses; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; approving Atmos Mid-Tex's proof of revenues; extending the RRM process for two cycles and adopting a new RRM tariff; ratifying the settlement agreement, including cost recovery for a steel service line replacement program; adopting a savings clause; determining that this Ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; declaring an effective date; and requiring delivery of this Ordinance to the company and the Steering Committee's legal counsel. Mayor Wampler read the ordinance by title only.

Mr. Hayes noted Atmos had filed a \$70.2 million rate increase in March 2010 and the ACSC had negotiated the rate increase to \$27 million plus an additional \$3.4 million increase for the line replacement program mandated by the state. The negotiated increase resulted in a 3.15% increase or \$1.40 per average residential customer. He noted no changes to the ordinance since first reading.

Mr. Allen moved for approval of Ordinance No. 2010-17 on second and final reading; Ms. Keeble seconded the motion and it passed 4-0.

7C. Accept report from Mayor Wampler regarding the response to and resolution of issues raised by the Kerrville Performing Arts Society (KPAS) for their use of the Cailloux Theatre.

Mayor Wampler stated he had met with KPAS and Playhouse 2000 representatives and city staff to address KPAS' concerns regarding the management and operations of the Cailloux Theater and KPAS' use of the theater. He requested council consider those concerns adequately addressed and the matter closed with submission of a letter to KPAS reporting the following:

- Ownership: The theater and real property are owned by the city.
- Management: City had a contract with Playhouse 2000 to be the exclusive manager and operator of the facility. Playhouse had sole responsibility in the facility's operation and management; the city was not directly involved in the management or operation of the theater.

- Liability and indemnity: Playhouse 2000 was required to maintain insurance and indemnify the city. A certificate of insurance was provided to the city; however, it did not list the city as additionally insured, and Playhouse was correcting this.
- Merchandising: Playhouse 2000 had sole authority regarding all promotions, concessions, and marketing issues, and such must be negotiated directly with Playhouse 2000.
- Audit: An independent audit would be expensive for KPAS to conduct; however, city staff had reviewed the tax returns of both organizations.
- Fire Inspection: The city did conduct a fire inspection; it was noted that the fire alarm system and the fire extinguisher inspection should be conducted annually.
- Evacuation Plan. Playhouse 2000 had an evacuation plan in place and the evacuation chart would be provided in the letter.

Council also discussed the following:

- Playhouse did maintain two separate books: one for management and one for productions.
- KPAS requested Playhouse provide a statement with the gross amount and invoice them for expenses rather than provide a net amount; this would assist KPAS in applying for grants. Mayor Wampler noted KPAS did not express this as an issue of concern, and Playhouse should treat all renters the same.

Mr. Allen moved to accept the report and letter as presented and to consider the matter closed; Mr. Motheral seconded the motion and it passed 4-0.

5. PUBLIC HEARING AND RESOLUTION:

5A. Resolution No. 034-2010 granting a Conditional Use Permit for an approximate 2.19 acre tract of land, being Lots 134 through 143, inclusive, of Block 2 of the J.D. Brown Addition, a subdivision within the City of Kerrville, Kerr County, Texas, and otherwise known as 620 Main Street (State Highway 27) and located within zoning district 11-C (Central City); by permitting said property to be used for vehicle sales/service-used and vehicle maintenance and repair; and making said permit subject to certain conditions and restrictions.

Mr. Coleman noted the applicant currently operated a vehicle sales center on SH 16 and SH 27, and requested to expand that operation, allow used car sales and include vehicle maintenance and repair, to additional property he had acquired on Jefferson Street, thereby requiring a CUP. He noted the planning and zoning commission recommended the CUP with the restriction that auto body repair not be allowed.

Mayor Wampler declared the public hearing open at 6:26 p.m.; no one spoke; Mayor Wampler closed the public hearing at 6:26 p.m.

Mr. Motheral moved for approval of Resolution No. 034-2010; Ms. Keeble seconded the motion and it passed 4-0.

6. ORDINANCE, FIRST AND ONLY READING:

6A. Ordinance No. 2010-21 authorizing the issuance of City of Kerrville, Texas

general obligation refunding bonds, Series 2010, authorizing the execution of an escrow or deposit agreement, a paying agent/registrar agreement, a purchase contract and other instruments and procedures related thereto, delegating authority to certain city officials to select outstanding obligations to be refunded and approve all final terms of the bonds, approving an official statement, and calling certain obligations for redemption. Mayor Wampler read the ordinance by title only.

Ann Burger Entekin, First Southwest Company, the city's financial advisor, proposed issuing general obligation refunding bonds Series 2010 in the amount of \$4.7 million to refinance existing outstanding bonds, resulting in an overall savings of approximately \$200,000 over several years. She anticipated an interest rate of approximately 4% and a maturity date not to exceed 2017. Approval of the ordinance would authorize staff and FSC to proceed with preparation of documents and delegate authority to the city manager and mayor to approve the final amount and rate, and authorize the mayor to sign the related bond refinancing documents. She recommended the motion also establish parameters, such as: par amount not exceed \$4.9 million, maturity date not exceed February 15, 2017, interest rate not more than 4.0%, and debt service savings not less than 3% net present value benefit. If the bond is issued, she will brief the council at a future meeting.

Mr. Motheral moved for approval of Ordinance No. 2010-21 on first and only reading; Mr. Allen seconded the motion and it passed 4-0.

7. CONSIDERATION AND POSSIBLE ACTION:

7A. Request to review and approve abandonment of a portion of Rodriguez Street between Main Street (State Highway 27 and Water Street and a portion of an alley adjacent to Crenwelge Motors. Jeff Carroll, Matkin Hoover Engineering, representing Crenwelge Motors (CM), requested conceptual approval of the feasibility of abandoning two sections of roadway: Rodriguez Street between Highway 27 and Water Street, and that portion of the alleyway that is owned by CM on both sides; the remainder would remain a public alleyway. The purpose of the two abandonments was to allow Crenwelge Motors to expand use of their property. Mr. Crenwelge understood that utilities were located in the right of way and any rerouting of utilities would be at his expense. He requested preliminary approval by the council before proceeding with an appraisal of the property and formal request for abandonment.

The council also discussed the following:

- Conditional approval of the request to abandon the right of ways was no guarantee of approval of the pending development site plan.
- Construction would not be allowed over the utilities, and any rerouting of utilities would be at CM's expense.
- Property value would have to be established in order to determine payment.
- City requested a traffic analysis. Mr. Carroll noted that primary traffic was associated with CM but they were willing to do a traffic analysis.
- The city should help local businesses that wanted to expand.
- More information was needed before a decision could be finalized.

Mr. Motheral moved to move forward including the following steps: 1) submittal of a concept plan showing all proposed improvements to the site, including utility relocation or extensions, drainage mitigation, planned fire access, and TxDOT approved access points on SH27; 2) surveys of alley and street; 3) appraisal of alleys and street; 4) preliminary approval of abandonment from council; 5) submission of subdivision plat and any utility/drainage relocation plans; 6) final council approval of abandonment; and 7) plat approval by the planning and zoning commission. Further, the project should address fire lane access concerns and provide a traffic impact analysis. Mr. Allen seconded the motion and it passed 4-0.

7B. Resolution No. 033-2010 adopting the Lytle Park site Master Plan.

Mr. Matthews gave a brief history of the property, noting it was originally given to the city in 1890 by Joseph A. Tivy, Kerrville's First Mayor for the purpose of a public park. He described existing conditions at the park and reviewed proposed renovation and amenities estimated to cost approximately \$100,000. Playground equipment would meet ADA requirements. Meetings had been held to receive public input on the plan and the parks and recreation advisory board recommended approval.

The council questioned why no parking had been requested on two sides of the park. Mr. Matthews noted two streets were neighborhood streets, two streets were heavy traffic areas and there had been accidents.

Ms. Keeble moved for approval of Resolution No. 033-2010; Mr. Allen seconded the motion and it passed 4-0.

7C. Accept report from Mayor Wampler regarding the response to and resolution of issues raised by the Kerrville Performing Arts Society (KPAS) for their use of the Cailloux Theatre. (Occurred earlier in the meeting following Item 4B)

7D. Authorize the execution of a Construction Contract with Huser Construction Co., Inc. for construction of the waste water service facility building in the amount of \$460,000.

Mr. Wellborn recommended approval of the contract and noted the building would house expensive critical equipment for the wastewater treatment plant, e.g. vehicles that contained television equipment.

Mr. Allen moved to authorize execution of the contract as presented; Mr. Motheral seconded the motion and it passed 4-0.

7E. Authorize the execution of a Radio Antenna Tower Lease Agreement between the Grand Lodge of Hermann Sons and the City of Kerrville.

Chief Ojeda noted the tower provided public safety radio communications to the area, and Hermann Sons had provided the lease at no cost to the city since 2006; he recommended approval of the two year lease.

The council discussed the possibility of longer lease terms in the future; Chief Ojeda will discuss this with Hermann Sons when the lease expires in 2012. Chief Ojeda noted funding for the radio equipment had been provided through a federal grant.

Mr. Motheral moved to approve extension of the lease as presented; Ms. Keeble seconded the motion and it passed 4-0.

7F. Authorize the City Manager to intervene in the Wiedenfeld Water Works, Inc. application to amend its Water Certificate of Convenience and Necessity (CCN) No. 12052. Mr. Hastings noted WWW filed an application to amend its CCN to provide water utility service in the same area that the city had filed to extend its CCN area earlier in the year. He noted the deadline to intervene in WWW's CCN was October 17 and recommend city council authorize the city manager to oppose and intervene in the portions of WWW's CCN 12052 that conflicted with the City's CCN application.

Ms. Keeble noted this area had requested to opt out previously, and she felt that request should have been granted.

Mr. Motheral moved to authorize the city manager to intervene in the WWW's application to amend its CCN No. 12052. Mr. Allen seconded the motion and it passed 3-1 with Messrs. Motheral, Allen, and Wampler voting in favor of the motion and Ms. Keeble voting against the motion.

8. INFORMATION AND DISCUSSION:

8A. Library renovation project.

Victoria Mosty Roberts reported on activities of the Mary Elizabeth Holdsworth Library Foundation: 1) received notification that the foundation would be the recipient of a grant of at least \$50,000 from Charity Ball for playground equipment; 2) received 501(c)3 designation; 3) hired Dini Partners as fundraising consultants; 4) Jeana Krause was selected to Leadership Kerr County 2011 and the Leaders Circle (a cooperative fund raising group of executive leaders in Kerr County); and 5) attended several meetings and public hearings of the Kerr County Commissioners' Court and building relationships.

8B. Sign regulations in the proposed Central Business Zoning District.

Mr. Coleman noted with the adoption of the new Central Business District (CBD) into the zoning ordinance, signage regulations should be adopted for the CBD. He presented a list of proposed sign regulations, and following council's review, those regulations would be presented to downtown stakeholders for their input before an ordinance was prepared for council's adoption.

The council discussed how to balance the need to protect the uniqueness of the downtown area and have signage that was visible and encouraging. The council discussed the proposed changes, in particular: sign size, height, material, internal lighting, street frontage, and the use of temporary banners. The public input process should also involve sign makers and designers.

The consensus of the council was to proceed with the initial vetting process and receive direction and input from downtown stakeholders, including the Main Street Advisory Board and the Downtown Business Association and bring back results of those meetings.

8C. Update regarding Lower Colorado River Authority Transmission Services Corporation's application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).

Mr. Hayes reported the following: currently over 2,000 documents had been filed; the city had filed as an intervener and participated in discovery; and Mayor Wampler may be called to testify at the hearing in Austin in October. ERCOT was tasked with relooking at the proposed transmission line routes and the "need" for the transmission lines. ERCOT issued a study on September 24 that made three findings: 1) the Kendall to Gillespie portion of the CREZ line may be unnecessary, particularly if another transformer station is installed at the Kendall substation; 2) the McCamey D to Kendall line is needed, there is not an alternative, and that line will move forward; and 3) ERCOT had studied the private line between Kerrville and Fredericksburg and decided it was not a viable alternative.

8D. Consider conceptual community events. Ms. Wendele reported on plans for the Fourth of July event. A committee had been meeting to explore ideas, and those persons will have discussions with the non profit groups they represented regarding commitments for participation and bring those ideas to a meeting on October 13. She noted that concern had been expressed regarding how much assistance the city could realistically provide considering city staff reductions and budget cuts. She will report on the meeting at the October 26 council meeting.

Mr. Motheral presented a list of possible activities that could be part of the event.

The council also discussed the following:

- Would like a list of specific things that each organization was willing to commit to do for the event.
- Could contact foundations to help with funding.
- Look at events that energize central city and focus on river trail.
- The city should be cognizant of the city's limitations with regard to staffing and budget, even with assistance from volunteers.

The consensus of council was that Ms. Wendele would provide a full report with the whole plan laid out at the October 26 meeting.

8E. Kerrville budget/economic update.

Mr. Erwin noted unemployment remained 6.2%; the fund balance from FY10 was carried over to FY11; and staff's targeted goal for FY11 was 95% of the original FY11 budget. He noted the water meter replacement program resulted in more accurate meter readings and increased water revenue.

9. BOARD APPOINTMENTS:

9A. Appointments to the Parks and Recreation Advisory Board.

Ms. Keeble moved to appoint Dana Cardwell and Stephen Roberts to fill unexpired terms due to expire on March 31, 2011; Mr. Motheral seconded the motion and it passed 4-0.

9B. Appointment to the Planning and Zoning Commission.

Mr. Motheral moved to appoint Tony Roberts to the unexpired regular position with term due to expire January 1, 2011, pending his completion of open government training; Mr. Allen seconded the motion and it passed 4-0.

Further, Mr. Motheral moved to appoint Chastan McRae to the unexpired alternate position with term due to expire January 1, 2012; Mr. Allen seconded the motion and it passed 4-0.

10. ITEMS FOR FUTURE AGENDAS: None.

11. ANNOUNCEMENTS OF COMMUNITY INTEREST: None.

12. EXECUTIVE SESSION:

Ms. Keeble moved for the city council to go into executive closed session under Section 551.071 (consultation with attorney), and 551.072 (deliberation regarding real property) of the Texas Government Code; the motion was seconded by Mr. Allen and passed 4-0 to discuss the following matters:

Section 551.072:

- Discuss the purchase, exchange, lease, sale, or value of real property for use as a City facility, the public discussion of which would not be in the best interests of the City's bargaining position with third parties.

At 7:45 p.m. the regular meeting recessed and council went into executive closed session at 7:49 p.m. At 8:25 p.m. the executive closed session recessed and council returned to open session at 8:26 p.m. The mayor announced that no action had been taken in executive session.

13. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

ADJOURNMENT. The meeting adjourned at 8:27 p.m.

APPROVED: _____

David Wampler, Mayor

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:
(Staff)

- 2B. Authorize the purchase of twelve Arbitrator mobile digital audio/video camera systems for the police department, from Portable Computer Systems, in an amount not to exceed \$57,000.

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Approve the purchase of twelve (12) Arbitrator mobile digital audio/video camera systems for the police department.

FOR AGENDA OF: October 12, 2010 **DATE SUBMITTED:** October 4, 2010

SUBMITTED BY: Chief John Young **CLEARANCES:** Todd Parton, City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$ 57,000	\$84,000	\$57,000	85-800-506

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DIRECTOR: 

SUMMARY STATEMENT

The police department was awarded a grant in the amount of \$84,000 through the Office of the Governor to purchase mobile digital audio/video camera systems. The department is requesting authorization to purchase twelve (12) camera systems from Portable Computer Systems, a TX DIR contractor (DIR-SDD-531). The remaining funding (\$27,000) will be used to purchase the data storage required to support the system.

RECOMMENDED ACTION

The Chief of Police recommends that City Council approve the purchase of twelve (12) Arbitrator mobile digital audio/video camera systems in an amount not to exceed \$57,000.

Agenda Item:
(Staff)

- 2C. Authorize the execution of a three year geographic information system enterprise license agreement with Environmental Systems Research Institute, Inc. in the amount of \$25,000 per year.

RECOMMENDED ACTION

Authorize the City Manager to enter into a three year GIS Enterprise License Agreement with ESRI.



October 1, 2010

Mr. Travis Cochrane
CITY OF KERRVILLE
800 JUNCTION HWY
KERRVILLE, TX 78028

Dear Travis,

The ESRI Small Municipal and County Enterprise License Agreement (ELA) is a three-year agreement that will grant your organization access to ESRI® software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. The ELA will be effective on the date executed and will require a firm, three-year commitment.

Based on ESRI's work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise license agreement. An ELA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all ESRI software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the ELA.
- If your organization wishes to acquire and/or maintain any ESRI software during the term of the agreement that is not included in the ELA, it may do so separately at the ESRI pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of ESRI software. The organization may designate individuals as specified in the ELA who may directly contact ESRI for Tier 2 technical support.
- The organization will provide an annual report of installed ESRI software to ESRI.

Small Government ELA

- ESRI software and updates that you are licensed to use will be shipped automatically as they become available.
- The organization will act as an ESRI reference site and will permit ESRI to publicize its use of ESRI software and services.
- Licenses are valid for the term of the ELA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this ELA offer:

1. Sign and return the signature page of the ELA with a Purchase Order or issue a Purchase Order that references this ELA Quotation and includes the following statement on the face of the Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."** and have it signed by an authorized representative of the organization.
2. On the first page of the ELA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title if applicable, address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address noted below:

ESRI
Attn.: Customer Service SG-ELA
380 New York Street
Redlands, CA 92373-8100

Or e-mail service@esri.com or fax documents to 909-307-3083.

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best regards,

Sarah Powers



ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
11200 Westheimer Rd, Ste 630
Houston, TX 77042

Phone: (713) 401-0658 Fax: (713) 782-5958
DUNS Number: 06-313-4175 CAGE Code: OAMS3

To expedite your order, please attach a copy of
this quotation to your purchase order.
Quote is valid from: 09/30/2010 To: 12/29/2010

Quotation # 20374297

Date: September 30, 2010

Customer # 12836 Contract #

CITY OF KERRVILLE
PUBLIC WORKS DEPT
800 JUNCTION HWY
KERRVILLE, TX 78028

ATTENTION: Travis Cochrane
PHONE: (830) 792-8390
FAX: 830-896-0517

Material	Qty	Description	Unit Price	Total
110035	1	Populations of 0 to 25,000 Small Government Enterprise Term License Agreement- Year 1	25,000.00	25,000.00
110035	1	Populations of 0 to 25,000 Small Government Enterprise Term License Agreement- Year 2	25,000.00	25,000.00
110035	1	Populations of 0 to 25,000 Small Government Enterprise Term License Agreement- Year 3	25,000.00	25,000.00
			Item Total:	75,000.00
			Subtotal:	75,000.00
			Sales Tax:	0.00
			Estimated Shipping & Handling(2 Day Delivery) :	0.00
			Contract Pricing Adjust:	0.00
			Total:	\$75,000.00

Please reference attached cover letter for terms and payment information.

