

# **A G E N D A**

A regular meeting of the Mayor and City Council of the City of Waxahachie, Texas to be held in the Council Chamber at City Hall, 401 S. Rogers on ***Monday, December 21, 2020 at 7:00 p.m.***

Council Members: David Hill, Mayor, Council Member Place 1  
Mary Lou Shipley, Mayor Pro Tem  
Chuck Beatty, Council Member  
Doug Barnes, Council Member Place 2  
Melissa Olson, Council Member Place 3

1. Call to Order
2. Invocation
3. Pledge of Allegiance and Texas Pledge of Allegiance
4. ***Public Comments:*** Persons may address the City Council on any issues. This is the appropriate time for citizens to address the Council on any concern whether on this agenda or not. In accordance with the State of Texas Open Meetings Act, the Council may not comment or deliberate such statements during this period, except as authorized by Section 551.042, Texas Government Code.

5. ***Consent Agenda***

All matters listed under Item 5, Consent Agenda, are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. Approval of the Consent Agenda authorizes the Mayor/City Manager to execute all matters necessary to implement each item. Any item may be removed from the Consent Agenda for separate discussion and consideration by any member of the City Council.

- a. Minutes of the City Council meeting of December 7, 2020
  - b. Minutes of the City Council briefing of December 7, 2020
  - c. Set City Council meeting of Tuesday, January 19, 2021
6. ***Recognize*** Mr. Kevin Strength for his service as Mayor and City Council Member
7. ***Consider*** Development Agreement for ZDC-72-2020
8. ***Continue Public Hearing*** on a request by Carolyn J Haman for Voluntary Annexation on approximately 150.5+/- acres located NW of 2374 W Highway 287 Bypass (Property ID 185971 and 185886) - Owner: CAROLYN J HAMAN (ANX-DNX-145-2020)
9. ***Consider*** proposed Ordinance approving ANX-DNX-145-2020
10. ***Continue Public Hearing*** on a request by Phillip Fisher, Macatee Engineering LLC, for a Zoning Change from a Future Development and General Retail zoning district to Planned Development-Mixed-Use Residential, located W of 2374 W Highway 287 Bypass (Property IDs 185971, 185972, 185886, 185978) - Owner: CAROLYN J HAMAN (ZDC-72-2020)

11. **Consider** proposed Ordinance approving ZDC-72-2020
12. **Public Hearing** on a request by Sean Neal, TGS Architects, for a Specific Use Permit (SUP) for Electronic Message Sign use within a General Retail zoning district located at 1905 N Highway 77 (Property ID 262426) - Owner: COMMUNITY NATIONAL BANK & TRUST OF TEXAS (ZDC-155-2020)
13. **Consider** proposed Ordinance approving ZDC-155-2020
14. **Public Hearing** on a request by Josh Helm, Texas Best Construction, for a Specific Use Permit (SUP) for Accessory Building, Used as a Dwelling Unit and Accessory Building (Residential), Greater than or Equal to 700 SF use within a Single-Family Residential-2 zoning district located at 1640 Lone Elm Rd (Property ID 275601) - Owner: BRADLEY & JENNIFER KEITH (ZDC-158-2020)
15. **Consider** proposed Ordinance approving ZDC-158-2020
16. **Public Hearing** on a request by Nicholas Balsamo, Kalterra Capital Partners, for a Zoning Change from a Multiple-Family Residential-2 zoning district to Planned Development-Multiple-Family Residential-2, located near the SW corner of Park Place Blvd at Garden Valley Pkwy (Property ID 275563) - Owner: KALTERRA CAPITAL PARTNERS LLC (ZDC-159-2020)
17. **Consider** proposed Ordinance approving ZDC-159-2020
18. **Consider** Development Agreement for ZDC-159-2020
19. **Public Hearing** on a request by Jenny Nivens, Dancing Daiquiris, for Convenience Store (Daiquiri Shop) use within a Planned Development-37-General Retail zoning district located at 1014 Ferris Ave, Suite 110 (being a portion of Property ID 176876) – Owner: LEDBETTER REAL ESTATE LTD (ZDC-164-2020)
20. **Consider** proposed Ordinance approving ZDC-164-2020
21. **Public Hearing** on a request by Brian Gray for a Specific Use Permit (SUP) for Accessory Building (Residential), Greater than or Equal to 700 SF use within a Planned Development-23-Single-Family Residential-1 zoning district located at 101 Homestead Ln (Property ID 269680) - Owner: BRIAN & MARY GRAY (ZDC-166-2020)
22. **Consider** proposed Ordinance approving ZDC-166-2020
23. **Discuss** live streaming all public meetings in City Hall, including briefings, and take any necessary action
24. Comments by Mayor, City Council, City Attorney and City Manager
25. Adjourn

**The City Council reserves the right to go into Executive Session on any posted item.** This meeting location is wheelchair-accessible. Parking for mobility-impaired persons is available. Any request for sign interpretive services must be made forty-eight hours ahead of the meeting. To make arrangements, call the City Secretary at 469-309-4005 or (TDD) 1-800-RELAY TX

(5a)

City Council  
December 7, 2020

A regular meeting of the Mayor and City Council of the City of Waxahachie, Texas was held in the Council Chamber at City Hall, 401 S. Rogers on Monday, December 7, 2020 at 7:00 p.m.

Council Members Present: David Hill, Mayor, Council Member Place 1  
Mary Lou Shipley, Mayor Pro Tem  
Chuck Beatty, Council Member  
Melissa Olson, Council Member Place 3

Council Member Absent: Doug Barnes, Council Member Place 2

Others Present: Michael Scott, City Manager  
Albert Lawrence, Assistant City Manager  
Tommy Ludwig, Assistant City Manager  
Robert Brown, City Attorney  
Lori Cartwright, City Secretary

**1. Call to Order**

Mayor David Hill called the meeting to order.

**2. Invocation**

**3. Pledge of Allegiance and Texas Pledge of Allegiance**

Mayor Hill gave the invocation and led the Pledge of Allegiance and the Texas Pledge of Allegiance.

**4. Public Comments**

Mr. Ira Tenpenny, 109 Rosa Street, Waxahachie, Texas, expressed concern with safety issues of large trash dumpsters not sitting properly near the Waxahachie Housing Authority. He suggested to place them properly and have reflective tape on them that can be seen when someone is driving by. He expressed concern with owners not obeying the leash law and recommended the Waxahachie Police Department make sure pet owners keep their animals on a leash. Mr. Tenpenny referenced rental properties noting there is no requirement to fix them up prior to renting them.

Mr. Alan Fox, 327 University, Waxahachie, Texas, stated the Pearl Harbor Anniversary is today and noted we are facing record deaths due to COVID-19. He stated we need to keep our focus on the present good and as a city, we will get past this as Pearl Harbor did and will be better for it. He thanked City Council for their leadership.

**5. Consent Agenda**

- a. Minutes of the City Council meeting of November 16, 2020
- b. Minutes of the City Council briefing of November 16, 2020
- c. Mobile Home License Renewals for 2021
- d. Taxi Cab License Renewal for 2021
- e. Change Order # 3 to the 2020 Asphalt Street Rehabilitation contract with Reynolds Asphalt and Construction that will add two additional sites to the contract

(5a)

- f. Budget adjustment from Waxahachie Police Department
- g. Receive Fiscal Year 2020 4<sup>th</sup> Quarter Financial Report

**Action:**

*Mayor Pro Tem Mary Lou Shipley moved to approve items a. through g. on the Consent Agenda. Council Member Melissa Olson seconded, All Ayes.*

**6. Public Hearing on the amendment of land use assumptions and capital improvement plans for roads, water and wastewater, and the imposition of an impact fee**

Mayor Hill opened the Public Hearing.

Mr. Eddie Haas, Project Manager for Roadway Impact Fees, Freese & Nichols, reviewed Land Use Assumptions for impact fees and Mr. Derek Chaney, Birkhoff, Hendricks, & Carter, L.L.P., reviewed the Water and Wastewater Impact Fee Report. He explained the 10-year growth projection by service area calculated at 3.5% growth rate. The Land Use Assumptions are the basis for the development of the Capital Improvement Plan. He reviewed the Roadway Impact Fee Report and the full thoroughfare roadway system. Mr. Chaney reviewed the Water and Wastewater Impact Fee report and provided methods of calculating the fees, a 10-year Capital Improvement Plan method and a full Water and Sewer System method.

Mr. Haas and Mr. Chaney recommended adopting the system wide plan approach and assess the impact fees at no greater than the 10 Year Plan calculations.

Assistant City Manager Tommy Ludwig recommended the following staff recommendations:

- Adopt the system wide plan approach
- Assess the impact fees at no greater than the 10 Year Plan calculations

Mr. Ludwig stated the Impact Fee Capital Improvement Advisory Committee voted unanimously to accept staff recommendations at their September 15<sup>th</sup> and October 27<sup>th</sup> meetings.

There being no others to speak for or against the Public Hearing on the amendment of land use assumptions and capital improvement plans for roads, water and wastewater, and the imposition of an impact fee, Mayor Hill closed the Public Hearing.

**7. Consider proposed Ordinance updating 1) the City's Land Use Assumptions, 2) Waste, Wastewater, and Roadway Impact Fee Capital Improvement Plans, and 3) establishing revised assessment and collection schedules for Water, Wastewater, and Roadway Impact Fees**

**ORDINANCE NO. 3239**

**AN ORDINANCE OF THE CITY OF WAXAHACHIE, TEXAS, ADOPTING UPDATED LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLANS AND ASSOCIATED BOUNDARIES; AND APPROVING REVISED ASSESSMENT AND COLLECTION SCHEDULES FOR WATER, WASTEWATER, AND ROADWAY IMPACT FEES;**

(5a)

**PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.**

**Action:**

*Council Member Chuck Beatty moved to approve Ordinance No. 3239. Mayor Pro Tem Mary Lou Shipley seconded, All Ayes.*

- 8. Convene into Executive Session for consultation with attorney regarding pending or contemplated litigation as permitted under Section 551.071, Texas Government Code and for deliberation regarding real property as permitted under Section 551.072, Texas Government Code**

Mayor Hill announced at 7:40 p.m. the City Council would convene into Executive Session for consultation with attorney regarding pending or contemplated litigation as permitted under Section 551.071, Texas Government Code and for deliberation regarding real property as permitted under Section 551.072, Texas Government Code.

- 9. Reconvene and take any necessary action**

The meeting reconvened at 8:22 p.m.

1. Deliberation regarding real property as permitted under Section 551.072, Texas Government Code.

**Action:**

*Mayor Pro Tem Mary Lou Shipley moved to authorize the City Manager to purchase approximately 0.32 acres of Ellis County Property ID 189786 in an amount not to exceed \$45,000, plus any closing costs, and to execute any documents necessary to facilitate the property purchase. Council Member Chuck Beatty seconded, All Ayes.*

2. Consultation with attorney regarding pending or contemplated litigation as permitted under Section 551.071, Texas Government Code.

**Action:**

*None*

- 10. Comments by Mayor, City Council, City Attorney and City Manager**

Assistant City Manager Tommy Ludwig thanked city staff for their meticulous roll in the impact fee process and meetings.

City Manager Michael Scott thanked city staff for their role in the impact fee process. He thanked Mayor David Hill and Mayor Pro Tem Mary Lou Shipley for attending the employee awards ceremony and looks forward to the upcoming drive-thru city employee luncheon on Thursday.

Mayor David Hill stated today's employee awards ceremony is a testament that city staff is the heartbeat of the city.

(5a)

City Council  
December 7, 2020  
Page 4

**11. Adjourn**

There being no further business, the meeting adjourned at 8:26 p.m.

Respectfully submitted,

Lori Cartwright  
City Secretary

City Council  
December 7, 2020

A briefing session of the Mayor and City Council of the City of Waxahachie, Texas was held in the City Council Conference Room at City Hall, 401 S. Rogers, Waxahachie, Texas, on Monday, December 7, 2020 at 6:30 p.m.

Council Members Present: David Hill, Mayor, Council Member Place 1  
Mary Lou Shipley, Mayor Pro Tem  
Chuck Beatty, Council Member  
Melissa Olson, Council Member Place 3

Council Member Absent: Doug Barnes, Council Member Place 2

Others Present: Michael Scott, City Manager  
Albert Lawrence, Assistant City Manager  
Tommy Ludwig, Assistant City Manager  
Robert Brown, City Attorney  
Lori Cartwright, City Secretary

**1. Call to Order**

Mayor David Hill called the meeting to order.

**2. Conduct a briefing to discuss items for the 7:00 p.m. regular meeting**

City Staff reviewed the following Consent Agenda Items:

- e. Change Order # 3 to the 2020 Asphalt Street Rehabilitation contract with Reynolds Asphalt and Construction that will add two additional sites to the contract – Director of Public Works and Engineering James Gaertner reported the Change Order for \$86,612.00 would increase the total contract amount to \$669,090.00. Funding for this additional scope of work will utilize the remaining \$18,252.00 from the 2020 street rehabilitation program in the operations budget. The additional funding of \$64,360.00 is available through the Capital budget.
- f. Budget adjustment from Waxahachie Police Department – Police Chief Wade Goolsby reviewed a budget adjustment to replenish the maintenance fund. He explained this will recuperate procured insurance reimbursement funds used to repair a police vehicle.
- g. Receive Fiscal Year 2020 4th Quarter Financial Report – City Manager Michael Scott and Finance Director Chad Tustison stated this will be the first of many quarterly reports of financial snapshots of what will be presented to City Council. Mr. Tustison explained the intention of providing city finances is to make them easier to understand and will identify issues sooner than later and will provide transparency. He plans to report to City Council every six weeks.

Assistant City Manager Tommy Ludwig reported a Public Hearing followed by a proposed Ordinance updating 1) the City's Land Use Assumptions, 2) Waste, Wastewater, and Roadway Impact Fee Capital Improvement Plans, and 3) establishing revised assessment and collection schedules for Water, Wastewater, and Roadway Impact Fees will be presented to City Council for

(5b)

City Council  
December 7, 2020  
Page 2

consideration. He explained Staff, along with the Impact Fee Capital Improvement Advisory Committee, will recommend adopting the system wide plan approach and assess the impact fees at no greater than the 10 Year Plan calculations.

**3. Adjourn**

There being no further business, the meeting adjourned at 6:50 p.m.

Respectfully submitted,

Lori Cartwright  
City Secretary



## MONTCLAIR HEIGHTS DEVELOPMENT AGREEMENT

This Montclair Heights Development Agreement (this “Agreement”) is entered into by and between the City of Waxahachie, Texas, a home-rule municipality (the “City”) and Montclair Waxahachie Development, LLC, a Texas limited liability company (the “Developer”) (each individually, a “Party,” and collectively, the “Parties”), to be effective on the Effective Date.

### SECTION 1 RECITALS

**WHEREAS**, certain capitalized terms used in these recitals are defined in Section 2;

**WHEREAS**, the Developer will develop approximately 188.455 acres of real property, described by metes and bounds in Exhibit A and depicted in Exhibit B (the “Property”);

**WHEREAS**, a 150.5 acre portion of the Property (the “Annexed Property”) is located within the extraterritorial jurisdiction of the City (the “ETJ”) and a 37.96 acre portion of the Property is located within the municipal boundaries of the City (the “City Property”);

**WHEREAS**, as generally described and depicted on the Concept Plan, the Developer intends to develop the Property as a mixed use community including single-family lots of various sizes, cottage homes, and other commercial uses over multiple phases and is to be known and referred as “Montclair Heights” (the “Project”);

**WHEREAS**, the Annexed Property is located within the certificated area of the Sardis Lone Elm Water Supply Corporation (“Sardis”) water CCN;

**WHEREAS**, (i) the City Property, which includes 22.7 acres of the property on which the commercial development will occur (the “Commercial Property”) and approximately 15.24 acres to be developed into approximately 45 residential lots, is located within the certificated area of the City’s water CCN and the City’s wastewater CCN;

**WHEREAS**, the Annexed Property is not located in the wastewater CCN of any provider, and it is the intention of the parties that the City provide the Property with wastewater service;

**WHEREAS**, Developer anticipates commencing development of the Project upon: (i) the execution of this Agreement, (ii) the annexation of the Annexed Property into the City’s municipal boundaries, (iii) the approval of a planned development zoning designation for the Property that is substantially consistent with the Development Standards and the Concept Plan as provided in Section 7.4(b) hereof, and (iv) creation of the PID by the City;

**WHEREAS**, the Parties desire and intend that Developer will design, construct, install, and/or make financial contributions toward the Authorized Improvements, and that Developer’s costs incurred therewith will be financed or reimbursed through multiple sources, including PID Bond Proceeds, Assessments and Impact Fee Credits;

**WHEREAS**, the Parties desire and intend for the design, construction, and installation of the Authorized Improvements to occur in a phased manner over the Term of this Agreement and

that Developer will dedicate to and the City will accept the Authorized Improvements for public use and maintenance, subject to the City's approval of the plans and inspection of the Authorized Improvements in accordance with this Agreement and the City Regulations;

**WHEREAS**, as it relates to the Property, Developer estimates that the total costs of the Authorized Improvements necessary for development will be \$24,260,431 (as more particularly described on Exhibit D);

**WHEREAS**, in consideration of Developer's agreements contained herein and upon the creation of the PID, the City intends to exercise its powers under the PID Act to provide financing arrangements that will enable Developer, in accordance with the procedures and requirements of the PID Act and this Agreement, to: (a) be reimbursed for all or a portion of the PID Projects using the PID Bond Proceeds; and/or (b) be reimbursed for all or a portion of the PID Projects, the source of which reimbursement will be installment payments from Assessments on the Property, provided that such reimbursements shall be subordinate to the payment of PID Bonds, if issued, Administrative Expenses, and any amounts owed to the City by Developer in connection with the PID;

**WHEREAS**, the City, subject to the consent and approval of the City Council, the satisfaction of all conditions for PID Bond issuance, Developer's substantial compliance with this Agreement, and in accordance with the terms of this Agreement and all legal requirements, including but not limited to the Indenture, shall use good faith efforts to: (i) adopt a Service and Assessment Plan; (ii) adopt one or more Assessment Ordinances (to reimburse Developer for all or a portion of the PID Projects Cost and the costs associated with the administration of the PID and the issuance of the PID Bonds, and for repayment of PID Bonds); and (iii) issue, in one or more series, up to \$10,000,000, in the principal amount of PID Bonds for the purpose of financing the PID Projects in accordance with the Service and Assessment Plan and reimbursing Developer for certain associated costs as described herein;

**WHEREAS**, to the extent funds must be advanced by the City to pay for any costs associated with the creation of the PID, the issuance of PID Bonds, or the preparation of documentation related thereto, including any costs incurred by the City and its consultants and advisors (excluding the fees associated with closing the PID Bonds and paid from PID Bond Proceeds), Developer shall be responsible for advancing such funds and shall have a right to reimbursement for the funds advanced from the PID Bond Proceeds and Assessments, and the City will not be responsible for such reimbursement or the payment of any such costs from any other sources of funds; and

**WHEREAS**, unless expressly set forth to the contrary in this Agreement, the Parties intend this Agreement to supersede City Regulations only to the extent that City Regulations directly conflict with the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

## **SECTION 2** **DEFINITIONS**

Certain terms used in this Agreement are defined in this Section 2. Other terms used in this Agreement are defined in the recitals or in other sections of this Agreement. Unless the context requires otherwise, the following terms shall have the meanings hereinafter set forth:

Administrative Expenses means reasonable expenses incurred by the City and Developer in the establishment, administration, and operation of the PID.

Administrator means an employee, consultant, or designee of the City who shall have the responsibilities provided in the Service and Assessment Plan, an Indenture, or any other agreement or document approved by the City related to the duties and responsibilities for the administration of the PID.

Assessment(s) means the special assessments levied on the Property, under an Assessment Ordinance to reimburse Developer for the PID Projects as set forth in the Service and Assessment Plan, as well as payment of Administrative Expenses and repayment of the PID Bonds and the costs associated with the issuance of the PID Bonds.

Assessment Ordinance means an ordinance approved by the City Council under the PID Act establishing one or more Assessment(s).

Authorized Improvements means the PID Projects and all other on- and off-site public water, sewer, drainage, and roadway facilities, along with other public improvements, such as landscaping and screening, that benefit the Property, are to be constructed by Developer, are identified on Exhibit D, and for which the Parties intend Developer will be fully or partially reimbursed pursuant to the terms of this Agreement. The Authorized Improvements specifically exclude the Sardis Water Improvements.

Authorized Improvements Cost means the actual costs of design, engineering, construction, acquisition, and inspection of the Authorized Improvements and all costs related in any manner to the Authorized Improvements.

Bond Ordinance means an ordinance adopted by the City Council that authorizes and approves the issuance and sale of the PID Bonds.

Budgeted Cost means, with respect to any given Authorized Improvement, the estimated cost of the improvement as set forth by phase in Exhibit D.

Capital Improvement(s) shall have the meaning provided in Chapter 395, Texas Local Government Code.

Capital Improvement Costs means any construction, contributions, or dedications of Capital Improvements, including actual costs of design, engineering, construction, acquisition, and inspection, and all costs related in any manner to the Capital Improvement.

(7)

Capital Improvements Plan ("CIP") means all capital improvements plan(s) duly adopted by the City under Chapter 395, Texas Local Government Code, as may be updated or amended from time to time.

Certificate of Convenience and Necessity ("CCN") means a certificate of that name issued by the PUC or its predecessor or successor agency pursuant to Chapter 13, Texas Water Code.

Chapter 245 means Chapter 245, Texas Local Government Code.

Chapter 395 means Chapter 395, Texas Local Government Code.

City Code means the Code of Ordinances, City of Waxahachie, Texas.

City Council means the governing body of the City.

City Manager means the current or acting City Manager of the City, or a person designated to act on behalf of that individual if the designation is in writing and signed by the current or acting City Manager.

City Regulations means the City's applicable development regulations in effect on the Effective Date, including without limitation City Code provisions, ordinances (including, without limitation, park dedication fees), design standards (including, without limitation, pavement thickness), and other policies duly adopted by the City; provided, however, that as it relates to Public Infrastructure for any given phase of the Project, the applicable construction standards (including, without limitation, uniform building codes) shall be those that the City has duly adopted at the time of the filing of an application for a preliminary plat for that phase unless construction has not commenced within two years of approval of such preliminary plat in which case the construction standards shall be those that the City has duly adopted at the time that construction commences. The term does not include Impact Fees, which shall be assessed on the Property in accordance with this Agreement.

City Water Improvements means those water facilities necessary to provide the City Property within the City's water CCN with treated water service and that will be conveyed to, and owned and operated by, the City.

Concept Plan means the intended conceptual plan for the development of the Project as depicted on Exhibit C.

Collector Road means the road identified as "80 Foot Secondary Thoroughfare (D)" on the Concept Plan.

Developer Continuing Disclosure Agreement means any continuing disclosure agreement of Developer executed contemporaneously with the issuance and sale of PID Bonds.

Development Standards means the design specifications and construction standards permitted or imposed by this Agreement, including without limitation the standards set forth in Exhibit F and applicable City Regulations.

Effective Date means the effective date of this Agreement, which shall be the date upon which all Parties have fully executed and delivered this Agreement.

End User means any tenant, user, or owner of a Fully Developed and Improved Lot, but excluding the HOA.

Fully Developed and Improved Lot means any privately-owned lot in the Project, regardless of proposed use, intended to be served by the Authorized Improvements and for which a plat has been approved by the City and recorded in the Real Property Records of Ellis County.

HOA means the Montclair Heights Homeowners Association, which shall privately function as a homeowners association for the Project, or such similar name as may be available with Texas Secretary of State, and its successors.

Home Buyer Disclosure Program means the disclosure program, administered by the Administrator, as set forth in a document in the form of Exhibit G or another form agreed to by the Parties, that establishes a mechanism to disclose to each End User the terms and conditions under which their lot is burdened by the PID.

Impact Fees means those fees assessed and charged against the Project in accordance with Chapter 395 and as defined therein.

Impact Fee Credits means credits against Impact Fees otherwise due from the Project to offset Capital Improvements Costs.

Improvement Account of the Project Fund ("IAPF") means the construction fund account created under the Indenture, funded by the PID Bond Proceeds, and used to pay or reimburse for certain portions of the construction or acquisition of the PID Projects.

Indenture means a trust indenture by and between the City and a trustee bank under which PID Bonds are issued and funds are held and disbursed.

Landowner Agreement means an agreement, which may or may not be part of a PID Reimbursement Agreement, by and between the City and the owner(s) of the Property consenting to the creation of the PID, the levy of the Assessments, and undertaking certain other obligations relating to providing notice to subsequent owners of all or a portion of the Property, including a Declaration of Covenants, Conditions, and Restrictions and the Homebuyer Education Program.

Mayor means the Mayor of the City.

Non-Benefited Property means parcels or lots that accrue no special benefit from the PID Projects, including but not limited to property encumbered with a public utility easement that restricts the use of such property to such easement.

Notice means any notice required or contemplated by this Agreement (or otherwise given in connection with this Agreement).

(7)

PID means each of the Montclair Heights Public Improvement District for which the City agrees to exert good faith efforts to create for the benefit of the Project pursuant to the PID Act and this Agreement.

PID Act means Chapter 372, Texas Local Government Code, as amended.

PID Bonds means assessment revenue bonds, but not Refunding Bonds, issued by the City pursuant to the PID Act to finance the PID Projects.

PID Bond Proceeds means the funds generated from the sale of the PID Bonds.

PID Documents means, collectively, the PID Resolution, the SAP, and the Assessment Ordinance(s).

PID Projects means all City Water Improvements, wastewater/sewer, drainage, roadway, and other improvements allowable under the PID Act and benefitting and necessary to serve the Project, identified in the PID Documents and outlined in Exhibit D. PID Projects does not include the Sardis Water Improvements.

PID Projects Cost means the actual cost of design, engineering, construction (including construction management), acquisition, and/or inspection of the PID Projects, along with Administrative Expenses associated with the PID.

PID Reimbursement Agreement means an agreement by and between the City and Developer by which the Parties establish the terms by which Developer may obtain reimbursements for PID Projects through the PID Bond Proceeds or Assessments.

PID Resolution means the resolution and improvement order adopted by the Council creating the PID pursuant to Section 372.010 of the PID Act and approving the advisability of the Authorized Improvements.

Private Improvements means the improvements and amenities Developer shall cause to be constructed, as more particularly discussed in Section 7.2.

Public Infrastructure means all water, wastewater/sewer, detention and drainage, roadway, park and trail, and other infrastructure necessary to serve the full development of the Project and/or to be constructed and dedicated to the City under this Agreement. The term includes the PID Projects.

PUC means the Texas Public Utility Commission.

Real Property Records means the official land recordings of the Ellis County Clerk's Office.

Refunding Bonds means bonds issued pursuant to Section 372.027 of the PID Act.

Sardis Water Improvements shall mean those water facilities necessary to provide the Property within the Sardis CCN with treated water service and that will be conveyed to, and owned and operated by, Sardis.

(1)

Service and Assessment Plan ("SAP") means the SAP for the PID, to be adopted and amended annually, if needed, by the City Council pursuant to the PID Act for the purpose of assessing allocated costs against portions of the Project located within the boundaries of the PID having terms, provisions, and findings approved by the City, as required by this Agreement.

TCEQ means the Texas Commission of Environmental Quality.

### **SECTION 3** **PUBLIC IMPROVEMENT DISTRICTS**

3.1 Creation of the PID; Levy of Assessments. The City shall use good faith efforts to initiate and approve all necessary documents and ordinances, including without limitation the PID Documents, required to effectuate this Agreement, to create the PID, and to levy the Assessments. The Assessments shall be levied: (i) on a phase-by-phase basis against the applicable phase(s) benefitted by the applicable portion of the PID Projects for which the applicable series of the PID Bonds are issued, and (ii) prior to the sale of any lot to an End User. The Parties will cooperate, in good faith, to select a mutually agreeable SAP Consultant and the City will approve the SAP on a date subsequent to the date hereof, which shall include the PID Projects and provide for the levy of the Assessments on the Property. Promptly following preparation and approval of a preliminary SAP acceptable to the Parties and subject to the City Council making findings that the PID Projects confer a special benefit on the Property, the City Council shall consider an Assessment Ordinance.

3.2 Acceptance of Assessments and Recordation of Covenants Running with the Land. Following the levy of the Assessment applicable to a particular phase of the Project, Developer shall: (a) approve and accept in writing the levy of the Assessment(s) on all land owned by Developer; (b) approve and accept in writing the Home Buyer Disclosure Program related to such phase; and (c) cause covenants running with the land to be recorded against the portion of the Property within the applicable phase that will bind any and all current and successor developers and owners of all or any part of such phase of the Project to: (i) pay the Assessments, with applicable interest and penalties thereon, as and when due and payable hereunder and that the purchasers of such land take their title subject to and expressly assume the terms and provisions of such assessments and the liens created thereby; and (ii) comply with the Home Buyer Disclosure Program. The covenants required to be recorded under this paragraph shall be recorded substantially contemporaneously with the recordation of the plat of the applicable phase.

### **SECTION 4** **PID BONDS**

4.1 PID Bond Issuance. Developer may request issuance of PID Bonds by filing with the City a list of the PID Projects to be funded or acquired with the PID Bond Proceeds and the estimated or actual costs of such PID Projects. Prior to the City undertaking any preparations for the sale of PID Bonds: (i) the City Council shall have approved and adopted the PID Documents; (ii) the City shall have reviewed and approved the Home Buyer Disclosure Program and the Landowner Agreement; and (iii) owner(s) of the portion of the Property relating to the issuance of PID Bonds shall have executed a Landowner Agreement. The subsequent issuance of any series of PID Bonds is further subject to all of the following conditions:

(7)

(a) The City has evaluated and determined that there will not be substantial negative impact on the City's creditworthiness, bond rating, access to or cost of capital, or potential for liability.

(b) The City has determined that the PID Bonds assessment level, structure, terms, conditions and timing of the issuance of the PID Bonds are reasonable for the PID Projects Cost to be financed and that there is sufficient security for the PID Bonds to be creditworthy.

(c) All costs incurred by the City that are associated with the administration of the PID shall be paid out of special assessment revenue levied against property within the PID. City administration costs shall include those associated with continuing disclosure, compliance with federal tax law, agent fees, staff time, regulatory reporting and legal and financial reporting requirements.

(d) The Service and Assessment Plan and the Assessment Ordinance levying assessments on all or any portion of the Property benefitted by PID Projects provide for amounts sufficient to pay all costs related to such PID Bonds.

(e) The City has formed and utilized its own financing team including, but not limited to, bond counsel, financial advisor, Administrator, and underwriters related to the issuance of PID Bonds and bond financing proceedings.

(f) The City has chosen and utilized its own continuing disclosure consultant and arbitrage rebate consultant. Any and all costs incurred by these activities will be included in City administration costs recouped from special assessments. The continuing disclosure will be divided into City disclosure and Developer disclosure, and the City will not be responsible or liable for Developer disclosure, but the City's disclosures professional will be used for both disclosures.

(g) The aggregate principal amount of PID Bonds issued and to be issued shall not exceed \$10,000,000.

(h) The PID Bonds shall be in an amount estimated to be sufficient to fund the PID Projects or portions thereof for which such PID Bonds are being issued.

(i) Approval by the Texas Attorney General of the PID Bonds and registration of the PID Bonds by the Comptroller of Public Accounts of the State of Texas.

(j) The Developer is current on all taxes, assessments, fees and obligations to the City including without limitation payment of Assessments.

(k) The Developer is not in default under this Agreement or, with respect to the Property, any other agreement to which Developer and the City are parties.

(l) No outstanding PID Bonds are in default and no reserve funds established for outstanding PID Bonds have been drawn upon that have not been replenished.



(7)

(m) The Administrator has certified that the specified portions of the PID Projects Cost to be paid from the proceeds of the PID Bonds are eligible to be paid with the proceeds of such PID Bonds.

(n) The PID Projects to be financed by the PID Bonds have been or will be constructed according to the approved Development Standards imposed by this Agreement including any applicable City Regulations not superseded by this Agreement.

(o) The City has determined that the amount of proposed PID assessments and the structure, terms, conditions and timing of the issuance of the PID Bonds are reasonable for the project costs to be financed and the degree of development activity within the PID, and that there is sufficient security for the PID Bonds to be creditworthy.

(p) The maximum maturity for PID Bonds shall not exceed 30 years from the date of delivery thereof.

(q) The PID Bonds meet all regulatory and legal requirements applicable to the issuance of the PID Bonds.

(r) Unless otherwise agreed by the City, the PID Bonds shall be sold and may be transferred or assigned only in compliance with applicable securities laws and in minimum denominations of \$25,000 or integral multiples of \$1,000 in excess thereof.

(s) The Developer agrees to provide periodic information and notices of material events regarding the Developer and the Developer's development within the PID in accordance with Securities and Exchange Commission Rule 15c2-12 and any continuing disclosure agreements executed by the Developer in connection with the issuance of PID Bonds.

(t) In the issuance of any Refunding Bonds, the amount of assessment necessary to pay the Refunding Bonds shall not exceed the amount of the assessments that were levied to pay the PID Bonds that are being refunded.

(u) The estimated tax equivalent assessment rate for the Assessment levy shall be less than \$0.3100 per \$100.00 taxable assessed valuation.

(v) Unless otherwise set forth in this section, a minimum value to lien ratio of 2:1 for PID Bonds; provided that any receivables due under any PID Reimbursement Agreement may be sold or assigned in accordance with this Agreement.

(w) The Developer and the City shall have entered into a PID Reimbursement Agreement that provides for the Developer's construction of certain PID Projects and the City's reimbursement to the Developer of certain PID Projects.

4.2 Disclosure Information. Prior to the issuance of PID Bonds by the City, Developer shall provide all relevant information, including financial information that is reasonably necessary in order to provide potential bond investors with a true and accurate offering document for any PID Bonds. Developer shall, at the time of providing such information, agree, represent, and warrant that the information provided for inclusion in a disclosure document for an issue of PID

Bonds does not, to Developer's actual knowledge, contain any untrue statement of a material fact or omit any statement of material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, and Developer further shall provide a certification to such effect as of the date of the closing of any PID Bonds.

#### 4.3 Qualified Tax-Exempt Status.

(a) Generally. In any calendar year in which PID Bonds are issued, Developer agrees to pay the City its actual additional costs ("Additional Costs") the City may incur in the issuance of its own public securities or obligations on its own taxing power of municipal revenues (the "City Obligations"), as described in this section, if the City Obligations are deemed not to qualify for the designation of qualified tax-exempt obligations ("QTEO"), as defined in section 265(b)(3) of the Internal Revenue Code ("IRC") as amended, as a result of the issuance of PID Bonds by the City in any given year. The City agrees to deposit all funds for the payment of such Additional Costs received under this section into a segregated account of the City, and such funds shall remain separate and apart from all other funds and accounts of the City until December 31 of the calendar year in which the PID Bonds are issued, at which time the City is authorized to utilize such funds for any purpose permitted by law. On or before January 15<sup>th</sup> of the following calendar year, the final Additional Costs shall be calculated. By January 31<sup>st</sup> of such year, any funds in excess of the final Additional Costs that remain in such segregated account on December 31<sup>st</sup> of the preceding calendar year shall be refunded to the developers or owner and any deficiencies in the estimated Additional Costs paid to the City by any developer or owner shall be remitted to the City by the respective developer or owner.

#### (b) Issuance of PID Bonds prior to City Obligations.

(1) In the event the City issues PID Bonds prior to the issuance of City Obligations, the City, with assistance from its financial advisor ("Financial Advisor"), shall estimate the Additional Costs based on the market conditions as they exist approximately 30 days prior to the date of the pricing of the PID Bonds (the "Estimated Costs"). The Estimated Costs are an estimate of the increased cost to the City to issue its City Obligations as non-QTEO. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to Developer in an amount less than or equal to the Estimated Costs. Developer, in turn, shall remunerate to the City the amount shown on said invoice on or before the earlier of: (i) 15 business days after the date of said invoice, or (ii) 5 business days prior to pricing the PID Bonds. The City shall not be required to price or sell any series of PID Bonds until Developer has paid the invoice of Estimated Costs related to the PID Bonds then being issued.

(2) Upon the City's approval of the City Obligations, the Financial Advisor shall calculate the Additional Costs to the City of issuing its City Obligations as non-QTEO. The City will, within 5 business days of the issuance of the City Obligations, provide written notice to Developer of the amount of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to Developer the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice to Developer required under this paragraph. If the Additional Costs are more than the Estimated Costs, Developer will pay to the City the difference between the Additional Costs and

the Estimated Costs within 15 business days of the date of the City's notice required under this paragraph. If Developer does not pay the City the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice required under this paragraph, Developer shall not be paid any reimbursement amounts under any PID Reimbursement Agreement(s) related to the Project until such payment of Additional Costs is made in full.

(c) Issuance of City Obligations prior to PID Bonds.

(1) In the event the City issues City Obligations prior to the issuance of PID Bonds, the City, with assistance from the Financial Advisor, shall calculate the Estimated Costs based on the market conditions as they exist 20 days prior to the date of the pricing of the City Obligations. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to Developer: (1) in an amount less than or equal to the Estimated Costs, and (2) that includes the pricing date for such City Obligations. The Developer, in turn, shall remunerate to the City the amount shown on said invoice at least fifteen (15) days prior to the pricing date indicated on the invoice. If Developer fails to pay the Estimated Costs as required under this paragraph, the City, at its option, may elect to designate the City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year.

(2) Upon the City's approval of the City Obligations, the Financial Advisor shall calculate the Additional Costs to the City of issuing non-QTEO City Obligations. The City will, within 5 business days of the issuance of the City Obligations, provide written notice to Developer of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to Developer the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice to Developer. If the Additional Costs are more than the Estimated Costs, Developer will pay to the City the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice. If Developer does not pay to the City the difference between the Additional Costs and the Estimated Costs as required under this paragraph, then Developer shall not be paid any reimbursement amounts under any PID Reimbursement Agreement(s) related to the Project until such payment of Additional Costs is made in full.

(d) To the extent any developer(s) or property owner(s) (including Developer, as applicable) has (have) paid Additional Costs for any particular calendar year, any such Additional Costs paid subsequently by a developer or property owner (including Developer, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or property owner(s) (including Developer, as applicable) as necessary so as to put all developers and property owners (including Developer, if applicable) so paying for the same calendar year in the proportion set forth in subsection (e), below, said reimbursement to be made by the City within 15 business days after its receipt of such subsequent payments of such Additional Costs.

(e) The City shall charge Additional Costs attributable to any other developer or property owner on whose behalf the City has issued debt in the same manner as described in this section, and Developer shall only be liable for its portion of the Additional Costs under this provision, and if any Additional Costs in excess of Developer's portion has already been paid to the City under this provision, then such excess of Additional Costs shall be reimbursed to

Developer. The portion owed by Developer shall be determined by dividing the total proceeds from any debt issued on behalf of Developer in such calendar year by the total proceeds from any debt issued by the City for the benefit of all developers (including Developer) in such calendar year.

4.4 Tax Certificate. If, in connection with the issuance of the PID Bonds, the City is required to deliver a certificate as to tax exemption (a "Tax Certificate") to satisfy requirements of the IRC, Developer agrees to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. Developer represents that such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the best of the knowledge of the officers of Developer providing such facts and estimates, true, correct and complete as of such date. To the extent that it exercises control or direction over the use or investment of the PID Bond Proceeds, including, but not limited to, the use of the PID Projects, Developer further agrees that it will not knowingly make, or permit to be made, any use or investment of such funds that would cause any of the covenants or agreements of the City contained in a Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

## **SECTION 5** **AUTHORIZED IMPROVEMENTS**

5.1 Authorized Improvements. The Authorized Improvements and Authorized Improvements Cost are subject to change as may be agreed upon by Developer and the City and, if changed, shall be updated by the Developer and the City consistent with the Service and Assessment Plan and the PID Act. All approved plats within the Project shall include those Authorized Improvements located therein and the respective Authorized Improvements Cost shall be finalized at the time the applicable plat is approved by the City Council or other appropriate City commission. The Developer shall include any updated Budgeted Cost(s) with each plat application, which shall be submitted to the City Council for consideration and approval concurrently with the submission of each plat. Upon approval by the City Council or other appropriate City commission of any such updated Budgeted Cost(s), this Agreement shall be deemed amended to include such approved updated Budgeted Cost(s) in **Exhibit D**. The Budgeted Cost, Authorized Improvements Cost, and the timetable for installation of the Authorized Improvements will be reviewed at least annually by the Parties in an annual update of the Service and Assessment Plan adopted and approved by the City.

### 5.2 Construction, Ownership, and Transfer of Authorized Improvements.

(a) Contract Specifications. Developer's engineers shall prepare, or cause the preparation of, and provide the City with contract specifications and necessary related documents for the Authorized Improvements.

(b) Construction Standards, Inspections and Fees. Except as otherwise expressly set forth in this Agreement, the Authorized Improvements and all other Public Infrastructure required for the development of the Property shall be constructed and inspected, and all applicable fees, including but not limited to Impact Fees (subject to the terms hereof and any applicable credits), permit fees, and inspection fees, shall be paid by Developer, in accordance

with this Agreement, the City Regulations, and any other governing body or entity with jurisdiction over the Authorized Improvements.

(c) Contract Letting. The Parties understand that construction of the Authorized Improvements to be funded through Assessments are legally exempt from competitive bidding requirements pursuant to the Texas Local Government Code. As of the Effective Date, the construction contracts for the construction of Authorized Improvements have not been awarded and contract prices have not yet been determined. Before entering into any construction contract for the construction of all or any part of the Authorized Improvements, Developer's engineers shall prepare, or cause the preparation of, and submit to the City all contract specifications and necessary related documents, including the contract proposal showing the negotiated total contract price and scope of work, for the construction of any portion of the Authorized Improvements that have not been awarded.

(d) Ownership. Except for the Sardis Water Improvements, all of the Authorized Improvements and Public Infrastructure shall be owned by the City upon acceptance of them by the City. Developer agrees to take any action reasonably required by the City to transfer, convey, or otherwise dedicate or ensure the dedication of land, right-of-way, or easements for the Authorized Improvements and Public Infrastructure to the City for public use. PID Bond Proceeds and/or the proceeds from PID Assessments will be used in part to reimburse Developer for PID Projects Cost related to the PID Projects and, in the event PID Bond Proceeds and/or proceeds from PID Assessments are not available at the time that all or a portion of the PID Projects are substantially complete and the City is ready to accept said PID Projects or portion thereof, PID Bond Proceeds and/or proceeds from PID Assessments, once available, will be used to reimburse Developer in accordance with this Agreement and as otherwise agreed to by the Parties for said PID Projects Cost following acceptance by the City.

### 5.3 Operation and Maintenance.

(a) Upon inspection, approval, and acceptance of the Authorized Improvements or any portion thereof, the City shall maintain and operate the accepted public infrastructure and provide retail sewer service to the Property. It is the intention that (i) any Sardis Water Improvements shall be conveyed to Sardis upon completion and shall thereafter be owned and maintained by Sardis, which shall provide the Annexed Property with treated water service and (ii) any City Water Improvements shall be conveyed to the City upon completion and shall thereafter be owned and maintained by City, which shall provide the City Property with treated water service.

(b) Upon final inspection, approval, and acceptance of the roadway Authorized Improvements required under this Agreement or any portion thereof, the City shall maintain and operate the public roadways and related drainage improvements.

(c) The HOA shall maintain and operate any open spaces, nature trails, amenity center, common areas, landscaping, screening walls, development signage, and any other common improvements or appurtenances within the Property that are not maintained or operated by the City, including without limitation such facilities financed by the PID.

#### 5.4 Wastewater/Sanitary Sewer Facilities.

(a) Developer's General Obligations. Developer is responsible for the design, installation, and construction of all wastewater/sanitary sewer improvements necessary to serve the Property. The design of all wastewater/sanitary sewer improvements shall be approved by the City in advance of the construction of same. Subject to the City's obligations under Section 7.16, Developer shall be responsible for the acquisition of any easements and other property acquisitions necessary for wastewater/sewer facilities (the size and extent of each such easement or other property interest to be approved by the City) for all development. The locations of said easements or other property interests shall be approved by the City's engineer or his or her agent as part of the platting process. The costs of obtaining such easements may be included in the applicable PID Projects Cost to be reimbursed to the Developer through the PID.

(b) Timing of General Obligations. Except as otherwise provided herein, Developer shall complete in a good and workmanlike manner all wastewater/sanitary sewer improvements necessary to serve each phase of the Project prior to the recordation of the plat covering such phase.

#### 5.5 Wastewater Services.

(a) The City represents and confirms that it currently has and reasonably expects to continue to have the capacity to provide to the Property continuous and adequate retail wastewater service at times and in capacities sufficient to meet the service demands of the Project as it is developed.

(b) Upon acceptance by the City of the wastewater facilities described herein, the City shall operate or cause to be operated said wastewater facilities serving the Project and use them to provide service to all customers within the Project at the same rates as similar projects located within the City. Upon acceptance by the City, the City shall at all times maintain said wastewater facilities, or cause the same to be maintained, in good condition and working order in compliance with all applicable laws and ordinances and all applicable regulations, rules, policies, standards, and orders of any governmental entity with jurisdiction over same.

#### 5.6 Water Facilities.

(a) Developer's General Obligations. Developer is responsible for design, installation, and construction of all water improvements necessary to serve the Property, including the City Water Improvements and the Sardis Water Improvements. The Developer shall be responsible for the acquisition of any easements and other property acquisitions necessary for water facilities for all development upon and within the Property. To the extent such water improvements are Sardis Water Improvements, the costs shall not be included in the PID Projects Cost to be reimbursed to the Developer.

(b) Timing of General Obligations. Except as otherwise provided herein, Developer shall complete in a good and workmanlike manner all water facility improvements necessary to serve each phase of the Project prior to the recordation of the plat covering such phase.

(c) City Water Improvements and City Water CCN. The City Property currently lies within the City's Water CCN. The City and the Developer agree that the City shall serve the City Property with retail water service, and the City Water Improvements shall constitute a portion of the PID Projects and shall be dedicated to and maintained by the City.

#### 5.7 Roadway Facilities and Drainage Improvements.

(a) Developer's General Obligations. Developer is responsible for the design, installation, and construction of all roadway facilities required to serve the Property. The design of all roadway improvements shall be approved by the City in advance of the construction of same.

(b) Timing of General Obligations. Prior to the recordation of any plat for any phase of the Project, Developer shall complete, in a good and workmanlike manner, construction of all roadway facilities and related improvements necessary to serve such phase in accordance with construction plans approved by the City. Thereafter, the roads shall be conveyed to the City for ownership and maintenance.

(c) Drainage/Detention Infrastructure. Developer shall have full responsibility for designing, installing, and constructing the drainage/detention infrastructure that will serve the Property and the cost thereof. Prior to the recordation of the plat for any phase of development, Developer shall complete in a good and workmanlike manner construction of the drainage/detention improvements necessary to serve such phase. Upon inspection, approval and acceptance, City shall maintain and operate the drainage and roadway improvements for the Property.

5.8 Open Space Improvements. Developer shall construct neighborhood or "pocket" parks as depicted on the Concept Plan (the "Neighborhood Parks"). The final size and location of each Neighborhood Park shall be established at time of plat approval for each phase of the Project. Neighborhood Parks shall be owned and maintained by the HOA.

5.9 Screening, Landscaping, and Entryways. Before the recordation of the plat for any phase of the Project, Developer shall construct, in a good and workmanlike manner, standard screening in accordance the City Regulations along all perimeter roadways. Project entryways shall also include such monument signage with Project branding, shrubs, and additional landscaping as the Developer deems appropriate. All screening and landscaping is expected to be dedicated to and owned by the City, and shall be maintained by the HOA. Entryways shall be owned and maintained by the HOA.

### **SECTION 6**

#### **PAYMENT AND REIMBURSEMENT OF AUTHORIZED IMPROVEMENTS**

##### 6.1 PID Projects.

(a) Improvement Account of the Project Fund. The IAPF shall be administered and controlled by the City, or the trustee bank for the PID Bonds, and funds in the IAPF shall be deposited and disbursed in accordance with the terms of the Indenture.

(b) Timing of Expenditures and Reimbursements. Developer shall finance and undertake construction of the PID Projects in accordance with this Agreement, the SAP, or otherwise in conjunction with the construction of the Project prior to seeking reimbursement from the IAPF. Although the terms by which Developer will be entitled to reimbursement from the IAPF shall be detailed in one or more PID Reimbursement Agreement(s), Developer will generally be entitled to the maximum available funds within the IAPF up to the PID Projects Cost, plus interest, following the City's acceptance of the PID Projects.

(c) Cost Overrun. Should the PID Projects Cost exceed the maximum PID Bond Proceeds deposited in the IAPF ("Cost Overrun"), the Developer shall be solely responsible to fund such part of the Cost Overrun, subject to the cost-underrun in subsection (d) below.

(d) Cost Underrun. Upon the final acceptance by City of an Authorized Improvement and payment of all outstanding invoices for such Authorized Improvement, if the Authorized Improvement Cost is less than the Budgeted Cost (a "Cost Underrun"), any remaining funds in the Improvement Account of the Project Fund will be available to pay the cost of any other Authorized Improvement. The City shall promptly confirm to the Trustee that such remaining amounts are available to pay such costs, and the City, with input from the Developer, will decide how to use such moneys to secure the payment and performance of the work for other Authorized Improvements, if available. If a Cost Underrun exists after payment of all costs for all Authorized Improvements contemplated in the applicable Indenture, such unused funds will be used to pay Assessments on the Property.

(e) Infrastructure Oversizing. Developer shall not be required to construct any Public Infrastructure so that it is oversized to provide a benefit to land outside the Property ("Oversized Public Infrastructure") unless (i) before the commencement of construction, the City has made arrangements to finance the City's portion of the costs of construction attributable to the oversizing requested by the City from sources other than PID Bond Proceeds or Assessments, and (ii) such oversizing will not cause any material delays in the Developer's development schedule. In the event Developer constructs or causes the construction of any Oversized Public Infrastructure on behalf of the City, the City shall be solely responsible for all costs attributable to oversized portions of the Oversized Public Infrastructure and that the PID shall not be utilized for financing the costs of Oversized Public Infrastructure. The Parties agree that the City shall not require the oversizing of the Sardis Water Improvements.

(f) Reimbursement of PID Projects Cost. The Parties shall, prior to or substantially contemporaneously with the initial levy of assessments on the Project, enter into a PID Reimbursement Agreement (or similar agreement) to provide for reimbursement to Developer for PID Projects Cost from the PID Bond Proceeds or Assessments levied therefor.

## 6.2 City Participation.

(a) Impact Fees; Credits and Reimbursements. Impact Fees for the Project shall be assessed and collected at the rates adopted by the City Council in effect at the time the plat for a given phase of the Project is recorded in the Property Records; provided, however, that Developer shall be entitled to Impact Fee Credits to compensate and reimburse the Developer for Capital Improvements Costs incurred for the Collector Road, Oversized Public Infrastructure, and any costs associated with the Traffic Signal (as hereinafter defined) required in connection with the



Development pursuant to the Traffic Impact Analysis (as hereinafter defined). Developer may also apply Impact Fee Credits earned in a prior phase of the Project to the Impact Fees otherwise due from subsequent phases of the Project without any obligation to apply the credits pro rata or otherwise to spread the credits throughout the Project.

(b) Collection of Fees; Allocation of Credits. All Impact Fee Credits inuring to the Property belong to Developer and may not be allocated to any other party without Developer's prior written consent, which consent shall be in the form of an assignment specifying the assignee and the categories and amounts of Impact Fee Credits assigned. Developer shall deliver a copy of any such assignment to the City within ten (10) days of its effective date, and Developer shall not make any claim to or have any entitlement to any such Impact Fee Credits once assigned. Except to the extent such assignment(s) has been provided by Developer and delivered to the City, the City shall collect Impact Fees from all third-party permit applicants within the Project regardless of any otherwise applicable Impact Fee Credits. At the conclusion of each annual quarter (January 1, April 1, July 1, and October 1), Developer may request reimbursement from the City for any Impact Fees collected by the City from the Project to offset any Impact Fee Credits acquired by Developer hereunder. All such requests shall include a certification that the Impact Fee Credits being requested have not been assigned to any third party(ies). The City shall remit such reimbursement to Developer within 30 days of receipt of Developer's request under this paragraph.

(c) CIP Projects. The City will study and consider, no later than the next statutory required update to the CIP, the inclusion of the Collector Road, the Traffic Signal, and any Oversized Public Infrastructure constructed (or caused to be constructed) by Developer at the request of City as part of the City's CIP. If Developer incurs costs in connection with the Collector Road or any Oversized Public Infrastructure before they are included in the CIP, and such costs would otherwise qualify as Capital Improvements Costs, Developer shall be entitled to Impact Fee Credits for those costs as if the Collector Road and such Oversized Public Infrastructure were Capital Improvements as of the date Developer incurred such costs. In the event the City fails to include the Collector Road or such Oversized Public Infrastructure in the CIP, the City shall finance and/or reimburse Developer for the portion of the cost of the Collector Road or such Oversized Public Infrastructure that would otherwise be reimbursable through Impact Fee Credits from sources other than those derived from the PID.

(d) Parkland Dedication Credit. Provided Developer reserves a minimum of approximately 42 acres as open space (including parks, open space, and dog parks) within the Project as generally depicted on the Concept Plan (the "Open Space Acreage"), Developer shall be deemed to have satisfied all applicable parkland dedication or improvement requirements of the City or fees required in lieu thereof, of any kind whatsoever. The Open Space Acreage, to the extent such acreage is not a Neighborhood Park shall be platted as open space and/or common area and may include or be improved with Private Improvements, including the Amenity Center.

(e) Traffic Signal. The City and the Developer acknowledge that the Traffic Impact Analysis prepared by Traffic Impact Group, LLC dated December 8, 2020 (the "Traffic Impact Analysis"), recommends that a traffic signal be constructed at the intersection of WB Frontage Road and the Collector Road (referred to in the Traffic Impact Analysis as "Thoroughfare D") (the "Traffic Signal") when anticipated traffic volumes meet warrants. When and if the projected traffic volumes from the Development justify the installation of the Traffic Signal and

(1)

the City requires the Traffic Signal be constructed as a condition of furtherance of the Development, Developer agrees to construct such Traffic Signal provided that: (i) Developer's funding obligation of the Traffic Signal shall not exceed 63% of the Traffic Signal cost and (ii) the City has and contributes sufficient and available funds to finance the construction of the Traffic Signal. In the event the City cannot fulfill its share of the financing obligation for the Traffic Signal as required in this section, Developer shall not be required to construct the Traffic Signal to proceed with the Development. If the City includes the Traffic Signal on a future Texas Local Government Code Chapter 395 roadway capital improvement plan, and provided Developer incurred expenses toward the construction of the Traffic Signal, Developer shall immediately be entitled to credits for its share of the Traffic Signal cost as provided herein.

6.3 Payee Information. With respect to any and every type of payment/remittance due to be paid at any time by the City to Developer after the Effective Date under this Agreement, the name and delivery address of the payee for such payment shall be:

Montclair Waxahachie Development, LLC  
Attn: Terrance Jobe  
2415 Somerfield Drive  
Midlothian TX 76065

Developer may change the name of the payee and/or address set forth above by delivering written notice to the City designating a new payee and/or address or through an assignment of Developer's rights hereunder.

## **SECTION 7** **ADDITIONAL OBLIGATIONS AND AGREEMENTS**

7.1 Administration of Construction of Public Infrastructure. Subject to the terms of this Agreement, the Parties agree that Developer will be solely responsible to construct all Public Infrastructure. The public on-site and off-site infrastructure and all other related improvements, other than the Sardis Water Improvements, will be considered City projects and the City will own all such Public Infrastructure upon completion and acceptance.

7.2 Private Improvements. Developer, at Developer's cost, will (or will cause) the design, construction, maintenance, and operation of the Private Improvements described in this Section 7.2.

(a) Amenity Center and Amenities. The Private Improvements in the Development shall include an amenity center park area with a variety of private amenities to residents including a six foot wide trail system, two pergolas with benches and picnic tables, a sand volleyball court, playground equipment, parking, and a pool. The Amenity Center main building shall include within are two restrooms, a storage building, a covered patio, a covered porch, and a fireplace. The Amenity Center and amenity center park area shall be completed in accordance with the Developer's general development schedule for the Property. Upon completion, the Amenity Center will be owned and maintained by the HOA.

7.3 Mandatory Homeowners Association. Developer will, in a manner acceptable to the City, create the HOA, which shall be mandatory and shall levy and collect from homeowners

(7)

annual fees in an amount calculated to maintain the Private Improvements (including without limitation the Amenity Center and common areas), and other HOA owned improvements within the Project. Common areas, including, but not limited to, all landscaped entrances to the Project and right-of-way landscaping and signage, shall be maintained solely by the HOA. Maintenance of public rights-of-way by the HOA shall comply with City Regulations.

#### 7.4 Annexation and Zoning.

(a) Annexation. The City acknowledges that the Developer has submitted a voluntary irrevocable petition for annexation of the Annexed Property to the City in compliance with Chapter 43, Texas Local Government Code, or other applicable law, as amended (the "Annexation Petition") concurrently with the zoning application described in Section 7.4(b). Developer agrees to execute and supply any and all instruments and/or other documentation necessary for the City to legally annex the Annexed Property into the City's corporate limits, provided such instruments and/or documentation shall contain no conditions or limitations to annexation. The City shall, subject to Section 7.4(b) in accordance with applicable statutory requirements, take all steps necessary to complete the annexation of the Annexed Property immediately prior to the ordinance adopting the PD Zoning. Immediately upon the completion of the annexation, the City shall serve and provide the Property with all municipal services otherwise offered by the City within the city limits including, without limitation, water, sewer, solid-waste collection, and emergency response services as provided in the annexation service plan adopted by the City Council in connection with the annexation of the Annexed Property.

(b) Zoning. The City acknowledges that an application to zone the Property as a planned development district has been submitted and, concurrently with its approval of this Agreement, the City shall consider planned development zoning for the Property consistent with the Development Standards, the Concept Plan, and applicable provisions of this Agreement (the "PD Zoning"). Through this Agreement, Developer expressly consents and agrees to the PD Zoning of the Property. Any such zoning of the Property shall otherwise be in accordance with all procedures set forth in the applicable City Regulations. Should the City fail to approve the PD Zoning, or approve zoning on the Property that is in any way more restrictive than the PD Zoning without Developer consent, Developer shall have the right to terminate this Agreement with notice to the City. Within thirty (30) days following delivery of such termination notice, the City shall disannex the Property from the City.

7.5 Conflicts. In the event of any direct conflict between this Agreement and any other ordinance, rule, regulation, standard, policy, order, guideline, or other City adopted or City enforced requirement, whether existing on the Effective Date or thereafter adopted, this Agreement, including its exhibits, as applicable, shall control. In the event of a conflict between the Concept Plan and the Development Standards, the Development Standards shall control to the extent of the conflict.

7.6 Compliance with City Regulations. Development and use of the Property, including, without limitation, the construction, installation, maintenance, repair, and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with City Regulations unless expressly stated to the contrary in

this Agreement. City Regulations shall apply to the development and use of the Property unless expressly set forth to the contrary in this Agreement.