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Sarah Powers Email: spowers@esri.com Phone: (713) 401-0658 x5806

Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630

POWERSS This offer is limited to the terms and conditions incorporated and attached herein.



Quotation # 20374297

Date: September 30, 2010

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
11200 Westheimer Rd, Ste 630
Houston, TX 77042
Phone: (713) 401-0658 Fax: (713) 782-5958
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Customer # 12836 Contract #

CITY OF KERRVILLE
PUBLIC WORKS DEPT
800 JUNCTION HWY
KERRVILLE, TX 78028

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 09/30/2010 To: 12/29/2010

ATTENTION: Travis Cochrane
PHONE: (830) 792-8390
FAX: 830-896-0517

BY SIGNING BELOW YOU ARE INDICATING THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION. DO NOT USE THIS FORM FOR ORDER ACTIVATION IF YOUR ORGANIZATION WILL NOT HONOR AND PAY AN INVOICE THAT HAS BEEN ISSUED AT YOUR DIRECTION WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

If you choose to discontinue your maintenance, you will become ineligible for maintenance benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your maintenance coverage at a later date.

This quotation is subject to the terms set forth herein and the terms of your agreement with Esri, if any, or as otherwise provided by Esri's standard terms and conditions at www.esri.com/legal, which are incorporated by reference. Federal Government entities and prime contractors buying under GSA pricing/terms are subject to Esri's Federal Supply Schedule GS-35F-5086H. Acceptance is limited to terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer or confirmation sent or to be sent by buyer. All terms of this quotation as referenced above shall be incorporated into and are part of any further or additional agreement regarding Esri's software data, web services, training, services and maintenance.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

By signing below, you are authorizing Esri to issue an invoice for the items included in the above quote in the amount of: \$ _____, plus sales taxes if applicable. (Note: Shipping costs are subject to change.)

Please check one of the following:

I agree to pay any applicable sales tax.

I am tax exempt, please contact me if exempt information is not currently on file with Esri.

Signature of Authorized Representative Date

Name (Please Print)

Title

The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

Any estimated sales and/or use tax reflected on this quote has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state tax directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Sarah Powers	Email: spowers@esri.com	Phone: (713) 401-0658 x5806
Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law. If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630		



**SMALL MUNICIPAL AND COUNTY
ENTERPRISE LICENSE AGREEMENT
(E214-1 05/14/2010)**

ESRI, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation ("Licensee") and Environmental Systems Research Institute, Inc. ("ESRI"), with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of ESRI's receipt of Licensee's Purchase Order citing this ELA. This ELA grants Licensee certain rights to use specific ESRI Software, Data, Web Services, and Documentation for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA is composed of (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise the ELA, the order of precedence for the documents shall be as follows: (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Purchase Order will not apply, and the terms of this ELA will govern.

ENTERPRISE SOFTWARE SCHEDULE

Unlimited Quantities

Desktop Software and Extensions

ArcInfo
ArcEditor
ArcView
ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcScan for ArcGIS, ArcGIS Publisher, Maplex for ArcGIS, Schematics, and Job Tracking for ArcGIS (JTX)

ArcIMS

ArcGIS Server Extensions: 3D, Schematics, Geostatistical, Job Tracking, Network, Image, and Spatial

Developer

ArcGIS Engine Runtime
ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

Limited Quantities

One Annual Subscription to ESRI Developer Network (EDN)

Server Software and Extensions

ArcGIS Server Workgroup or Enterprise (Advanced, Standard, and Basic)

OTHER BENEFITS

Number of ESRI International User Conference Registrations provided annually	2
Number of Tier 1 Help Desk Individuals authorized to call ESRI	2
Sets of media*	2
Virtual Campus Dollars allowance for ESRI authored courses only	5,000
Five percent (5%) discount on all commercially available instructor-led training at ESRI facilities	

* Additional sets of media may be purchased.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Software. Except as provided in Section 9.1 Future Versions/Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it with an authorizing Purchase Order that matches the ELA Quotation, references the ELA, and includes the following statement on the face of its Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."**

Licensee will return this ELA and its Purchase Order to Attn.: ESRI Customer Service, Dept. SG-ELA, 380 New York Street, Redlands, CA 92373-8100; e-mail it to service@esri.com; or fax it to 909-307-3083.

ACCEPTED AND AGREED:

(Licensee)
By: _____
Signature
Printed Name: _____
Title: _____
Date: _____

Licensee Contact Information

Contact Name: _____
Address: _____
City, State, ZIP: _____
Telephone: _____
Fax: _____
E-mail: _____
ELA Quotation Number: _____
ESRI Contract Number: _____

ELA TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- "Data" means any ESRI or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under this ELA.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related key codes/registration files) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by ESRI to Licensee for the Enterprise Software.
- "ELA Quotation" means the ESRI quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by ESRI under this ELA.
- "Software" means the actual copy of all or any portion of ESRI's proprietary software technology accessed or downloaded from an authorized ESRI Web site or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License" means licenses provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by ESRI to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.
- "Web Services" means software services or ESRI or third-party data provided by ESRI that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet, excluding Virtual Campus.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

The Enterprise Software is licensed and not sold. ESRI and its licensors own the Enterprise Software and all copies, which are

protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect the Enterprise Software from unauthorized use, reproduction, distribution, or publication. ESRI and its third-party licensors reserve all rights not specifically granted in this ELA including the right to change and improve Web Services.

ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Subject to the terms and conditions of this ELA, ESRI grants to Licensee a personal, nonexclusive, nontransferable Term License solely to

- a. Use, copy, and Deploy quantities of Enterprise Software as defined in the Enterprise Software Schedule of this ELA for Licensee's own internal use for a term concurrent with this ELA.
- b. Deploy one subscription of the ESRI Developer Network for use by a single named developer for the term of this ELA.
- c. Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information.
- d. Use Enterprise Software in accordance with Exhibit 1 (provided that all licenses are Term Licenses).

3.2 Consultant Access. Subject to 3.1, Licensee may provide access to the Enterprise Software to any consultant or contractor of Licensee, provided consultants' and contractors' use is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely accessing or using Enterprise Software from Licensee's on-site computers or machines, or (iii) remotely using/accessing Enterprise Software from a third party's computers or machines under contract to the Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require consultant or contractor to discontinue access to and use of Enterprise Software upon completion of work for Licensee.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

- a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
- b. Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
- c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
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4.2 Uses Not Permitted

- a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share the Enterprise Software. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to the Enterprise Software. Licensee shall not use Enterprise Software for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or charging for access to the site or service).
- b. Except as provided herein, Licensee shall not redistribute the Software to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
- c. Licensee shall not reverse engineer, decompile, or disassemble the Enterprise Software, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measures that control access to, or use of, the Enterprise Software.
- e. Except as provided herein, Licensee shall not redistribute the Software activation number(s), registration number/license authorization file(s), developer license file(s), or Web Services access codes to third parties.
- f. Licensee shall not use the Software or Web Services to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.
- g. Licensee shall not remove or obscure any ESRI or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Enterprise Software.
- h. Licensee shall not unbundle individual or component parts of the Software or Data for independent use.
- i. Hard-copy Documentation may not be copied.
- j. Licensee shall not use, transfer, redistribute, or Deploy Enterprise Software outside the United States.

ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

5.1 Term. The term of the ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA. No indefinite or perpetual term license grants are provided with this ELA.

5.2 Termination for Lack of Funds. Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

5.3 Termination for a Material Breach. Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

5.4 No Use upon Expiration or Termination. Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and cease use, uninstall, remove, and destroy all Deployed Software, Data, and Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to ESRI. ELA Maintenance, Virtual Campus access, and User Conference Registrations shall also terminate.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided for in this Article 6, ESRI warrants that (i) the unmodified Software will substantially conform to the published Documentation and (ii) the media upon which the Software, Data, and Documentation are provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

6.2 Data and Web Services Disclaimer. The Data and Web Services may contain some nonconformities, defects, errors, or omissions. THE DATA AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, ESRI and its licensor(s) do not warrant that the Data and Web Services will meet Licensee's needs or expectations, that the use of the Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. ESRI and its licensor(s) are not inviting reliance on this Data or Web Services, and Licensee should always verify actual Data or Web Services.

6.3 Special Disclaimer. SAMPLES, PATCHES, AND HOT FIXES ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLES, PATCHES, AND HOT FIXES.

6.4 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.

6.5 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE SOFTWARE WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SOFTWARE, DATA, WEB SERVICES, AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.6 Exclusive Remedy. Licensee's exclusive remedy and ESRI's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at ESRI's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for the Software subject to the ESRI Maintenance Program found at www.esri.com/legal/maintenance.html; or (iii) return of the license fees paid by Licensee for the Software or Documentation that does not meet ESRI's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Software or Documentation and executes and delivers evidence of such actions to ESRI.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. ESRI AND ITS LICENSOR(S) SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; OR LOSS OF ANY GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF THE ENTERPRISE SOFTWARE, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR ENTERPRISE SOFTWARE PURSUANT TO THIS ELA. *TO THE EXTENT ALLOWED BY TEXAS LAW*

7.3 Applicability of Disclaimers and Limitations. The parties agree that ESRI has set its fees and entered into this ELA in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 8—INFRINGEMENT INDEMNITY

8.1 ESRI shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that the Software infringes a U.S. patent, copyright, or trademark provided

- a. Licensee promptly notifies ESRI in writing of the claim;
- b. Licensee provides documents clearly describing the allegations of infringement;
- c. ESRI has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
- d. Licensee cooperates fully in the defense of the claim.

8.2 If the Software is found to infringe a U.S. patent, copyright, or trademark, ESRI, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or (ii) modify the allegedly infringing elements of the Software while maintaining substantially similar software functionality or data/informational content. If neither alternative is commercially reasonable, the infringing items shall be returned to ESRI, the license shall terminate, and Licensee shall uninstall the infringing items. ESRI's entire liability shall then be to indemnify Licensee pursuant to section 8.1 and to refund a portion of the fees paid by Licensee in the current fee payment period. The refund will be calculated for the time remaining for the fee payment period, starting from the notice date of infringement to the end of the fee payment period.

8.3 ESRI shall have no obligation to defend Licensee or to pay any resulting costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement of the Software by (i) the combination of or integration with a product, process, or system not supplied by ESRI; (ii) material alteration by

anyone other than ESRI or contractors acting on behalf of ESRI; (iii) use after Licensee has been notified of possible infringement; or (iv) use after modifications are provided or a return is ordered by ESRI under section 8.2.

8.4 In no event shall the indemnification set forth in this Article 8 apply to any Samples delivered hereunder.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI AND ITS DISTRIBUTOR WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Versions/Updates. Updated or new Enterprise Software may require additional or revised terms and conditions. Terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use, and Exhibit 1—Scope of Use (E300) or any term as required by law. ESRI may provide notice of the revisions to Licensee in writing or by posting them on ESRI's Web site at www.esri.com/legal. The revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Software. Should Licensee reject the revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release the Enterprise Software, in whole or in part, to (i) any U.S. embargoed country (or to a national or resident of any U.S. embargoed country); (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity to which such export or reexport violates any U.S. export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to U.S. export laws as they may occur from time to time.

9.3 Taxes and Fees. Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. ESRI will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without ESRI's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

9.8 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, a party shall

have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

9.9 Governing Law. This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that U.S. federal law shall govern in matters of intellectual property.

ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable ESRI U.S. Software Maintenance Program document (found at www.esri.com/legal) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Web Services.

a. Tier 1 Support Provided by Licensee

- (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
- (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
- (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from Licensee user. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
- (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact ESRI Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
- (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact ESRI directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by ESRI

- (1) ESRI shall log the calls received from Tier 1 Help Desk individuals.
- (2) ESRI shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
- (3) ESRI may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
- (4) ESRI shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
- (5) When the Incident is resolved, ESRI shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee user.

ESRI may, at ESRI's sole discretion, make patches, hot fixes, or updates available for downloading from ESRI's Web site or deliver them on media.

ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

11.1 Purchase Orders, Delivery, and Deployment

- a. Licensee shall issue a Purchase Order upon execution of the ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA. ESRI's Federal ID Number is 95-2775-732.
- b. Upon receipt of the initial Purchase Order from Licensee, ESRI shall deliver media containing the Enterprise Software to Licensee for its Deployment activities. ESRI shall ship the media to the ship-to address identified on the Purchase Order, FOB Destination, with shipping charges prepaid.
- c. ESRI shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
- d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

11.2 Purchase Order Requirements

- a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
- b. The following information shall be included in each Purchase Order:
 - (1) Licensee name; ESRI customer number, if known; and bill-to and ship-to addresses
 - (2) Purchase Order number
 - (3) Applicable annual payment due
 - (4) On the face page of its Purchase Order (or ordering document), Licensee shall insert a reference to the ELA and the following statement: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."

ARTICLE 12—ENDORSEMENT AND PUBLICITY

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of ESRI by Licensee. Licensee agrees that upon execution of the ELA, ESRI may publicize the existence of this ELA.

ARTICLE 13—ADMINISTRATIVE REQUIREMENTS

13.1 OEM Licenses. If Licensee obtains Software, Data, Web Services, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of ESRI, Licensee shall not be entitled to or seek any discount from the OEM business partner or ESRI, directly or indirectly, as a result of or based on the availability of such Software, Data, or Web Services as Enterprise Software under this ELA. In addition, such Software, Data, Web Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

13.2 Product Obsolescence. During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of the ELA, but updates for such obsolete Enterprise Software may not be available. ESRI's Product Life Cycle Support Policy, available at <http://resources.arcgis.com/content/product-life-cycles>.

defines the support phases and overall support plans. ELA Maintenance shall be subject to the Product Life Cycle Support Status, which can be found at <http://resources.arcois.com/content/product-life-cycles>.

13.3 Renewal. Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

ARTICLE 14—OPTIONAL ITEMS

If additional Software identified in the ELA Quotation is acquired, it will be deemed added to the Enterprise Software Schedule and subject to the terms of this ELA. If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses.

EXHIBIT 1
SCOPE OF USE
(E300 05/14/2010)

The scope of use for the Software, Data, Web Services, and Documentation identified below is described in the applicable footnotes identified in parentheses.

Software

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iPhone (1, 16, 25, and 33)
- ArcGIS Desktop
 - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
 - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
 - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iPhone (1, 20, 25, and 33)
- ArcGIS Mapping
 - For Excel (5, 6, 33, and 35)
 - For SharePoint (5, 6, 31, 33, 35, and 47)
- ArcGIS Mobile Deployments (1, 15, 16, 25, and 33)
- ArcGIS Server
 - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45)
 - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45)
- ArcGIS Server Extensions
 - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
 - ArcGIS Server Image Extension (7, 8, and 42)
 - ArcGIS Server Image Extension Service Editor (1)
 - Other Extensions (7)
- ArcGIS Web Mapping APIs (including JavaScript™, Adobe® Flex™, Microsoft® Silverlight™/WPF™, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
 - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
 - Desktop (either 1 or 2 and 25)
 - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
 - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
 - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- ESRI Aeronautical Solution (either 1 or 2)
- ESRI Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- ESRI Business Analyst Server (either 3, 4, or 5 and 8, 9, 21, 25, 28, 31, 33, 39, 40, 45, and 48)
- ESRI Business Analyst Server Developer (6, 25, 33, 35, and 51)
- ESRI Defense Mapping (either 1 or 2)
- ESRI Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- ESRI Nautical Solution (either 1 or 2)
- ESRI Production Mapping (either 1 or 2)
- Geoportals Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

Web Services

- ArcGIS Online Services (6, 25, 33, 34, and 35)

Data

- Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- ArcGIS Data Appliance (6, 23, 25, and 41)
- ESRI Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- ESRI Data (either 1, 2, or 5 and 25 and 48)
 - Demographic, Consumer Spending, Market Potential, Retail MarketPlace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)

1. "Single Use License." Licensee may permit a single authorized end user to install and use the Software, Data, and Documentation on a single computer for use by that end user on the computer on which the Software is installed. Remote access is not permitted. Licensee may permit the single authorized end user to make a second copy for end user's exclusive use on a portable computer as long as only one (1) copy of the Software, Data, and Documentation is in use at any one (1) time. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
2. "Concurrent Use License." Licensee may install and use the Software, Data, and Documentation on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. No other end user may use the Software, Data, or Documentation under the same license at the same time for any other purpose.
3. "Development Server License." Licensee may install and use the Software on a single computer to design and build applications that interface with or utilize server Software as described in the Documentation.
4. "Staging Server License." In addition to the Development Server License rights, Licensee may use and install the Software for the following purposes: user acceptance testing, performance testing, load testing of other third-party software, staging new commercial data updates, and training activities.
5. "Deployment Server License." In addition to the Staging Server License rights, Licensee may install and use the Software or Data to provide services to multiple users on the same or other computer(s).
6. License is provided only as a Term License. "Term License" means license provided for use in a limited time period or on a subscription or transaction basis.
7. Extensions to Software programs follow the same scope of use as that granted for the corresponding Software programs.
8. The administration tools for the Software may be copied and redistributed throughout Licensee's organization.
9. User-developed ArcGIS Server administration tools may be copied throughout Licensee's organization, but the ArcCatalog application (found in ArcGIS Desktop) may not be copied.
10. The ArcIMS license includes the right to deploy MapObjects—Windows Edition applications on the Internet or intranet. Licensee shall not develop client/server solutions with the ArcIMS—Java Archive (JAR) files without a license for the MapObjects—Java Edition developer kit.
11. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee installs the Spatial Data Service.
12. Software is only licensed for navigational use when used in conjunction with ArcLogistics.
13. "Dual Use License" means the Software may be installed on a desktop computer and used simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any one (1) time.
14. Developers must include the following attribution with any deployed MapObjects application: "Portions of this computer program are owned by LizardTech, Inc., and are Copyright © 1995–2002 LizardTech, Inc., and/or the University of California. All rights reserved. U.S. Patent No. 5,710,835."
15. Deployment licenses for desktop or Internet application(s) may be subject to payment of additional license fees.
16. Licensee may deliver applications to its sublicensee(s) provided Licensee uses a written sublicense agreement that protects ESRI's rights in its Software, Data, Web Services, and Documentation to the same extent as the ESRI License Agreement including, but not limited to, the following terms:
 - a. Sublicensee may not reverse engineer, decompile, or disassemble the ESRI Software, Data, Web Services, or Documentation, except to the extent permitted by applicable law; copy for commercial use; transfer; or assign its rights under the license grant;
 - b. Sublicensee may not use any ESRI Software, Data, Web Services, or Documentation, in whole or in part, separate from Licensee's executable application; and
 - c. Third-party dependent or required components are redistributable subject to permission from the owner or author.
17. Licensee may use Business Objects Crystal Reports software only with the ArcView 3.x Software with which it was acquired and subject to the Crystal Reports License Agreement available on the media. Licensee may not use a software program or system to cache or queue report requests.
18. The deployment license is per application per computer.
19. MapObjects—Java Edition contains Java Archive files, which indicate they are authentic ESRI-certificated files when used over the Internet. Licensee shall not use ESRI certification or reference ESRI as a source of trusted content in any modified MapObjects—Java Archive files. Licensee may deploy the unmodified Java class ESRI-certified libraries as an integral part of the Licensee's application(s).
20. Licensee may reproduce and deploy the Software provided all the following occur: (a) the Software is reproduced and deployed in its entirety; (b) a license agreement accompanies each copy of the Software that protects the Software to the same extent as the ESRI License Agreement, and the recipient agrees to be bound by the terms and conditions of the

license agreement; (c) all copyright and trademark attributions/notices are reproduced; and (d) there is no charge or fee attributable to the use of the Software.