7.7 Phasing. The Property may be developed in phases and Developer may submit a replat or amending plat for all or any portions of the Property in accordance with applicable law. Any replat or amending plat shall conform with applicable City Regulations and subject to City approval.

7.8 Public Infrastructure, Generally. Except as otherwise expressly provided for in this Agreement, Developer shall provide all Public Infrastructure necessary to serve the Project, including streets, utilities, drainage, sidewalks, trails, street lighting, street signage, and all other required improvements, at no cost to the City except as expressly provided in this Agreement or the PID Reimbursement Agreement, and as approved by the City's engineer or his or her agent. Developer shall cause the installation of the Public Infrastructure within all applicable time frames in accordance with the City Regulations unless otherwise established in this Agreement. Developer shall provide engineering studies, plan/profile sheets, and other construction documents at the time of platting as required by City Regulations. Such plans shall be approved by the City's engineer or his or her agent prior to approval of a plat. Construction of any portion of the Public Infrastructure shall not be initiated until a pre-construction conference with a City representative has been held regarding the proposed construction and the City has issued a written notice to proceed. No plat may be recorded in the Real Property Records until construction of all Public Infrastructure shown thereon shall have been constructed, and thereafter inspected, approved, and accepted by the City.

7.9 Maintenance Bonds. For each construction contract for any part of the Public Infrastructure, Developer, or Developer's contractor, must execute a maintenance bond in accordance with applicable City Regulations that guarantees the costs of any repairs that may become necessary to any part of the construction work performed in connection with the Public Infrastructure, arising from defective workmanship or materials used therein, for a full period of two (2) years from the date of final acceptance of the Public Infrastructure constructed under such contract.

7.10 Inspections, Acceptance of Public Infrastructure, and Developer's Remedy.

(a) Inspections, Generally. The City shall have the right to inspect, at any time, the construction of all Public Infrastructure necessary to support the Project, including City water improvements, wastewater/sanitary sewer, drainage, roads, streets, alleys, park facilities, electrical, and street lights and signs. The City's inspections and/or approvals shall not release Developer from its responsibility to construct, or cause the construction of, adequate Authorized Improvements and Public Infrastructure in accordance with approved engineering plans, construction plans, and other approved plans related to development of the Property. Notwithstanding any provision of this Agreement, it shall not be a breach or violation of the Agreement if the City withholds building permits, certificates of occupancy or City utility services as to any portion of the Project until Developer has met its obligations to provide for required Public Infrastructure necessary to serve such portion according to the approved engineering plans and City Regulations and until such Public Infrastructure has been dedicated to and accepted by the City. Acceptance by the City shall not be unreasonably withheld, conditioned, or delayed.

(b) Acceptance; Ownership. From and after the inspection and acceptance by the City of the Public Infrastructure and any other dedications required under this Agreement, such improvements and dedications shall be owned by the City. Acceptance of Public Infrastructure by the City shall be evidenced in a writing issued by the City Manager or his designee. The Sardis Water Improvements shall not be required to be accepted or owned by the City.

(c) Approval of Plats/Plans. Approval by the City, the City's engineer, or other City employee or representative, of any plans, designs, or specifications submitted by Developer pursuant to this Agreement or pursuant to applicable City Regulations shall not constitute or be deemed to be a release of the responsibility and liability of Developer, his engineer, employees, officers, or agents for the accuracy and competency of their design and specifications. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by Developer or Developer's engineer, or engineer's officers, agents, servants or employees, it being the intent of the parties that approval by the City's engineer signifies the City's approval on only the general design concept of the improvements to be constructed. In accordance with Chapter 245, all development related permits issued for the Project, including each plat, shall remain valid for two years from date of approval and shall not thereafter expire so long as progress has been made toward completion of the Project. Upon recordation of the plat for the Project, the Project shall not expire for the duration of this Agreement, provided that the Developer shall be required to finalize improvements in each phase of the Development in accordance with subdivision ordinance adopted by the City.

7.11 Insurance. Developer or its contractor(s) shall acquire and maintain, during the period of time when any of the Public Infrastructure is under construction (and until the full and final completion of the Public Infrastructure and acceptance thereof by the City): (a) workers compensation insurance in the amount required by law; and (b) commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under any indemnification provisions of this Agreement, with limits of liability for bodily injury, death and property damage of not less than \$1,000,000.00. Such insurance shall also cover any and all claims which might arise out of the Public Infrastructure construction contracts, whether by Developer, a contractor, subcontractor, material man, or otherwise. Coverage must be on a "per occurrence" basis. All such insurance shall: (i) be issued by a carrier that is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas; and (ii) name the City as an additional insured and contain a waiver of subrogation endorsement in favor of the City. Upon the execution of Public Infrastructure construction contracts, Developer shall provide to the City certificates of insurance evidencing such insurance coverage together with the declaration of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, the City shall receive written notice of such cancellation, non-renewal or modification.

7.12 INDEMNIFICATION AND HOLD HARMLESS. THE DEVELOPER, INCLUDING ITS RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY COVENANT AND AGREE TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, REPRESENTATIVES, SERVANTS AND EMPLOYEES (COLLECTIVELY, THE "RELEASED PARTIES"), FROM AND AGAINST ALL THIRD-

PARTY CLAIMS, SUITS, JUDGMENTS, DAMAGES, AND DEMANDS (TOGETHER, "CLAIMS") AGAINST THE CITY OR ANY OF THE RELEASED PARTIES, WHETHER REAL OR ASSERTED INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES, RELATED EXPENSES, EXPERT WITNESS FEES, CONSULTANT FEES, AND OTHER COSTS, ARISING OUT OF THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF THE DEVELOPER, INCLUDING THE NEGLIGENCE OF ITS RESPECTIVE EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIAL MEN, AND/OR AGENTS, IN CONNECTION WITH THE DESIGN OR CONSTRUCTION OF ANY PUBLIC INFRASTRUCTURE, STRUCTURES, OR OTHER FACILITIES OR IMPROVEMENTS THAT ARE REQUIRED OR PERMITTED UNDER THIS AGREEMENT. **THE DEVELOPER SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY THE CITY'S CONCURRENT, CONTRIBUTORY, OR SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF THE DEVELOPER AND THE CITY, THE DEVELOPER'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE DEVELOPER'S OWN PERCENTAGE OF RESPONSIBILITY.

7.13 Status of Parties. At no time shall the City have any control over or charge of Developer's design, construction or installation of any of the Public Infrastructure, nor the means, methods, techniques, sequences or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise or venture or employment relationship between the City and Developer.

7.14 [Reserved].

7.15 Vested Rights. This Agreement shall constitute a "permit" (as defined in Chapter 245) that is deemed filed with the City on the Effective Date.

7.16 Sole Source of Funding. Notwithstanding any other provision of this Agreement, the only source of funding for which the City is obligated to use to reimburse Developer for Developer's obligations under this Agreement are PID Bond Proceeds in accordance with this Agreement and any future PID Reimbursement Agreements (or similar agreements), Assessments, and Impact Fee Credits. All other funding for Developer's obligations under this Agreement shall be the sole responsibility of Developer.

## **SECTION 8**

### **EVENTS OF DEFAULT; REMEDIES**

8.1 Events of Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given in writing (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time to be determined based on the nature of the alleged failure, but in no event more than thirty (30) days (or any longer time period to the extent expressly stated in this Agreement as relates to a specific failure to perform) after written notice of the alleged failure has been given. Notwithstanding the foregoing, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the

(1)

notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within twenty (20) business days after it is due.

8.2 Remedies. As compensation for the other party's default, an aggrieved Party is limited to seeking specific performance of the other party's obligations under this Agreement. However, the Parties agree that Developer will not be required to specifically perform under this Agreement in the event that Developer satisfies all of its obligations under Section 4.1 and the City does not issue PID Bonds within one year of the Effective Date.

## **SECTION 9**

### **ASSIGNMENT; ENCUMBRANCE**

9.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The obligations, requirements, or covenants to develop the Property subject to this Agreement shall be freely assignable, in whole or in part, to any affiliate or related entity of Developer, or any lienholder on the Property, without the prior written consent of the City. Except as otherwise provided in this paragraph, the obligations, requirements or covenants to the development of the Property shall not be assigned, in whole or in part, by Developer to a non-affiliate or non-related entity of Developer without the prior written consent of the City Manager, subject to the advice and written consent of the Mayor, which consent shall not be unreasonably withheld, conditioned, or delayed. In connection with the foregoing, the City acknowledges that the Developer has executed a letter of intent with UnionMain Homes (the "Contract Party"), an unrelated entity, for the sale of a portion of the Property (the "Contract Property"), and the Developer expects that, if such sale is consummated, the Contract Party will be assigned the obligations to construct of a portion of the Public Improvements with respect to the Contract Property. The City hereby consents to such assignment relating to the Contract Property if the sale is consummated. An assignee shall be considered a "Party" for the purposes of this Agreement. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment unless the City approves the release in writing. Developer shall maintain written records of all assignments made by Developer to assignees, including a copy of each executed assignment and, upon written request from any Party or assignee, shall provide a copy of such records to the requesting person or entity, and this obligation shall survive the assigning Party's sale, assignment, transfer, or other conveyance of any interest in this Agreement or the Property.

9.2 Assignees as Parties. An assignee authorized in accordance with this Agreement and for which notice of assignment has been provided in accordance herewith shall be considered a "Party" for the purposes of this Agreement. With the exception of: (a) the City, (b) an End User, (c) a purchaser of a Fully Developed and Improved Lot, any assignee named in an assignment under Section 9.1 hereof shall be deemed to be a "Developer" and have all of the rights and obligations of Developer as set forth in this Agreement and all related documents to the extent of said ownership or ownership interest.

9.3 Third Party Beneficiaries. Except as otherwise provided herein, this Agreement inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

9.4 Notice of Assignment. Subject to Section 9.1 of this Agreement, the following requirements shall apply in the event that Developer sells, assigns, transfers, or otherwise conveys the Property or any part thereof and/or any of its rights or benefits under this Agreement: (i) Developer must provide written notice to the City to the extent required under Section 9.1; (ii) said notice must describe the extent to which any rights or benefits under this Agreement will be sold, assigned, transferred, or otherwise conveyed; (iii) said notice must state the name, mailing address, telephone contact information, and, if known, email address, of the person(s) that will acquire any rights or benefits as a result of any such sale, assignment, transfer or other conveyance; and (iv) said notice must be signed by a duly authorized person representing Developer and a duly authorized representative of the person that will acquire any rights or benefits as a result of the sale, assignment, transfer or other conveyance.

## **SECTION 10** **RECORDATION AND ESTOPPEL CERTIFICATES**

10.1 Binding Obligations. This Agreement and all amendments thereto and assignments hereof shall be recorded in the Real Property Records. This Agreement binds and constitutes a covenant running with the Property and, upon the Effective Date, is binding upon Developer and the City, and forms a part of any other requirements for development within the Property. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns as permitted by this Agreement and upon the Property.

10.2 Estoppel Certificates. From time to time, upon written request of Developer or any future owner, the City Manager, or his/her designee will, in his/her official capacity and to his/her reasonable knowledge and belief, execute a written estoppel certificate identifying any obligations of an owner under this Agreement that are in default.

## **SECTION 11** **GENERAL PROVISIONS**

11.1 Term. Unless otherwise extended by mutual agreement of the Parties, the term of this Agreement shall be thirty-five (35) years after the Effective Date (the "Original Term"). Upon expiration of the Original Term, the City shall have no obligations under this Agreement with the exception of maintaining and operating the PID in accordance with the SAP and the Indenture.

11.2 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) reflect the final intent of the Parties with regard to the subject matter of this Agreement; and (d) are fully incorporated into this Agreement for all purposes. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering



(1)

into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

11.3 Acknowledgments. In negotiating and entering into this Agreement, the Parties respectively acknowledge and understand that:

(a) Developer's obligations hereunder are primarily for the benefit of the Property;

(b) the improvements to be constructed and the open space dedications and donations of real property that Developer is obligated to set aside and/or dedicate under this Agreement will benefit the Project by positively contributing to the enhanced nature thereof, increasing property values within the Project, and encouraging investment in and the ultimate development of the Project;

(c) the Authorized Improvements will benefit the City and promote state and local economic development, stimulate business and commercial activity in the City for the development and diversification of the economy of the state, promote the development and expansion of commerce in the state, and reduce unemployment or underemployment in the state;

(d) the PID Projects are public improvements and such PID Projects shall be dedicated to the City in accordance with the PID Act;

(e) nothing contained in this Agreement shall be construed as creating or intended to create a contractual obligation that controls, waives, or supplants the City Council's legislative discretion or functions with respect to any matters not specifically addressed in this Agreement;

(f) this Agreement is a development agreement under Section 212.172, Texas Local Government Code; and

(g) pursuant to Section 395.023, Texas Local Government Code, Developer shall be entitled to Impact Fee Credits against roadway Impact Fees for Capital Improvement Costs incurred in connection with collector or arterial roadways shown on the City's master thoroughfare plan (or comparable planning document) regardless of whether the particular collector or arterial roadway is designated on the City's roadway CIP.

11.4 Notices. Any notice, submittal, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when delivered personally or upon the expiration of 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To the City:

City of Waxahachie, Texas  
Attn: City Manager  
Waxahachie City Hall  
401 S. Rogers  
Waxahachie, Texas 75165

(1)

To Developer:

Montclair Waxahachie Development, LLC  
Attn: Terrance Jobe  
2415 Somerfield Drive  
Midlothian, Texas 76065

With a copy to:

Winstead PC  
Attn: Drew Slone  
2728 N. Harwood St., Suite 500  
Dallas, Texas 75201

Any Party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other Party.

11.5 Interpretation. Each Party has been actively involved in negotiating this Agreement. Accordingly, a rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

11.6 Time. In this Agreement, time is of the essence and compliance with the times for performance herein is required.

11.7 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. The Developer represents and warrants that this Agreement has been approved by appropriate action of Developer, and that each individual executing this Agreement on behalf of Developer has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions.

11.8 Limited Waiver of Immunity. The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocably waives all claims of sovereign and governmental immunity which it may have (including, but not limited to, immunity from suit and immunity to liability) to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a Party to this Agreement, or any party that may be construed to be a third-party beneficiary to this Agreement.

11.9 Severability. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent

(7)

jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

11.10 Applicable Law; Venue. This Agreement is entered into pursuant to, and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Ellis County. Exclusive venue for any action related to, arising out of, or brought in connection with this Agreement shall be in the Ellis County District Court.

11.11 Non Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

11.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11.13 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three (3) business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance, shall give Notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term "force majeure" shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the good faith exercise of good faith, due diligence and reasonable care.

11.14 Complete Agreement. This Agreement embodies the entire Agreement between the Parties and cannot be varied or terminated except as set forth in this Agreement, or by written agreement of the Parties expressly amending the terms of this Agreement. By entering into this Agreement, any previous agreements or understanding between the Parties relating to the same subject matter are null and void.

11.15 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.

11.16 Exhibits. The following exhibits are attached to this Agreement and are incorporated herein for all purposes:

(1)

Exhibit A	Metes and Bounds Description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Concept Plan
Exhibit D	Authorized Improvements with Budgeted Cost
Exhibit E	Maps of Authorized Improvements
Exhibit F	Development Standards
Exhibit G	Home Buyer Disclosure Program

[SIGNATURES PAGES AND EXHIBITS FOLLOW;  
REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

(7)

**EXECUTED BY THE PARTIES TO BE EFFECTIVE ON THE EFFECTIVE DATE:**

**CITY OF WAXAHACHIE, TEXAS**

By: \_\_\_\_\_  
Name: David Hill  
Title: Mayor  
Date: \_\_\_\_\_

STATE OF TEXAS           §  
COUNTY OF ELLIS       §

This instrument was acknowledged before me on this \_\_ day of \_\_\_\_\_ 20\_\_, by  
David Hill, Mayor of the City of Waxahachie, Texas, on behalf of said City.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

27)

**DEVELOPER:**

**MONTCLAIR WAXAHACHIE DEVELOPMENT,  
LLC, a Texas limited liability company**

By: Alluvium Development Inc.,  
a Texas corporation, its Manager

By: \_\_\_\_\_  
Name: Terrance Jobe  
Its: President

STATE OF TEXAS           §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of Montclair Waxahachie Development,  
LLC, a \_\_\_\_\_ limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public in and for the State of Texas

[SEAL]

(7)

**Exhibit A**

**Legal Description**

**BEING** a tract of land situated in the William Irwin Survey, Abstract No. 545, and the William Irwin Survey, Abstract No. 546, and the D.S. Gentry Survey, Abstract No. 409, in Ellis County, Texas, being a portion of that same tract of land as conveyed to Carolyn J. Haman Family Limited Partnership, by deed recorded in Volume 1320, Page 58 of the Deed Records of Ellis County, Texas (D.R.E.C.T.), and being all together more particularly described by metes and bounds as follows (Bearings and distances are based on the State Plane Coordinate System, Texas North Central Zone (4202) North American Datum of 1983 (NAD 83)(US Foot) with a combined scale factor of 1.000072449):

**COMMENCING** at a 1/2-inch rebar found for the Southwest corner of Lot 9 of Black Champ Estates, Phase 2, an addition to Ellis County, Texas, according to the Plat thereof recorded in Cabinet C, Page 169, of the Plat Records of Ellis County, Texas (P.R.E.C.T.), same being the Northwest Corner of Lot 10 of said Black Champ Estates, Phase 2, and lying on the Eastright-of-way line of Black Champ Road;

**THENCE** North 89 Degrees 16 Minutes 14 Seconds East, departing the East right-of-way line of said Black Champ Road, with the South line of said Lot 9, a distance of 824.46 feet to a point for the Southeast corner of said Lot 9, same being the Northeast corner of said Lot 10, same being the Northernmost Northwest corner of a Common Area of said Black Champ Estates, also being the Southwest corner of a tract of land conveyed to Jimmie W. and Erin S. Hallbauer, by deed recorded in Volume 2281, Page 2078 (D.R.E.C.T.);

**THENCE** North 88 Degrees 54 Minutes 14 Seconds East, with the North line of said Common Area, a distance of 342.26 feet to a 1/2-inch rebar with a cap stamped "ASC" set for the Northwest corner of the herein described tract, same being the Northeast corner of said Common Area, and the **POINT OF BEGINNING**;

**THENCE** North 89 Degrees 09 Minutes 00 Seconds East, with the North line of said Carolyn J. Haman Family Limited Partnership tract, a distance of 942.96 feet to a 1/2-inch rebar found for corner;

**THENCE** North 89 Degrees 38 Minutes 30 Seconds East, continuing with the North line of said Carolyn J. Haman Family Limited Partnership tract, a distance of 1337.47 feet to a point for the Southwest corner of Lot 2 of Marshall Road Estates, an addition to the City of Waxahachie, Ellis County, Texas, according to the Plat thereof recorded in Cabinet C, Page 647 (P.R.E.C.T.), same being the Southeast corner of a tract of land conveyed to Leo James, and Cynthia J. Hughes, by deed recorded in Instrument No. 1728155 (D.R.E.C.T.), from which a 1/2-inch rebar found for reference bears South 89 Degrees 17 Minutes 31 Seconds West, a distance of 2.72 feet;

(7)

**THENCE** North 88 Degrees 46 Minutes 39 Seconds East, with the South line of said Lot 2, a distance of 619.61 feet to a 1/2-inch rebar with a cap stamped "ASC" set for the Northeast corner of said Carolyn J. Haman Family Limited Partnership tract, same being the Northwest corner of a

tract of land conveyed to Susan Morton Calvert, by deed recorded in Volume 1431, Page 829 (D.R.E.C.T.);

**THENCE** South 00 Degrees 29 Minutes 27 Seconds East, with the West line of said Calvert tract, also with the West line of Lot 2R, of Ellis County Youth Expo, an addition to the City of Waxahachie, according to the Plat thereof recorded in Cabinet G, Page 359 (P.R.E.C.T.), a total distance of 2560.93 feet to a wood right-of-way monument found for the Southeast corner of the herein described tract, and lying on the North right-of-way line of U.S. Highway No. 287 (variable width right-of-way.)

**THENCE** South 88 Degrees 55 Minutes 18 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, passing at a distance of 611.65 feet, a wood R.O.W. monument found, and continuing for a total distance of 1053.29 feet to a point for corner from which a wood R.O.W. monument found for corner bears North 79 Degrees 05 Minutes 01 Seconds West, a distance of 0.71 feet;

**THENCE** North 86 Degrees 30 Minutes 42 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, a distance of 501.60 feet to a wood R.O.W. monument found for corner;

**THENCE** South 88 Degrees 55 Minutes 18 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, a distance of 425.00 feet to a 1/2-inch rebar with a cap stamped "ASC" set for corner;

**THENCE** North 80 Degrees 34 Minutes 42 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, a distance of 1161.41 feet to point for corner from which a wood R.O.W. monument found bears North 71 Degrees 37 Minutes 16 Seconds East, a distance of 0.70 feet;

**THENCE** North 73 Degrees 06 Minutes 12 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, a distance of 354.46 feet to a 1/2-inch rebar with a cap stamped "ASC" set for the Southeast corner of Lot 18 of said Black Champ Estates, Phase 2;

**THENCE** departing the North right-of-way line of said U.S. Highway 287, with the East line of said Black Champ Estates, Phase 2, the following courses and distances to 1/2-inch rebar's with cap's stamped "ASC" set for corner:

North 19 Degrees 53 Minutes 42 Seconds West, a distance of 550.08 feet;

North 28 Degrees 43 Minutes 18 Seconds East, a distance of 377.39 feet;



(1)

North 21 Degrees 09 Minutes 18 Seconds East, a distance of 229.42 feet;

North 57 Degrees 37 Minutes 18 Seconds East, a distance of 173.26 feet;

North 57 Degrees 05 Minutes 18 Seconds East, a distance of 205.18 feet;

North 70 Degrees 03 Minutes 29 Seconds East, a distance of 137.90 feet;

North 45 Degrees 54 Minutes 16 Seconds East, a distance of 91.79 feet;

North 26 Degrees 18 Minutes 01 Seconds East, a distance of 45.92 feet;

North 66 Degrees 37 Minutes 36 Seconds West, a distance of 450.33 feet;

North 42 Degrees 43 Minutes 46 Seconds West, a distance of 203.87 feet;

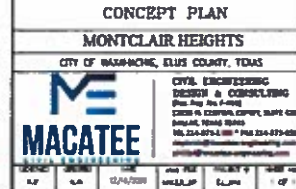
North 89 Degrees 16 Minutes 14 Seconds East, a distance of 333.49 feet;

**THENCE** North 17 Degrees 16 Minutes 14 Seconds East, with the East line of said Common Area, a distance of 500.83 feet to the **POINT OF BEGINNING** and containing a total of 8,209,099 square feet, or 188.455 acres of land, more or less.

### Depiction of the Property



## Concept Plan



**Exhibit D**

**Authorized Improvements**

**WATER SYSTEM (SARDIS-LONE ELM)**

ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
12" P.V.C. Water Pipe	4,300	LF	28.00	\$120,400.00
8" P.V.C. Water Pipe	18,480	LF	23.00	\$425,040.00
12" Gate Valves	18	EA	2,200.00	\$39,600.00
8" Gate Valves	80	EA	1,250.00	\$100,000.00
Fire Hydrant W/6" Valve	42	EA	4,000.00	\$168,000.00
Cast Iron Fittings & Blocking	23	TN	3,000.00	\$68,340.00
1" Water Service (DOM)	383	EA	700.00	\$268,100.00
1" Water Service (IRR)	13	EA	900.00	\$11,700.00
Connect to Existing Water Pipe	9	EA	100.00	\$900.00
4" Conduit for Gas/Electric/Irrigation Crossings	4,500	LF	10.00	\$45,000.00
Test Water Line	22,780	LF	1.50	\$34,170.00
Trench Safety	22,780	LF	1.50	\$34,170.00
Misc. Items	1,315,420	PER	5.0%	\$65,771.00
City Bonds	1,381,191	PER	3.0%	\$41,435.73
Insepction Fee	1,381,191	PER	4.00%	\$55,247.64
<b>TOTAL SARDIS-LONE ELM SYSTEM</b>				<b>\$1,477,874.37</b>

**WATER SYSTEM (City Extension)**

ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
12" P.V.C. Water Pipe (Hwy Frontage)	4,600	LF	28.00	\$128,800.00
8" P.V.C. Water Pipe (Offsite)	4,900	LF	23.00	\$112,700.00
8" P.V.C. Water Pipe (Onsite)	4,194	LF	23.00	\$96,462.00
12" Gate Valves	20	EA	2,200.00	\$44,000.00
Bore with 18" Steel Casing Pipe	600	LF	125.00	\$75,000.00
Bore with 12" Steel Casing Pipe	250	LF	100.00	\$25,000.00
8" Gate Valves	40	EA	1,250.00	\$50,000.00
Fire Hydrant W/6" Valve	20	EA	4,000.00	\$80,000.00
Cast Iron Fittings & Blocking	10	TN	3,000.00	\$28,500.00
1" Water Service (DOM)	40	EA	700.00	\$28,000.00

1" Water Service (IRR)	3	EA	900.00	\$2,700.00
Connect to Existing Water Pipe	1	EA	100.00	\$100.00
Test Water Line	9,500	LF	1.50	\$14,250.00
Trench Safety	9,500	LF	1.50	\$14,250.00
Misc. Items	699,762	PER	5.0%	\$34,988.10
City Bonds	734,750	PER	3.0%	\$22,042.50
Insepction Fee	734,750	PER	4.00%	\$29,390.00
<b>TOTAL CITY SYSTEM</b>				<b>\$786,182.61</b>

**WATER TOTAL** **\$2,264,056.98**

**SANITARY SEWER SYSTEM**  
**ONSITE SANITARY SEWER**

ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
8" P.V.C. Pipe SDR-35	15,300	LF	28.00	\$428,400.00
10" P.V.C. Pipe SDR-35	2,000	LF	35.00	\$70,000.00
12" P.V.C. Pipe SDR-35	4,200	LF	42.00	\$176,400.00
4' Dia. Manhole	50	EA	4,000.00	\$200,000.00
5' Dia. Manhole	15		5,000.00	\$75,000.00
Conn to Existing	4	EA	1,000.00	\$4,000.00
Conn to Ex MH	2	EA	2,500.00	\$5,000.00
6" SS Lateral	383	EA	750.00	\$287,250.00
TV & Test Sewer Line	21,500	LF	2.00	\$43,000.00
Trench Safety	21,500	LF	1.50	\$32,250.00
Misc. Items	1,321,300	PER	5.0%	\$66,065.00
City Bonds	1,387,365	PER	3.0%	\$41,620.95
Inspection Fee	1,387,365	PER	4.00%	\$55,494.60
<b>ONSITE SANITARY SEWER TOTAL</b>				<b>\$1,484,480.55</b>

**OFFSITE SANITARY SEWER**

ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
27" P.V.C. Pipe SDR-35	3,500	LF	135.00	\$472,500.00
24" P.V.C. Pipe SDR-35	3,000	LF	106.00	\$318,000.00
18" P.V.C. Pipe SDR-35	225	LF	72.00	\$16,200.00
8" P.V.C. Pipe SDR-35	150	LF	28.00	\$4,200.00

Bore with 32" Steel Casing Pipe	1,250	LF	200.00	\$250,000.00
6' Dia Manhole	13	EA	7,000.00	\$91,000.00
5' Dia. Manhole	10	EA	5,500.00	\$55,000.00
Conn to Existing Manhole	1	EA	2,500.00	\$2,500.00
TV & Test Sewer Line	3,150	LF	2.00	\$6,300.00
Trench Safety	3,150	LF	1.50	\$4,725.00
Misc. Items	747,925	PER	15.0%	\$112,188.75
City Bonds	860,114	PER	3.0%	\$25,803.41
Inspection Fee	860,114	PER	4.00%	\$34,404.55
<b>OFFSITE SANITARY SEWER TOTAL</b>				<b>\$1,392,821.71</b>
<b>SANITARY SEWER TOTAL</b>				<b>\$2,877,302.26</b>

#### **DRAINAGE SYSTEM**

ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
10' Curb Inlet	54	EA	3,500.00	\$189,000.00
21" Class III RCP	1,097	LF	61.00	\$66,917.00
24" Class III RCP	8,270	LF	72.00	\$595,440.00
30" Class III RCP	3,810	LF	93.00	\$354,330.00
36" Class III RCP	2,045	LF	125.00	\$255,625.00
42" Class III RCP	1,860	LF	130.00	\$241,800.00
48" Class III RCP	100	LF	150.00	\$15,000.00
4' Manholes	8	EA	4,000.00	\$32,000.00
Type B Headwalls	6	EA	6,000.00	\$36,000.00
Grade to Drain	500	LF	50.00	\$25,000.00
Detention Outfall Structure	2	EA	35,000.00	\$70,000.00
Riprap at Det Outfall	500	SY	60.00	\$30,000.00
Rock Rip Rap at Outfall	200	SY	60.00	\$12,000.00
Trench Safety	17,182	LF	1.00	\$17,182.00
Misc. Items	1,940,294	PER	5.0%	\$97,014.70
City Bonds	2,037,309	PER	3.0%	\$61,119.26
Insepction Fee	2,037,309	PER	4.0%	\$81,492.35
<b>DRAINAGE TOTAL</b>				<b>\$2,179,920.31</b>

#### **STREET PAVING**

##### **RESIDENTIAL STREETS**

ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
------	----------	------	------------	-------

6" 3600 psi Reinf. Conc. Pvmt. w/6" Curb (31' B-B)	62,533	SY	35.00	\$2,188,655.00
8" Stabilized Subgrade	67,785	SY	3.00	\$203,355.00
Hydrated Lime Material (6% - 36#/SY)	1,220	Tons	160.00	\$195,220.80
Stamped Concrete at Roundabout	600	SY	100.00	\$60,000.00
6" 3600 psi Reinf. Conc. Alley Pavement	8,300	SY	35.00	\$290,500.00
6" Stabilized Subgrade	9,150	SY	3.00	\$27,450.00
Hydrated Lime Material (6% - 36#/SY)	165	Tons	160.00	\$26,400.00
5" 3000 psi Reinf. Conc. Pvmt (Parking)	760	SY	32.00	\$24,320.00
6" Compacted Subgrade (Parking)	915	SY	3.00	\$2,745.00
Stamped Conc. At Entry	50	SY	100.00	\$5,000.00
Barrier Free Ramp	58	EA	1,800.00	\$104,400.00
5' Conc. Sidewalk	13,250	SF	5.00	\$66,250.00
Traffic Control During Paving	4	LS	2,000.00	\$8,000.00
Conn. To Ex. Concrete Pavement	7	EA	2,500.00	\$17,500.00
End of Road Barricade	185	LF	30.00	\$5,550.00
Misc. Items	3,225,346	PER	5.0%	\$161,267.29
City Bonds	3,386,613	PER	3.0%	\$101,598.39
Inspection Fee	3,386,613	PER	4.0%	\$135,464.52
<b>SUBTOTAL</b>				<b>\$3,623,676.01</b>

**Thoroughfare Type 'D'**

ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
8" 4000 psi Reinf. Conc. Pvmt. w/6" Curb (48' wide)	24,600	SY	45.00	\$1,107,000.00
8" Stabilized Subgrade	25,830	SY	2.50	\$64,575.00
Hydrated Lime Material (6% - 36#/SY)	465	Tons	150.00	\$69,741.00
Stamped Conc. at Roundabout	900	SY	100.00	\$90,000.00
Barrier Free Ramp	10	EA	1,200.00	\$12,000.00
8' Conc. Sidewalk	56,000	SF	5.00	\$280,000.00
Conn. To Ex. Concrete Pavement	1	EA	2,500.00	\$2,500.00
Deceleration Lane to TxDot Specs	1	LS	200,000.00	\$200,000.00
End of Road Barricades	110	LF	30.00	\$3,300.00
Traffic Control During Paving Operations	1	LS	2,000.00	\$2,000.00
Conn. To Ex Asphalt Pavement	1	EA	2,500.00	\$2,500.00
Misc. Items	1,833,616	PER	5.0%	\$91,680.80
City Bonds	1,925,297	PER	3.0%	\$57,758.90
Inspection Fee	1,925,297	PER	4.0%	\$77,011.87
<b>SUBTOTAL</b>				<b>\$2,060,067.58</b>

**FUTURE THOROUGHFARE F**

\$1,200,319.70

**PAVING TOTAL****\$6,884,063.28****EARTHWORK**

Clearing & Grubbing	138	AC	500.00	\$69,000.00
Unclassified Excavation	355,000	CY	3.25	\$1,153,750.00
Lot Benching/Fine Grading	390	EA	500.00	\$195,000.00
Retaining Walls	30,000	FF	12.00	\$360,000.00
Misc. Items	1,777,750	PER	10.0%	\$177,775.00

**EARTHWORK TOTAL****\$1,955,525.00****EROSION CONTROL**

Open Top Inlet Protection	54	EA	250.00	\$13,500.00
Standard Inlet Protection	54	EA	250.00	\$13,500.00
8' Wide Curlex in Parkways	46,500	SY	2.50	\$116,250.00
Post-Construction Erosion Control	399	Lots	1,000.00	\$399,000.00
Stone Contruction Entrance	4	EA	4,000.00	\$16,000.00
Silt Fence	14,200	LF	2.50	\$35,500.00
Stone Overflow Structure	6	EA	4,000.00	\$24,000.00
Misc. Items	617,750	PER	5.0%	\$30,887.50

**EROSION CONTROL TOTAL****\$648,637.50****OPEN SPACES (LANDSCAPE/HARDSCAPE)****Phase 1**

Landscaping Roundabout #1 and Collector Road	1	LS	200,000.00	\$200,000.00
Landscaping Roundabout #2 and Collector Road	1	LS	400,000.00	\$400,000.00
Screening Wall and Entry Feature	1	LS	450,000.00	\$450,000.00
Landscaping & Trails for Public Park at Amenity Center	1	LS	300,000.00	\$300,000.00

**Phase 2**

Dog Park and Fencing	1	LS	300,000.00	\$300,000.00
Remainder of Screening Wall & Landscaping Collector	1	LS	350,000.00	\$350,000.00



**OPEN SPACES TOTAL****\$2,000,000.00****SOFT COSTS**

SWPPP + NOI	3	LS	1,500.00	\$4,500.00
SWPPP Inspections & Repairs	36	Months	1,000.00	\$36,000.00
Materials Testing	383	Lots	450.00	\$172,350.00
Platting	1	LS	37,000.00	\$37,000.00
Final Engineering	1	LS	470,000.00	\$470,000.00
Downstream Assessment	1	LS	30,000.00	\$30,000.00
Construction Phase Services	1	LS	60,000.00	\$60,000.00
Construction Surveying	1	LS	210,000.00	\$210,000.00
Topographic Data	1	LS	24,000.00	\$24,000.00
Set Final Iron Rods	1	LS	19,000.00	\$19,000.00
Screening wall Adjacent to Thoroughfare (6' Masonry)	5,950	LF	120.00	\$714,000.00
Gas Services	383	Lots	1,200.00	\$459,600.00
Street Signs & Street Lights	1	LS	55,000.00	\$55,000.00
TCEQ Inspections	1	LS	180,000.00	\$180,000.00
QC Inspections	1	LS	90,000.00	\$90,000.00

**SOFT COST TOTAL****\$2,561,450.00****TOTAL COST WITHIN PID****\$21,370,955.33****CONTINGENCY****10%****\$2,137,095.53****CONSTRUCTION MANAGEMENT FEE****4%****\$752,380.21****\$24,260,431.08**

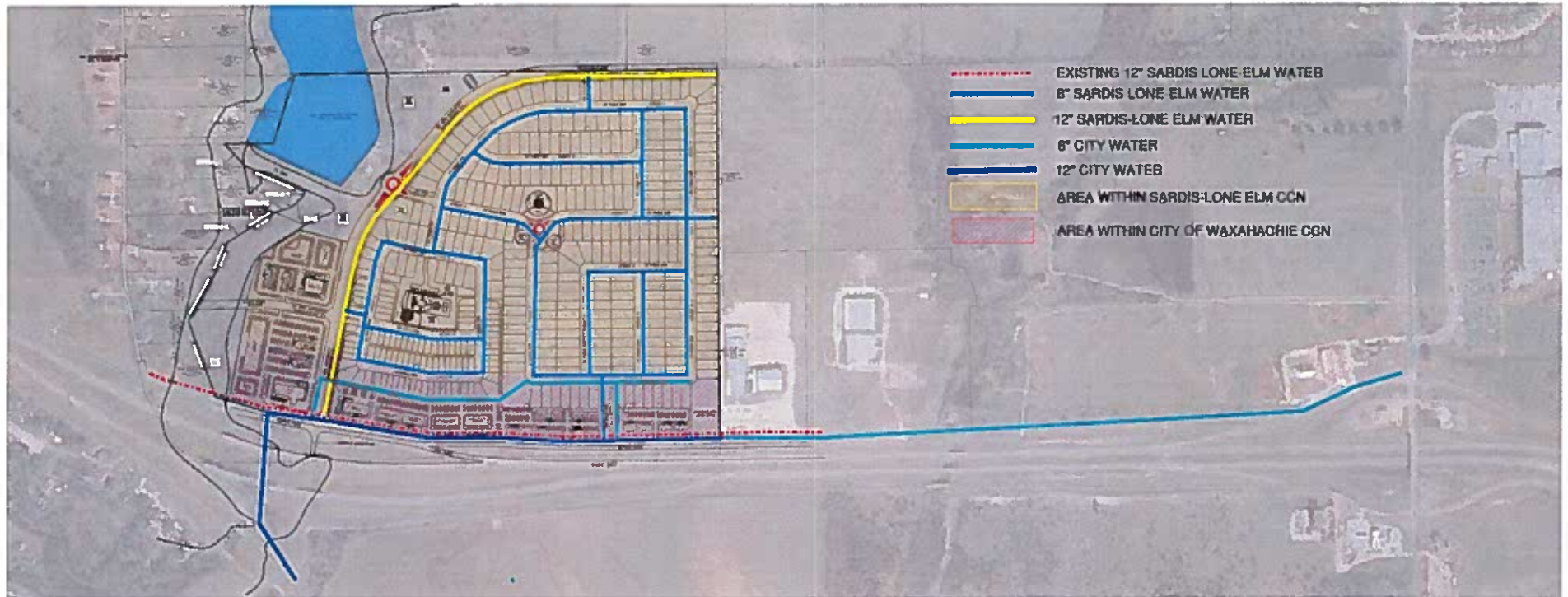
(7)

**Exhibit E**

**Maps of Authorized Improvements**

(17)

## WATER LINE EXHIBIT

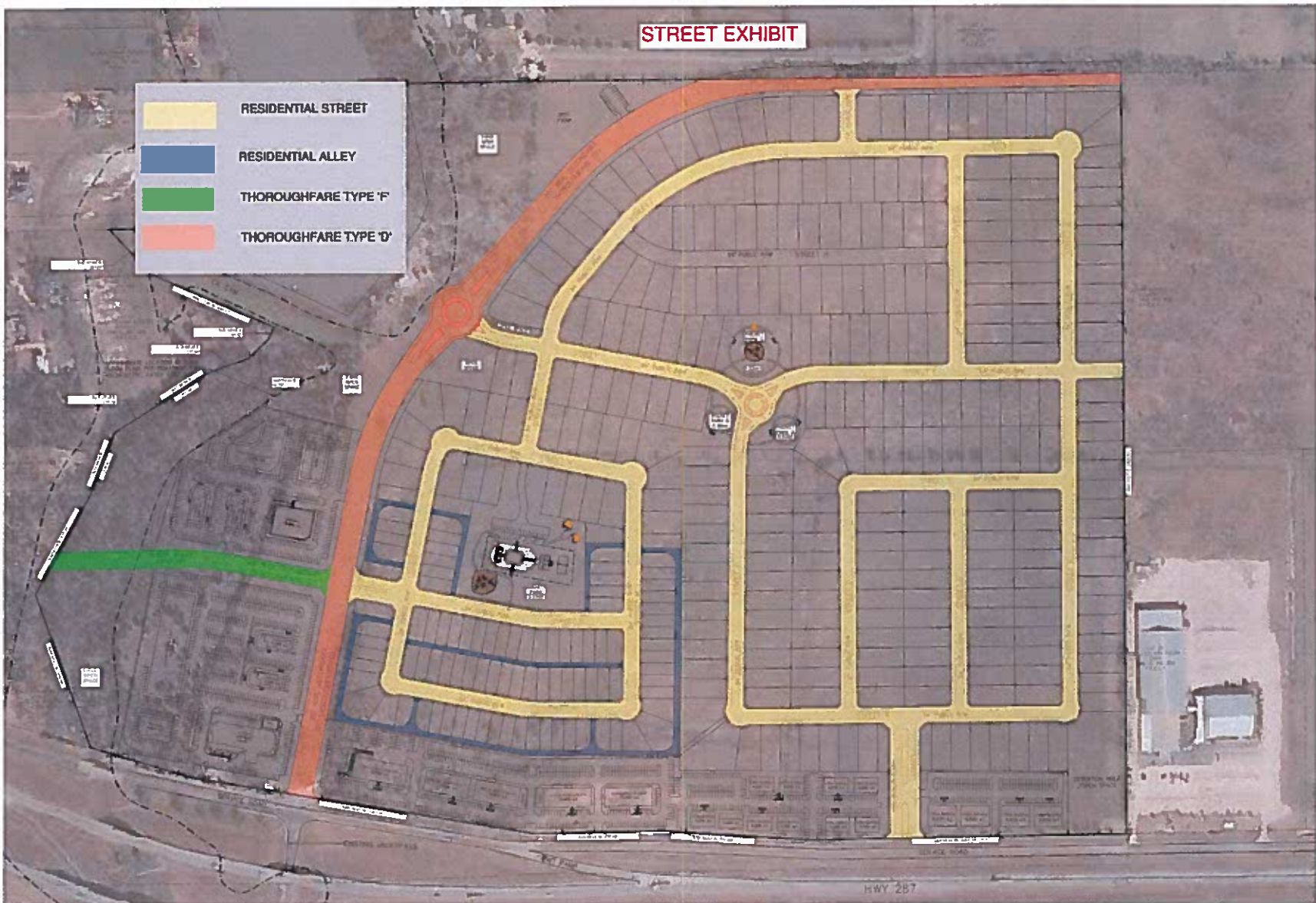


(7)



(7)

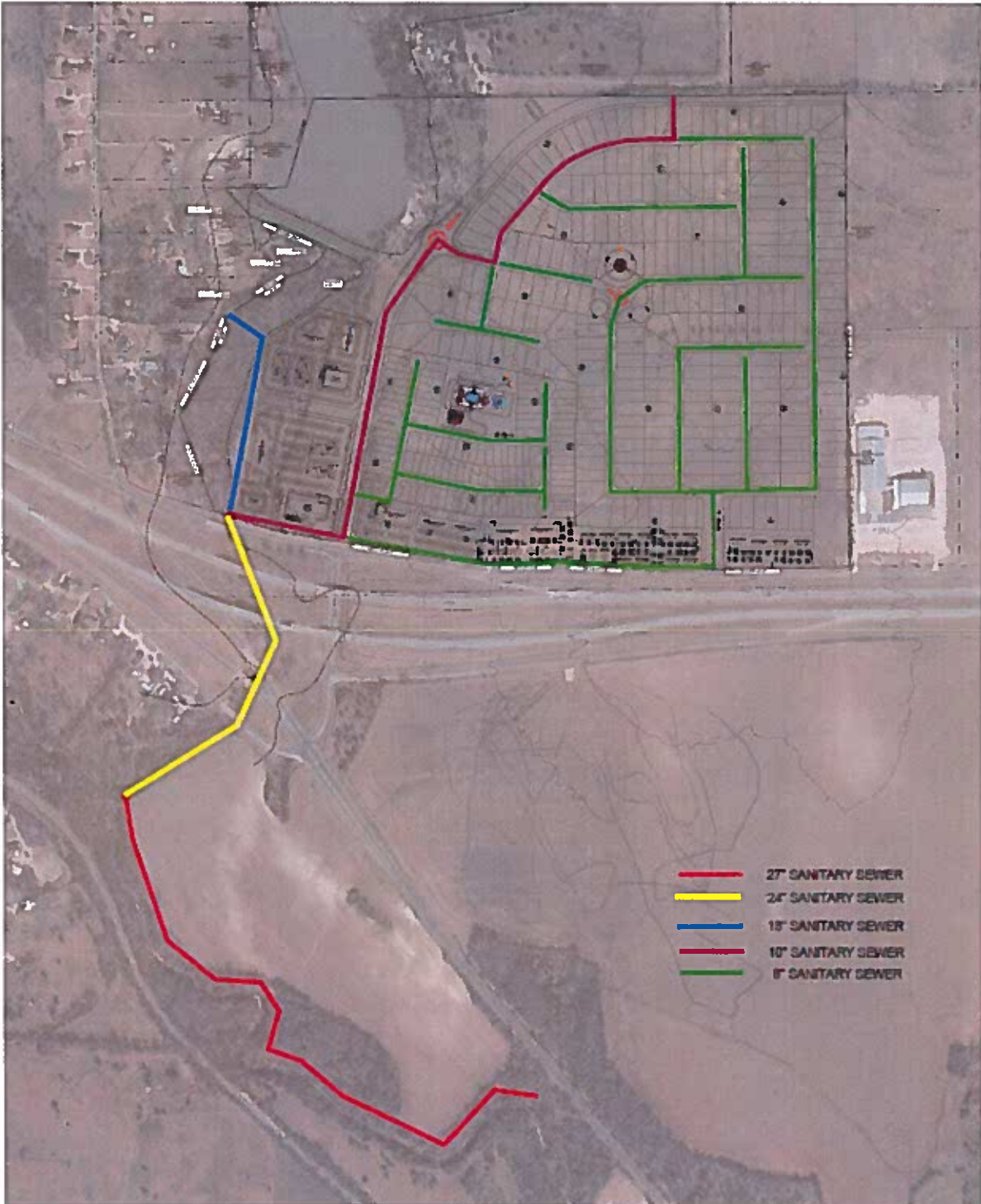




(27)

(7)

# SANITARY SEWER EXHIBIT



(1)

## **Exhibit F**

### **Development Standards**

#### **PLANNED DEVELOPMENT REGULATIONS FOR ZDC-72-2020**

##### **General Description**

Montclair Heights is a master planned community comprising of residential, retail and office uses. It will provide housing diversity in the form of single family detached homes and cottages. There will be extensive parks and open space, including a central amenity park, several pocket parks and a dog park throughout the community. The shops, restaurants and offices that are part of this development will provide employment opportunities and sustain the community with neighborhood services.

**Based Zoning** - Single-Family Residential-3 (SF3)

**Permitted Uses** - Single family detached dwellings and uses permitted in the GR, General Retail District.

**Development Acreage and Density** - Refer to Site Summary in Concept Plan

##### **Single Family Residential Development Standards**

###### **Type 'A' Lots**

- Minimum Lot Area - 13,500 SF
- Minimum Lot Width - 90' interior lot; 95' corner lot; 65' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10'
- Minimum Side Yard (exterior on corner lots) - 15'

###### **Type 'B' Lots**

- Minimum Lot Area - 12,000 SF
- Minimum Lot Width - 80' interior lot; 85' corner lot; 55' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'

(1)

- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10'
- Minimum Side Yard (exterior on corner lots) - 15'

#### **Type 'C' Lots**

- Minimum Lot Area - 10,000 SF
- Minimum Lot Width - 70' interior lot; 75' corner lot; 55' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10"
- Minimum Side Yard (exterior on corner lots) - 15'

#### **Type 'D' Lots**

- Minimum Lot Area - 9,150 SF
- Minimum Lot Width - 65' interior lot; 70' corner lot; 55' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 120'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 7.5'
- Minimum Side Yard (exterior on corner lots) - 10'

#### **Type 'E' Lots**

- Minimum Lot Area - 7,250 SF
- Minimum Lot Width - 50' interior lot; 55' corner lot; 40' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 5'
- Minimum Side Yard (exterior on corner lots) - 10'
- 

#### **For all Type 'A' 'B' 'C' 'D' and 'E' Lots**

- Maximum Lot Coverage - 50% by main and accessory buildings not including drives and walks



(7)

- Maximum Height - 2 stories for the main building; 1 story for accessory buildings without garages
- Minimum Parking - 2 enclosed spaces per lot
- Minimum Dwelling Unit Area - 1,750 SF
- Garage Door Orientation or Placement - 50% of the dwellings shall have garage doors served by side-entry or j-swing drives, or shall be 3' behind the front building face
- Maximum Garage Width - Garages that are front facing a street shall not exceed 50% of the total width of the house
- Minimum Roof Pitch - 8:12 with laminated 3-dimensional architectural shingles with a 30 year minimum
- Minimum Number of Elevations - No single building elevation shall be duplicated within 6 lots either direction on the same blockface
- Minimum Number of Design Elements - Shall comply with the requirements applicable to SF3 zoning in Section 5.01, Exterior Construction Requirements of the City's Zoning Ordinance
- Landscaping Requirements - Shall comply with the requirements applicable to SF3 zoning as provided in Section 5.04 of the City's Zoning Ordinance.
- Accessory Structures and Uses - Shall comply with the requirements applicable to accessory structures and uses in SF3 zoning
- Masonry Exterior Construction - Shall comply with the requirements applicable to single-family residential use as provided in Section 5.01 of the City's Zoning Ordinance.

#### **Detached Residential (Cottage) Development Standards**

- Minimum Lot Area - 4,400 SF
- Minimum Lot Width - 40' interior lot; 45' corner lot
- Minimum Lot Depth - 110'
- Minimum Front Yard - 10'
- Minimum Rear Yard - 20'
- Minimum Side Yard (interior) - 5'
- Minimum Side Yard (exterior on corner lots) - 10'
- Maximum Lot Coverage - 55% by main and accessory buildings not including drives and walks
- Maximum Height - Two (2) stories; 1 story for accessory buildings
- Minimum Parking - 2 enclosed spaces per dwelling units, plus 0.45 space per dwelling unit for guests
- Minimum Dwelling Unit Area - 1,450 SF
- Garage Door Orientation or Placement - All garages shall be rear entry.

(7)

- Minimum Roof Pitch - 8:12 with laminated 3-dimensional architectural shingles with a 30 year minimum
- Minimum Number of Elevations - No single building elevation shall be duplicated within 6 lots either direction on the same blockface
- Minimum Number of Design Elements - Shall comply with the requirements applicable to SF3 zoning in Section 5.01, Exterior Construction Requirements of the City's Zoning Ordinance
- Landscaping Requirements - Shall comply with the requirements applicable to SF3 zoning as provided in Section 5.04 of the City's Zoning Ordinance.
- Accessory Structures and Uses - Shall comply with the requirements applicable to accessory structures and uses in SF3 zoning
- Masonry Exterior Construction - Shall comply with the requirements applicable to single-family residential use as provided in Section 5.01 of the City's Zoning Ordinance.

#### **Screening and Buffer Requirements**

- Along the 80' thoroughfare - shall be a 6' high masonry wall and a 10' wide landscape buffer with one 3" caliper tree every 40'
- Between the General Retail and residential uses - shall comply with the requirements applicable to GR zoning in Section 5.03 of the City's Zoning Ordinance

#### **Commercial Development Standards**

- The future retail, office or commercial development shall comply with the regulations applicable to General Retail (GR) District.
- Parking shall be provided as required by Section 4.03 of the City's Zoning Ordinance
- Access to the retail area along the highway frontage road will comply with TxDOT guidelines and will require drive approach permits from TxDOT
- To enhance cross access, a common access easement will be provided along most of the commercial lot frontage, where it is appropriate, parallel to the highway frontage road.
- Loading docks shall be screened from public right-of-way
- Dumpsters shall be located and screened in compliance with the City's Zoning Ordinance requirements
- Mechanical and electrical equipment shall be screened from public right-of-way
- Masonry Exterior Construction - Shall comply with the requirements applicable to commercial uses as provided in Section 5.01 of the City's Zoning Ordinance.

#### **Amenities or Improvements within Parks and Open Space:**

(7)

- Pockets parks / open space among the single family residential lots -
  - a. Shade trees, playground equipment and benches
  - b. Trees and seasonal colors in the two open space areas that form the gateway from the 80' thoroughfare into the single-family residential lots
- Amenities Park - shall have at least one (1) swimming pool and one (1) playground, plus a minimum of four (4) of the following amenities: trees, pool cabana, volleyball court, shade structures, picnic benches, grills.
- Dog Park - 4' high vinyl coated chain link fence along the perimeter with benches and pet waste stations
- Detention Areas - Trees planted in clusters around the ponds

**Signage** - The proposed signage for the residential subdivision and non-residential uses shall comply with the Sign Regulations in Section 5.08 of the City's Zoning Ordinance.

**Lighting** - All proposed lighting shall comply with the Lighting and Glare Standards in Section 6.03 of the City's Zoning Ordinance.

#### **Maintenance of Private Improvements and Common Areas**

The developer will establish a mandatory Homeowner's Association (HOA) to be responsible for the maintenance of the private parks, amenities, landscaping and common areas.

#### **Variations from City Zoning Ordinance Requirements**

Description	Zoning Ordinance Requirements - SF3	Proposed PD Regulations
Min. Lot Width	80' measured along front lot line	Type 'C' 'D' and 'E' Lots are 70', 65' and 50' wide, respectively; measured along front building line for lots with frontage along cul-de-sac and knuckles
Min. Side Setback	10'; 15' on corner lots	7.5'; 10' on corner lots for Type 'D' Lots 5'; 10' on corner lots for Type 'E' Lots

(7)

Note: The City Zoning Ordinance does not contain regulations for the proposed cottages on 4,400 sf lots and rear-entry garages from alleys.

(7)

## **Exhibit G**

### **Home Buyer Disclosure Program**

The Administrator (as defined in the Service and Assessment Plan) for the PIDs shall facilitate notice to prospective homebuyers in accordance with the following minimum requirements:

1. Record notice of the PID in the appropriate land records for the property.
2. Require builders to include notice of the Single Family PID in addendum to contract on brightly colored paper.
3. Collect a copy of the addendum signed by each buyer in the Single Family PID from builders and provide to the City.
4. Require signage indicating that the property for sale is located in a special assessment district and require that such signage be located in conspicuous places in all model homes.
5. Prepare and provide to builders an overview of the Single Family PID for those builders to include in each sales packets.
6. Notify builders who estimate monthly ownership costs of the requirement that they must disclose Assessments separately with estimated property taxes.
7. Notify settlement companies through the builders that they are required to include Assessments on HUD 1 forms and include separately with total estimated taxes for the purpose of setting up tax escrows.
8. Include notice of the Single Family PID in the homeowner association documents in conspicuous bold font.
9. The City will include announcements of the PIDs on the City's web site.
10. The disclosure program shall be monitored by Developer and Administrator.

(8+9)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE PROVIDING FOR THE VOLUNTARY ANNEXATION OF PROPERTY ID 185971, ABSTRACT 546 & 409 OF THE WM IRWIN D S GENTRY SURVEY, AND PROPERTY ID 185866, ABSTRACT 545 OF THE WM IRWIN SURVEY, APPROXIMATELY 150.11 ACRES, SITUATED EAST OF BLACK CHAMP ROAD AND NORTH OF U.S. HIGHWAY 287 BUSINESS, OF THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:**

**SECTION 1.** That the following described land and territory lying adjacent to the City of Waxahachie and being within its extraterritorial jurisdiction (ETJ), be, and the same is hereby added and annexed to the City of Waxahachie, and that said territory hereinafter described shall hereafter be included within the boundary limits of the City of Waxahachie, at the various points contiguous to the area hereinafter described, are altered and amended so as to include said area within the corporate limits of the City of Waxahachie to-wit:

All that Property Id 185971, Abstract 546 & 409 of the WM Irwin D S Gentry Survey, and Property ID 185866, Abstract 545 of the WM Irwin Survey, situated in Ellis County, Texas, and being more particularly described in Exhibit A – Legal Description, describing portions of the annexation, made a part of hereof and attached hereto for all purposes.

**SECTION 2.** That the above described additional territory and area so annexed shall be a part of the City of Waxahachie, and the property so added therein shall bear its pro rata part of the taxes levied by the City of Waxahachie, and the inhabitants hereof shall be entitled to all the rights and privileges of all the citizens and shall be bound by the acts, ordinances, resolutions, and regulations of the City of Waxahachie, Texas.

**SECTION 3.** Municipal services shall be rendered as described in the attached Annexation Service Plan.

**SECTION 4.** An emergency is declared to exist, in that this annexation should be completed and made final so that the boundaries of the City shall be determined without delay, and this ordinance is effective immediately upon passage.

(8+9)

**PASSED, APPROVED AND ADOPTED** on this 21<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

(8+9)

**SERVICE PLAN  
FOR  
PROPOSED VOLUNTARY ANNEXATION OF APPROXIMATELY 150.5 ACRES  
SITUATED EAST OF BLACK CHAMP ROAD AND NORTH OF U.S. HIGHWAY 287  
BUSINESS**

The following is a plan whereby full municipal services as defined in Section 43.056 of the Texas Local Government Code will be provided by the City of Waxahachie (the "City") in territory to be annexed, being approximately 150.11 acres of land located adjacent to the City limits, as depicted in the attached annexation exhibit.

Municipal facilities and services will be provided to the annexed area at the following levels and in accordance with the following schedule:

**A. Police Protection:**

The City provides municipal police protection to its residents, including routine patrols throughout the City and law enforcement services upon call. Upon the effective date of the annexation, said services will also be made available to the annexed area on the same basis as they are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the annexed area.

**B. Fire Protection and Emergency Medical Services:**

The City provides full-time fire protection. Upon the effective date of the annexation, said services will also be made available to the annexed area on the same basis as they are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the proposed annexation area.

The City contracts with American Medical Response ("AMR") for Emergency Medical Service. Upon the effective date of the annexation, said services will also be made available to the annexed area on the same basis as they are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the proposed annexation area.

**C. Solid Waste Collection:**

The City's solid waste collection is currently provided by Waste Connections ("Waste Connections"). Upon the effective date of the annexation, the City will provide solid waste collection to the annexed area on the same basis as it is made available to other parts of the city with land uses and population densities similar to those reasonably contemplated or projected in the annexed area.

**D. Water and Wastewater Service and Maintenance:**

The area to be annexed is an unplatted area within the City's ETJ. Portions of the area to be annexed lies within the City of Waxahachie's Water Certificate of Convenience and Necessity Service Area (Number 10915). Portions of the area to be annexed also lie within the Sardis-Lone Elm Water Supply Corporation, Water Certificate of Convenience and Necessity Service Area (Number 10058). All of the area to be annexed lies within the City of Waxahachie's Wastewater Masterplan Service Area.

At this time water and wastewater services are not available within the area, and the City does not have plans to extend services to the area. The developer will be responsible for



(8+9)

the extension of any water and wastewater services necessary to service the property. In the event water services area extended to the property, the services within the City's Water Certificate of Convenience and Necessity Service Area will be dedicated to the City, and the City will be responsible for their maintenance and upkeep once inspected and accepted by the City. In the event wastewater services area extended to the property, the services within the City's Wastewater Masterplan Service Area will be dedicated to the City, and the City will be responsible for their maintenance and upkeep once inspected and accepted by the City.