21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.
22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
23. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at <http://www.esri.com/legal/>, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
24. EDN Software, Web Services, and Data may only be used by one (1) named developer per subscription solely for the purposes of research, development, testing, and demonstration of a prototype application. EDN server Software and Data may be installed on multiple computers for use by any named EDN developer.
25. Use of included third-party owned data shall be subject to the Use of Data Restrictions found at <http://www.esri.com/legal/> for the specific Data accessed. The Use of Data Restrictions may be modified by ESRI from time to time. If a modification is unacceptable to Licensee, Licensee may cancel a subscription upon written notice to ESRI, or discontinue use of the Data or Web Services, as applicable. If Licensee continues to use the Data or Web Services, Licensee will be deemed to have accepted the modification.
26. An ArcSDE Personal Edition geodatabase is restricted to four (4) gigabytes of Licensee data.
27. ArcGIS Server Web ADF Runtime Software may not be deployed independent of Licensee's ArcGIS Server Enterprise configuration.
28. Use is limited to ten (10) concurrent end users of applications other than ArcGIS Server applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Server geodatabase. There are no limitations on the number of connections from Web applications.
29. Software can only be used with SQL Server 2005/2008 Express.
30. Use is restricted to a maximum of four (4) gigabytes of Licensee data.
31. Redundant Software installation(s) for failover operations is allowed but can only be operational during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
32. No redundant Software installation is permitted.
33. Licensee's access to and use of ArcGIS Online Services or Microsoft Bing Maps are conditioned upon Licensee's acceptance of the ESRI Web Site and Service Terms of Use Agreement and the terms and conditions specific to ArcGIS Online Services or Microsoft Bing Maps found at <http://www.esri.com/legal/>.
34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
35. Licensed end users shall not share the client-side data cache derived from ArcGIS Online Services with other licensed end users or third parties.
36. Reserved.
37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.

43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.
44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with ESRI Business Analyst and ESRI Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
47. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee has also installed the Microsoft SharePoint Server.
48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the ESRI reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of ESRI. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. ESRI MapIt Silverlight Web or WPF applications may not be deployed independent of Licensee's MapIt deployment configuration.
50. Licensee has the right to one (1) desktop deployment of Spatial Data Assistant for each ESRI MapIt server license.
51. ESRI Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of ESRI. Licensee shall treat any source code file identified as "Software" in a README file or at <http://www.esri.com/legal/> as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. Deployment license options are as follows:
 - a. A license for Web applications is per the principal registered unique domain identifier. Domain is the Internet domain name registered with a domain name registrar. For example, in example.com or example.com.xx (where xx is a registered country code), *example* is the principal registered unique domain identifier.
 - b. A license for desktop applications is per organization. For the purposes of this license, organization is equivalent to a principal registered unique domain identifier (as described above). For example, desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.

EXHIBIT 2
TRAINING ADDENDUM
(E207CWM 9/09)

ARTICLE 1—TRAINING DESCRIPTION

ESRI offers instructor-led training related to the use of its proprietary GIS software. ESRI will provide to Licensee a fixed number of days of Instructor-Led Training, as defined in the Small Enterprise Training Package included in the ELA. Instructor-led training events occur at an ESRI Learning Center or via the Web. The ESRI software training course(s) to be conducted, location, and schedule dates are set forth in the *ESRI Course Catalog* located on ESRI's Training Web site (<http://training.esri.com>). All courses are conducted in substantial conformity with course descriptions outlined on the ESRI Training Web site. ESRI reserves the right to modify course content when necessary due to software technical capabilities or limitations.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- ESRI will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. ESRI will provide each Student with a course manual where applicable.
- ESRI will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

ARTICLE 3—LICENSEE'S RESPONSIBILITIES

- Licensee must ensure the protection of ESRI's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of ESRI's training material(s).
- Licensee must not resell seat(s) to an ESRI training class unless explicitly authorized in writing by ESRI.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on ESRI's Training Web site.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, ESRI will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- U.S. government export control laws and regulations prohibit U.S. persons from engaging in transactions with certain denied persons found on various U.S. Government Denied Persons lists (e.g., U.S. Department of the Treasury's Specially Designated Nationals List, U.S. Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to the ESRI Training Event Assistant a list of the names of Students that are to attend any training class. Licensee must submit the list of Student names to ESRI at least three (3) business days before the class start date. Any Student that is found on any of the various U.S. Government Denied Persons lists will not be permitted to attend training.
- Licensee is responsible for all Student travel arrangements. ESRI assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to U.S. government export regulation requirements, course scheduling changes, or cancellations.
- Licensee must provide written notice to ESRI's Customer Service of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for ESRI training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.

- Students may not use audio and/or video recording equipment within the classroom without prior written approval from ESRI.

ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY

Licensee may cancel or reschedule Student attendance in training up to three (3) working days before the scheduled class start date. In the event of a cancellation, Licensee will reimburse ESRI for any reasonable travel and shipping expenses incurred by ESRI. In the event Licensee does not notify ESRI at least three (3) days prior to the scheduled training date, ESRI will deduct the appropriate number of class days from the remaining account training days.

If ESRI is unable to conduct the training on the scheduled date, ESRI will notify Licensee at least three (3) business days before the scheduled date.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

Students may transfer from one scheduled ESRI Learning Center class to another up to two (2) times at no additional charge. Subsequent transfers may be assessed an additional nonrefundable transfer fee.

Student substitutions, when a Student's place in class is filled by another person from the same organization, are allowed provided that ESRI Customer Service is notified three (3) business days in advance of the class start date.

ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE

- The training days are available for a period of thirty-six (36) months, commencing on the Effective Date, or when all training days are consumed, whichever is sooner.
- Licensee is committed to scheduled training days when ESRI training requests are received and accepted by ESRI.
- ESRI will invoice for outstanding training expenses where applicable.
- Upon the anniversary, unused training days are forfeited.
- Training days are nontransferable and nonrefundable for any other ESRI products or services.

ARTICLE 6—CONFIDENTIAL INFORMATION

ESRI or the Licensee may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the confidential information of the other party.

ARTICLE 7—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, ESRI and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 8—WARRANTY

ESRI will provide training in a manner consistent with the technical and professional standards of the industry.

8.1 Disclaimer of Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE DELIVERABLES ARE ERROR FREE.

ARTICLE 9—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. *TO THE EXTENT ALLOWED BY TEXAS LAWS*

ARTICLE 10—UCC INAPPLICABILITY

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

Agenda Item:
(Staff)

- 3A. A resolution approving a second amendment to the development site plan for an approximate 2.25 acre tract of land out of the Samuel Wallace Survey No. 114, Abstract No. 348, Kerr County, Texas, located in a residential cluster "RC" zoning district and adjacent to Pinto Trail.

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Public Hearing: Development Site Plan – Consider a request for a development site plan for a twelve (12) lot, 2.25 acre single family development located on the south side of Pinto Trail between Tomahawk Trail and Bow Lane.

FOR AGENDA OF: October 12, 2010 **DATE SUBMITTED:** October 1, 2010

SUBMITTED BY: Gordon Browning **CLEARANCES:** Kevin Coleman *KC*

EXHIBITS: Location Map, Site Plan, Property Owner Response, Resolution *RD*

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *[Signature]*

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

Project History/Timeline:

- January 22, 2008 – City Council approves a development site plan for “Songbird Ridge” and adopts Resolution No. 010-2008.
- October 14, 2008 – City Council approves an amendment to the development site plan for “Songbird Ridge”, adopting Resolution No. 096-2008.
- July 19, 2010 – Staff meets with the new property owner’s representative to discuss amending the site plan for “Songbird Ridge”.
- August 16, 2010 – Staff accepts amended site plan for review and consideration.
- September 1, 2010 – Notice of required public hearings are published in The Kerrville Daily Times and mailed to property owners within 200-feet of the subject property. The Development Review Committee (DRC) review process is completed.
- September 10, 2010 – Staff comments to applicant.

- September 16, 2010 – Public hearing before the Planning and Zoning Commission (P&Z) and consideration of recommendation for the site plan and resolution to City Council.
- October 12, 2010 – Public hearing before the City Council and consideration of the site plan and resolution.

Proposal:

The new owners of the property, Hill Country Opportunity Council, Inc., are requesting amending the previously approved 21 lot duplex development with a 12 lot single family development. The site plan submitted provides a general layout for the first ten units of the proposed development as well as 'typical' plot plans and provides the information outlined in the Zoning Code for the subject submittal.

As stated above, the proposed amendment to the site plan will allow construction of single family homes accessed from private access drives, greatly reducing the number of potential approaches to Pinto Trail. The lots are configured to face the access drives, each lot will be approximately 5900 square feet in area.

Drainage in this area has been an ongoing concern for both the City and previous developers. As noted on the site plan, Lot 1 and Lot A are not part of the initial review pending final completion and approval of the site drainage plan.

RC – Residential Cluster District:

The primary purpose of the RC Residential Cluster District is to permit development of a mix of residential uses, including, but not limited to, single family detached dwellings, zero lot line 'Garden Homes', and townhouses, subject to certain development regulations that ensure better compatibility of different types of uses within the same zone, such as required buffer areas, screening fences, street layout and/or landscaping.

The procedure for approval of a Development Site Plan or any amendment thereto shall be the same as for the adoption of a Conditional Use Permit. Any amendment to a Development Site Plan shall be approved in the same manner as the original development site plan.

Informational Comments and Notes:

Approval of a Development Site Plan does not constitute approval of a preliminary plat. Prior to submittal of a preliminary plat the development site plan must be approved by the Planning and Zoning Commission and the City Council and a copy of the resolution adopting the development site plan shall be filed in the official records of the County Clerk of Kerr County, Texas. The resolution number and the

date of adoption must be noted on both the preliminary plat and the final plat in addition to any other development restrictions as deemed necessary.

The applicant should consider the following in preparation of the preliminary and final plats and accompanying civil construction plans.

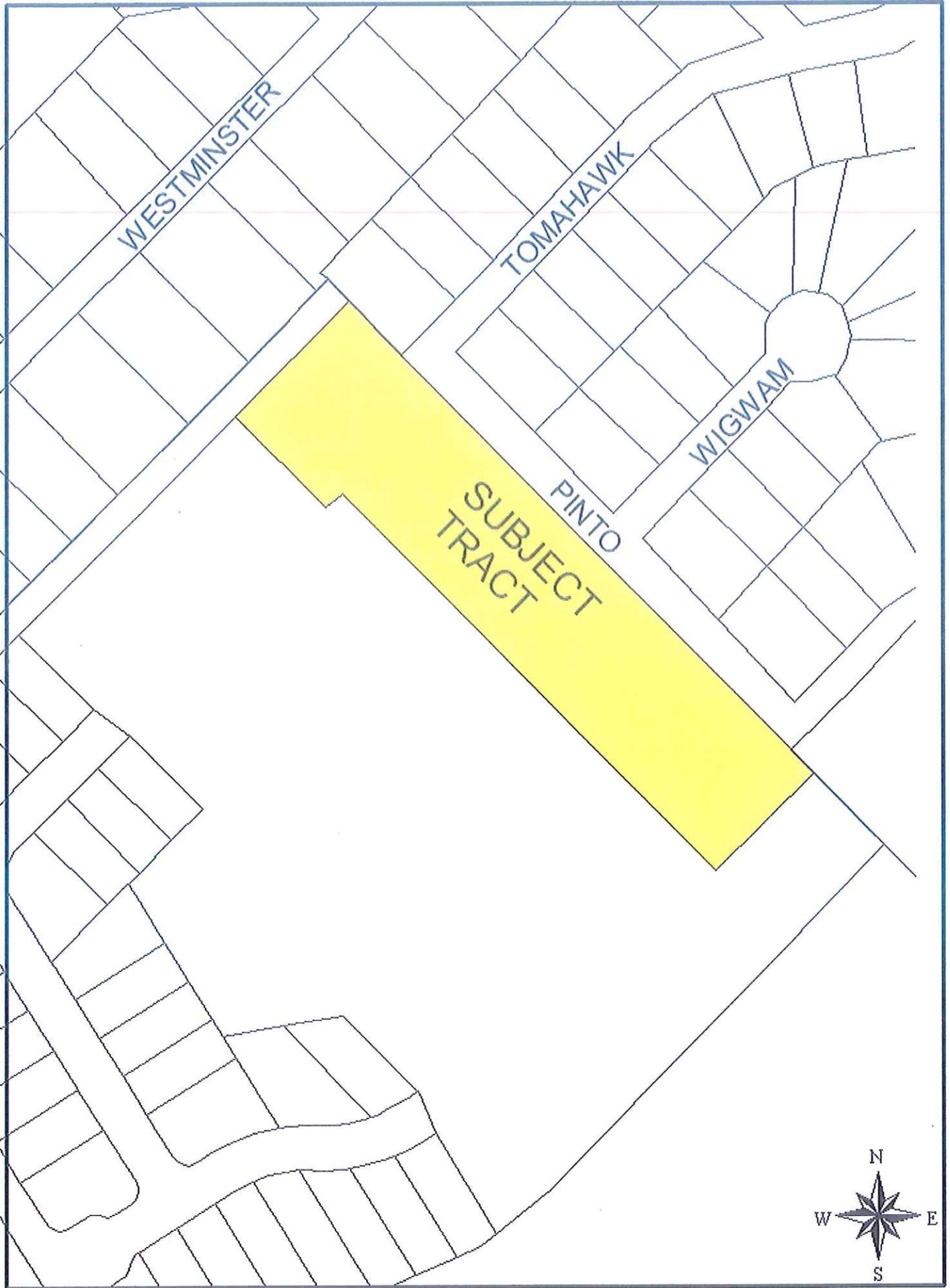
- Show all existing and proposed easements with dimensions and labeled by type to include franchise utilities. Label existing easements as 'Existing' and provide recording information. Identify proposed easements by stating dedication method within parenthesis, ex. (By Plat).
- A detailed drainage plan will be required with this development. Staff recommends that the applicant/owner consider a joint drainage solution with the developer/owner of the property to the south.
- With the preliminary plat submittal, a request for a variance to the required minimum lot depth of 100-feet should be included.
- Contact KPUB prior to preliminary submittal for easements and services locations.
- Kerr 911 approval of "street" names and addresses will be the responsibility of the applicant/owner.
- The minimum turning radii for the new private access drives must be at least 25-feet.
- Use of Lots 1 and/or A for other than single family development, will require an amendment to the site plan.

After review of the development site plan submitted and a review of the existing and proposed development in the area, staff finds that the use proposed is compatible with the area and recommends approval as submitted.

The Planning and Zoning Commission at their September 16, 2010 meeting, following a public hearing and discussion, recommended approval of the amended site plan and attached resolution. One person spoke at the public hearing regarding traffic and drainage concerns existing in the area and one property owner response was received opposed to the request, see attached.

RECOMMENDED ACTION

1. Open the public hearing and receive comments, and
2. Approve the development site and attached resolution.



WESTMINSTER

TOMAHAWK

WIGWAM

PINTO

SUBJECT TRACT



RECEIVED

SEP 13 2010

Sept. 10, 2010

900-B Laura Belle

Kerrville, Texas

Planning & Zoning Co.

Council Chambers

Kerrville, Texas

Council Member:

I own the duplex on corner of Bow Lane and Pinto Dr. I spoke with your office before I purchased this property in 1997 about the big pasture south of Pinto trail and was informed it was to be a circle of private homes and that a street would connect Bow Lane through east side of it. So I felt I had a safe location. That has changed several times. Parker Harrison has been very kind to explain the new plans, however, I still think this is far too many people in a small area on a very narrow street with no area for

Children to play and ride bicycles safely.
Tomahawk Trail is already bumper to
bumper. When so many busy people
are stacked up like this, it soon
becomes a very unkept place and our
city doesn't want to create slums. Please
consider this.

I have cataract surgery Tuesday
so I can not attend your 16th
meeting. Thank you.

Ms. P. J. Colvin

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. ____-2010**

**A RESOLUTION APPROVING A SECOND AMENDMENT TO THE
DEVELOPMENT SITE PLAN FOR AN APPROXIMATE 2.25 ACRE TRACT OF
LAND OUT OF THE SAMUEL WALLACE SURVEY NO. 114, ABSTRACT NO.
348, KERR COUNTY, TEXAS, LOCATED IN A RESIDENTIAL CLUSTER "RC"
ZONING DISTRICT AND ADJACENT TO PINTO TRAIL**

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Kerrville, Texas, in compliance with the City Charter and state law, with reference to the approval of a development site plan for a duplex development located in Residential Cluster "RC" Zoning District under Title 11, Chapter I of the Code of Ordinances of the City of Kerrville, Texas, and the official zoning map adopted thereby, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Kerrville, Texas, finds that the health, safety and general welfare will be best served by approving a second amendment to the development site plan for the property described in Section One hereof; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
KERRVILLE, KERR COUNTY, TEXAS:**

SECTION ONE. In accordance with Art. 11-1-10(c.)(2) of the Code of Ordinances of the City of Kerrville, Texas, the Development Site Plan, attached hereto and incorporated herein by reference as **Exhibit A**, is approved with respect to the development of an approximate 2.25 acre tract of land out of the Samuel Wallace Survey No. 114, Abstract No. 348, Kerr County, Texas, said property being more particularly described in that certain application for approval of an amendment to the Development Site Plan for "Songbird Ridge," approved by the City of Kerrville Planning and Zoning Commission on September 18, 2008. The approval of this amendment to the Development Site Plan authorizes a change in use for the property described above from dwelling, duplex to dwelling, single family detached.

SECTION TWO. The approval of the Development Site Plan attached hereto as **Exhibit A** amends Resolutions 010-2008 and 096-2008. Should a conflict arise between the Development Site Plan approved herein and the previously approved resolutions, the Development Site Plan approved by this Resolution prevails.

PASSED AND APPROVED ON this the ____ day of _____, A.D., 2010.

ATTEST:

David Wampler, Mayor

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

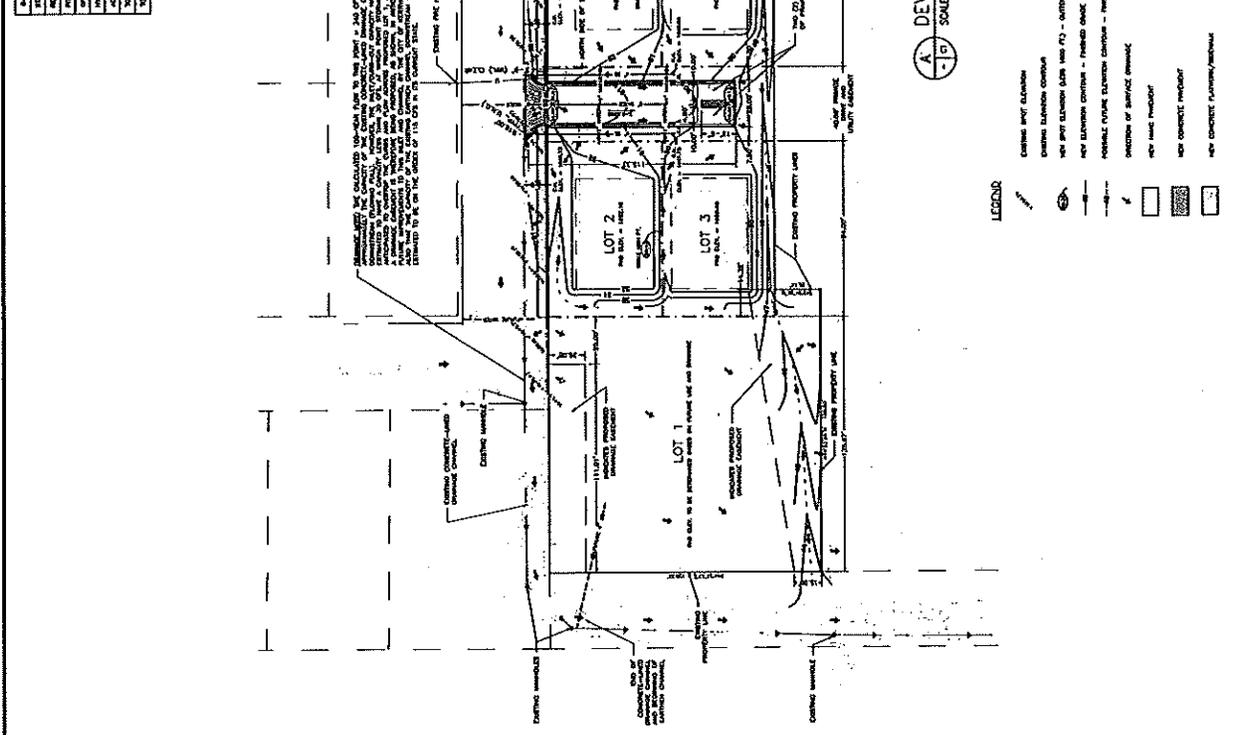
MAXWELL ENGINEERING, PLLC
 Structural • Geotechnical • Civil • Forensic
 511 Riverside Drive
 Killeen, Texas 76726
 Phone: (817) 835-0033
 Fax: (817) 835-0033
 License No. 25743
 State of Texas
 Expires 12/31/2013

REV	DATE	DESCRIPTION	APP
01/0	7/10	ISSUE FOR PERMIT	
02/0	7/10	ISSUE FOR PERMIT	

CITY APPROVAL
 This plan has been reviewed and approved by the City of Killeen, Texas, for the purpose of the subdivision of land. The City of Killeen, Texas, is not responsible for the accuracy of the information provided on this plan.

GENERAL NOTES:
 1. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF ALL UTILITIES, INCLUDING BUT NOT LIMITED TO WATER, SEWER, GAS, AND ELECTRICITY. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF ALL UTILITIES, INCLUDING BUT NOT LIMITED TO WATER, SEWER, GAS, AND ELECTRICITY. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF ALL UTILITIES, INCLUDING BUT NOT LIMITED TO WATER, SEWER, GAS, AND ELECTRICITY.

AREA	AREA TYPE	AREA SIZE (SQ FT)	AREA SIZE (SQ YD)
LOT 1	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 2	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 3	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 4	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 5	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 6	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 7	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 8	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 9	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 10	RESIDENTIAL	1,125 SQ FT	0.26 AC
LOT 11	RESIDENTIAL	1,125 SQ FT	0.26 AC
TOTAL		12,375 SQ FT	2.83 AC



Agenda Item: **(Staff)**

- 4A. An ordinance creating a "planned development district" for dwelling, multi-family (apartment) and professional office on an approximately 1.2 acre tract of land, being Lots 3 through 8, inclusive, Block 27 of the J.A. Tivy Addition, a subdivision within the City of Kerrville, Texas, and otherwise known as 1001 Jefferson Street; adopting a concept plan and conditions related to the development of said district; containing a cumulative clause; containing a savings and severability clause; establishing a penalty or fine not to exceed \$2,000 for each day of violation of any provision hereof; ordering publication; and providing other matters relating to the subject.

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Public Hearing: Planned Development District – Consider a request to change the zoning from RT (Residential Transition) District to a PDD (Planned Development District) on an approximately 1.2 acre tract located at 1001 Jefferson Street.

FOR AGENDA OF: October 12, 2010 **DATE SUBMITTED:** October 1, 2010

SUBMITTED BY: Gordon Browning **CLEARANCES:** Kevin Coleman

EXHIBITS: Location Map, Applicant's Request, Property Owner Response,

Ordinance

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The applicant's request is to change the zoning on an approximately 1.2 acre tract from RT (Residential Transition) District to a PDD (Planned Development District) to allow professional office and apartment uses as outlined in the attached ordinance.

As currently zoned the proposed professional office use would be permitted by right; however the apartment use would require a Conditional Use Permit. Staff proposed the PDD as a way to develop the tract as a single project under a single controlling ordinance.

Though the site is below the acreage threshold established by Ordinance 2010-09 for a non-residential PDD, the applicant's original submittal was received and commented on by the DRC prior to the effective date of this ordinance, therefore allowed to move forward under the prior ordinance.

As presented in the applicant's concept plan and request, the proposed development will consist of a professional office building, the Jefferson Street house, and three (3) two-story apartment buildings with a total of twenty (20), two bedroom units. Access will be from Tivy and Jefferson Streets as shown on the concept plan, parking for both uses will be provided on site.

Project Timeline:

- April 9, 2010 – Staff and applicant hold a pre application conference to discuss the proposal.
- June 2, 2010 – Fire flow tests conducted - passed.
- June 22, 2010 – Council adopts Ordinance No. 2010-09 requiring nonresidential PDD's to be a minimum of 2 acres (effective on 07/06/2010).
- June 24, 2010 – Initial concept plan submitted.
- June 24, 2010 – The Development Review Committee (DRC) reviews initial concept plan, comments are provided to the applicant.
- July 6, 2010 – Ordinance No. 2010 – 09 is effective.
- July 19, 2010 – Applicant and staff hold a pre-application conference to discuss the zoning change submittal.
- August 8, 2010 – An application for a PDD is accepted by staff for review and consideration.
- September 1, 2010 – Notices of the required public hearings are published in The Kerrville Daily Times and mailed to property owners within 200-feet of the subject tract. The Development Review Committee (DRC) review process is completed.
- September 10, 2010 – Staff comments and draft PDD ordinance to applicant.
- September 16, 2010 – The Planning and Zoning Commission conducted a public hearing, and upon discussion recommended denial of the request.
- **October 12, 2010 – Public hearing before the City Council and consideration of an ordinance on first reading.**
- October 26, 2010 – Second and final ordinance reading for the PDD, if necessary.

PDD Process and Summary:

Article 11-I-15 of the Zoning Code describes Planned Development Districts (PDD) and the process by which they are considered. PDD's are zoning districts that can be considered for permitting land uses not normally allowed in the zoning district in

which the property is located. A PDD is governed by a concept plan and any other development regulations associated with a City Council approved ordinance. A PDD effectively becomes a "stand alone" zoning district similar to those districts already described in the Zoning Code.

No underlying right exists to approve a PDD request. The fact that the P&Z and City Council may review an application for a zoning change does not mean it must be approved. The burden falls on the applicant to show that the use would be a benefit to the particular area and to the general welfare of the City.

As presented in the applicant's concept plan and request, the proposed development will consist of a professional office building, the Jefferson Street house, and three (3) two-story apartment buildings with a total of twenty (20), two bedroom units. Access will be from Tivy and Jefferson Streets as shown on the concept plan, parking for both uses will be provided on site.

Unless specifically addressed in the attached draft ordinance, approval of the PDD does not exempt the property owner and/or developer from any other ordinance or requirement related to the development of the property described. Approval of the PDD is not a permit for development and/or construction.

Prior to submission of any building and/or civil construction plans, the applicant shall submit a re-plat of the property per the City's Subdivision Regulations and a development site plan for review and approval per Article 11-I-15 of the Zoning Code.

Overview of Planning and Zoning Commission Discussion

The Planning and Zoning Commission conducted a public hearing, and following discussion recommended denial of the requested PDD. One person spoke at the public hearing regarding an existing visibility issue at the Tivy and Jefferson Street intersection and one property owner response was received opposed to the request, see attached.

The Jefferson Street house is one of the few remaining historically significant Victorian houses in the City. The Commission recommended incorporating the appearance, character and/or style of the house into the exterior of the proposed apartments should be considered in the approval of the PDD.

To that end, the proposed elevations of the three (3) apartment's buildings are included as a part of and as a requirement of the PDD approval.

Additionally, the Planning and Zoning Commission discussed the following items during their review of the request:

- Add a provision for additional screening adjacent to the alley.

- The continuance of the historic designation of the existing house.
- The proposed density of the project.
- The location and adequacy of parking.

The combined concern over these items led to the Commission's negative recommendation on a 0-4 vote. These issues are not addressed in the proposed ordinance.

Staff Review of Planning and Zoning Commission Discussion

The owner has agreed to the screening requirement along the adjacent alley.

The owner has agreed to continue the Texas State Landmark Status designation for the existing structure.

With the exception of the front yard setback off of Jefferson Street, the density, separation, and setbacks of the development narrowly meet the minimum standards for the proposed uses under Article 17 of the zoning ordinance. The standard front yard setback for this use is 25 feet; the proposed front yard setbacks shown are 11 feet for unit 1 and 18 feet for unit 3; the existing structure is setback 11 feet from Jefferson Street.

The number of parking spaces proposed exceeds the minimum standards for the proposed uses under Article 20 of the zoning ordinance. Many of the on-site parking spots allocated to the apartments are remote from the units they serve, but are within the maximum distance allowed for required parking provided off-site.

City Council Public Hearing, Review and Potential Action

The Council may impose requirements and conditions of approval as are needed to ensure that a use requested by a PDD is compatible and complementary to adjacent properties.

Upon completion of the required Public Hearing and any needed discussion with staff or the applicant, Council can take one of the following actions:

1. Approve the proposed ordinance as written on first reading;
2. Approve the proposed ordinance on first reading, adding any requirements or conditions as are needed; or
3. Deny the request.

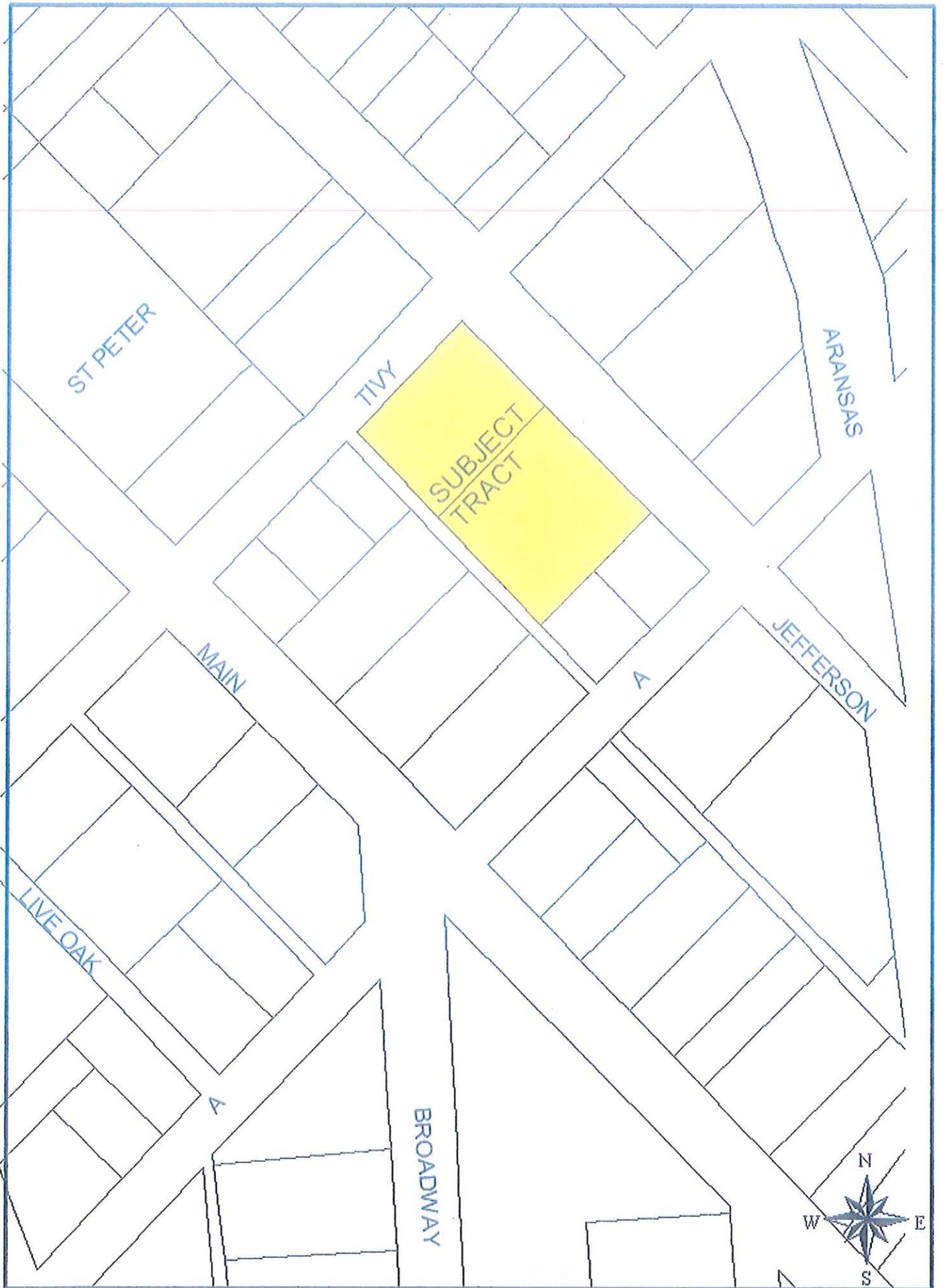
If Council approves the proposed ordinance as presented, no substantial changes can be made at second reading.

If Council denies the request, the owner cannot bring the PDD request back unless additional property is added and the two acre minimum is met. However, the owner can come forward under separate application for a Conditional Use Permit for the multi-family use as allowed in the RT district.

If Council approves the ordinance on first reading and exercises its right to add any requirements or conditions it deems necessary, the ordinance and/or the attached concept plan or elevation designs can be amended to conform to those conditions and presented for second reading.

RECOMMENDED ACTION

1. Open the public hearing and receive comments,
2. Consider the PDD request as submitted, and
3. Approve the proposed ordinance on first reading, subject to any requirements and conditions as needed.



**CITY OF KERRVILLE DEVELOPMENT SERVICES DEPARTMENT
MASTER APPLICATION ***

PROPERTY INFORMATION: (Please PRINT or TYPE for all permits)

Project Address 1001 Jefferson St Nearest Intersection Tivy + Jefferson
 Minor Plat/Subdivision J. A. Tivy Addition Lot 3,4,5,6,7,8 Block 27 Jefferson St
 Zoning Districts _____ Comprehensive Plan Designation _____

OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE: For all permits)

Applicant/Authorized Agent Elida Briseño Phone (210) 647-7430 FAX (210) 647-8277
 Email Address: n/a
 Mailing Address 7051 Bandera Road City San Antonio State TX Zip 78238
 Property Owner Elida Briseño Phone (210) 647-7430 FAX (210) 647-8277
 Email Address: n/a
 Mailing Address 7051 Bandera Road City San Antonio State TX Zip 78238

Transaction Code: 840.01-6236

Attach completed checklists for all projects

- | | | | |
|---|---------------|---|-------|
| <input type="checkbox"/> Annexation (2 copies /2 petitions) | <u>No Fee</u> | <input type="checkbox"/> Preliminary Plat (15 copies) | _____ |
| | | \$300 + \$20/lot or \$10/acre (which ever is greater) | |
| <input type="checkbox"/> Administrative Appeal | \$150 | <input type="checkbox"/> Final Plat (15 copies) | _____ |
| | | \$150 + \$10/lot | |
| <input type="checkbox"/> Preliminary Site Plan (15 copies) | <u>No Fee</u> | <input type="checkbox"/> Preliminary Minor Plat (15 copies) | _____ |
| | | \$150 + 10/lot | |
| <input type="checkbox"/> Final Site Plan (15 copies) | <u>No Fee</u> | <input type="checkbox"/> Final Minor Plat (15 copies) | _____ |
| | | \$150 + 10/lot | |
| <input type="checkbox"/> Concept Plan (15 copies) | \$500 | <input type="checkbox"/> Replat (15 copies) | _____ |
| | | \$150 + 10/lot | |

**For plats in the ETJ:
(Payment due at the time of final plat, \$200.00 per lot)**

- Parkland Fee (East) _____
 08-6242
 Parkland Fee (West) _____
 08-6243

Owner's Affidavit Required for: (Must attach to this Master Application Form)

- | | | | |
|--|------------|--|-------|
| <input type="checkbox"/> Conditional Use Permit (CUP) Request | _____ | <input type="checkbox"/> Zoning Change Request | _____ |
| 840. 01-6236 | \$300 | 840. 01-6236 | \$300 |
| <input type="checkbox"/> Variance Request | _____ | <input type="checkbox"/> Comp. Plan Amendment Request | _____ |
| 840. 01-6236 | \$150 | 840. 01-6236 | \$300 |
| <input checked="" type="checkbox"/> Planned Development District Request | <u>300</u> | <input type="checkbox"/> Specific Use Permit (SUP) Request | _____ |
| 840. 01-6236 | \$300 | 840. 01-6236 | \$300 |

Please provide a basic description of the proposed project: Apartment & Professional Bldg.