Should City plans be changed and water and or wastewater service infrastructure be extended to this area, said services will also be made available to the annexed area on the same basis as they are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the annexed area.

**E. Maintenance of Roads, Streets and Street Lighting:**

The City shall begin to make provision for the maintenance of current roads and streets within the annexed areas upon the effective date of the annexation\*. Such streets and roads shall be maintained in their current condition and shall be included in the City's Capital Improvements Plan for upgrading, resurfacing and/or improvement on the same basis as other areas in the City with topography, land uses and population densities similar to those reasonably contemplated or projected in the annexed area. Any such resurfacing or upgrade shall be made in accordance with current City policies or the City's Subdivision Ordinance, adopted as Ordinance 3151, and as amended from time to time.

Improvements will be made in conjunction with new development in accordance with City policies contained in the City's Subdivision Ordinance after installation and dedication of such improvements by the relevant property owner and acceptance by the City. Future streets within the annexed area will be upgraded in accordance with an approved Capital Improvements Program, as may be amended from time to time, on the same basis as other areas in the City with land uses and population densities to those reasonably contemplated or projected in the annexed area.

\* State-owned facilities will continue to be maintained by the State of Texas, Department of Transportation.

**F. Parks, Playgrounds and other Public Facilities and Services:**

All parks, playgrounds, and other recreation facilities within the annexed area will be private property and will be the responsibility of the developer or home owner's associated to maintain. No public dedication of parks, playgrounds, and other recreation facilities will be made to the City. Property owners and residents of the annexed area may use the existing public parks, playgrounds, and other recreation facilities and services of the City on the same basis as other residents of the City.

**G. Public Library Services and Other Publicly Owned Facilities, Buildings and Services:**

Property owners and residents of the annexed area may use the existing public library and other publicly owned facilities, buildings, and services within the City on the same basis as other residents of the City.

(8+9)

**H. City Regulations and Code Enforcement**

The annexed areas will upon the date of annexation, be subject to all City regulations as specified within the City of Waxahachie Code of Ordinances. Further, the City's codes and regulations will be enforced in a manner like other similar parts of the corporate city limits.

**I. General Municipal Administration:**

General municipal administration services will be available to the annexed area upon the effective date of the annexation. This Service Plan provides for full municipal services to the annexed area on the same basis as municipal services are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the annexed area. Further, said municipal services are equal to or greater than the services and level of such services in existence in the annexed area are immediately preceding the effective date of the annexation. This Service Plan does not constitute a right to a superior level of services in the annexed area. The City retains its authority to adjust programs on a city-wide basis to provide more effective services through changes in operating procedures and standards. The City also retains the authority to adjust services on a city-wide basis should economic or emergency circumstances dictate.

Upon annexation to the city of Waxahachie, this tract, similar to other newly annexed lands, will be assigned the Future Development (FD) zoning district designation. This zoning designation shall remain until such time as a separate zoning action by City Council has taken place to change it.

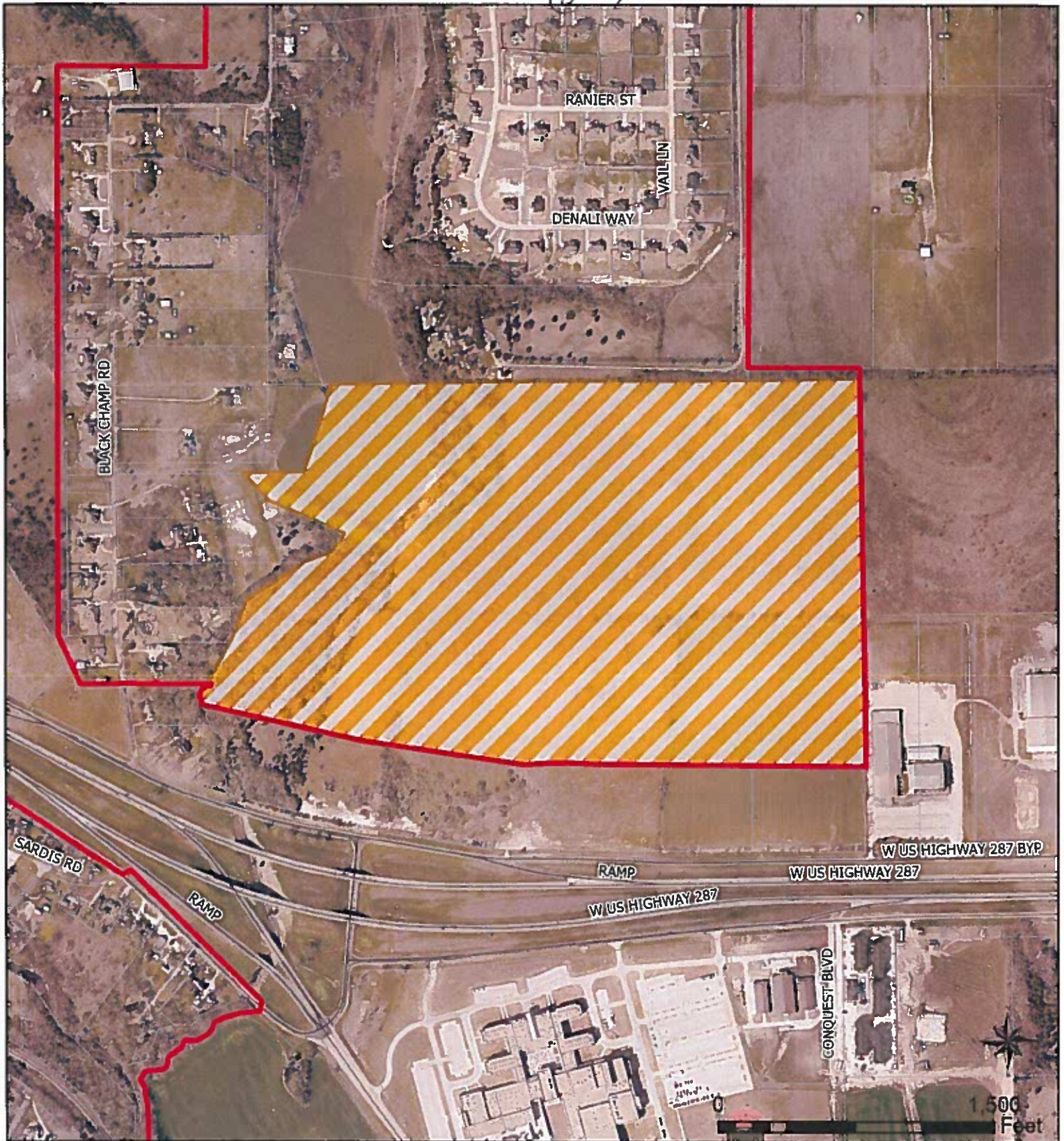
This plan is presented the 21<sup>st</sup> day of December, 2020.

---

Michael Scott  
City Manager



(849)



## Montclair Heights Annexation Exhibit

Based on the Boundary/Topographic  
Survey provided during the 1st Submittal

Date: 12/17/2020

### Legend

Montclair Heights Property

 Outside City Limits - 150.11 acres



(8+9)

# Exhibit A - Legal Description

**BEING** a tract of land situated in the William Irwin Survey, Abstract No. 545, and the William Irwin Survey, Abstract No. 546, and the D.S. Gentry Survey, Abstract No. 409, in Ellis County, Texas, being a portion of that same tract of land as conveyed to Carolyn J. Haman Family Limited Partnership, by deed recorded in Volume 1320, Page 58 of the Deed Records of Ellis County, Texas (D.R.E.C.T.), and being all together more particularly described by metes and bounds as follows (Bearings and distances are based on the State Plane Coordinate System, Texas North Central Zone (4202) North American Datum of 1983 (NAD 83)(US Foot) with a combined scale factor of 1.000072449):

**COMMENCING** at a 1/2-inch rebar found for the Southwest corner of Lot 9 of Black Champ Estates, Phase 2, an addition to Ellis County, Texas, according to the Plat thereof recorded in Cabinet C, Page 169, of the Plat Records of Ellis County, Texas (P.R.E.C.T.), same being the Northwest Corner of Lot 10 of said Black Champ Estates, Phase 2, and lying on the East right-of-way line of Black Champ Road;

**THENCE** North 89 Degrees 16 Minutes 14 Seconds East, departing the East right-of-way line of said Black Champ Road, with the South line of said Lot 9, a distance of 824.46 feet to a point for the Southeast corner of said Lot 9, same being the Northeast corner of said Lot 10, same being the Northernmost Northwest corner of a Common Area of said Black Champ Estates, also being the Southwest corner of a tract of land conveyed to Jimmie W. and Erin S. Hallbauer, by deed recorded in Volume 2281, Page 2078 (D.R.E.C.T.);

**THENCE** North 88 Degrees 54 Minutes 14 Seconds East, with the North line of said Common Area, a distance of 342.26 feet to a 1/2-inch rebar with a cap stamped "ASC" set for the Northwest corner of the herein described tract, same being the Northeast corner of said Common Area, and the **POINT OF BEGINNING**;

**THENCE** North 89 Degrees 09 Minutes 00 Seconds East, with the North line of said Carolyn J. Haman Family Limited Partnership tract, a distance of 942.96 feet to a 1/2-inch rebar found for corner;

**THENCE** North 89 Degrees 38 Minutes 30 Seconds East, continuing with the North line of said Carolyn J. Haman Family Limited Partnership tract, a distance of 1337.47 feet to a point for the Southwest corner of Lot 2 of Marshall Road Estates, an addition to the City of Waxahachie, Ellis County, Texas, according to the Plat thereof recorded in Cabinet C, Page 647 (P.R.E.C.T.), same being the Southeast corner of a tract of land conveyed to Leo James, and Cynthia J. Hughes, by deed recorded in Instrument No. 1728155 (D.R.E.C.T.), from which a 1/2-inch rebar found for reference bears South 89 Degrees 17 Minutes 31 Seconds West, a distance of 2.72 feet;

**THENCE** North 88 Degrees 46 Minutes 39 Seconds East, with the South line of said Lot 2, a distance of 619.61 feet to a 1/2-inch rebar with a cap stamped "ASC" set for the Northeast corner of said Carolyn J. Haman Family Limited Partnership tract, same being the Northwest corner of a

(8+9)

tract of land conveyed to Susan Morton Calvert, by deed recorded in Volume 1431, Page 829 (D.R.E.C.T.);

**THENCE** South 00 Degrees 29 Minutes 27 Seconds East, with the West line of said Calvert tract, also with the West line of Lot 2R, of Ellis County Youth Expo, an addition to the City of Waxahachie, according to the Plat thereof recorded in Cabinet G, Page 359 (P.R.E.C.T.), a total distance of 2560.93 feet to a wood right-of-way monument found for the Southeast corner of the herein described tract, and lying on the North right-of-way line of U.S. Highway No. 287 (variable width right-of-way.)

**THENCE** South 88 Degrees 55 Minutes 18 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, passing at a distance of 611.65 feet, a wood R.O.W. monument found, and continuing for a total distance of 1053.29 feet to a point for corner from which a wood R.O.W. monument found for corner bears North 79 Degrees 05 Minutes 01 Seconds West, a distance of 0.71 feet;

**THENCE** North 86 Degrees 30 Minutes 42 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, a distance of 501.60 feet to a wood R.O.W. monument found for corner;

**THENCE** South 88 Degrees 55 Minutes 18 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, a distance of 425.00 feet to a 1/2-inch rebar with a cap stamped "ASC" set for corner;

**THENCE** North 80 Degrees 34 Minutes 42 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, a distance of 1161.41 feet to point for corner from which a wood R.O.W. monument found bears North 71 Degrees 37 Minutes 16 Seconds East, a distance of 0.70 feet;

**THENCE** North 73 Degrees 06 Minutes 12 Seconds West, continuing with the North right-of-way line of said U.S. Highway No. 287, a distance of 354.46 feet to a 1/2-inch rebar with a cap stamped "ASC" set for the Southeast corner of Lot 18 of said Black Champ Estates, Phase 2;

**THENCE** departing the North right-of-way line of said U.S. Highway 287, with the East line of said Black Champ Estates, Phase 2, the following courses and distances to 1/2-inch rebar's with cap's stamped "ASC" set for corner:

North 19 Degrees 53 Minutes 42 Seconds West, a distance of 550.08 feet;

North 28 Degrees 43 Minutes 18 Seconds East, a distance of 377.39 feet;

North 21 Degrees 09 Minutes 18 Seconds East, a distance of 229.42 feet;

North 57 Degrees 37 Minutes 18 Seconds East, a distance of 173.26 feet;

(8+9)

North 57 Degrees 05 Minutes 18 Seconds East, a distance of 205.18 feet;

North 70 Degrees 03 Minutes 29 Seconds East, a distance of 137.90 feet;

North 45 Degrees 54 Minutes 16 Seconds East, a distance of 91.79 feet;

North 26 Degrees 18 Minutes 01 Seconds East, a distance of 45.92 feet;

North 66 Degrees 37 Minutes 36 Seconds West, a distance of 450.33 feet;

North 42 Degrees 43 Minutes 46 Seconds West, a distance of 203.87 feet;

North 89 Degrees 16 Minutes 14 Seconds East, a distance of 333.49 feet;

**THENCE** North 17 Degrees 16 Minutes 14 Seconds East, with the East line of said Common Area, a distance of 500.83 feet to the **POINT OF BEGINNING** and containing a total of 8,209,099 square feet, or 188.455 acres of land, more or less.

(8+9)

**SERVICE PLAN  
FOR  
PROPOSED VOLUNTARY ANNEXATION OF APPROXIMATELY 150.5 ACRES  
SITUATED EAST OF BLACK CHAMP ROAD AND NORTH OF U.S. HIGHWAY 287  
BUSINESS**

The following is a plan whereby full municipal services as defined in Section 43.056 of the Texas Local Government Code will be provided by the City of Waxahachie (the "City") in territory to be annexed, being approximately 150.11 acres of land located adjacent to the City limits, as depicted in the attached annexation exhibit.

Municipal facilities and services will be provided to the annexed area at the following levels and in accordance with the following schedule:

**A. Police Protection:**

The City provides municipal police protection to its residents, including routine patrols throughout the City and law enforcement services upon call. Upon the effective date of the annexation, said services will also be made available to the annexed area on the same basis as they are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the annexed area.

**B. Fire Protection and Emergency Medical Services:**

The City provides full-time fire protection. Upon the effective date of the annexation, said services will also be made available to the annexed area on the same basis as they are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the proposed annexation area.

The City contracts with American Medical Response ("AMR") for Emergency Medical Service. Upon the effective date of the annexation, said services will also be made available to the annexed area on the same basis as they are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the proposed annexation area.

**C. Solid Waste Collection:**

The City's solid waste collection is currently provided by Waste Connections ("Waste Connections"). Upon the effective date of the annexation, the City will provide solid waste collection to the annexed area on the same basis as it is made available to other parts of the city with land uses and population densities similar to those reasonably contemplated or projected in the annexed area.

**D. Water and Wastewater Service and Maintenance:**

The area to be annexed is an unplatted area within the City's ETJ. Portions of the area to be annexed lies within the City of Waxahachie's Water Certificate of Convenience and Necessity Service Area (Number 10915). Portions of the area to be annexed also lie within the Sardis-Lone Elm Water Supply Corporation, Water Certificate of Convenience and Necessity Service Area (Number 10058). All of the area to be annexed lies within the City of Waxahachie's Wastewater Masterplan Service Area.

At this time water and wastewater services are not available within the area, and the City does not have plans to extend services to the area. The developer will be responsible for

the extension of any water and wastewater services necessary to service the property. In the event water services are extended to the property, the services within the City's Water Certificate of Convenience and Necessity Service Area will be dedicated to the City, and the City will be responsible for their maintenance and upkeep once inspected and accepted by the City. In the event wastewater services are extended to the property, the services within the City's Wastewater Masterplan Service Area will be dedicated to the City, and the City will be responsible for their maintenance and upkeep once inspected and accepted by the City.

Should City plans be changed and water and or wastewater service infrastructure be extended to this area, said services will also be made available to the annexed area on the same basis as they are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the annexed area.

**E. Maintenance of Roads, Streets and Street Lighting:**

The City shall begin to make provision for the maintenance of current roads and streets within the annexed areas upon the effective date of the annexation\*. Such streets and roads shall be maintained in their current condition and shall be included in the City's Capital Improvements Plan for upgrading, resurfacing and/or improvement on the same basis as other areas in the City with topography, land uses and population densities similar to those reasonably contemplated or projected in the annexed area. Any such resurfacing or upgrade shall be made in accordance with current City policies or the City's Subdivision Ordinance, adopted as Ordinance 3151, and as amended from time to time.

Improvements will be made in conjunction with new development in accordance with City policies contained in the City's Subdivision Ordinance after installation and dedication of such improvements by the relevant property owner and acceptance by the City. Future streets within the annexed area will be upgraded in accordance with an approved Capital Improvements Program, as may be amended from time to time, on the same basis as other areas in the City with land uses and population densities to those reasonably contemplated or projected in the annexed area.

\* State-owned facilities will continue to be maintained by the State of Texas, Department of Transportation.

**F. Parks, Playgrounds and other Public Facilities and Services:**

All parks, playgrounds, and other recreation facilities within the annexed area will be private property and will be the responsibility of the developer or home owner's associated to maintain. No public dedication of parks, playgrounds, and other recreation facilities will be made to the City. Property owners and residents of the annexed area may use the existing public parks, playgrounds, and other recreation facilities and services of the City on the same basis as other residents of the City.

**G. Public Library Services and Other Publicly Owned Facilities, Buildings and Services:**

Property owners and residents of the annexed area may use the existing public library and other publicly owned facilities, buildings, and services within the City on the same basis as other residents of the City.



**H. City Regulations and Code Enforcement**

The annexed areas will upon the date of annexation, be subject to all City regulations as specified within the City of Waxahachie Code of Ordinances. Further, the City's codes and regulations will be enforced in a manner like other similar parts of the corporate city limits.

**I. General Municipal Administration:**

General municipal administration services will be available to the annexed area upon the effective date of the annexation. This Service Plan provides for full municipal services to the annexed area on the same basis as municipal services are made available to other parts of the City with land uses and population densities similar to those reasonably contemplated or projected in the annexed area. Further, said municipal services are equal to or greater than the services and level of such services in existence in the annexed area are immediately preceding the effective date of the annexation. This Service Plan does not constitute a right to a superior level of services in the annexed area. The City retains its authority to adjust programs on a city-wide basis to provide more effective services through changes in operating procedures and standards. The City also retains the authority to adjust services on a city-wide basis should economic or emergency circumstances dictate.

Upon annexation to the city of Waxahachie, this tract, similar to other newly annexed lands, will be assigned the Future Development (FD) zoning district designation. This zoning designation shall remain until such time as a separate zoning action by City Council has taken place to change it.

This plan is presented the 21<sup>st</sup> day of December, 2020.

---

Michael Scott  
City Manager

(10)

# Planning & Zoning Department

## Zoning Staff Report

Case: ZDC-72-2020



### MEETING DATE(S)

Planning & Zoning Commission: December 15, 2020

City Council: December 21, 2020 (continued from November 16, 2020)

### ACTION SINCE INITIAL STAFF REPORT

At the Planning & Zoning Commission meeting, held December 15, 2020, the Commission voted 7-0 to recommend denial of case number ZDC-72-2020.

It should be noted that this request is for a Planned Development (PD) Concept Plan. The second part of the PD process is the Detailed Site Plan. If the Concept Plan ordinance is adopted, then the applicant's Detailed Site Plan will be administratively reviewed and can be approved in accordance with the Concept Plan.

### CAPTION

**Public Hearing** on a request by Phillip Fisher, Macatee Engineering LLC, for a **Zoning Change** from a Future Development and General Retail zoning district to Planned Development-Mixed-Use Residential, located W of 2374 W Highway 287 Bypass (Property IDs 185971, 185972, 185886, 185978) - Owner: CAROLYN J HAMAN (ZDC-72-2020)

### APPLICANT REQUEST

The applicant is requesting approval of a Planned Development to allow development of single family homes, cottage style homes, retail/office, and park/open space on 188.46 acres.

*\*The proposed zoning change is contingent upon City Council approving the proposed annexation case (ANX-DNX-145-2020) for this property. City Council is scheduled to take action on the item on December 21, 2020.*

### CASE INFORMATION

Applicant: Terrance Jobe, Alluvium Development

Property Owner(s): Carolyn Haman

Site Acreage: 188.46 acres

Current Zoning: Future Development & General Retail

Requested Zoning: Planned Development-Mixed Use Residential

(10)

**SUBJECT PROPERTY**

**General Location:** West of 2374 W Highway 287 Bypass

**Parcel ID Number(s):** 185971, 185972, 185886, 185978

**Existing Use:** Currently Undeveloped

**Development History:** N/A

**Table 1: Adjoining Zoning & Uses**

Direction	Zoning	Current Use
North	N/A (Ellis County)	Single Family Residences
East	SF1 & PD-C	Undeveloped Land & Cowboy Church of Ellis County
South	---	US Highway 287
West	N/A (Ellis County)	Single Family Residences

**Future Land Use Plan:** Low Density Residential and Highway Commercial

**Comprehensive Plan:** *Low Density Residential:* This category is representative of smaller single family homes and some duplex units. The majority of Waxahachie's current development is of similar density. It is appropriate to have approximately 3.5 dwelling units per acre.

*Highway Commercial:* Highway Commercial areas are intended to allow for traditional commercial land uses, but such uses should be developed to a higher standard. For example, outside storage may be permitted, but would have to be screened and not visible from the road. In addition, a more limited array of commercial uses would be permitted. Hotels, motels, and car dealerships would be permitted, for example, but manufactured home sales and self-storage buildings would not. The idea is for these areas to show a positive image of Waxahachie and make visitors want to travel into the main part of the City.

**Thoroughfare Plan:** The subject property is accessible via US Highway 287 Service Road.



**Site Image:**

## **PLANNING ANALYSIS**

### **Purpose of Request:**

The applicant is requesting approval of a Planned Development to allow development of single family homes, cottage style homes, retail/office, and park/open space on 188.46 acres. Per the City of Waxahachie Zoning Ordinance, the Planned Development requires approval from City Council.

### **Proposed Use:**

The purpose of this Planned Development district is to create zoning that will allow the development of 384 total lots. Of which, 288 lots will fall within the categories A, B, C, D, and E (as identified on the attached PD Concept Plan and listed in the "Proposed Planned Development Regulations" section of the staff report below) and 96 lots will be developed as 40' wide "Cottage Style" lots. Four general retail tracts are also proposed adjacent to Highway 287 and the proposed thoroughfares.

The applicant intends to create a walkable, interactive and high-end development by creating several open spaces, including pocket parks, a 3.5acre amenity park, and a dog park.

**Staff Note:** The proposed zoning change is contingent upon City Council approving the proposed annexation case (ANX-DNX-145-2020) for this property. City Council is scheduled to take action on the item on December 21, 2020.

At the December 15, 2020 Planning and Zoning meeting, the Planning and Zoning Commission requested that the applicant revise the submitted plan(s) for the proposed development to further address the Commissions concerns, as well as be more conducive to the surrounding area. Per the Commission's request, listed below are changes made by the applicant.

### **CHANGES FROM THE 12/15/20 PZ MEETING**

- Providing alleys for nearly 77% of all lots within the Planned Development
- Providing six (6) lot types (originally 4). Types A – E are based on Single Family-3 base zoning, and the cottage lots represent the sixth lot type.
  - o Type lots D (9,150 sq. ft.) and E (7,250 sq. ft.) are both below the 10,000 minimum lot size requirement.
- Dispersed the different lot types throughout the community instead of grouping them together, to provide the variety the Planning and Zoning Commission requested.
  - o For example, Street F, which is the main street through the development, now has three different lot types fronting.
- Increased side yard setbacks to 7.5' minimum to be closer to the Single Family-3 zoning.
- Maximum Garage Width - Garages that are front facing a street shall not exceed 50% of the total width of the house
  - o **Original Request:** Maximum Garage Width - Garages for 85% of total dwellings shall not exceed 50% of the total width of the house; 15% of dwellings may have garages that constitute up to 60% of the total width of the house to allow for 3-car garages
- Minimum dwelling unit size for cottage lots increased from 1,200 to 1,450 sq. ft.
- Minimum Number of Elevations - No single building elevation shall be duplicated within 6 lots either direction on the same blockface
  - o **Original Request:** Minimum Number of Elevations - No single building elevation shall be duplicated within 5 lots either direction on the same blockface
- Minimum Lot Width - Type 'C' 'D' and 'E' lots are 70', 65' and 50' wide, respectively; measured along front building line for lots with frontage along cul-de-sac and knuckles

- Minimum Side Yard Setback –
  - o Type D Lots: 7.5'; 10' on corner lots
  - o Type E Lots: 5'; 10' on corner lots

#### Proposed Planned Development Regulations

*\*Items highlighted in bold indicates a variation request from the Single Family-3 (SF3) requirements.*

#### Type 'A' Lots

- Minimum Lot Area - 13,500 SF
- Minimum Lot Width - 90' interior lot; 95' corner lot; **65' for lots with predominate frontage on a curve radius measuring along front building line**
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10'
- Minimum Side Yard (exterior on corner lots) - 15'

#### Type 'B' Lots

- Minimum Lot Area - 12,000 SF
- Minimum Lot Width - 80' interior lot; 85' corner lot; **55' for lots with predominate frontage on a curve radius measuring along front building line**
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10'
- Minimum Side Yard (exterior on corner lots) - 15'

#### Type 'C' Lots

- Minimum Lot Area - 10,000 SF
- Minimum Lot Width - 70' interior lot; 75' corner lot; **55' for lots with predominate frontage on a curve radius measuring along front building line**
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10'
- Minimum Side Yard (exterior on corner lots) - 15'

#### Type 'D' Lots

- Minimum Lot Area - 9,750 SF
- Minimum Lot Width - 65' interior lot; 70' corner lot; **55' for lots with predominate frontage on a curve radius measuring along front building line**
- Minimum Lot Depth - 120'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 7.5'
- Minimum Side Yard (exterior on corner lots) - 10'

**Type 'E' Lots**

- Minimum Lot Area - 7,500 SF
- Minimum Lot Width - 50' interior lot; 55' corner lot; 40' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 5'
- Minimum Side Yard (exterior on corner lots) - 10'

**For all Type 'A' 'B' 'C' 'D' and 'E' Lots**

- Maximum Lot Coverage - 50% by main and accessory buildings not including drives and walks
- Maximum Height - 2 stories for the main building; 1 story for accessory buildings without garages
- Minimum Parking - 2 enclosed spaces per lot
- Minimum Dwelling Unit Area - 1,750 SF
- Garage Door Orientation or Placement - 50% of the dwellings shall have garage doors served by side-entry or j-swing drives, or shall be 3' behind the front building face
- Maximum Garage Width - Garages that are front facing a street shall not exceed 50% of the total width of the house
- Minimum Roof Pitch - 8:12 with laminated 3-dimensional architectural shingles with a 30 year minimum
- Minimum Number of Elevations - No single building elevation shall be duplicated within 6 lots either direction on the same blockface
- Minimum Number of Design Elements - Shall comply with the requirements applicable to SF3 zoning in Section 5.01, Exterior Construction Requirements of the City's Zoning Ordinance
- Landscaping Requirements - Shall comply with the requirements applicable to SF3 zoning as provided in Section 5.04 of the City's Zoning Ordinance.
- Accessory Structures and Uses - Shall comply with the requirements applicable to accessory structures and uses in SF3 zoning
- Masonry Exterior Construction - Shall comply with the requirements applicable to single-family residential use as provided in Section 5.01 of the City's Zoning Ordinance.

**Detached Residential (Cottage) Development Standards**

*\*It should be noted that the City of Waxahachie Zoning Ordinance does not contain regulations regarding cottage lots.*

- Minimum Lot Area - 4,400 SF
- Minimum Lot Width - 40' interior lot; 45' corner lot
- Minimum Lot Depth - 110'
- Minimum Front Yard - 10'
- Minimum Rear Yard - 20'
- Minimum Side Yard (interior) - 5'
- Minimum Side Yard (exterior on corner lots) - 10'
- Maximum Lot Coverage - 55% by main and accessory buildings not including drives and walks
- Maximum Height - Two (2) stories; 1 story for accessory buildings

(10)

- Minimum Parking - 2 enclosed spaces per dwelling units, plus 0.45 space per dwelling unit for guests
- Minimum Dwelling Unit Area - 1,450 SF
- Garage Door Orientation or Placement - All garages shall be rear entry.
- Minimum Roof Pitch - 8:12 with laminated 3-dimensional architectural shingles with a 30 year minimum
- Minimum Number of Elevations - No single building elevation shall be duplicated within 6 lots either direction on the same blockface
- Minimum Number of Design Elements - Shall comply with the requirements applicable to SF3 zoning in Section 5.01, Exterior Construction Requirements of the City's Zoning Ordinance
- Landscaping Requirements - Shall comply with the requirements applicable to SF3 zoning as provided in Section 5.04 of the City's Zoning Ordinance.
- Accessory Structures and Uses - Shall comply with the requirements applicable to accessory structures and uses in SF3 zoning
- Masonry Exterior Construction - Shall comply with the requirements applicable to single-family residential use as provided in Section 5.01 of the City's Zoning Ordinance.