I hereby certify that I am the owner or duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the permit or approval may be revoked.

Owners Signature: Elida B. Briseño Date: 8/2/10 **PAID** AUG 5 2010

REQUIREMENTS PLANNED DEVELOPMENT DISTRICTS (PDD) REQUEST

Please submit the following requirements along with the completed master application. The project cannot be scheduled for consideration unless all items are marked complete or non-applicable. Thank you, Kerrville Development Services Division.
Citations come from the Zoning Ordinance.

Complete



1. The name, address, and daytime phone number of the applicant if different than the property owner, along with an owner's affidavit authorizing the applicant to apply for this permit on his behalf in all matters relating to this application. 11-I-15.c.1.i thru 11-I-15.c.1.iii



2. The full legal description of the property for which the application is made and, if available, the street address of the property. 11-I-15.c.1.iv



3. A statement describing the proposed use. 11-I-15.c.1.vi



4. Ten (10) copies of a site plan for the proposed use, including:

- a. Parking facilities conforming to all applicable municipal requirements. 11-I-15.c.9.v



- b. Load/unloading, service and utility areas, if a non-residential use. 11-I-15.c.9.v



- c. The existing location and use of all properties contiguous to the subject property. 11-I-15.c.9.iv



- d. The location and dimensions of boundaries, easements, and building setbacks. 11-I-15.c.9.i

- e. The location of existing and proposed;



1. Buildings and other improvements. 11-I-15.c.9.ii



2. Drainage structures and watercourses. 11-I-13.c.9.vi



3. Exterior lighting fixtures. 11-I-15.c.9.v



4. Landscaped areas. 11-I-15.c.9.v



- f. The relationship of the property and the proposed use to surrounding areas, including pedestrian and vehicular access and circulation between the property and adjacent properties, current uses of nearby parcels, and any proposed off-site improvements to be made. 11-I-15.c.9.viii



- g. For property with an average slope greater than 15% a plan showing proposed grading, drainage, and erosion control measures or plans as required under other city ordinance(s) regulating storm water runoff. 11-I-15.c.9.vii



5. Except for proposed one and two-family residential buildings, building elevation drawings for proposed buildings, any part of which are to be constructed within three hundred feet (300') of the property line of property not owned by the applicant. 11-I-15.c.1.xiv

6. Performance characteristics and effects of the proposed use, including:

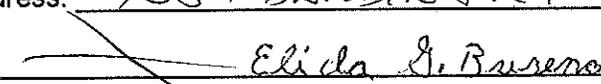
- a. Projected traffic generated and changes in traffic patterns generated by the proposed use, types of vehicles expected, and likely effects on surrounding properties within 500 feet, if a non-residential or multi-family residential use. 11-1-15.c.1.viii
- b. Estimated number of employees, occupants and/or users of proposed use, with peak hours of identified, if a non-residential use. 11-1-15.c.1.ix
- 7. Statement identifying state or federal licenses or permits required by the proposed use (if any) and the issuing agent. 11-1-15.c.1.xi
- 8. Identification of all existing similar uses within 500 feet of the subject property. 11-1-15.c.1.xiii
- 9. Availability of off street parking. 11-1-15.c.1.vii
- 10. Not required on drawing: Existing water well (Circle: operative, inoperative). Ordinance # 2000-07

I have read and understand in its entirety Article 11-1-15 of the Comprehensive Zoning Ordinance No. 97-07 for the City of Kerrville and understand that the requirements of a Planned Development District are subject to the terms and conditions therein. This Planned Development District checklist is used to insure compliance with the Ordinance and in some instances, the City may require more information for approval. An endorsement of this application checklist by the applicant shall be acknowledgment that all of the items on the above list have been reviewed and complied with or variances have been requested.

Project Name: JEFFERSON STREET APARTMENTS & PROFESSIONAL BLDG.

Owner: ELIDA BRISSENS Date: _____

Owner Address: 7051 BANDANA Rd Phone/Fax: 210-647-7430

Signature: 

Architect/Engineer/Surveyor: DAVID NAREDO Date: 8-3-10

Architect/Engineer/Surveyor Address: 2505 GOAT CREEK Phone/Fax: 896-0892

Signature: 

PDD CHECK LIST

1. Elida Briseno 7051 Bandera Road, San Antonio TX 78239 (210) 647-7430
2. Lots 3,4,5, 6,7, and 8 of the J.A. Tivy Addition, Kerrville TX
3. The existing Historical Homestead is to be used as a professional building. The remaining property is to be used for apartments and parking. Parking to service both apartments and professional building.
4. See Plot Plan.
5. See Proposed building plans
6. A. Existing Homestead used as a professional building rather than a restaurant and not using the Jefferson Street for parking should reduce congestion on Jefferson Street during lunch and dinner hours. Parking required for this structure will be reduced overall. All vehicles will now enter and exit parking area from Jefferson Street or Tivy Street. No parking will be allowed along either street.

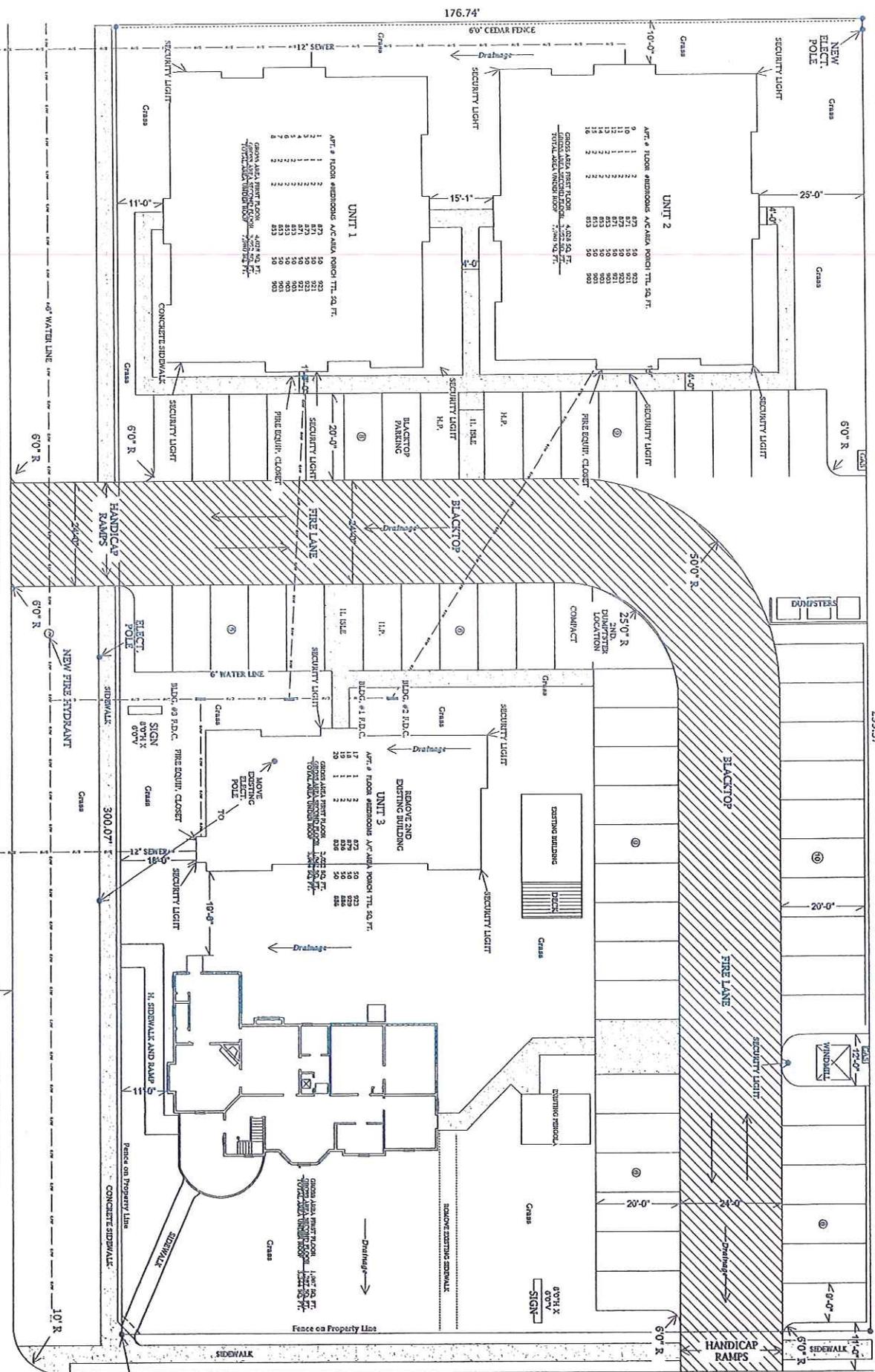
B. Required parking for the professional building is eleven spaces. We expect 8-9 occupants with peak use being between 8am – 5pm.
7. No state or Federal permits required
8. Apartment located on A Street
9. No parking along street. Forty spaces required for Apartments and Eleven for the Professional building. Property is plotted for Fifty nine spaces with a surplus of eight spaces.
10. N.A.

NOTICE
 This document is a preliminary site plan for the proposed development. It is not to be used for construction or other purposes without the approval of the local authority having jurisdiction. The information herein is for informational purposes only and does not constitute a contract or any other legal instrument.

PUBLIC ALLEY

295.37'

PUBLIC ALLEY



LOTS 3,4,5,6,7,8 BLOCK 27
 J.A. TIVY ADDITION
 KERR COUNTY, TEXAS

JEFFERSON STREET

1001 JEFFERSON ST.

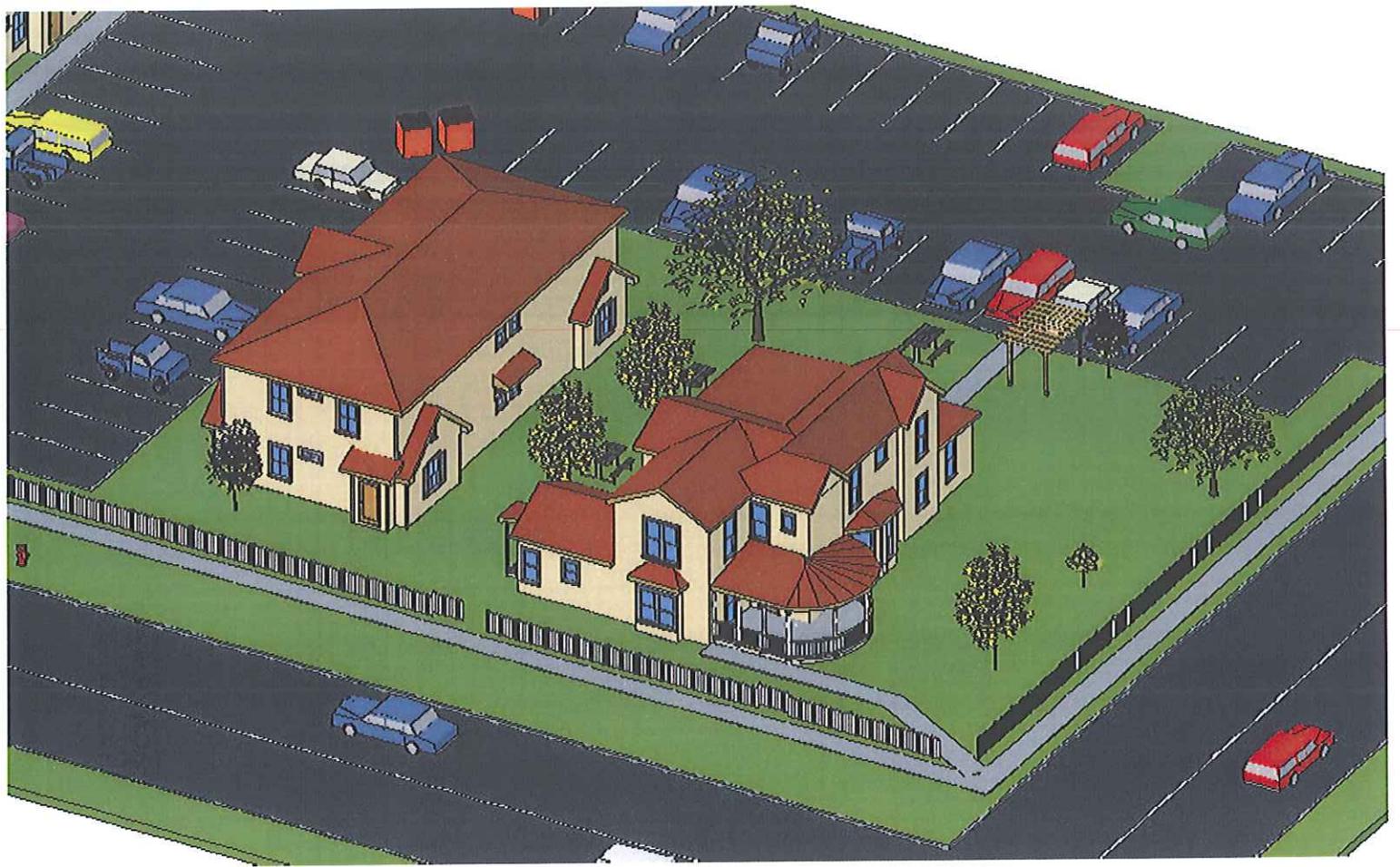
Both sewer line located near center of Jefferson St.
 15" Sewer @ 5'6"
 8" Sewer @ 8'6"