#### **Screening and Buffer Requirements**

- Along the 80' thoroughfare - shall be a 6' high masonry wall and a 10' wide landscape buffer with one 3" caliper tree every 40'
- Between the General Retail and residential uses - shall comply with the requirements applicable to GR zoning in Section 5.03 of the City's Zoning Ordinance

#### **Commercial Development Standards**

- The future retail, office or commercial development shall comply with the regulations applicable to General Retail (GR) District.
- Parking shall be provided as required by Section 4.03 of the City's Zoning Ordinance
- Access to the retail area along the highway frontage road will comply with TxDOT guidelines and will require drive approach permits from TxDOT
- To enhance cross access, a common access easement will be provided along most of the commercial lot frontage, where it is appropriate, parallel to the highway frontage road.
- Loading docks shall be screened from public right-of-way
- Dumpsters shall be located and screened in compliance with the City's Zoning Ordinance requirements
- Mechanical and electrical equipment shall be screened from public right-of-way
- Masonry Exterior Construction - Shall comply with the requirements applicable to commercial uses as provided in Section 5.01 of the City's Zoning Ordinance.

#### **Amenities or Improvements within Parks and Open Space:**

- Pockets parks / open space among the single family residential lots -
  - a. Shade trees, playground equipment and benches
  - b. Trees and seasonal colors in the two open space areas that form the gateway from the 80' thoroughfare into the single-family residential lots

- Amenities Park - shall have at least one (1) swimming pool and one (1) playground, plus a minimum of four (4) of the following amenities: trees, pool cabana, volleyball court, shade structures, picnic benches, grills.
- Dog Park - 4' high vinyl coated chain link fence along the perimeter with benches and pet waste stations
- Detention Areas - Trees planted in clusters around the ponds

#### **Maintenance of Private Improvements and Common Areas**

The developer will establish a mandatory Homeowner's Association (HOA) to be responsible for the maintenance of the private parks, amenities, landscaping and common areas.

The Concept Plan depicts a development that includes amenities such as:

- Parks/Open Space
- Amenity Ponds

#### **Conformance with the Comprehensive Plan:**

The proposed development is consistent with the following goals and objectives in the 2016 Comprehensive Plan Addendum:

- Growth Strategies – Goal 1: Encourage the most desirable, efficient use of land while maintaining and enhancing local aesthetics.
- Growth Strategies – Goal 2: Encourage a balance of land uses to serve the needs of citizens and to ensure a diverse economic base
- Growth Strategies – Goal 12: Promote growth of the community where infrastructure exists.
- Growth Strategies – Goal 15: Identify areas for strategic annexations to occur.

#### **Development Standards:**

Allowed uses shall be those provided within the City of Waxahachie Zoning Ordinance with additional changes listed below.

Permitted Uses:

- Single family
- Cottage style homes
- Retail/Office
- Park/Open Space

#### **SPECIAL EXCEPTION/VARIANCE REQUEST:**

##### **Lot Size**

The minimum lot size requirement per SF3 zoning is 10,000 sq. ft.

- Type D Lots: The applicant is proposing a minimum lot size of 9,150 sq. ft.
- Type E Lots: The applicant is proposing a minimum lot size of 7,250 sq. ft.

##### **Lot Width**

The minimum lot width requirement per SF3 zoning is 80ft.

- Type A Lots: The applicant is proposing a minimum lot width of 65' for lots with predominate frontage on a curve radius measuring along front building line
- Type B Lots: The applicant is proposing a minimum lot width of 55' for lots with predominate frontage on a curve radius measuring along front building line



- Type C Lots: The applicant is proposing a minimum lot width of 70' interior lot; 75' corner lot; 55' for lots with predominate frontage on a curve radius measuring along front building line
- Type D Lots: The applicant is proposing a minimum lot width of 65' interior lot; 70' corner lot; 55' for lots with predominate frontage on a curve radius measuring along front building line
- Type E Lots: The applicant is proposing a minimum lot width of 50' interior lot; 55' corner lot; 40' for lots with predominate frontage on a curve radius measuring along front building line

#### Side Yard Setback

The minimum side yard setback requirement per SF3 zoning is 10ft. (15ft. adjacent to ROW)

- Type D Lots: The applicant is proposing a minimum side yard setback of 7.5ft. and 10ft. on corner lots.
- Type E Lots: The applicant is proposing a minimum side yard setback of 5ft. and 10ft. on corner lots.

#### PUBLIC NOTIFICATIONS

To comply with State law contained in Local Government Code Chapter 211 and the City's public hearing notice requirements, 19 notices were mailed to property owners within 200 feet of the request. In addition, a notice was published in the Waxahachie Sun and a sign was visibly posted at the property.

#### PROPERTY OWNER NOTIFICATION RESPONSES

Inside 200ft. Notification Area: Staff received two (2) letters of opposition within the 200ft. notification area.

Outside 200ft. Notification Area: Staff received one (1) letter of opposition, and one (1) letter of support outside of the 200ft. notification area.

#### RECOMMENDATION

Based on the details provided in this Staff Report and the present status of the documents subject to the request, the Planning and Zoning Department recommends:

- ☐ Denial
- ☐ Approval, as presented.
- ☒ **Approval, per the following comments:**
  1. Staff recommendation for approval was based on the applicant's original submission. Since the Planning and Zoning meeting associated with this case, the applicant has made significant changes to the Concept Plan in response to the feedback from the Planning and Zoning Commission. A viable option may be to refer this case back to the Planning and Zoning Commission for reconsideration due to the recent revisions.
  2. If approved, a mutually agreed upon Development Agreement must be signed by the applicant.

#### ATTACHED EXHIBITS

1. Property Owner Notification Responses
2. Ordinance
3. Planned Development Regulations
4. Location Exhibit
5. Concept Plan
6. Park Concept Plans

**APPLICANT REQUIREMENTS**

1. If approved by City Council, within 30 days the applicant shall provide the Planning Department one revised electronic plan set that incorporates all comments.
2. Once the revised plans are provided, staff will verify all outstanding comments were satisfied.
  - a. If comments were not satisfied, then applicant will be notified to make corrections.
  - b. If all comments satisfied, applicant shall provide a set of drawings that incorporate all comments.

**STAFF CONTACT INFORMATION**

*Prepared by:*

Colby Collins

Senior Planner

[ccollins@waxahachie.com](mailto:ccollins@waxahachie.com)

*Reviewed by:*

Shon Brooks, AICP

Director of Planning

[sbrooks@waxahachie.com](mailto:sbrooks@waxahachie.com)

(10)

Case ZDC-72-3020  
 Responses Received Inside Required 200 Notification Area  
 Support 0 Oppose 2

Tract No.	Owner's Name	Acres	Legal Description	Owner's Address	Owner's City	Owner's State	Owner's ZIP	Physical Address
185886	HAMAN CAROLYN J L/E: HAMAN CAROLYN FAMILY LTD PARTNS	20.56	545 WM IRWIN 20.56 ACRES	3808 CABEZA DE VACA CIR	IRVING	TX	75082	HIGHWAY 287 WAXAHACHE TX 75167
185893	CALVERT SUSAN M	47.507	545 WM IRWIN 47.507 ACRES	PO BOX 808	WAXAHACHE	TX	75108	FM 884 WAXAHACHE TX 75167
185971	HAMAN CAROLYN J L/E: HAMAN CAROLYN FAMILY PARTN	130.178	546 480 WWM IRWIN D S GENTRY 130.178 ACRES	3808 CABEZA DE VACA CIR	IRVING	TX	75082	HIGHWAY 287 WAXAHACHE TX 75167
185972	HAMAN CAROLYN J L/E: HAMAN CAROLYN FAMILY LTD PARTNS	25.30	548 WWM IRWIN 25.30 ACRES	3808 CABEZA DE VACA CIR	IRVING	TX	75082	HIGHWAY 287 WAXAHACHE TX 75167
185974	HALLBAUER JIMMIE W & ERIN S	7.54	548 L J IRWIN 7.54 ACRES	3640 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	3640 BLACK CHAMP RD WAXAHACHE TX 75167
185975	HUGHES LEO J & CYNTHIA J	33.121	548 L J IRWIN 33.121 ACRES	2451 MARSHALL RD	WAXAHACHE	TX	75167	2451 MARSHALL RD WAXAHACHE TX 75167
185978	HAMAN CAROLYN J L/E: HAMAN CAROLYN FAMILY LTD PARTNS	8.8	545 WWM IRWIN 8.8 ACRES	3808 CABEZA DE VACA CIR	IRVING	TX	75082	HIGHWAY 287 WAXAHACHE TX 75167
187851	BYARS RANDY L & JAMES F	4.531	TR 1 BLACK CHAMP ESTS 4.531 ACRES	4270 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	4270 BLACK CHAMP RD WAXAHACHE TX 75167
190014	ROCKWELL STEPHEN	5.108	LOT 15 BLACK CHAMP ESTS PH 2 5.108 AC	4230 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	4230 BLACK CHAMP RD WAXAHACHE TX 75167
190015	BULFONG PHILIP M	3.095	LOT 15 BLACK CHAMP ESTS PH 2 3.095 AC	4230 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	4230 BLACK CHAMP RD WAXAHACHE TX 75167
190016	LINDESEY MICHAEL S & VIRGINIA	2.831	LOT 16 BLACK CHAMP ESTS PH 2 2.831 AC	4419 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	4419 BLACK CHAMP RD WAXAHACHE TX 75167
190017	DAVIES CYNTHIA	2.001	LOT 17 BLACK CHAMP ESTS PH 2 2.001 AC	4430 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	4430 BLACK CHAMP RD WAXAHACHE TX 75167
190018	HULSEY ZACHARY N & CHRISTINA V	2.776	LOT 18 BLACK CHAMP ESTS PH 2 2.776 AC	4450 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	4450 BLACK CHAMP RD WAXAHACHE TX 75167
190022	BROWN MARK R	4	LOT 11 BLACK CHAMP ESTS PH 2 4 AC	4070 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	4070 BLACK CHAMP RD WAXAHACHE TX 75167
190023	STIERHOFF FAMILY LIVING TRUST CHARLES V & MARY I STIERHOFF TRUSTEES	5.723	LOT 12 BLACK CHAMP ESTS PH 2 5.723 AC	4230 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	4230 BLACK CHAMP RD WAXAHACHE TX 75167
190031	BLACK CHAMP ESTATE S HOMEOWNERS ASSOC C/O MARK BROWN	3.867	BLACK CHAMP EST PH 2 COMMON AREA 3.867 ACRES	4070 BLACK CHAMP RD	MIDLOTHIAN	TX	76085	BLACK CHAMP RD WAXAHACHE TX 75167
203325	FEDORIO TRUDY E	26.284	5 MARSHALL RD ESTS 26.284 ACRES	2357 MARSHALL RD	WAXAHACHE	TX	75167	2357 MARSHALL RD WAXAHACHE TX 75167
203849	FEDORIO TRUDY E	26.558	2 MARSHALL RD ESTS 26.558 ACRES	2357 MARSHALL RD	WAXAHACHE	TX	75167	MARSHALL RD WAXAHACHE TX 75167
210010	COWBOY BAPTIST CHURCH OF MIDLOTHIAN	8.616	LOT W PT 2R ELLIS COUNTY YOUTH EXPO 8.616 AC	2374 HIGHWAY 287 BYP	WAXAHACHE	TX	75167	2374 W HIGHWAY 287 BYPASS WAXAHACHE TX 75167

(10)

Case ZDC-72-2020  
Responses Received OUTSIDE Required 200' Notification Area  
Support: 1 Oppose: 1

PropertyID	Owner's Name	Physical Address
241486	JIM AND SHELIA HOOD	3841 BLACKCHAMP RD
225711	CHRIS NOWELS	3811 BLACKCHAMP



(10)

City of Waxahachie, Texas  
Notice of Public Hearing  
Case Number: ZDC-72-2020

ROZIER RICHARD  
4250 BLACK CHAMP RD  
MIDLOTHIAN, TX 76065

RECEIVED NOV - 4 2020

The Waxahachie Planning & Zoning Commission will hold a Public Hearing on Tuesday, November 10, 2020 at 7:00 p.m. and the Waxahachie City Council will hold a Public Hearing on Monday, November 16, 2020 at 7:00 p.m. in the Council Chamber at the Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas to consider the following:

1. Request by Phillip Fisher, Macatee Engineering LLC, for a **Zoning Change** from a Future Development and General Retail zoning district to Planned Development-Mixed-Use Residential, located W of 2374 W Highway 287 Bypass (Property IDs 185971, 185972, 185886, 185978) - Owner: CAROLYN J HAMAN (ZDC-72-2020)

You received this notice because your property is within the area of notification as required by law. As an interested party you are welcome to make your views known by attending the hearings. If you cannot attend the hearings, you may express your views by filling in and returning the bottom portion of this notice. Please contact the Planning Department at (469) 309-4290 or via email: [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) for additional information on this request.

Case Number: ZDC-72-2020

City Reference: 199014

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on *Wednesday, November 4, 2020* to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

Comments:

☐ SUPPORT

☒ OPPOSE

Signature

*Richard Rozier*  
Printed Name and Title

Date

*11/2/2020*  
*4250 Black Champ Rd*  
Address

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*

City Council and P&Z Commission,

I am writing today to express my opposition to zoning case ZDC-72-2020. As you know the Proposed Planned Development know as Montclair Heights is very dense single-family homes with poorly planned office/retail. Let me say from the time we purchased our property 16 years ago we have always known and understood that the property would develop one day. We are not opposed to its development but feel that the current proposal is not the highest and best use for the property. Below are some reasons why we feel this way.

1. **Current Zoning:** Approximately 500 ft. along HWY 287 is in the city and is zoned GR. The developer proposes to build small office and retail across the front with less than 200 ft. deep in most places. This is 60% less retail than envisioned in the current plan. Given the large institutional uses east and the new high school across the highway to the south, the city should stay with its desire for substantial GR.
2. **Density:** The developer proposes to construct 399 homes on just 120 acres. 105 houses on just 20 acres. The residential that adjoins this property is all large rural lots. The smallest is 1 acer while many are much larger. The properties within 200 ft. to the west are on average over 4 acres. This development is too crowded and is not in keeping with the nature of existing homes.
3. **Cottages:** This is not a zoning category that currently exists in the city's zoning ordinance. Small houses on 4,000 sq. ft. is extremely dense. On a 40 ft. wide lot the maximum width of a house would be 25 ft. This is smaller than a double wide mobile home.
4. **SF3:** The 294 lots listed as SF3 do not meet the minimum requirement for width and the side setbacks.
5. **Need for Annexation:** If the developer follows county requirements for single family, city zoning and boundary there is no need for annexation. As you are aware county development regulations require a minimum of one acre for a residential home. The adjoining properties has been developed under this standard. The only reason the developer is requesting to be annexed is to get as many lots as possible on as few acers as possible.
6. **Retail Development:** The retail development on the west side of the proposed development is very speculative. The property allocated for this development has extreme differences in elevation, making it expensive to develop.
7. **Classic Transect Development:** Long held as a standard of development and zoning philosophy. This concept calls for a dense urban core transitioning to less dense rural residential and agricultural as you move out from the core. This is not that!

Again, we understand this property will develop but this proposal is too dense and does not come close to meeting the current zoning goals for this property. We respectfully request that the city deny this requested zoning and annexation.

Sincerely,  
Richard Rozier



(10)

RECEIVED DEC 17 2020

City of Waxahachie, Texas  
Notice of Public Hearing  
Case Number: ZDC-72-2020



BLEVINS PHILLIP M  
4290 BLACK CHAMP RD  
MIDLOTHIAN, TX 76065

The Waxahachie Planning & Zoning Commission will hold a Public Hearing on Tuesday, November 10, 2020 at 7:00 p.m. and the Waxahachie City Council will hold a Public Hearing on Monday, November 16, 2020 at 7:00 p.m. in the Council Chamber at the Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas to consider the following:

1. Request by Phillip Fisher, Macatee Engineering LLC, for a **Zoning Change** from a Future Development and General Retail zoning district to Planned Development-Mixed-Use Residential, located W of 2374 W Highway 287 Bypass (Property IDs 185971, 185972, 185886, 185978) - Owner: CAROLYN J HAMAN (ZDC-72-2020)

You received this notice because your property is within the area of notification as required by law. As an interested party you are welcome to make your views known by attending the hearings. If you cannot attend the hearings, you may express your views by filling in and returning the bottom portion of this notice. Please contact the Planning Department at (469) 309-4290 or via email: [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) for additional information on this request.

Case Number: ZDC-72-2020

City Reference: 199015

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on *Wednesday, November 4, 2020* to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

☐ SUPPORT

☒ OPPOSE

Comments:

*My concerns are about potential negative impact to my property value & traffic*

Signature

*Phillip Blevins*

Printed Name and Title

Date

*12/17/20*  
*4290 BLACK CHAMP RD*  
*MIDLOTHIAN, TX, 76065*

Address

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*

(10)

RECEIVED NOV - 4 2020

**Wright, Destiny**

---

**From:** sheliahood1203@sbcglobal.net  
**Sent:** Wednesday, November 4, 2020 2:22 PM  
**To:** Planning@waxahachie.com  
**Subject:** Case Number: ZDC-72-2020

I am writing to express our opposition to the above referenced case. While myself and my neighbors on Blackchamp Road recognized that the property would certainly be developed some day, we did not imagine nor do we welcome the proposed density level of the Proposed Planned Development of Montclair Heights.

In addition to a poorly planned and thought out office a retail space, the size and density of the housing development is certainly not in keeping with the surrounding residential areas of minimum acre properties and as much as 5 acre properties. This certainly feels like the opposite of a Classic Transect Development plan.

Not only is the housing density not in keeping with the surrounding residential areas, but the proposed tiny cottages on extremely small lots is certainly outside the purview of good municipal planning in this area. It appears the only reason annexation has been proposed is in order to skirt the county requirement of 1 acre lots.

As residents of the area, we make our purchasing decisions with a certain amount of faith, trust and confidence in City Council and officials to make decisions based on the best and highest use of the properties using proven and accepted planning models and not based on profit margins of the developers.

We look forward to future plans for much more fitting development in this area and respectfully and earnestly request you deny this proposal for zoning and annexation.

Jim and Shelia Hood  
3841 Blackchamp Rd.  
Midlothian, TX 76065  
972-809-4711

Outside Notification Area

PID: 241486



(10)

To the honorable, Planning Director, Planning and Zoning Committee, and City Council,

I want all parties to know I am in support of ZCC-72-2020 - Montclair Heights PD.

I am the owner of the property located at the address of  
3811 Blackchamp Rd.  
Midlothian, TX 76065.

RECEIVED DEC 15 2020

Approximate Acreage: 2.5 acres

Thank you,



Outside Notification Area  
PID: 225711

Chris Nowels

(11)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A ZONING CHANGE FROM FUTURE DEVELOPMENT (FD) AND GENERAL RETAIL (GR) TO PLANNED DEVELOPMENT-MIXED USE RESIDENTIAL (PD-MUR), LOCATED WEST OF 2374 W HIGHWAY 287 BYPASS, IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING 188.46 ACRES KNOWN AS A PORTION OF PROPERTY ID 185971, 185972, 185886, 185978, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:**

**WHEREAS**, the City Council of the City of Waxahachie having heretofore adopted a zoning ordinance and map showing the classification of the various property located within the city limits of said City; and

**WHEREAS**, a proper application for a PD, with Concept Plan has been made in accordance with the zoning ordinances in the City of Waxahachie and said application has been assigned case number ZDC-72-2020. Said application, having been referred to the Planning and Zoning (P&Z) Commission for their final report, was recommended by the P&Z Commission for zoning change denial of the subject property from FD & GR to PD-MUR, with Concept Plan; and

**WHEREAS**, proper notification has been published for the time and in the manner as prescribed by the city ordinance of the City of Waxahachie for a public hearing thereon; and

**WHEREAS**, a proper hearing was held as required by law and the Council having heard all arguments for and against said zoning amendment;

**NOW, THEREFORE**, this property is rezoned from FD & GR to PD-MUR, with Concept Plan in order to facilitate development of the subject property in a manner that allows single family homes, cottage style homes, retail/office/restaurant, and park/open space uses on the following property: a portion of Property ID 185971, 185972, 185886, 185978, which is shown on Exhibit A, Concept Plan shown as Exhibit B, and Park Concept Plan shown as Exhibit C.

### **PLANNED DEVELOPMENT**

#### **Purpose and Intent**

The purpose of this planned development to create a mixed use development that includes single family homes, cottage style homes, retail/office/restaurant, and park/open space uses, and to establish appropriate restrictions and development controls necessary to ensure predictable land development, safe and efficient vehicular and pedestrian circulation, compatible uses of land and compliance with appropriate design standards.

(11)

Development Standards

All development on land located within the boundaries of this Planned Development District shall adhere to the rules and regulations set forth in this Ordinance/Development Agreement/Planned Development Regulations. The locations of buildings, driveways, parking areas, amenity areas, trails, fencing, and other common areas shall substantially conform to the locations shown on the approved Concept Plan (Exhibit B), and Park Concept Plan (Exhibit C).

Development Regulations

1. A mutually agreed upon Development Agreement will be required for the property.
2. The Concept Plan shall conform as approved by the City Council under case number ZDC-72-2020.
3. Any zoning, land use requirement, or restriction not contained within this zoning Ordinance/Development Agreement/Planned Development Regulations shall conform to those requirements and/or standards prescribed in Concept Plan (Exhibit B), and Park Concept Plan (Exhibit C). Where regulations are not specified in Exhibits B, C, or in this Ordinance/Development Agreement/Planned Development Regulations, the regulations of Mixed Use Residential zoning of the City of Waxahachie Zoning Ordinance shall apply to this development.
4. A detailed Site Plan packet shall be administratively reviewed and approved in accordance with the Concept Plan.
5. The development shall maintain compliance with all Federal, State and Local regulations; including, but not necessarily limited to, all applicable standards and regulations of the City of Waxahachie Municipal Code and City of Waxahachie Zoning Ordinance.

An emergency is declared to exist in that needed and approved improvements will be unnecessarily delayed if this ordinance is not effective upon passage and this ordinance is to be effective upon passage.

The zoning map of the City of Waxahachie is hereby authorized and directed to be demarked in accordance therewith.

**PASSED, APPROVED, AND ADOPTED** on this 21<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

(11)

## **PLANNED DEVELOPMENT REGULATIONS FOR ZDC-72-2020**

### **General Description**

Montclair Heights is a master planned community comprising of residential, retail and office uses. It will provide housing diversity in the form of single family detached homes and cottages. There will be extensive parks and open space, including a central amenity park, several pocket parks and a dog park throughout the community. The shops, restaurants and offices that are part of this development will provide employment opportunities and sustain the community with neighborhood services.

### **Based Zoning - Single-Family Residential-3 (SF3)**

**Permitted Uses** - Single family detached dwellings and uses permitted in the GR, General Retail District.

**Development Acreage and Density** - Refer to Site Summary in Concept Plan

### **Single Family Residential Development Standards**

#### **Type 'A' Lots**

- Minimum Lot Area - 13,500 SF
- Minimum Lot Width - 90' interior lot; 95' corner lot; 65' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10'
- Minimum Side Yard (exterior on corner lots) - 15'

#### **Type 'B' Lots**

- Minimum Lot Area - 12,000 SF
- Minimum Lot Width - 80' interior lot; 85' corner lot; 55' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10'
- Minimum Side Yard (exterior on corner lots) - 15'

#### **Type 'C' Lots**

- Minimum Lot Area - 10,000 SF

(11)

- Minimum Lot Width - 70' interior lot; 75' corner lot; 55' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 10'
- Minimum Side Yard (exterior on corner lots) - 15'

#### **Type 'D' Lots**

- Minimum Lot Area - 9,150 SF
- Minimum Lot Width - 65' interior lot; 70' corner lot; 55' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 120'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 7.5'
- Minimum Side Yard (exterior on corner lots) - 10'

#### **Type 'E' Lots**

- Minimum Lot Area - 7,250 SF
- Minimum Lot Width - 50' interior lot; 55' corner lot; 40' for lots with predominate frontage on a curve radius measuring along front building line
- Minimum Lot Depth - 140'
- Minimum Front Yard - 30'
- Minimum Rear Yard - 25'
- Minimum Side Yard (interior) - 5'
- Minimum Side Yard (exterior on corner lots) - 10'
- 

#### **For all Type 'A' 'B' 'C' 'D' and 'E' Lots**

- Maximum Lot Coverage - 50% by main and accessory buildings not including drives and walks
- Maximum Height - 2 stories for the main building; 1 story for accessory buildings without garages
- Minimum Parking - 2 enclosed spaces per lot
- Minimum Dwelling Unit Area - 1,750 SF
- Garage Door Orientation or Placement - 50% of the dwellings shall have garage doors served by side-entry or j-swing drives, or shall be 3' behind the front building face
- Maximum Garage Width - Garages that are front facing a street shall not exceed 50% of the total width of the house
- Minimum Roof Pitch - 8:12 with laminated 3-dimensional architectural shingles with a 30 year minimum
- Minimum Number of Elevations - No single building elevation shall be duplicated within 6 lots either direction on the same blockface

- Minimum Number of Design Elements - Shall comply with the requirements applicable to SF3 zoning in Section 5.01, Exterior Construction Requirements of the City's Zoning Ordinance
- Landscaping Requirements - Shall comply with the requirements applicable to SF3 zoning as provided in Section 5.04 of the City's Zoning Ordinance.
- Accessory Structures and Uses - Shall comply with the requirements applicable to accessory structures and uses in SF3 zoning
- Masonry Exterior Construction - Shall comply with the requirements applicable to single-family residential use as provided in Section 5.01 of the City's Zoning Ordinance.

#### **Detached Residential (Cottage) Development Standards**

- Minimum Lot Area - 4,400 SF
- Minimum Lot Width - 40' interior lot; 45' corner lot
- Minimum Lot Depth - 110'
- Minimum Front Yard - 10'
- Minimum Rear Yard - 20'
- Minimum Side Yard (interior) - 5'
- Minimum Side Yard (exterior on corner lots) - 10'
- Maximum Lot Coverage - 55% by main and accessory buildings not including drives and walks
- Maximum Height - Two (2) stories; 1 story for accessory buildings
- Minimum Parking - 2 enclosed spaces per dwelling units, plus 0.45 space per dwelling unit for guests
- Minimum Dwelling Unit Area - 1,450 SF
- Garage Door Orientation or Placement - All garages shall be rear entry.
- Minimum Roof Pitch - 8:12 with laminated 3-dimensional architectural shingles with a 30 year minimum
- Minimum Number of Elevations - No single building elevation shall be duplicated within 6 lots either direction on the same blockface
- Minimum Number of Design Elements - Shall comply with the requirements applicable to SF3 zoning in Section 5.01, Exterior Construction Requirements of the City's Zoning Ordinance
- Landscaping Requirements - Shall comply with the requirements applicable to SF3 zoning as provided in Section 5.04 of the City's Zoning Ordinance.
- Accessory Structures and Uses - Shall comply with the requirements applicable to accessory structures and uses in SF3 zoning
- Masonry Exterior Construction - Shall comply with the requirements applicable to single-family residential use as provided in Section 5.01 of the City's Zoning Ordinance.

(11)

### **Screening and Buffer Requirements**

- Along the 80' thoroughfare - shall be a 6' high masonry wall and a 10' wide landscape buffer with one 3" caliper tree every 40'
- Between the General Retail and residential uses - shall comply with the requirements applicable to GR zoning in Section 5.03 of the City's Zoning Ordinance

### **Commercial Development Standards**

- The future retail, office or commercial development shall comply with the regulations applicable to General Retail (GR) District.
- Parking shall be provided as required by Section 4.03 of the City's Zoning Ordinance
- Access to the retail area along the highway frontage road will comply with TxDOT guidelines and will require drive approach permits from TxDOT
- To enhance cross access, a common access easement will be provided along most of the commercial lot frontage, where it is appropriate, parallel to the highway frontage road.
- Loading docks shall be screened from public right-of-way
- Dumpsters shall be located and screened in compliance with the City's Zoning Ordinance requirements
- Mechanical and electrical equipment shall be screened from public right-of-way
- Masonry Exterior Construction - Shall comply with the requirements applicable to commercial uses as provided in Section 5.01 of the City's Zoning Ordinance.

### **Amenities or Improvements within Parks and Open Space:**

- Pockets parks / open space among the single family residential lots -
  - a. Shade trees, playground equipment and benches
  - b. Trees and seasonal colors in the two open space areas that form the gateway from the 80' thoroughfare into the single-family residential lots
- Amenities Park - shall have at least one (1) swimming pool and one (1) playground, plus a minimum of four (4) of the following amenities: trees, pool cabana, volleyball court, shade structures, picnic benches, grills.
- Dog Park - 4' high vinyl coated chain link fence along the perimeter with benches and pet waste stations
- Detention Areas - Trees planted in clusters around the ponds

**Signage** - The proposed signage for the residential subdivision and non-residential uses shall comply with the Sign Regulations in Section 5.08 of the City's Zoning Ordinance.

(11)

**Lighting** - All proposed lighting shall comply with the Lighting and Glare Standards in Section 6.03 of the City's Zoning Ordinance.

**Maintenance of Private Improvements and Common Areas**

The developer will establish a mandatory Homeowner's Association (HOA) to be responsible for the maintenance of the private parks, amenities, landscaping and common areas.