SCALE: 1" = 10'
 JOB: JEFFERSON ST. OFFICES & APARTS
 DATE: 7/29/2010
 PAGE: 1 OF 1

176.69'
 TIVY STREET

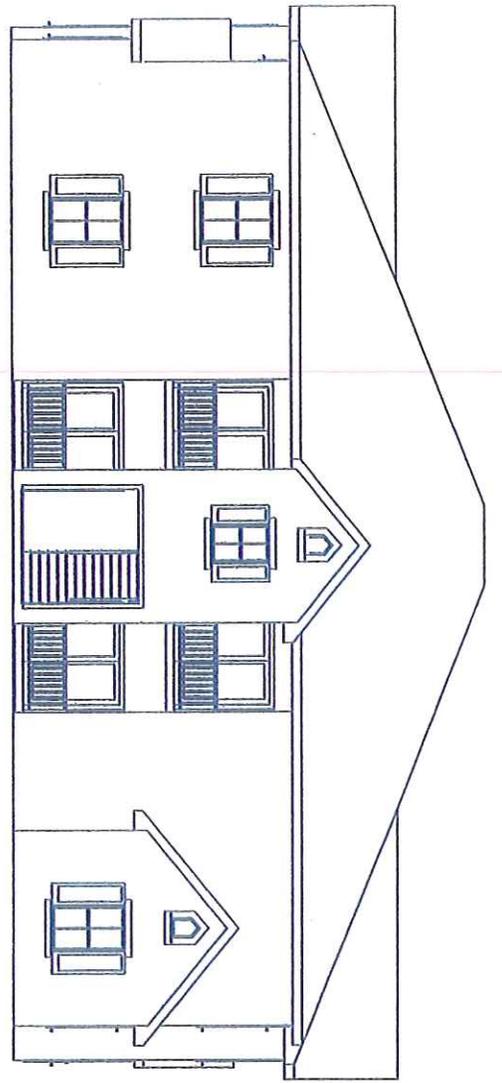




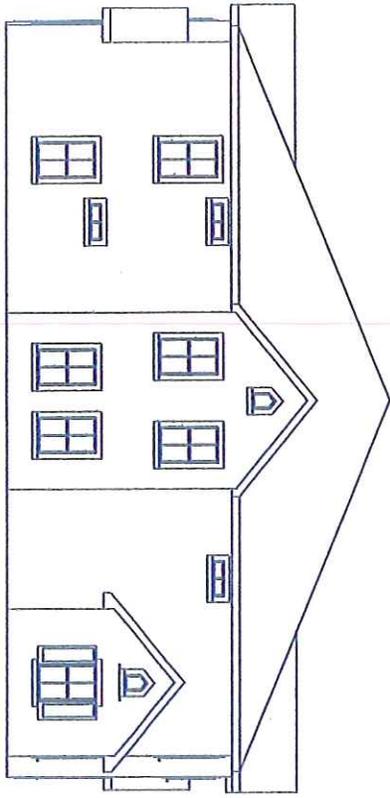




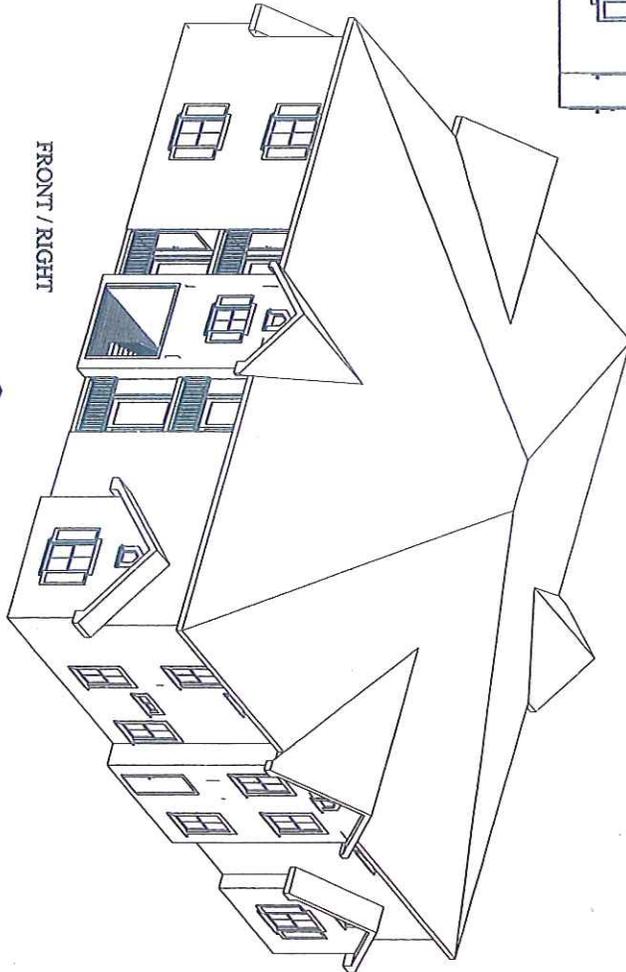
FRONT / BACK



LEFT

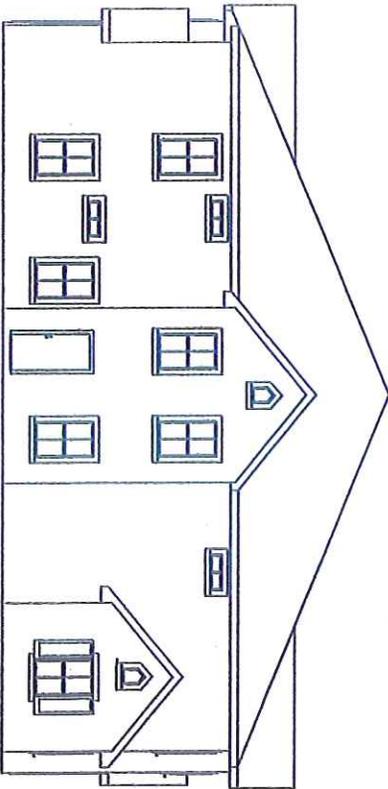


FRONT / RIGHT

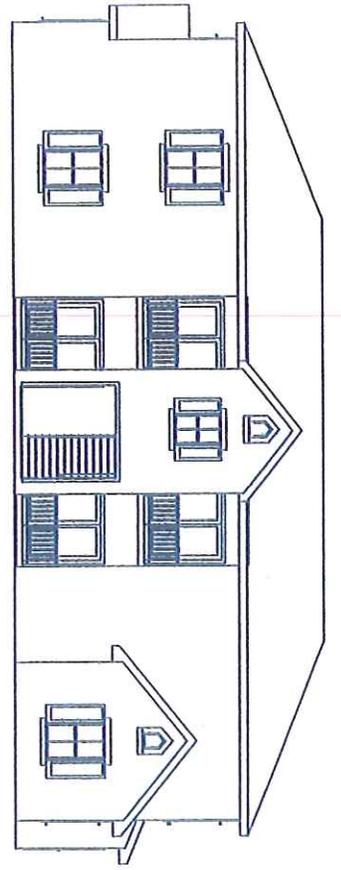


EIGHT APARTMENT UNIT (UNITS 1&2)

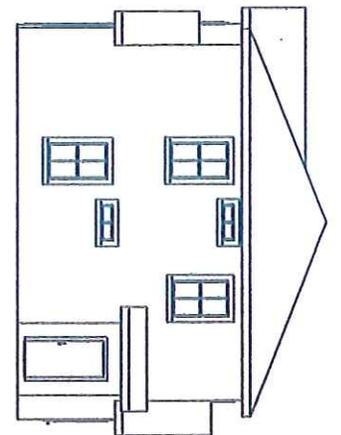
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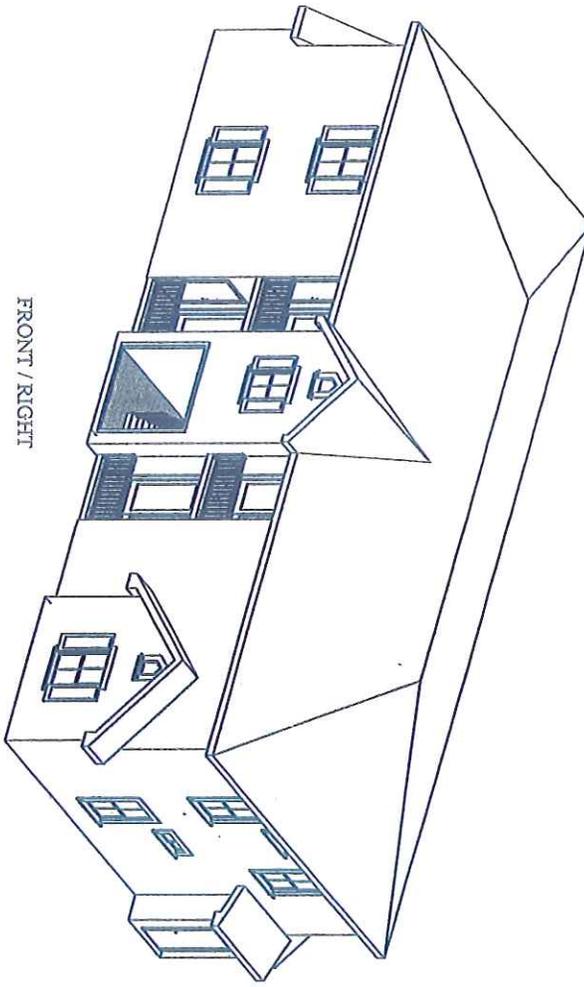
Wednesday, August 04, 2010



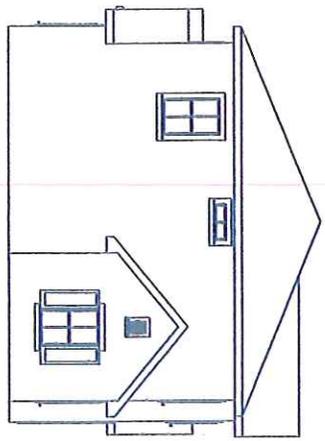
FRONT



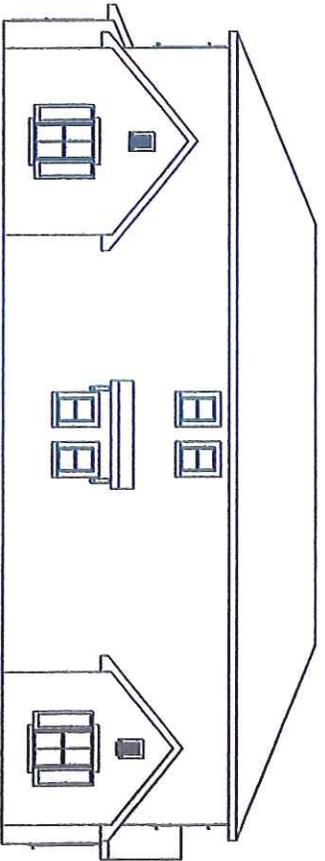
RIGHT



FRONT / RIGHT

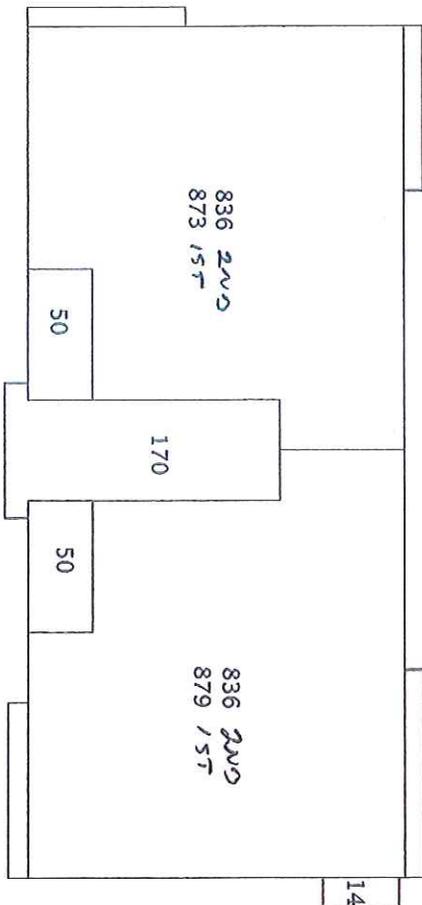


LEFT

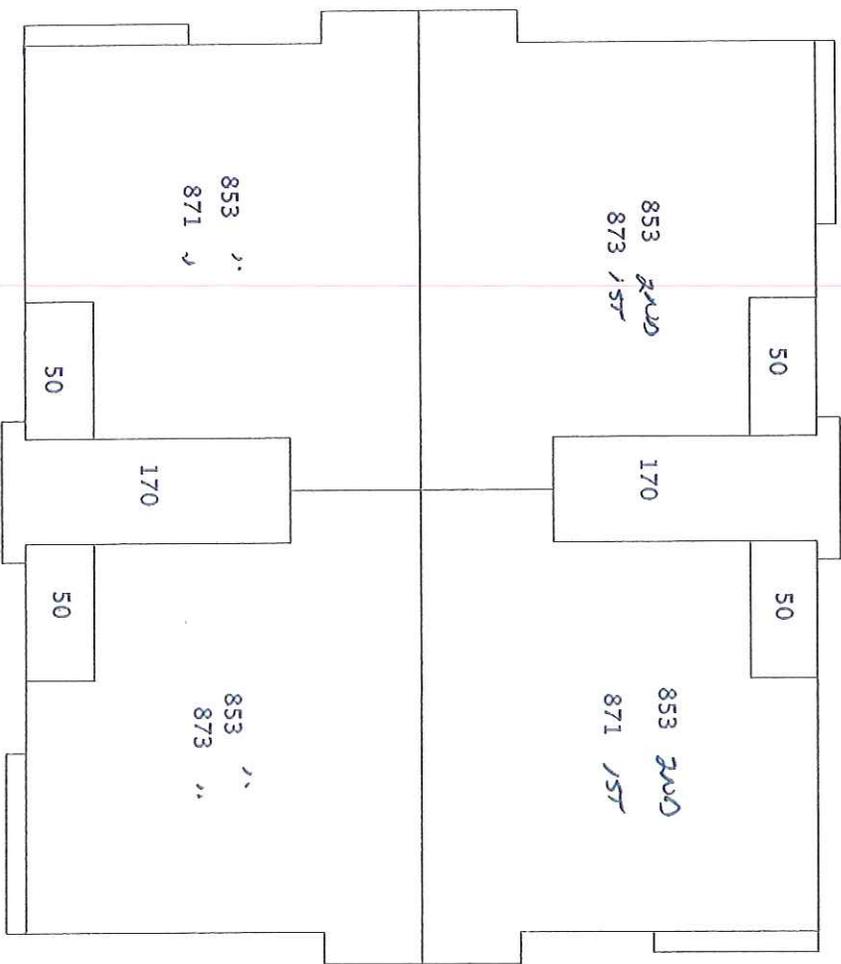


FOUR APARTMENT UNIT (UNIT 3)

BACK



T1L A/C 2ND 1672
 T1L A/C 1ST 1752
 FOOTPRINT 2,036

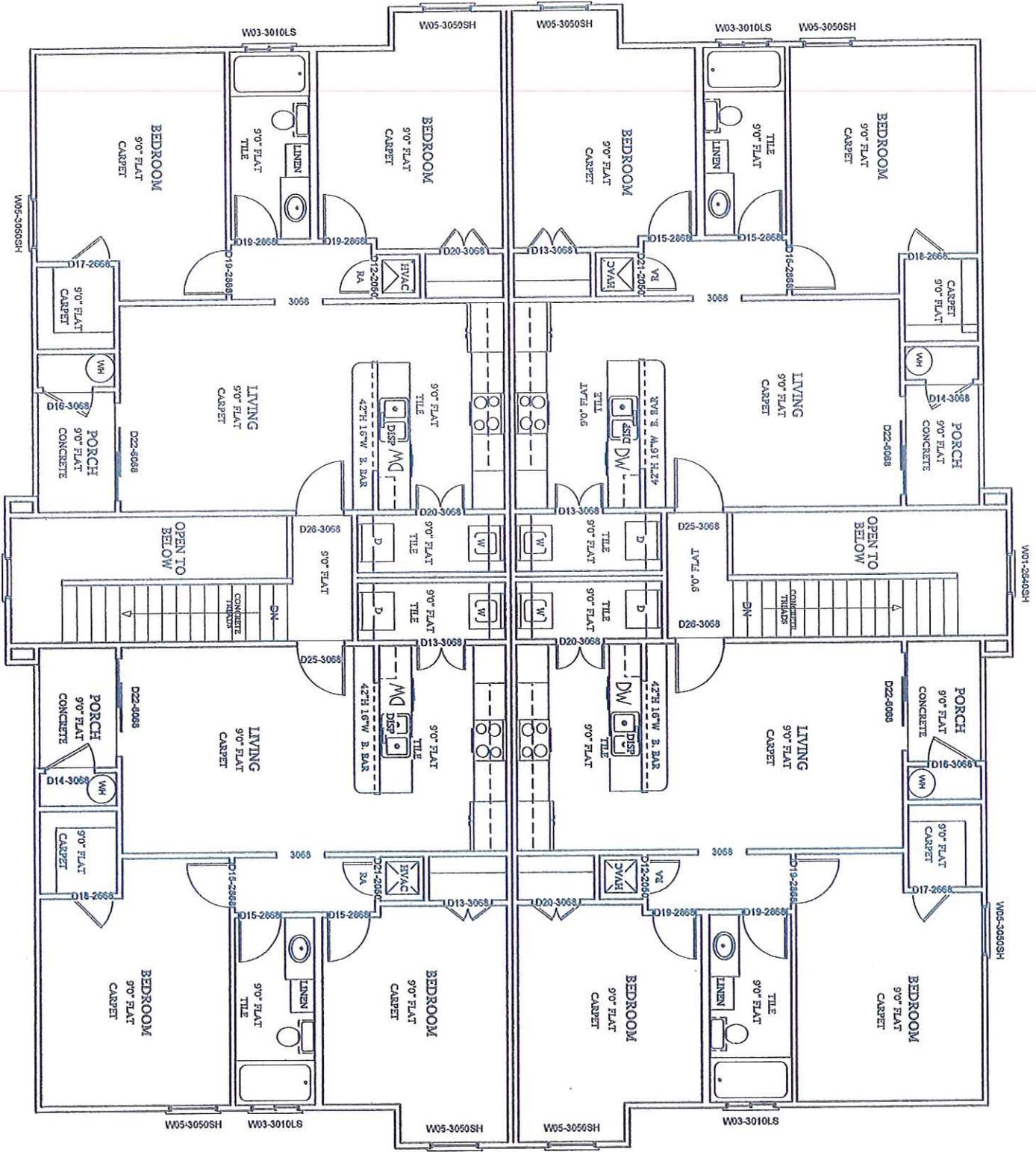


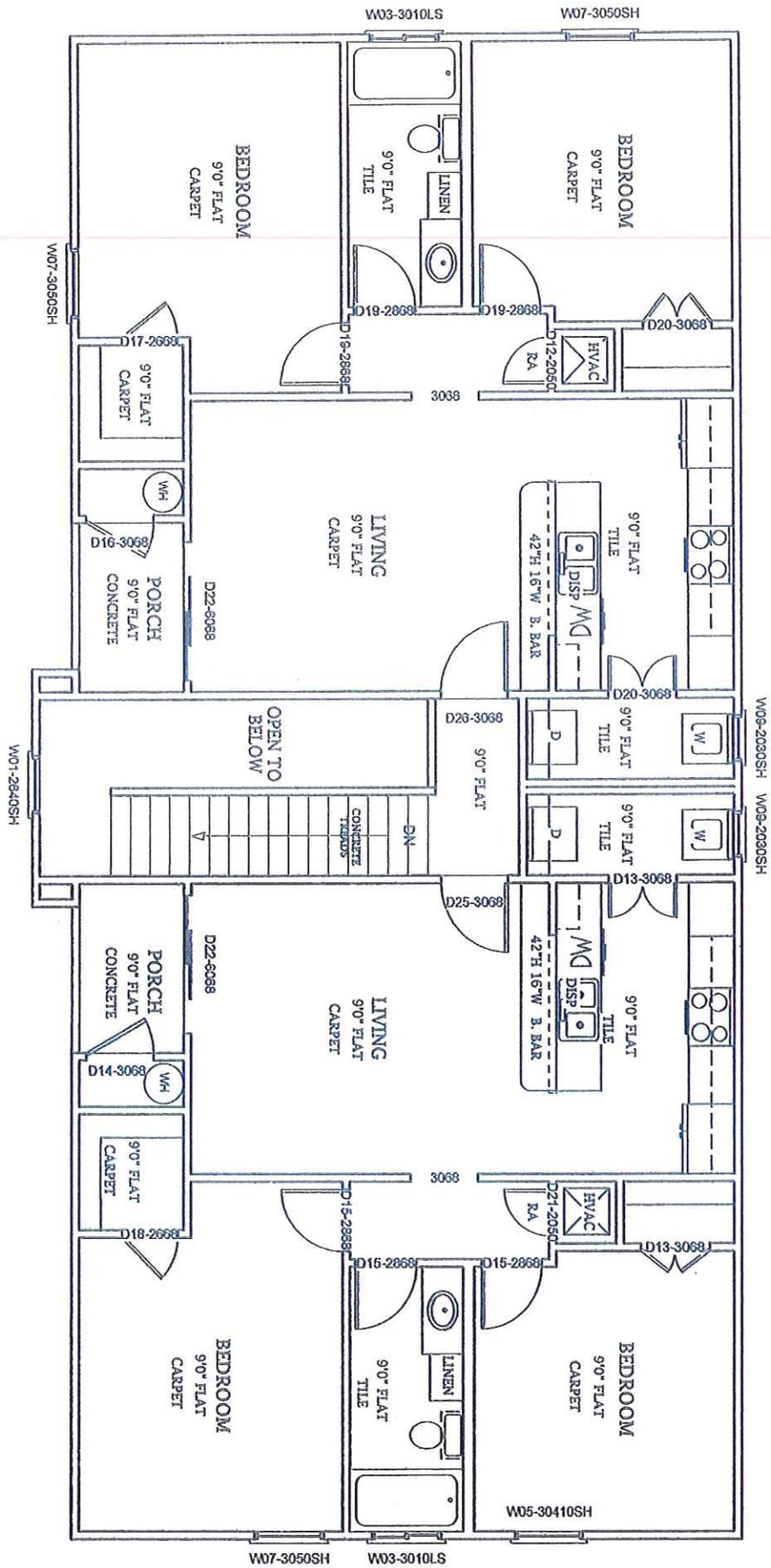
2ND FLOOR A/C 3,412
 1ST FLOOR A/C 3,488
 FOOT PRINT 4,028

EIGHT APARTMENT UNIT (UNITS 1&2)

2ND FLOOR

Wednesday, August 04, 2010





SECOND FLOOR

FOUR APARTMENT UNIT (UNIT 3)

Wednesday, August 04, 2010



Charles E. Gray, D.D.S.

Specialist in Orthodontics

9/13/2010

Mr. Gordon Browning
Senior planner
City of Kerrville

Response to Zoning Change Request notification letter:

Applicant: Elida Briseno. (File No. 2010-24)

I own property within 200 ft. of a zoning change request. I would be against the requested zoning change from RT to PDD. It is important to maintain the existing Residential Transition zoning to provide a safe buffer around BT Wilson School. Apartments would be an undesirable development of this area. The existing RT zoning also provides an important buffer for our historical district.

Dr. Charles Gray
417 Tivy St.
Kerrville, Texas 78028

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2010-_____**

AN ORDINANCE CREATING A "PLANNED DEVELOPMENT DISTRICT" FOR DWELLING, MULTI-FAMILY (APARTMENT) AND PROFESSIONAL OFFICE ON AN APPROXIMATELY 1.2 ACRE TRACT OF LAND, BEING LOTS 3 THROUGH 8, INCLUSIVE, BLOCK 27 OF THE J.A. TIVY ADDITION, A SUBDIVISION WITHIN THE CITY OF KERRVILLE, TEXAS, AND OTHERWISE KNOWN AS 1001 JEFFERSON STREET; ADOPTING A CONCEPT PLAN AND CONDITIONS RELATED TO THE DEVELOPMENT OF SAID DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING A PENALTY OR FINE NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Kerrville, Texas, in compliance with State law with reference to the creation of Planned Development Districts under Article 11-I-15 of the Zoning Code of the City of Kerrville, Texas, and amending the official zoning map adopted thereby, have given the requisite notices by United States mail, publication, and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Kerrville, Texas, finds that the health, safety, and general welfare will be best served by the creation of a Planned Development District for Dwelling, Multi-Family and Professional Office purposes, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. The property described as follows is removed from the "RT" Zoning District (Residential transition) and placed in a newly created Planned Development District ("PDD") for the development and use of Dwelling, Multi-Family (apartment) and Professional Office, as those terms are defined within Article 11-I-15 of the City's Zoning Code:

An approximate 1.2 acre tract of land being Lots 3 through 8, inclusive, Block 27 of the J.A. Tivy Addition, a subdivision within the City of Kerrville, Kerr County, Texas, and as more particularly described in Volume P, Page 16 of the Plat Records of Kerr County, Texas, referred to herein as the "Property".

SECTION TWO. The Property may be developed and used but only in accordance with the following conditions:

- A. Permitted Uses: The following uses shall be permitted in the PDD subject to the conditions provided herein and the applicable regulations for each use as provided

within the Zoning Code: Dwelling, Multi-Family (apartment) and Professional Office.

- B. Concept Plan: The development and use of the Property shall be substantially in accordance with the Concept Plan attached as **Exhibit A** and Building Elevations attached as **Exhibit B**.
- C. Development Site Plan: Prior to the City's acceptance of any civil construction or building plans, a Development Site Plan shall be submitted to the City pursuant to City regulations.
- D. Setbacks and Height: The Property shall be developed with the minimum setbacks from the Property lines and a maximum height as follows:
 - 1. Front Yard Setback: 11.0 feet
 - 2. Rear Yard Setback: 25.0 feet
 - 3. Interior Side Yard Setback: 10.0 feet
 - 4. Exterior Side Yard Setback: 15.0 feet
 - 5. Maximum Height: 40.0 feet
- E. Parking: The design, number of parking spaces, and aisle dimensions shall be in accordance with City regulations in effect at the time individual building permits are submitted to the City. All required parking spaces shall be constructed of asphalt or concrete and shall be marked and kept available for customers and employees.
- F. Parking Lot Lighting: All outside pole lights shall be of a "shoe box" design and shall be located, shielded, and aimed in such a manner so as not to allow light to directly fall on adjacent roadways and/or properties.
- G. Sidewalks: The construction of sidewalks shall be required and constructed in accordance with City regulations in effect at the time building permits are submitted.
- H. Signage: Signage shall be limited to the two (2) locations shown on the concept plan and shall be the monument style and no greater size than as indicated on the Concept Plan, which is attached as **Exhibit A**.
- I. Landscaping Regulations: Landscaping shall be installed in accordance with the following:
 - 1. Planting materials planted on the Property shall be from the list of recommended plants set forth in the most recent edition of Recommended Plants for the Kerrville Area published by the City at the time of planting.
 - 2. All landscaping shall be maintained in a healthy, growing condition.
- J. Screening: Screening shall be required in accordance with City regulations in effect at the time individual building permits are submitted to the City, and specifically a 6.0 foot wooden fence along the rear property line adjacent to the alley.

- K. Trash and Other Solid Waste: Solid waste collection bins and dumpsters shall be equipped with lids and screened with a gate with an opaque screen on one side and masonry material finished to look substantially like the adjacent building(s) on the remaining three sides.
- L. Outdoor Storage and Display: The outdoor storage of any materials, supplies, inventory and/or equipment, whether in cargo containers or similar containers or buildings shall be prohibited.
- M. Platting: The development of this property shall be subject to the City's Subdivision Regulations, which includes submittal and approval of a plat.

SECTION THREE. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas, hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Article 1-1-9 of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

SECTION SIX. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

PASSED AND APPROVED ON FIRST READING, this the ___ day of _____, A.D., 2010.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ___ day of _____, A.D., 2010.

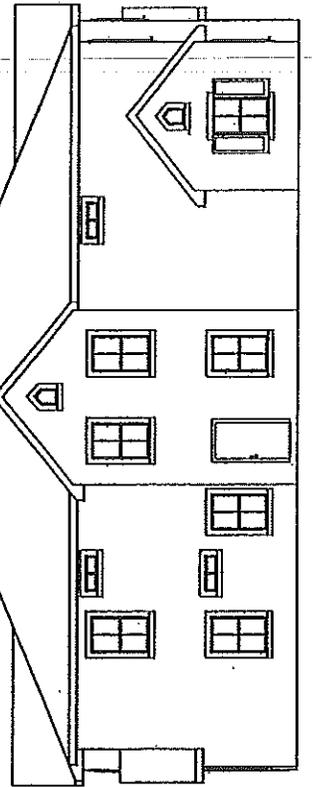
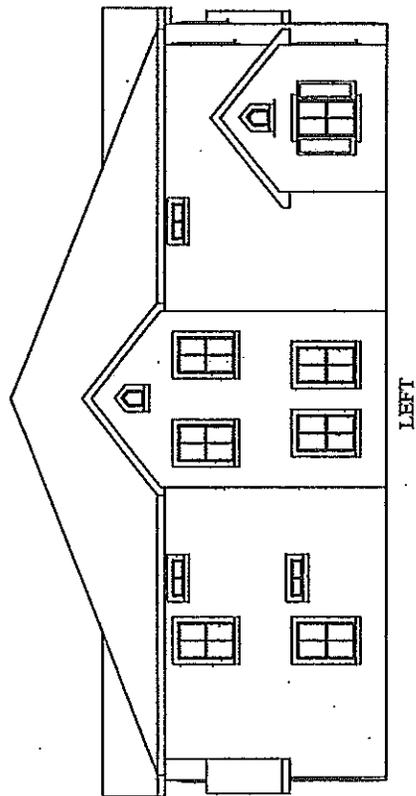
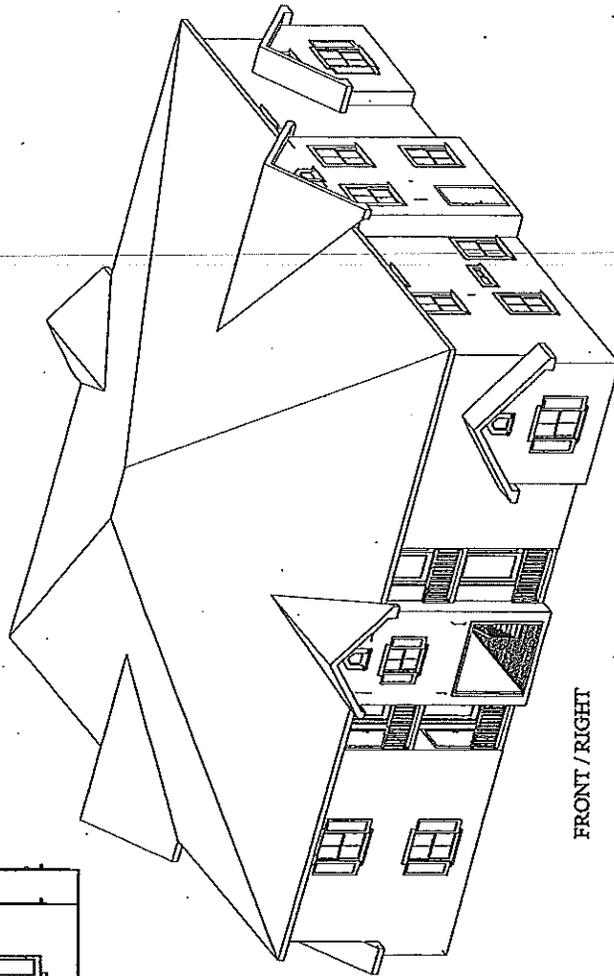
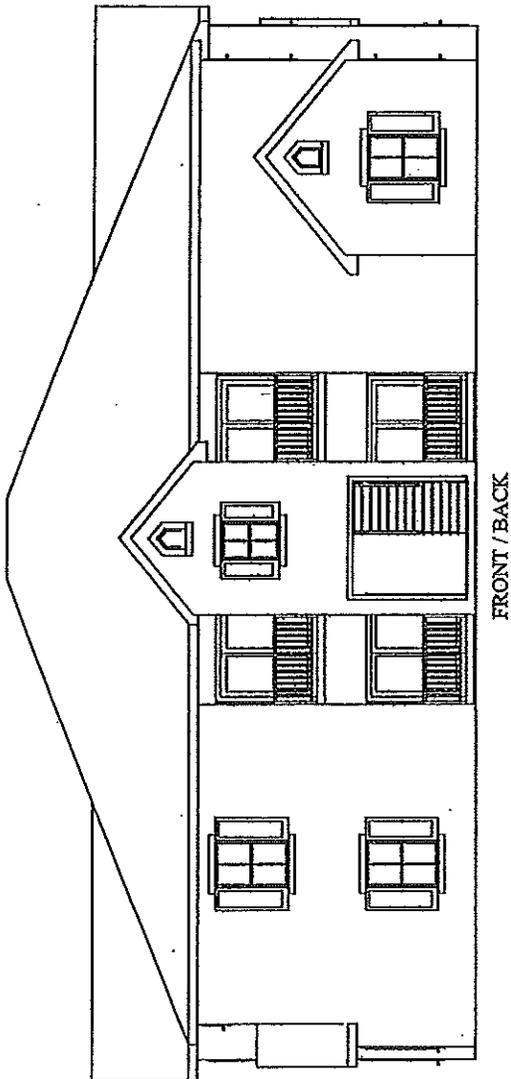
David Wampler, Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

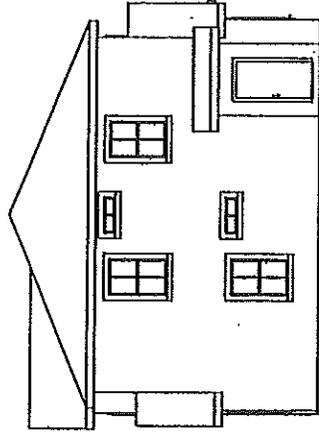

Michael C. Hayes, City Attorney



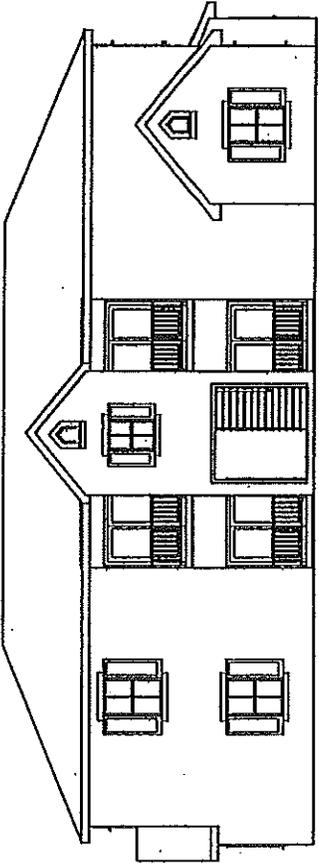
EIGHT APARTMENT UNIT (UNITS 1&2)

RIGHT

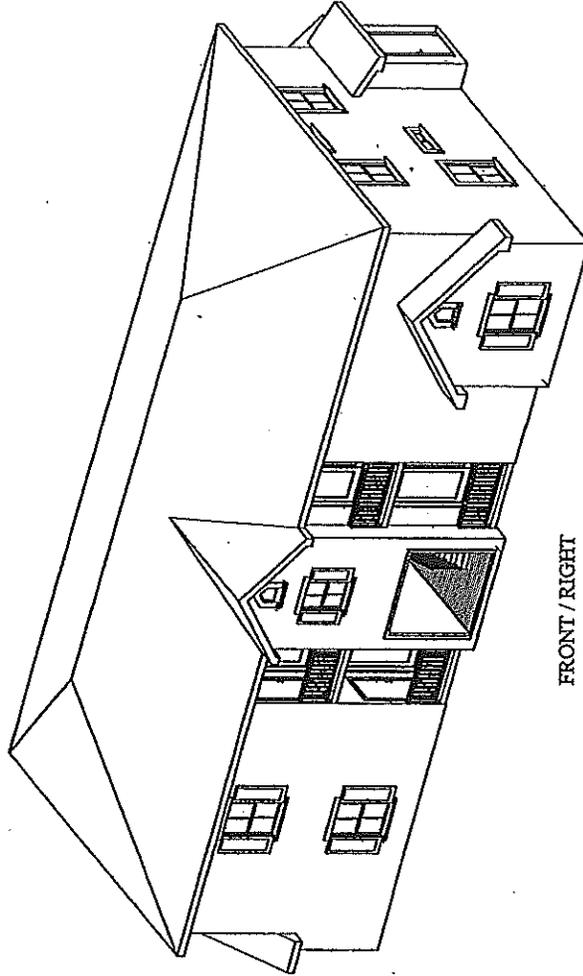
Wednesday, August 04, 2010



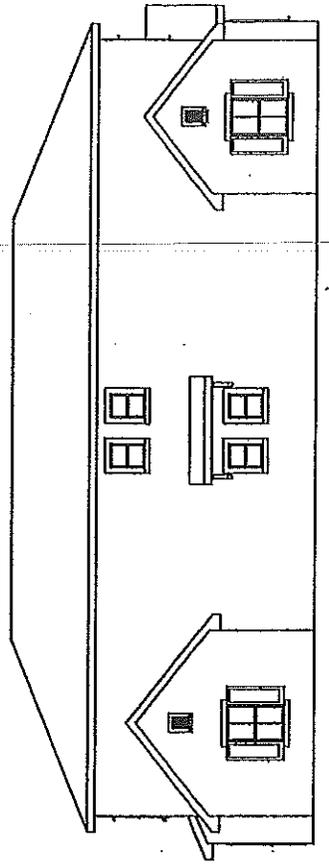
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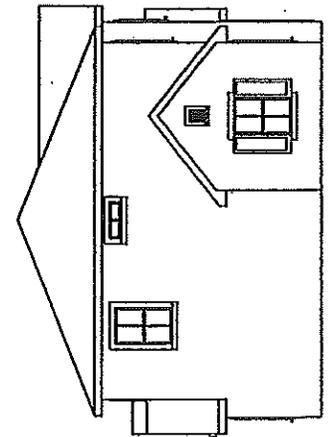
FRONT



FRONT / RIGHT



BACK



LEFT

FOUR APARTMENT UNIT (UNIT 3)

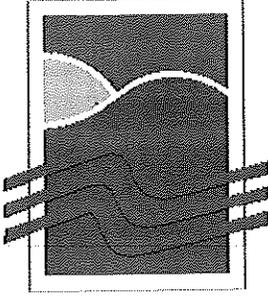
Agenda Item:
(Bruce Stacke)

- 5A. Request from Bruce Stacke to adopt Appendix O gray water recycling systems of the International Residential Code (IRC).

Exhibit "A"

The accepted building code(s) (Appendix O) for gray water use were not included in the adoption of existing building code by the City of Kerrville. The use of gray water recycling systems are approved in the great state of Texas and offer a safe and healthy way to further the City's efforts toward water conservation while encouraging good building practice without additional expense to the city. Gray water systems built to adopted IRC standards offer builders and residents clear direction to assist them in their efforts to reduce sanitary sewer loads, increase green building practices and reduce the use of drinking water for non-potable needs: specifically subsurface irrigation. It is our understanding that without adoption of the existing IRC Appendix O builders and residents do not have the option of installing these safe, green and sensible systems within the city limits.

Well designed residential gray water systems are simple, effective and inexpensive. These small scale systems would be appropriate for watering trees and ornamental shrubs or flowers in mulched beds. Acceptable systems would not require storage or pretreatment for clean, healthy and easily used irrigation water. Acceptable designs meeting IRC and recognized gray water irrigation principles are not complicated nor do they expose people or animals to unhealthy conditions. Adoption of at least that portion of Appendix O covering accepted building code for subsurface irrigation systems could be used to encourage healthy and sensible water conservation methods within the city limits helping the city meet potable water supplies in the future as our population grows. According to the Water Environmental Research Foundation (WERF) residential gray water systems could reduce residential potable water use by 40%. Reusing 40% of city drinking water could significantly reduce the cost to the community for the maintenance and capital investment for our water and waste water systems.