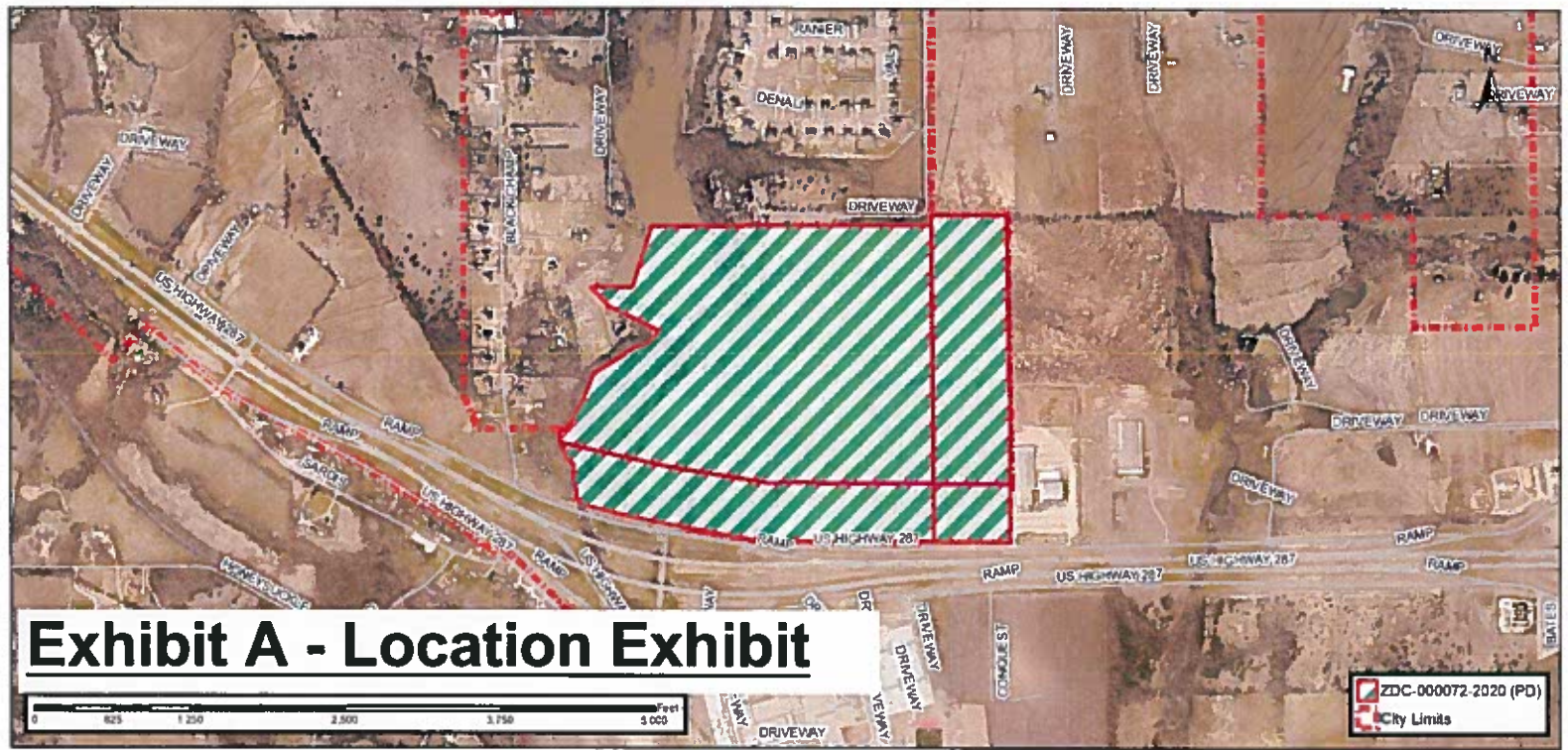
(11)

### Variations from City Zoning Ordinance Requirements

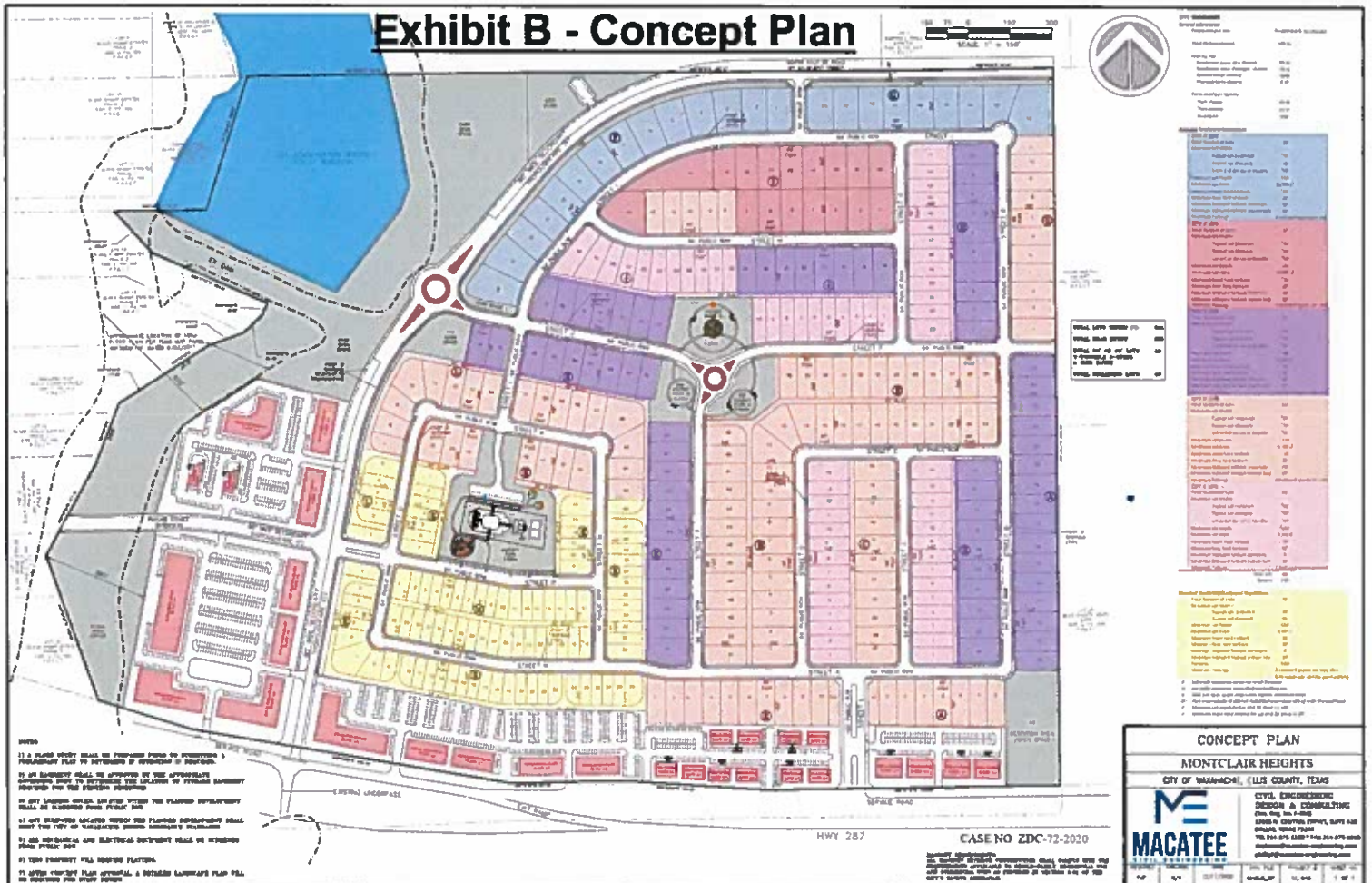
Description	Zoning Ordinance Requirements - SF3	Proposed PD Regulations
Min. Lot Width	80' measured along front lot line	Type 'C' 'D' and 'E' Lots are 70', 65' and 50' wide, respectively; measured along front building line for lots with frontage along cul-de-sac and knuckles
Min. Side Setback	10'; 15' on corner lots	7.5'; 10' on corner lots for Type 'D' Lots 5'; 10' on corner lots for Type 'E' Lots

Note: The City Zoning Ordinance does not contain regulations for the proposed cottages on 4,400 sf lots and rear-entry garages from alleys.

(11)

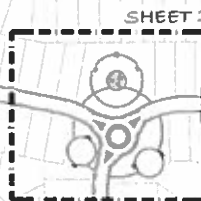
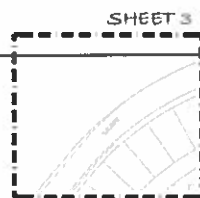


## Exhibit B - Concept Plan



011

## Exhibit C - Park Concept Plan



150 75 0 75 150  
SCALE 1" = 150'

NOTES:  
1) A PLANS EVERY SHALL BE PREPARED FROM TO REMOVING  
A PRELIMINARY PLAN TO DETERMINE IF INTERVIEW IS REQUIRED.  
2) AT SCHEDULE SHALL BE PREPARED AND APPROVED BY THE  
APPROPRIATE SUPERVISOR DURING THE LOCATION  
OF THE HYDRAULIC SCHEDULE FOR THE EXISTING  
SCHEDULE.

CASE NO. ZDC-72-2020

CONCEPTUAL PARK PLANS

MONTCLAIR HEIGHTS

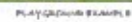
CITY OF SAN ANTONIO, BUREAU OF PLANNING



CIVIL ENGINEERING  
DESIGN & CONSTRUCTION  
ONE DAY 2015  
LAWSON & ASSOCIATES, INC. 2015 400  
DALLAS, TEXAS 75201  
P.O. BOX 415 1507 FAX 214-271-0000  
dallas@macatee-engineering.com  
planning@macatee-engineering.com

REVISION	DATE	BY	APP. BY	PROJECT	SHEET NO.
				15.000	001





CASE NO. ZDC-72-2020

### CONCEPTUAL PARK PLANS

### MONTCLAIR HEIGHTS

CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS



**2012**

1) A PLANS STUDY SHALL BE FORWARDED FROM THE DISTRICTING  
A FIELDMAST PLAN TO SUPERVISOR IF DETECTION IS REQUIRED.

2) AN ELEMENT SHALL BE FORWARDED AND APPROVED BY THE  
APPROPRIATE SUPERVISING BODY TO DETERMINE THE LOCATION  
OF THE STORAGE ELEMENT REQUIRED FOR THE IDENTIFY  
ELEMENT.

8) AN EMBROIDERED BALL IS FORWARDED AND ATTACHED BY THE APPROPRIATE AUTHORITY TO DETERMINE THE LOCATION OF THE STURGE BALLS REQUIRED FOR THE KENTON SIGNATURE.

11/01/2009	11/01/2009	11/01/2009	11/01/2009	11/01/2009	11/01/2009
------------	------------	------------	------------	------------	------------

(11)

## Exhibit C - Park Concept Plan



PLAYGROUND SAMPLE



PICNIC SHELTER SAMPLE

NOTES:  
1) A PLANS STUDY SHALL BE PREPARED PRIOR TO SUBMITTING A PRELIMINARY PLAN TO DETERMINE IF DETERMINED IS REQUIRED.  
2) AN EASEMENT SHALL BE PREPARED AND APPROVED BY THE LANDOWNER'S SUPERVISOR PRIOR TO DETERMINING THE LOCATION OF THE STORMWATER DRAINAGE FOR THE SYSTEMS DRAINAGE.

CASE NO. ZDC-72-2020

### CONCEPTUAL PARK PLANS

#### MONTCLAIR HEIGHTS

CITY OF MONTCLAIR, DALLAS COUNTY, TEXAS

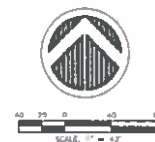


CIVIL ENGINEERING  
DESIGN & CONSULTING  
(Over 30 Years of Experience)  
LARRY R. MACATEE, P.E.  
DALLAS, TEXAS 75243  
TEL: 972.976.1100 FAX: 972.976.1101  
larry@macatee-engineering.com  
macatee-engineering.com

PROJECT	DATE	BY	CHK	APP	REV
10/10/2020	10/10/2020	10/10/2020	10/10/2020	10/10/2020	10/10/2020

(11)

## Exhibit C - Park Concept Plan



DOG PARK EXAMPLE



DOG PARK EXAMPLE

NOTES:  
1) A PLANNING STUDY SHALL BE PREPARED PRIOR TO SUBMITTING A PRELIMINARY PLAN TO THE CITY OF MONTCLAIR HEIGHTS.  
2) AN ENVIRONMENTAL STUDY SHALL BE PREPARED AND APPROVED BY THE APPROPRIATE AGENCIES PRIOR TO SUBMITTING THE LOCATION OF THE WALKWAY SURROUNDING THE DOG PARK TO THE CITY OF MONTCLAIR HEIGHTS.

CASE NO. ZDC-72-2020

### CONCEPTUAL PARK PLANS

#### MONTCLAIR HEIGHTS

CITY OF MONTCLAIR HEIGHTS, ILLINOIS COUNTY, ILLINOIS



CIVIL ENGINEERING  
DESIGN & CONSULTING  
One Way St. 1000  
MONTCLAIR HEIGHTS, ILLINOIS 62451  
TEL: 618-471-1100 FAX: 618-471-1101  
macatee@macatee-engineering.com

REVISION	DATE	BY	CHK	APP	DATE
1	12/15/2020				

(12)

# Planning & Zoning Department

## Zoning Staff Report

Case: ZDC-155-2020



### MEETING DATE(S)

*Planning & Zoning Commission:* December 15, 2020

*City Council:* December 21, 2020

### ACTION SINCE INITIAL STAFF REPORT

At the Planning & Zoning Commission meeting, held December 15, 2020, the Commission voted 6-1 to recommend approval of case number ZDC-155-2020, subject to staff comments.

### CAPTION

**Public Hearing** on a request by Sean Neal, TGS Architects, for a Specific Use Permit (SUP) for **Electronic Message Sign** use within a General Retail zoning district located at 1905 N Highway 77 (Property ID 262426) - Owner: COMMUNITY NATIONAL BANK & TRUST OF TEXAS (ZDC-155-2020)

### APPLICANT REQUEST

The applicant is requesting to install a multi-tenant ground monument/electronic message sign for Community National Bank & Trust of Texas, located at 1905 N. Highway 77.

### CASE INFORMATION

*Applicant:* Sean Neal, TGS Architects

*Property Owner(s):* Community National Bank & Trust of Texas

*Site Acreage:* 2.4699 acres

*Current Zoning:* General Retail

*Requested Zoning:* General Retail with an SUP for an Electronic Message Sign

### SUBJECT PROPERTY

*General Location:* 1905 N Highway 77

*Parcel ID Number(s):* 262426

*Existing Use:* Community National Bank & Trust of Texas

*Development History:* A Specific Use Permit was approved by City Council for this site on September 3, 2019.



(12)

**Table 1: Adjoining Zoning & Uses**

Direction	Zoning	Current Use
North	GR	Undeveloped Land
East	PD-SF1, PD-SF2, PD-SF3, MF1, GR	North Grove Planned Development
South	GR	7-Eleven (Currently Undeveloped)
West	LI1	Undeveloped Land

*Future Land Use Plan:*

Retail

*Comprehensive Plan:*

Retail includes areas that have restaurants, shops, grocery stores, and personal service establishments. Retail businesses generally require greater visibility than do other types of nonresidential land use (e.g., office, commercial).

*Thoroughfare Plan:*

The subject property is accessible via Triumph Ln, North Town Blvd, and Victory Dr.

*Site Image:*



## **PLANNING ANALYSIS**

### **Purpose of Request:**

The applicant intends to install a multi-tenant ground monument/electronic message sign for advertisement purposes at Community National Bank & Trust of Texas. Per the City of Waxahachie Zoning Ordinance, an Electronic Message Sign must be approved by City Council.

**Note:** The exhibits presented in the City Council packet are not consistent with the staff report information below. The applicant is proposing a 20ft. tall electronic message sign and the attached exhibits reflect a 25ft. tall electronic message sign. If approved, the applicant intends to have all revised

exhibits submitted to staff before applying for any building permits. It should also be noted that at the December 15, 2020 Planning and Zoning meeting, the Planning and Zoning Commission voted 6-1 to approve the multi-tenant ground monument/electronic message sign pending that the sign shall be a maximum of 15ft. tall and 15ft. wide. If the applicant requests a larger sign, the Planning and Zoning Commission requests that the case be reviewed again by the Planning and Zoning Commission. At the time of this report (12/17/2020), the applicant is still requesting approval to allow the proposed 300 sq. ft. and 20ft. tall multi-tenant ground monument/electronic message sign.

**Proposed Use:**

The applicant is requesting approval of a Specific Use Permit (SUP) to construct an electronic message sign for advertisement purposes at Community National Bank and Trust of Texas. The sign will be a changeable message sign to display on premise business services/products and possible community public service messages only. The proposed sign will be 300 square feet and 20 feet tall, and will be constructed of brick and concrete material painted to match the primary structure on the property. Per the City of Waxahachie Zoning Ordinance, all new electronic messaging signs shall have an approved SUP from City Council, and meet the following stipulations listed in Table 2 below:

**Table 2: Sign Regulation Chart**

*\*Items highlighted in bold are not consistent with the City of Waxahachie Zoning Ordinance*

<b>Electronic Messaging Sign (City of Waxahachie)</b>	<b>Community National Bank</b>
Signage shall not be located within the public right-of-way.	Sign will be on private property and not in the ROW
Changeable message copy signs may not be used to display commercial messages relating to products or services that are not offered on the premises.	The changeable message copy sign will display only on premise products and service and will not display any off-premise information except possible community service messages.
Such signs shall not exceed a brightness level of 0.3 foot candles above ambient light. In all zoning districts such signs shall come equipped with automatic dimming technology, which automatically adjusts the sign's brightness based on ambient light.	This sign will have automatic dimming technology and will adjust sign's brightness based upon ambient light as per city requirements.
Max. Size= 125 sq. ft.	300 sf
Max. Height= 10 ft.	20 ft. overall height
Setback= 15 ft. from public ROW	15' Setback from ROW

**PUBLIC NOTIFICATIONS**

To comply with State law contained in Local Government Code Chapter 211 and the City's public hearing notice requirements, 6 notices were mailed to property owners within 200 feet of the request. In addition, a notice was published in the Waxahachie Sun and a sign was visibly posted at the property.

**STAFF CONCERNS**

**Height**

Staff suggests that the applicant provide a maximum height of 15ft. for the electronic message sign opposed to the proposed 20ft.

**SPECIAL EXCEPTION/VARIANCE REQUEST**

**Size**

The maximum allowed size for an electronic message sign is 125 sq. ft.

The applicant is proposing a size of 300 sq. ft.

Height

The maximum allowed height for an electronic message sign is 10 ft.  
The applicant is proposing a maximum height of 20 ft.

RECOMMENDATION

Based on the details provided in this Staff Report and the present status of the documents subject to the request, the Planning and Zoning Department recommends:

☒ **Denial**

At the December 15, 2020 Planning and Zoning meeting, the Planning and Zoning Commission voted 6-1 to approve the multi-tenant ground monument/electronic message sign pending that the sign shall be a maximum of 15ft. tall and 15ft. wide. If the applicant requests a larger sign, the Planning and Zoning Commission requests that the case be reviewed again by the Planning and Zoning Commission. At the time of this report (12/17/2020), the applicant is still requesting approval to allow the proposed 300 sq. ft. and 20ft. tall multi-tenant ground monument/electronic message sign. Due to staff concerns regarding the height and size of the sign, staff is recommending denial for the proposed sign.

The applicant understands staff concerns and intends to state their reasoning at the December 21, 2020 City Council meeting.

☐ Approval, as presented.

☐ Approval, per the following comments:

ATTACHED EXHIBITS

1. Ordinance
2. Location Exhibit
3. Site Layout Plan
4. Sign Package

Note: The exhibits presented in the City Council packet are not consistent with the staff report information. The applicant is proposing a 20ft. tall electronic message sign and the attached exhibits reflect a 25ft. tall electronic message sign. If approved, the applicant intends to have all revised exhibits submitted to staff before applying for any building permits.

APPLICANT REQUIREMENTS

1. If approved by City Council, applicant can apply for building permits from the Building and Community Services Department.

STAFF CONTACT INFORMATION

*Prepared by:*  
Colby Collins  
Senior Planner  
[ccollins@waxahachie.com](mailto:ccollins@waxahachie.com)

*Reviewed by:*  
Shon Brooks, AICP  
Director of Planning  
[sbrooks@waxahachie.com](mailto:sbrooks@waxahachie.com)

(13)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A SPECIFIC USE PERMIT (SUP) TO PERMIT AN ELECTRONIC MESSAGE SIGN USE WITHIN A GENERAL RETAIL (GR) ZONING DISTRICT, LOCATED AT 1905 N. HIGHWAY 77, BEING PROPERTY ID 262426, IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING LOT 1, BLOCK B OF THE VICTORY PARK REV. 2, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:**

**WHEREAS**, the City Council of the City of Waxahachie having heretofore adopted a zoning ordinance and map showing the classification of the various property located within the city limits of said City; and

**WHEREAS**, the described property is classified in said ordinance and any amendments thereto as GR; and

**WHEREAS**, a proper application for an SUP has been made in accordance with the zoning ordinances in the City of Waxahachie and said application has been assigned case number ZDC-155-2020. Said application having been referred to the Planning and Zoning (P&Z) Commission was recommended by the P&Z Commission for approval and the issuance thereof; and

**WHEREAS**, proper notification has been published for the time and in the manner as prescribed by the city ordinance of the City of Waxahachie for a public hearing thereon; and,

**WHEREAS**, a proper hearing was held as required by law and the Council having heard all arguments for and against said SUP;

**NOW, THEREFORE**, this property is rezoned from GR to GR, with an SUP in order to permit an Electronic Message Sign use on the following property: Lot 1, Block B of the Victory Park Rev. 2, which is shown on Exhibit A, Site Layout Plan attached as Exhibit B, and the Sign Package attached as Exhibit C.

### **SPECIFIC USE PERMIT**

#### **Purpose and Intent**

The purpose of this Ordinance is to provide the appropriate restrictions and development controls that ensure this Specific Use Permit is compatible with the surrounding development and zoning and to also ensure that the development complies with the City's Comprehensive Plan and Zoning Ordinance.

(13)

### Specific Use Permit

**FOR OPERATION OF A SPECIFIC USE PERMIT FOR AN ELECTRONIC MESSAGE SIGN USE IN THE GENERAL RETAIL (GR) DISTRICT;** the following standards and conditions are hereby established as part of this ordinance:

1. The site plan shall conform as approved by the City Council under case number ZDC-155-2020.
2. The development shall maintain compliance with all Federal, State and Local regulations; including, but not necessarily limited to, all applicable standards and regulations of the City of Waxahachie Municipal Code and City of Waxahachie Zoning Ordinance.
3. The development shall adhere to the City Council approved in Exhibit A- Location Exhibit, Exhibit B – Site Layout Plan, and Exhibit C – Package.
4. The maximum height for the sign shall not exceed 20 ft.
5. The maximum square footage for the sign shall not exceed 300 sq. ft.
6. The sign shall be setback a minimum of 15 ft. from the public right-of-way.
7. The sign shall have automatic dimming technology and will adjust sign's brightness based upon ambient light as per city requirements.
8. The electronic message sign shall display only on premise products and service, and shall not display any off-premise information except possible community service messages.
9. If approved, City Council reserves the right to review the Specific Use Permit at any point in the future, if needed.

### Compliance

1. It shall be unlawful for the owner, manager, or any person in charge of a business or other establishment to violate the conditions imposed by the City Council when a Specific Use Permit is granted, and the violation of those conditions could result in a citation being issued by the appropriate enforcement officers of the City of Waxahachie.
2. Furthermore, by this Ordinance, if the premises covered by this Specific Use Permit is vacated and/or ceases to operate for a period exceeding six months (6 months), a new Specific Use Permit shall be required to reestablish the use.
3. This Specific Use Permit shall run with the land and therefore may be transferred from owner to owner; however, each new owner shall obtain a new Certificate of Occupancy.
4. The Certificate of Occupancy shall note the existence of this Specific Use Permit by its number and title.

An emergency is declared to exist in that needed and approved improvements will be unnecessarily delayed if this ordinance is not effective upon passage and this ordinance is to be effective upon passage.

The zoning map of the City of Waxahachie is hereby authorized and directed to be demarked in accordance therewith.

(13)

**PASSED, APPROVED AND ADOPTED** on this 21<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

(13)

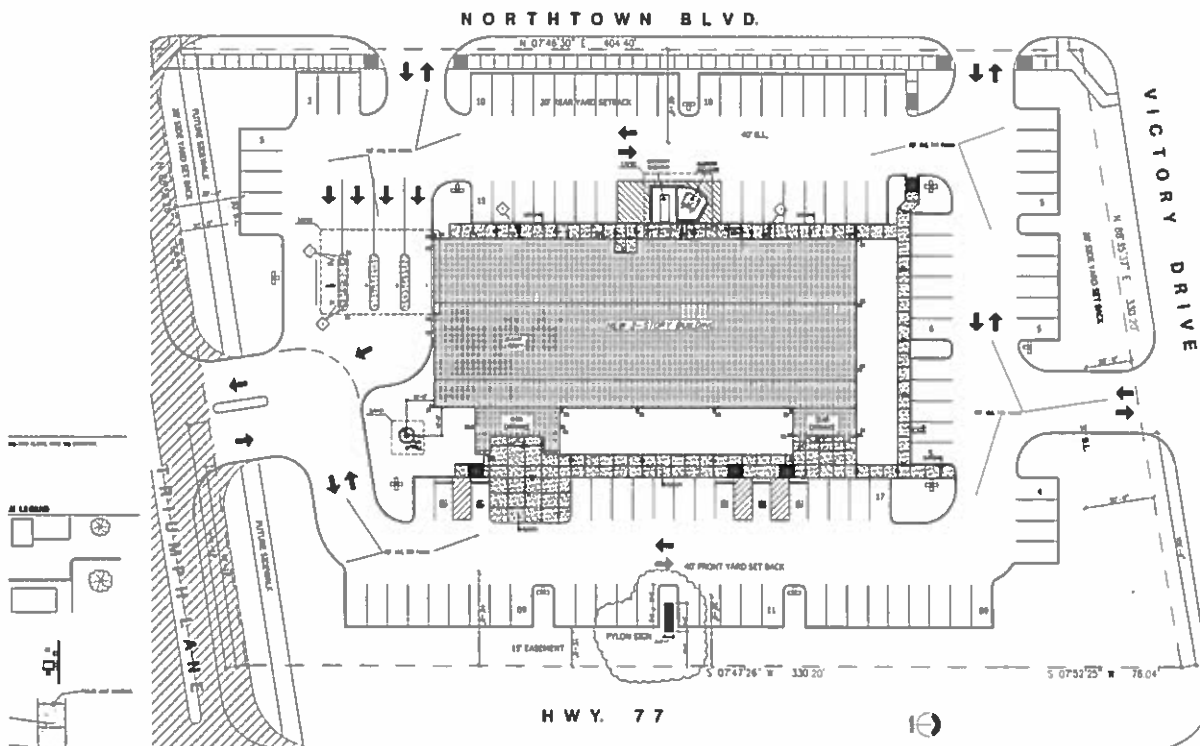


**Exhibit A - Location Exhibit**



(13)

## Exhibit B - Site Layout Plan



1 ARCHITECTURAL SITE PLAN  
SCALE 1/8" = 1'-0"



ARCHITECTURAL  
SITE PLANS  
PLANNING

1011 SPRING VALLEY ROAD  
SUITE 100  
DALLAS, TEXAS 75241  
972.708.1100  
972.708.1101 FAX  
TXArchitects.com



COMMUNITY  
NATIONAL BANK  
& TRUST OF  
TEXAS

2200 N. HWY. 77  
Waco, Texas, 76708

DATE: 10/10/10  
BY: [Signature]

ARCHITECTURAL SITE  
PLAN

18030  
A101



(13)

**Exhibit C - Sign Package**

(13)

**Exhibit C - Sign Package**

(13)

**Exhibit C - Sign Package**

(14)

# Planning & Zoning Department

## Zoning Staff Report

Case: ZDC-158-2020



### MEETING DATE(S)

*Planning & Zoning Commission:* December 15, 2020

*City Council:* December 21, 2020

### ACTION SINCE INITIAL STAFF REPORT

At the Planning & Zoning Commission meeting, held December 15, 2020, the Commission voted 7-0 to recommend approval of case number ZDC-158-2020, subject to staff comments.

### CAPTION

**Public Hearing** on a request by Josh Helm, Texas Best Construction, for a Specific Use Permit (SUP) for **Accessory Building, Used as a Dwelling Unit and Accessory Building (Residential), Greater than or Equal to 700 SF** use within a Single-Family Residential-2 zoning district located at 1640 Lone Elm Rd (Property ID 275601) - Owner: BRADLEY & JENNIFER KEITH (ZDC-158-2020)

### APPLICANT REQUEST

The applicant is requesting to construct two +700 sq. ft. accessory structures in the rear of a single family zoned property.

### CASE INFORMATION

*Applicant:* Joshua Helm, Texas Best Construction

*Property Owner(s):* Brad Keith

*Site Acreage:* 1.002 acres

*Current Zoning:* Single Family-1

*Requested Zoning:* Single Family-1 with SUP

### SUBJECT PROPERTY

*General Location:* 1640 Lone Elm Rd.

*Parcel ID Number(s):* 275601

*Existing Use:* Single Family Residence

*Development History:* N/A

(14)

**Table 1: Adjoining Zoning & Uses**

Direction	Zoning	Current Use
North	SF1	Single Family Residences
East	PD-SF1 (Mixed Community)	Currently Undeveloped (Kemp Tract)
South	SF1	Single Family Residences
West	N/A (Ellis County)	Single Family Residences

*Future Land Use Plan:* Low Density Residential

*Comprehensive Plan:* This category is representative of smaller single family homes and some duplex units. The majority of Waxahachie's current development is of similar density. It is appropriate to have approximately 3.5 dwelling units per acre.

*Thoroughfare Plan:* The subject property is accessible via Lone Elm Rd.

*Site Image:*



## **PLANNING ANALYSIS**

### **Purpose of Request:**

The applicant is requesting to construct a two +700 sq. ft. accessory structures in the rear of a single family property located at 1640 Lone Elm Rd. The submitted site plan layout depicts that one structure will be used as an accessory dwelling, and another structure will be used for storage/workshop space. According to Ellis County Appraisal District, the primary structure on the property is 2,932 sq. ft. Per the City of Waxahachie Zoning Ordinance, an accessory structure/dwelling that is equal to or greater than 700 square feet requires a SUP to be approved by City Council.