City of Kerrville
Building Inspections Division
800 Junction Highway
Kerrville, Texas 78028-5069
830.792.8356 (O)
830.792.0517 (F)
jeff.finley@kerrvilletx.gov

TO: KRISTINE ONDRIAS, ASSISTANT CITY MANAGER

VIA: KEVIN COLEMAN, DIRECTOR DEVELOPMENT SERVICES

FROM: JEFF FINLEY, CHIEF BUILDING OFFICIAL 

DATE: 10/04/2010

SUBJECT: ADOPTION OF GRAYWATER REUSE REGULATIONS AS DESCRIBED IN AGENDA BILL FROM BRUCE STRACKE

Mr. Stracke has requested that the City Council consider directing staff to adopt the graywater recycling provisions in both the International Residential Code and the International Plumbing Code. These provisions allow for and set the standards for recycling of graywater. Graywater is defined as "waste (water) discharged from lavatories, bathtubs, showers, clothes washers and laundry trays".

When the plumbing and residential codes were adopted in April of 2008, Appendix O in the International Residential Code and Appendix C in the International Plumbing Code were not adopted. This means that graywater reclamation systems are currently prohibited at this time under the City of Kerrville Code of Ordinances.

The systems for this recycling as described and permitted by these two code sections, when used in conjunction with appropriate Federal and State laws, make this water safe to use for subsurface irrigation or toilet and urinal flushing systems. This water shall not be used for spray irrigation purposes. These systems have been proven to be safe and can be good water conservation methods.

There would be no cost to the general public if these code sections were adopted. The appendix does not require that a graywater reclamation system be installed, they only allow them to be installed if the homeowner desires them. Therefore any cost associated to this ordinance change would be strictly voluntary by the property owner.

It is possible that since the sale of water is a revenue source for the City, some small drop in water sales could be experienced. However, since the City actively encourages year round water conservation measures by the public, this would appear to conform to the general city policy of water conservation. It also has the potential to

take a small part of the waste water treatment burden off our sewer system that is somewhat taxed and somewhat restrictive of growth at this time.

There are three potential problems with allowing graywater recycling systems. First the City does recycle the wastewater plant effluent. This water is sold to others and used by the city for irrigation purposes. The second potential problem is normal sewage collection piping systems are designed to use the graywater as a method to dilute the waste solids and help keep them moving. There is a potential that if graywater reclamation systems became very popular, additional time will be spent by the City employees insuring proper flow in the sewer mains. The third potential problem can be from a code enforcement complaint area. These systems must be properly maintained over their life or they can cause some mild odor problems in residential neighborhoods.

Staff has no problems at this time with adoption of these codes. If Council chooses to look at possible adoption of these standards, it would be appropriate to refer this topic to the Building Board of Adjustments and Appeals for review and recommendation.

If you have any questions, please let me know.

Agenda Item:
(Staff)

- 5B. Request to extend utilities from Town Creek and Old Harper Road up to Harper Road.

**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Harper Road Utility Extension Project

FOR AGENDA OF: October 12, 2010 **DATE SUBMITTED:** October 7, 2010

SUBMITTED BY: Kristine Ondrias *KO* **CLEARANCES:**
Assistant City Manager

EXHIBITS: Aerial Map

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *Kristine Ondrias*

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The Harper Road Utility Extension Project was initiated in November of 2006 when the City of Kerrville entered into an agreement with James Avery Craftsman (JAC) and the Economic Improvement Corporation (EIC) to fund the preliminary engineering design for public water and wastewater infrastructure to serve the JAC campus. Following the preliminary engineering design, the City, JAC and EIC entered into an agreement in 2008 for the construction of the water and wastewater lines.

In June 2010, after several alignment studies, stakeholder meetings and needed property acquisitions, the City Council awarded the construction contract for the water and wastewater lines to Nelson Lewis, Inc.

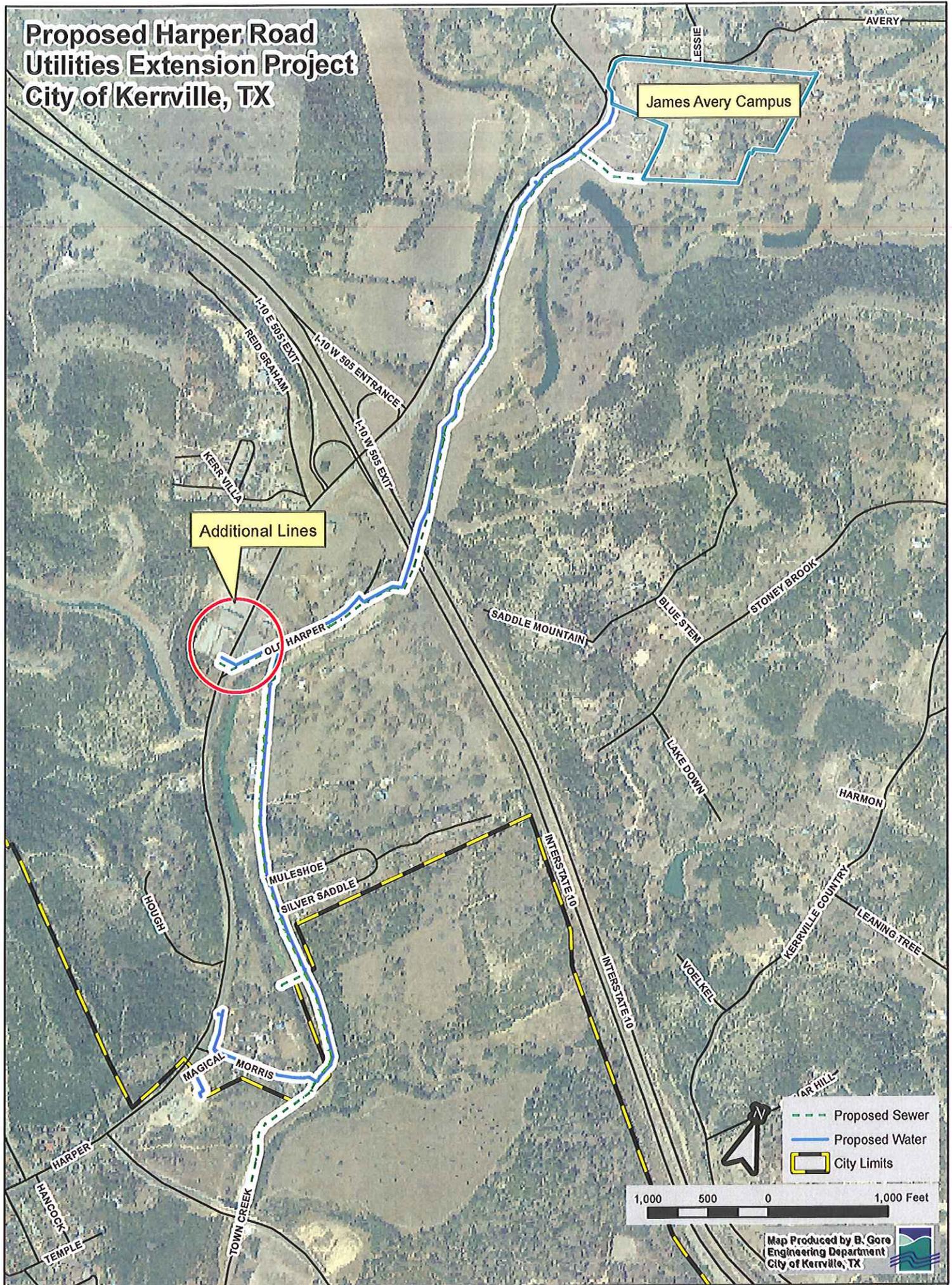
In late August, the City received a request from several property owners for the City to consider extending service of both water and wastewater from the JAC extension at Town Creek and Old Harper Road up to Harper Road. (Exhibit attached) Staff requested the contractor to submit a price for this extension. This change order, if executed with Nelson Lewis, would cost approximately \$185,000.00.

Staff has reviewed the construction process, the annexation process, as well as the funding and policy implications of this extension and will present those for council consideration.

RECOMMENDED ACTION

Provide staff direction on items presented.

Proposed Harper Road Utilities Extension Project City of Kerrville, TX



Agenda Item:
(Staff)

5C. Update on the general obligation refunding bonds, Series 2010.

Agenda Item:
(Staff)

6A. Kerrville budget/economic update.

**CITY OF KERRVILLE
ECONOMIC UPDATE AS OF OCTOBER 5, 2010**

	Current Month	Previous Month	1 Year Ago	Trend	Current Month
National					
Unemployment	9.60%	9.50%	9.70%	↔	August
Consumer Confidence	53.5	51	54.5	↔	August
1 year T-Bills	0.25%	0.25%	0.36%	↔	10/5/10

	Current Month	Previous Month	1 Year Ago	Trend	Current Month
State					
Monthly Unemployment	8.30%	8.50%	8.10%	↑	August
Monthly Sales Tax	\$1,766.7m	\$1,686.5m	\$1,752.2m	↔	August

	Current Month	Previous Month	1 Year Ago	Trend	Current Month
Local					
Monthly Unemployment (Kerr Co.)	6.20%	6.20%	5.80%	↔	August
Median Listing Price	\$182,500	\$183,000	\$198,000	↔	8/31/10
Monthly Sales Tax	\$372,641	\$443,423	\$379,436	↓	September
Monthly EIC Tax	\$186,321	\$221,711	\$189,718	↓	September
Monthly HOT	\$98,775	\$108,059	\$109,433	↓	August

	FY10 Budget	FY10 as of 9/30/2010	FY10 % Received	FY09 as of 9/30/2009	FY09 % Received
General Fund					
Tax Revenue	\$15,055,218	\$14,251,698	94.66%	\$15,323,174	97.64%
Property Tax	\$8,468,618	\$8,189,775	96.71%	\$8,306,611	100.80%
Sales Tax	\$4,624,000	\$4,488,319	97.07%	\$5,017,127	97.91%
Permits & Fees	\$370,750	\$324,735	87.59%	\$416,882	96.21%
Intergovernmental	\$695,156	\$683,167	98.28%	\$833,660	99.90%
Service Revenues	\$3,311,183	\$2,982,462	90.07%	\$3,271,836	99.75%
Grant Revenue	\$10,000	\$10,525	105.25%	\$39,657	129.73%
Fines & Forfeitures	\$504,510	\$506,756	100.45%	\$505,465	117.78%
Interest & Misc.	\$460,211	\$535,429	116.34%	\$424,044	89.17%
Transfers In	\$1,260,825	\$1,168,902	92.71%	\$887,050	100.06%
Total General Fund	\$21,667,853	\$20,463,675	94.44%	\$21,701,767	98.36%

	FY10 Budget	FY10 as of 9/30/2010	FY10 % Received	FY09 as of 9/30/2009	FY09 % Received
Water/Sewer Fund					
Water Sales	\$5,060,000	\$4,492,171	88.78%	\$4,847,039	106.20%
Sewer Sales	\$3,900,000	\$3,702,346	94.93%	\$3,415,190	96.31%
Other Revenue	\$669,500	\$827,364	123.58%	\$825,706	114.61%
Total Water & Sewer Fund	\$9,629,500	\$9,021,880	93.69%	\$9,087,935	102.91%

Agenda Item:
(Staff)

7A. Appointments to the Zoning Board of Adjustment.

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointments to the Zoning Board of Adjustment

FOR AGENDA OF: October 12, 2010 **DATE SUBMITTED:** October 4, 2010

SUBMITTED BY: Brenda G. Craig *BC* **CLEARANCES:**
City Secretary

EXHIBITS: ZBA Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *AD Jackson*

SUMMARY STATEMENT

Consider appointments to the following board:

Zoning Board of Adjustment: Two regular terms expired on September 30, 2010; Don Downing and William Morgan; and one alternate term expired on September 30, 2010; Robert Irvin.

RECOMMENDED ACTION

Consider appointment of two regular members and one alternate member with terms to expire September 30, 2012.

ZONING BOARD OF ADJUSTMENT

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
GERMANY, DAN 613 Guadalupe Street Chair	896-1939 (H)	08-08-06**	11-24-09	9-30-11
LIPSCOMB, CAROLYN 909 Lake Street Vice-Chair	895-4232 (H)	12-12-06**	11-24-09	9-30-11
ANDREW, GLENN CLARK 3553 La Cumbre Dr.	895-0676 (H)	10-09-07* 10-28-08**	11-24-09	9-30-11
DOWNING, DON 3508 La Cumbre Dr.	896-7349 (H)	02-13-07* 10-28-08**		9-30-10
MORGAN, WILLIAM 1744 Glen Road	257-6263 (H) 739-9655 (C)	06-28-05**	10-28-08	9-30-10
<u>ALTERNATES:</u>				
JOE M. ROGERS 1015 Jackson Rd..	792-5114	06-22-10		9-30-12
IRVIN, ROBERT 2128 Bluff Ridge	896-0586 (H) 895-7771 (O)	11-24-09		9-30-10
CITY STAFF: Gordon Browning Senior Planner	792-8350 (O)			

Qualifications: The board shall be composed of five members all of whom shall be residents and qualified voters of the city of Kerrville.

Alternate Members: Two alternate members will be appointed who shall be qualified voters of the city to serve concurrent terms as the regular members. The alternate members will serve on the board in place of an absent member when requested to do so by the chairperson of the board so that all cases to be heard by the board shall always be heard by a minimum of four members.

Powers and Duties:

1. The board shall hear and decide an appeal that alleges an error in any order, decision, or determination made by an administrative official of the city in the interpretation or enforcement of Chapter 211 of the Texas Local Government Code, as amended, or the zoning code.
2. The board shall grant, upon written request, variances from the height, yard, area, coverage, floor-to-area, and buffering regulations and required number of parking and loading spaces prescribed by the zoning code, which variances are not contrary to the public interest, and which, because of special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.

Term of Office: Two years. The members shall be appointed by a majority vote of the members of the city council. No member or alternate member shall serve more than three consecutive full terms on the board without having at least one full year off of the board between terms.

Quorum: Four members

Number of Members: Five with two alternates

Meeting Time & Place: At the call of the chairperson and at such other times as the members of the board shall determine.

Absences: Cause for removal of a member of the board by the city council shall be deemed to exist if during any period of twelve consecutive months for any reason other than a medical reason which prevents the member's attendance, the member is absent from the greater of three called meetings of the board or 25 percent of the called meetings of the board.

Established by: Ordinance No. 1997-07

Revised: July 2, 2010

* Appointed as alternate

** Appointed as full member

Agenda Item:
(Staff)

- 7B. Appointment to the Kerr Emergency 9-1-1 Network Board of Managers.

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointment to the Kerr Emergency 9-1-1 Network Board of Managers

FOR AGENDA OF: October 12, 2010 **DATE SUBMITTED:** September 30, 2010

SUBMITTED BY: Brenda Craig *BC* **CLEARANCES:**
City Secretary

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *[Signature]*

SUMMARY STATEMENT

Consider appointment to the following board:

Kerr Emergency 9-1-1 Network Board of Managers: One term expired on September 30, 2010; William Price.

RECOMMENDED ACTION

Consider appointment.

KERR EMERGENCY 9-1-1 NETWORK BOARD OF MANAGERS

	<u>Telephone</u>	<u>Orig. Date</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
** PRICE, WILLIAM E (Kerrville) Chairman 429 Sidney Baker Kerrville 78028	792-2730 (O) 257-2711 (F)	12-2003	09-23-08	09-30-10
*** VINCENT, JERRY Vice-Chairman 728 Elm Pass II Road Center Point 78010	896-7971 (O)	07-2008		09-30-11
* VICK, RONALD 1645 Harper Road Kerrville 78028	792-4111 (H) 257-7080 (F)	10-2004	10-2008	10-13-12
* JONS, HUGH R., JR. 829 Main St., Suite. B Kerrville 78028	896-8383 (O) 896-3535 (F)	10-2005	08-2007	09-30-11
** HUFFAKER, DENÉ (Ingram) 158 Ranchland Drive PO Box 204 Mountain Home 78052	367-5115 (O) 367-3175 (F)	04-2009	04-30-11	

NON-VOTING:

- AMERINE, BILL
Executive Director &
Ex-Officio Secretary
819 Water St., Suite 270
Kerrville 78028
792-5911 (O)
792-5923 (F)
- DEL TORO, MARK
Associate Director
819 Water St., Suite 270
Kerrville 78028
792-5911 (O)
792-5923 (F)
- HENDERSON, RUSTY
Ex-Officio Member
Windstream Communications
PO Box 290130
Kerrville 78029
257-9133 (O)
896-8029 (F)
- SCHULTE, STEPHEN B.
Attorney for Kerr
Emergency 9-1-1 Network
820 Main Street, Suite 100
Kerrville 78028
896-3811 ext. 230 (O)
257-6119 (F)

Powers and Duties: The board shall manage, control, and administer the district, and may adopt rules for the operation of the district. The board may contract with any public or private entity to carry out the purposes of the Emergency Telephone Number Act, including operation of a 9-1-1 system.

Term of Office: Two Years

Chairman: This board shall have a chairman who shall preside at each meeting. In the absence of the designated chairman, any member present may preside with the consent of other members. The chairman shall serve for a term of one year to run concurrently with the fiscal year, October 1 through September 30. The chairman shall be a voting member of the board and shall be elected by a simple majority of the members. He may be removed from office only for misconduct and then only by a unanimous vote of other board members. (Approved 10-2-91)

Number of Members: Six members; two appointed by commissioners' court; two appointed by participating municipalities of Ingram and Kerrville; one appointed jointly by volunteer fire departments operating in the district, and one nonvoting member appointed by the principal service supplier. (S.B.No.750)

Meeting Time & Place: At the call of the board; 819 Water Street, Suite 270

Absences: A board member may be removed from office at will by the governmental entity or organization appointing the member to the board. A 9-1-1 board member who is absent, without permission from three regularly called board meetings, shall automatically be dropped from the board and shall be replaced as provided by law. A previously removed member shall not be acceptable as a replacement.

Established by: Chapter 772, Subchapter D, Texas Health & Safety Code, to establish the number 9-1-1 as the primary emergency telephone number for use by local governments and to encourage units of local government and combinations of those units of local government to develop and improve emergency communication procedures and facilities in a manner that will make possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services.

Revised: June 3, 2009

- * Appointed by county
- ** Appointed by city
- *** Appointed by volunteer fire departments