### **Proposed Use:**

The applicant is requesting to construct two +700 sq. ft. accessory structures in the rear of a single family zoned property. One proposed structure (accessory dwelling) will be 31 ft. x 36 ft. x 17.5 ft. (1,116 sq. ft.). The accessory dwelling will be constructed of metal and is intended to be used as a guest house. The second proposed structure (storage/workshop) will be 20 ft. x 35 ft. x 15 ft. (700 sq. ft.) The storage/workshop structure will also be constructed of metal. During site visits, staff noticed there are

other storage accessory structures within the surrounding neighborhood area, yet staff did not notice any accessory dwelling units. At the time of this report (12/16/2020), staff has not received any letters of opposition for the proposed development.

Subject to approval of this application, an approved building permit will be required prior to the commencement of the construction. As part of the building permit review process, the Building Inspections department will ensure construction complies with all regulations.

#### **PUBLIC NOTIFICATIONS**

To comply with State law contained in Local Government Code Chapter 211 and the City's public hearing notice requirements, 7 notices were mailed to property owners within 200 feet of the request. In addition, a notice was published in the Waxahachie Sun and a sign was visibly posted at the property.

#### **RECOMMENDATION**

Based on the details provided in this Staff Report and the present status of the documents subject to the request, the Planning and Zoning Department recommends:

- ☐ Denial
- ☐ Approval, as presented.
- ☒ **Approval, per the following comments:**
  1. The applicant will need to obtain a building permit from the City of Waxahachie Building Inspections department prior to construction of the proposed structure.
  2. The accessory dwelling cannot be used to rent to outside tenants.
  3. Staff suggests that a privacy fence be placed on the subject property to screen the accessory structures from the public right-of-way (ROW).

#### **ATTACHED EXHIBITS**

1. Ordinance
2. Location Exhibit
3. Site Layout Plan
4. Elevation/Façade Plan

#### **APPLICANT REQUIREMENTS**

1. If approved by City Council, applicant can apply for building permits from the Building and Community Services Department.

#### **STAFF CONTACT INFORMATION**

*Prepared by:*  
Colby Collins  
Senior Planner  
[ccollins@waxahachie.com](mailto:ccollins@waxahachie.com)

*Reviewed by:*  
Shon Brooks, AICP  
Director of Planning  
[sbrooks@waxahachie.com](mailto:sbrooks@waxahachie.com)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A SPECIFIC USE PERMIT (SUP) TO PERMIT TWO (2) +700 SQUARE FOOT ACCESSORY STRUCTURES USE WITHIN A SINGLE FAMILY-1 (SF1) ZONING DISTRICT, LOCATED AT 1640 LONE ELM ROAD, PROPERTY ID 275601, BEING LOT 3, BLOCK A OF LONE ELM ADDITION, IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:**

**WHEREAS**, the City Council of the City of Waxahachie having heretofore adopted a zoning ordinance and map showing the classification of the various property located within the city limits of said City; and

**WHEREAS**, the described property is classified in said ordinance and any amendments SF1; and

**WHEREAS**, a proper application for an SUP has been made in accordance with the zoning ordinances in the City of Waxahachie and said application has been assigned case number ZDC-158-2020. Said application having been referred to the Planning and Zoning (P&Z) Commission was recommended by the P&Z Commission for approval and the issuance thereof; and

**WHEREAS**, proper notification has been published for the time and in the manner as prescribed by the city ordinance of the City of Waxahachie for a public hearing thereon; and,

**WHEREAS**, a proper hearing was held as required by law and the Council having heard all arguments for and against said SUP;

**NOW, THEREFORE**, this property is rezoned from SF1 to SF1, with an SUP in order to permit two (2) accessory structures equal to or exceeding 700 square feet on the following property: Lot 3, Block A of Lone Elm Addition, which is shown on Exhibit A, Site Layout Plan attached as Exhibit B, and Elevation/Façade Plan attached as Exhibit C.

### **SPECIFIC USE PERMIT**

#### **Purpose and Intent**

The purpose of this Ordinance is to provide the appropriate restrictions and development controls that ensure this Specific Use Permit is compatible with the surrounding development and zoning and to also ensure that the development complies with the City's Comprehensive Plan and Zoning Ordinance.

### Specific Use Permit

**FOR OPERATION OF A SPECIFIC USE PERMIT FOR TWO (2) +700 SQUARE FOOT ACCESSORY STRUCTURES USE IN THE SINGLE FAMILY-1 (SF1) DISTRICT; the following standards and conditions are hereby established as part of this ordinance:**

1. The site plan shall conform as approved by the City Council under case number ZDC-158-2020.
2. The development shall adhere to the City Council approved in Exhibit A- Location Exhibit, Exhibit B – Site Layout Plan, and Exhibit C – Elevation/Façade Plan.
3. The applicant will need to obtain a building permit from the City of Waxahachie Building Inspections department prior to construction of the proposed structure.
4. The accessory dwelling cannot be used to rent to outside tenants.
5. A privacy fence shall be placed on the subject property to screen the accessory structures from the public right-of-way (ROW).
6. The development shall maintain compliance with all Federal, State and Local regulations; including, but not necessarily limited to, all applicable standards and regulations of the City of Waxahachie Municipal Code and City of Waxahachie Zoning Ordinance.
7. If approved, City Council reserves the right to review the Specific Use Permit at any point in the future, if needed.

### Compliance

1. It shall be unlawful for the owner, manager, or any person in charge of a business or other establishment to violate the conditions imposed by the City Council when a Specific Use Permit is granted, and the violation of those conditions could result in a citation being issued by the appropriate enforcement officers of the City of Waxahachie.
2. Furthermore, by this Ordinance, if the premises covered by this Specific Use Permit is vacated and/or ceases to operate for a period exceeding six months (6 months), a new Specific Use Permit shall be required to reestablish the use.
3. The Certificate of Occupancy shall note the existence of this Specific Use Permit by its number and title.

An emergency is declared to exist in that needed and approved improvements will be unnecessarily delayed if this ordinance is not effective upon passage and this ordinance is to be effective upon passage.

The zoning map of the City of Waxahachie is hereby authorized and directed to be demarked in accordance therewith.

**PASSED, APPROVED AND ADOPTED** on this 21<sup>st</sup> day of December, 2020.



(15)

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

(15)

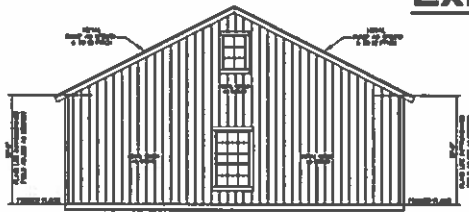


**Exhibit A - Location Exhibit**

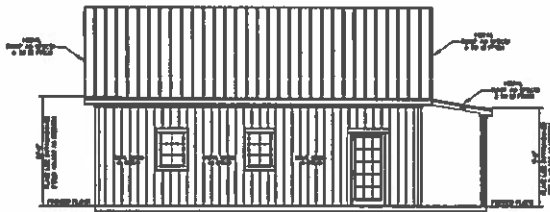


(15)

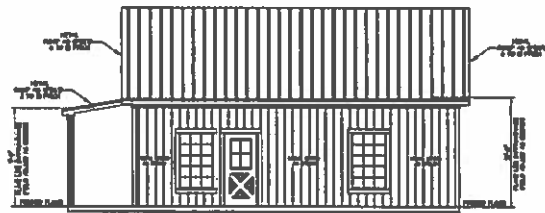
## Exhibit C - Elevation/Facade Plan



REAR ELEVATION  
1/4"=1'-0"



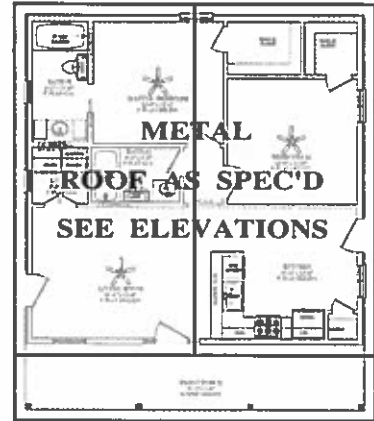
LEFT ELEVATION  
1/4"=1'-0"



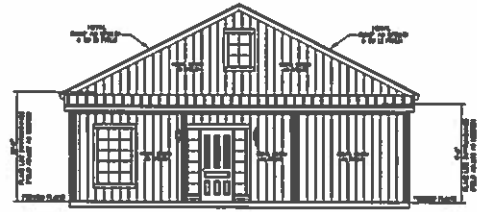
RIGHT ELEVATION  
1/4"=1'-0"

### NOTES:

1. ALL PLATE LINES ARE ESTIMATED ONLY & MUST BE FIELD VERIFIED & ADJUSTED AS NEEDED TO MAKE RING ALIGN PROPERLY.
2. ALL RING FITTERS ARE ESTIMATED ONLY AND MUST BE FIELD VERIFIED AND ADJUSTED AS NEEDED TO MAKE RING ALIGN PROPERLY.
3. ALL CEILING HEIGHTS TO BE FIELD VERIFIED AND APPROVED BY OWNER & MEASURE BEFORE ANY CEILING OR RING BATTERS ARE FRAMED.
4. THESE ELEVATIONS ARE RECOMMENDATIONS ONLY AND CAN BE FIELD MODIFIED AND ADJUSTED AS NEEDED PER BUILDERS' PRACTICES AND OWNER APPROVAL.
5. IT IS THE RESPONSIBILITY OF THE BUILDER, OWNER & FRAMER TO FOLLOW THE ABOVE NOTES AND VERIFY AND INFORM THE OWNER AND BUILDER OF ANY AND ALL DISCREPANCIES BEFORE ROOF IS COMPLETED.



ROOF PLAN  
1/4"=1'-0"



FRONT ELEVATION  
1/4"=1'-0"

### NOTE:

Ellis County Reprographics Inc. is a Drafting & Design firm only. In no way does E.C.R. represent itself as Architects or Engineers. All drawings are based on dimension specifications furnished to E.C.R. Inc. by the builder and/or home owner.

<b>ELLIS COUNTY REPROGRAPHICS, INC.</b> 1000 S. 10TH AVE. WAXAHACHE, TEXAS 76080 972.934.5150	
<b>CLIENT FOR:</b> BRIAN KEITH LOT 3 LONE ELM ROAD WAXAHACHE, TEXAS	
<b>ELEVATIONS AND ROOF PLAN</b>	
<b>DATE:</b> A-2	

(10)

## Planning & Zoning Department

### Zoning Staff Report

Case: ZDC-159-2020



#### MEETING DATE(S)

*Planning & Zoning Commission:* December 15, 2020

*City Council:* December 21, 2020

#### ACTION SINCE INITIAL STAFF REPORT

At the Planning & Zoning Commission meeting, held December 15, 2020, the Commission voted 7-0 to recommend denial of case number ZDC-159-2020.

It should be noted that this request is for a Planned Development (PD) Concept Plan. The second part of the PD process is the Detailed Site Plan. If the Concept Plan ordinance is adopted, then the applicant's Detailed Site Plan will be administratively reviewed and can be approved in accordance with the Concept Plan.

#### CAPTION

**Public Hearing** on a request by Nicholas Balsamo, Kalterra Capital Partners, for a **Zoning Change** from a Multiple-Family Residential-2 zoning district to Planned Development-Multiple-Family Residential-2, located near the SW corner of Park Place Blvd at Garden Valley Pkwy (Property ID 275563) - Owner: KALTERRA CAPITAL PARTNERS LLC (ZDC-159-2020)

#### APPLICANT REQUEST

The applicant is requesting approval of a Planned Development to allow for construction of 175 multi-family residential units on approximately 12.9 acres.

#### CASE INFORMATION

*Applicant:* Clint Nolen, Kalterra Capital Partners, LLC

*Property Owner(s):* Kalterra Capital Partners, LLC

*Site Acreage:* 13.17 acres

*Current Zoning:* MF2

*Requested Zoning:* PD-MF2

#### SUBJECT PROPERTY

*General Location:* SW corner of Park Place Blvd at Garden Valley Pkwy

*Parcel ID Number(s):* 275563

*Existing Use:* Currently Undeveloped

*Development History:*

N/A

**Table 1: Adjoining Zoning & Uses**

<b>Direction</b>	<b>Zoning</b>	<b>Current Use</b>
North	PD-SF2	Park Place Phase 2
East	NS	Promise Child Development Center
South	PD-MF2	The Hamilton at Garden Valley
West	MF2	Park Place Apartments

*Future Land Use Plan:*

Low Density Residential and Public/Semi-Public

*Comprehensive Plan:*

Low Density Residential: This category is representative of smaller single family homes and some duplex units. The majority of Waxahachie's current development is of similar density. It is appropriate to have approximately 3.5 dwelling units per acre.

Public/Semi-Public: This land use category includes uses that are educational, governmental or institutional in nature. This type of land use is generally permitted within any area, therefore, only the current Public/Semi-Public uses are shown on the map.

*Thoroughfare Plan:*

The subject property is accessible via Park Place Blvd.

*Site Image:***PLANNING ANALYSIS****Purpose of Request:**

The purpose of this request is to create a multi-family residential development within a Multi-Family zoning district. The existing zoning permits multi-family development, however, the applicant seeks variance request to allow for the development.

**Proposed Use:**

The applicant is requesting approval for a Planned Development to accommodate development of a 175 unit multi-family residential complex on 12.9 acres located at the Southwest corner of Park Place Blvd and Garden Valley Pkwy. The development will consist of four (4) apartment buildings with a maximum height of three (3) stories. If approved, the project is anticipated to be constructed in a single phase, with construction expected to commence approximately one year from zoning approval.

At the December 15, 2020 Planning and Zoning meeting, the Planning and Zoning Commission requested that the applicant revise the submitted plan(s) for the proposed development to further address the Commissions concerns, as well as be more conducive to the surrounding area. Per the Commission's request, listed below are changes made by the applicant.

**CHANGES FROM THE 12/15/20 PZ MEETING**

- Reduced total amount of buildings on the site from 5 to 4
- Reduced unit count from 205 to 175
- Reduced density from 16.12 units/ acre to 13.57 units/acre
- Reduced one bedroom count from 147units to 122 units
- Reduced two bedroom count from 58 units to 53 units
- Currently meeting the front yard setback requirement (previously requested variance)
- Currently meeting side yard setback requirement along the eastern boundary of the property (previously requested a variance)
- Reduced total parking from 306 to 263
- Reduced attached garages from 83 to 66
- Reduced carports from 78 to 66
- Reduced surface parking spaces from 153 to 135
- Requesting a building length of 282' for the main clubhouse building (originally requested no variance)

The Concept Plan depicts a residential development that includes elements such as *(but not limited to)*:

- Pool
- Community Green Space
- Dog Park
- Walk/Jog Trail
- Resident Clubhouse (Fitness Center, Coffee Bar, Conference Room, Game Room, Mail Room, Bicycle Storage/Repair)

**Conformance with the Comprehensive Plan:**

Residential developments can include low density residential, medium density residential, and high density residential. The proposed development is consistent with the following goals and objectives in the 2016 Comprehensive Plan Addendum:

- **Growth Strategies – Goal 1:** Encourage the most desirable, efficient use of land while maintaining and enhancing local aesthetics.
- **Growth Strategies – Goal 12:** Promote growth of the community where infrastructure exists.

**Development Standards:**

The applicant is proposing a base zoning district of Multi Family-2 (MF2). Allowed uses shall be those provided within the City of Waxahachie Zoning Ordinance for Multi Family-2 with additional changes listed below.

## Permitted Uses:

- Multi-Family Apartments

**Table 2: Proposed Multi-Family Residential (per MF2 standards)**\*\*\*Items highlighted in **bold** do not meet the City of Waxahachie MF2 requirements\*\*\*

<b>Table 2: Proposed Multi-Family Residential (per MF2 standards)</b> ***Items highlighted in <b>bold</b> do not meet the City of Waxahachie MF2 requirements*** <b>Standard</b>	<b>City of Waxahachie</b>	<b>The Fitzgerald</b>	<b>Meets</b>
Max. Density	18 DU per acre	13.57 DU per acre	Yes
Min. Lot Area (SF)	2,420 SF/Unit	2,741 SF/Unit	Yes
Min. Dwelling Unit (SF)	1 Bedroom – 600 2 Bedroom – 700	1 Bedroom – 650 2 Bedroom – 950	Yes
Max. Unit Count	232	175	Yes
Min. Lot Width	60 ft.	705 ft.	Yes
Min. Lot Depth	120 ft.	250 ft.	Yes
Min. Front Setback	75 ft. if over two stories (adj. to SF)	75 ft.	Yes
Min. Interior Setback	100 ft. if over 2 stories (adj. to MF or non res.)	100 ft. along eastern boundary; 30 ft. along western boundary	No
Min. Rear Setback	75 ft. if over two stories	30 ft.	No
Max. Height	3 stories (main structure); 1 story (accessory structure)	3 stories (main structure); 1 story (accessory structure)	Yes
Max. Lot Coverage	40%	38%	Yes
Parking	262.5 total  131.25 attached enclosed garages	Total: 267 spaces 135 surface area 66 attached garages 66 carports	No

Note: Per the Elevation/Façade Plan, the exterior of the façade will consist of stucco and stone.

**Table 3: Apartment Unit Breakdown**

Unit Description	Unit Count	Percentage Breakdown
1 Bedroom/1 Bath	122 (orig. 147)	70%
2 Bedroom/2 Bath	53 (orig. 58)	30%
Total	175	100%



**PUBLIC NOTIFICATIONS**

To comply with State law contained in Local Government Code Chapter 211 and the City's public hearing notice requirements, 32 notices were mailed to property owners within 200 feet of the request. In addition, a notice was published in the Waxahachie Sun and a sign was visibly posted at the property.

**PROPERTY OWNER NOTIFICATION RESPONSES**

Staff has received four (4) letters of support and three (3) letters of opposition for the proposed development.

**STAFF CONCERNS****Setback**

Staff suggests that the applicant revise the plan to meet the required setbacks for the zoning. As reflected in "Table 2" and the "Special Exception/Variance Request" sections of this report, the applicant is requesting variances for the side (west boundary) and rear yard setbacks of the development.

**Special Exception/Variance Request:****Side Setback**

For Multi-Family zoning, any side setback adjacent to Multi-Family or Nonresidential shall be 100 ft.

- The applicant is proposing side yard setback of 30 ft. along the western boundary of the property.

**Rear Setback**

For Multi-Family zoning, any rear setback over two stories shall be a minimum of 75 ft.

- The applicant is proposing rear yard setback of 30 ft.

**Parking (Garages)**

The applicant is required to provide 50% attached enclosed garages of the required parking for the site.

- The applicant is proposing 25% attached enclosed garages (66) of the 131.25 required attached enclosed garages.
  - The applicant also intends to provide 25% carports (66) for the development.

**Roof Pitch**

The minimum roof pitch allowed for MF2 zoning is 7:12.

- The applicant is proposing a roof pitch of 4:12.

**Screening**

Due to being adjacent to Multi-Family zoning (along the side and rear of the property), a min. 6ft. masonry wall is required.

- The applicant is proposing a 6 ft. ornamental iron fence with masonry columns spaced every 30 ft.

**Building Length**

No Mutli Family building length shall exceed 200 ft. in length.

- The applicant is requesting a building length of 282' for the main clubhouse building

**RECOMMENDATION**

Based on the details provided in this Staff Report and the present status of the documents subject to the request, the Planning and Zoning Department recommends:

☒ **Denial**

Staff recommendation for denial was based on the applicant's original submission. Since the Planning and Zoning meeting associated with this case, the applicant has made significant changes to the Concept Plan in response to the feedback from the Planning and Zoning Commission. A viable option may be to refer this case back to the Planning and Zoning Commission for reconsideration due to the recent revisions.

☐ **Approval, as presented.**

☐ **Approval, per the following comments:**

**ATTACHED EXHIBITS**

1. Property Owner Notification Responses
2. Development Agreement/Ordinance
3. Location Exhibit
4. Planned Development Packet

**APPLICANT REQUIREMENTS**

1. If approved by City Council, within 30 days the applicant shall provide the Planning Department one revised electronic plan set that incorporates all comments.
2. Once the revised plans are provided, staff will verify all outstanding comments were satisfied.
  - a. If comments were not satisfied, then applicant will be notified to make corrections.
  - b. If all comments satisfied, applicant shall provide a set of drawings that incorporate all comments.

**STAFF CONTACT INFORMATION***Prepared by:*

Colby Collins

Senior Planner

[ccollins@waxahachie.com](mailto:ccollins@waxahachie.com)*Reviewed by:*

Shon Brooks, AICP

Director of Planning

[sbrooks@waxahachie.com](mailto:sbrooks@waxahachie.com)

(16)

Case ZDC-159-2020  
 Responses Received Inside Required 2021 Notification Area  
 Support 4 Oppono 3

Parcel ID	Owner's Name	Address	Legal Description	Owner's Address	Owner's City	Owner's State	Owner's Zip	Parcel Address
216523	WAXAHACHE COMMUNITY DEVELOPMENT CORP	98 28	LOT 18 BROADHEAD ROAD SPORTS COMPLEX 98.28 AC	PO BOX 757	WAXAHACHE	TX	75166	801 BROADHEAD RD WAXAHACHE TX 75166
222341	DAVIDSON JANE A	0 1912	11 GARDEN VALLEY RANCH PH1 0 1912 ACRES	118 VALLEY RANCH CT	WAXAHACHE	TX	75165	118 VALLEY RANCH CT WAXAHACHE TX 75165
232361	ONE RO HE BRENNER & BRENDA I	0 1912	21 GARDEN VALLEY RANCH PH1 0 1912 ACRES	113 VALLEY RANCH CT	WAXAHACHE	TX	75165	113 VALLEY RANCH CT WAXAHACHE TX 75165
232368	MERCER LARRY WAYNE & DIANA LEE	0 1641	31 GARDEN VALLEY RANCH PH1 0 1641 ACRES	111 VALLEY RANCH CT	WAXAHACHE	TX	75165	111 VALLEY RANCH CT WAXAHACHE TX 75165
232371	DELLEON ANTONIO L & EMILY A	0 3189	LOT 4 BLK 1 GARDEN VALLEY RANCH PH1 0 3189 AC	109 VALLEY RANCH CT	WAXAHACHE	TX	75165	109 VALLEY RANCH CT WAXAHACHE TX 75165
232366	BOULES MELODY	0 1313	LOT 6 BLK 6 GARDEN VALLEY RANCH PH1 0 1313 AC	131 VALLEY RANCH DR	WAXAHACHE	TX	75165	131 VALLEY RANCH DR WAXAHACHE TX 75165
232369	DETERMAN JOHN	0 1313	LOT 7 BLK 6 GARDEN VALLEY RANCH PH1 0 1313 AC	129 VALLEY RANCH DR	WAXAHACHE	TX	75165	129 VALLEY RANCH DR WAXAHACHE TX 75165
232368	LUTTRALL BETTIE JO	0 1313	0 6 GARDEN VALLEY RANCH PH1 0 1313 ACRES	127 VALLEY RANCH DR	WAXAHACHE	TX	75165	127 VALLEY RANCH DR WAXAHACHE TX 75165
232361	GARZA LORI A	0 1667	0 6 GARDEN VALLEY RANCH PH1 0 1667 ACRES	126 VALLEY RANCH DR	WAXAHACHE	TX	75165	126 VALLEY RANCH DR WAXAHACHE TX 75165
232363	GOLTER GARY A & JOY BUSH & ALFA GOLTER	0 1667	LOT 10 BLK 6 GARDEN VALLEY RANCH PH1 0 1667 AC	131 COYOTE RUN	WAXAHACHE	TX	75165	131 VALLEY RANCH DR WAXAHACHE TX 75165
232363	VICKERY JOHN	0 1667	LOT 11 BLK 6 GARDEN VALLEY RANCH PH1 0 1667 AC	638 SARALVO RD	MEDFORTH	TX	75066	131 VALLEY RANCH DR WAXAHACHE TX 75165
232364	DE VANCHER JOE E & JENNIFER	0 1667	LOT 12 BLK 6 GARDEN VALLEY RANCH PH1 0 1667 AC	379 WACHMAN DR	WAXAHACHE	TX	75165	119 VALLEY RANCH DR WAXAHACHE TX 75165
241951	GARDEN VALLEY RANCH HOMEOWNERS ASSOCIATION C/O GOODWIN MANAGEMENT INC	0 75	LOT PT 18 BLK 1 GARDEN VALLEY AMENITY CENTER REV 0 75 AC	PO BOX 203110	AUSTIN	TX	78720	628 GARDEN VALLEY PKWY WAXAHACHE TX 75165
242279	GARDEN VALLEY APARTMENTS LLC	11 0	0 J B & A ADAMS 115 ACRES	2718 RAVENS ST STE 1100	DALLAS	TX	75219	248 PARK PLACE BLVD WAXAHACHE TX 75165
256756	SALVADOR FAMILY HOLDINGS LTD	0 246	LOT 1 BLK 1 PARK PLACE PH 2 246 AC	6366 N INTERSTATE HIGHWAY 36E	WAXAHACHE	TX	75165	100 NORTH STAR LN WAXAHACHE TX 75165
256757	BERNARD LISA B & JAMES R	0 192	LOT 2 BLK 1 PARK PLACE PH 2 192 AC	102 NORTH STAR LN	WAXAHACHE	TX	75165	102 NORTH STAR LN WAXAHACHE TX 75165
256758	BROCK SHEA C & B ELIZABETH	0 199	LOT 3 BLK 1 PARK PLACE PH 2 199 AC	104 NORTH STAR LN	WAXAHACHE	TX	75165	104 NORTH STAR LN WAXAHACHE TX 75165
256761	THOMAS MICHAEL N	0 216	LOT 1 BLK 3 PARK PLACE PH 2 216 AC	101 BLUE MOON DR	WAXAHACHE	TX	75165	101 BLUE MOON DR WAXAHACHE TX 75165
256762	LEET TERRY R & CASSANDRA B	0 192	LOT 2 BLK 3 PARK PLACE PH 2 192 AC	103 BLUE MOON DR	WAXAHACHE	TX	75165	103 BLUE MOON DR WAXAHACHE TX 75165
256763	ADAMS PAULA	0 192	LOT 3 BLK 3 PARK PLACE PH 2 192 AC	105 BLUE MOON DR	WAXAHACHE	TX	75165	105 BLUE MOON DR WAXAHACHE TX 75165
256764	BOWEN BRADLEY K & OLIVIA SHARA A	0 192	LOT 4 BLK 3 PARK PLACE PH 2 192 AC	107 BLUE MOON DR	WAXAHACHE	TX	75165	107 BLUE MOON DR WAXAHACHE TX 75165
256765	ADAMS BRADLEY K & OLIVIA SHARA A	0 192	LOT 5 BLK 3 PARK PLACE PH 2 192 AC	109 BLUE MOON DR	WAXAHACHE	TX	75165	109 BLUE MOON DR WAXAHACHE TX 75165
264776	TORRES NATALIE H & CHRISTOPHER C	0 37	LOT 6 BLK 3 PARK PLACE PH 2 37 AC	201 STARBUCKS TRL	WAXAHACHE	TX	75165	201 STARBUCKS TR WAXAHACHE TX 75165
264776	GARDEN VALLEY RANCH HOMEOWNERS ASSOCIATION INC C/O GOODWIN MANAGEMENT INC	0 564	LOT PT 18 BLK 1 GARDEN VALLEY AMENITY CENTER REV 0 564 AC	PO BOX 203110	AUSTIN	TX	78720	628 GARDEN VALLEY PKWY WAXAHACHE TX 75165
272687	D R HORTON TEXAS LTD	0 20	LOT 20 BLK 3 GARDEN VALLEY WEST 0 20 AC	4308 MILLER RD	ROWLETT	TX	75088	262 WESTWOOD DR WAXAHACHE TX 75165
272688	D R HORTON TEXAS LTD	0 11	LOT 21 BLK 3 GARDEN VALLEY WEST 0 11 AC	4308 MILLER RD	ROWLETT	TX	75088	264 WESTWOOD DR WAXAHACHE TX 75165
272689	RODRIGUEZ CHRISTINA L	0 12	LOT 22 BLK 3 GARDEN VALLEY WEST 0 12 AC	258 WESTWOOD DR	WAXAHACHE	TX	75165	258 WESTWOOD DR WAXAHACHE TX 75165
272690	ROLLINS MEGAN	0 12	LOT 23 BLK 3 GARDEN VALLEY WEST 0 12 AC	256 WESTWOOD DR	WAXAHACHE	TX	75165	256 WESTWOOD DR WAXAHACHE TX 75165
272691	D R HORTON TEXAS LTD	0 12	LOT 24 BLK 3 GARDEN VALLEY WEST 0 12 AC	4308 MILLER RD	ROWLETT	TX	75088	264 WESTWOOD DR WAXAHACHE TX 75165
272692	PUTMAN JASON & COURTNEY R	0 19	LOT 25 BLK 3 GARDEN VALLEY WEST 0 19 AC	253 WESTWOOD DR	WAXAHACHE	TX	75165	252 WESTWOOD DR WAXAHACHE TX 75165
272693	D R HORTON TEXAS LTD	0 23	LOT 26 BLK 3 GARDEN VALLEY WEST 0 23 AC	4308 MILLER RD	ROWLETT	TX	75088	101 GARDEN GROVE DR WAXAHACHE TX 75165
272694	RODRIGUEZ MICHELE A & JEAN L	0 14	LOT 27 BLK 3 GARDEN VALLEY WEST 0 14 AC	106 GARDEN GROVE DR	WAXAHACHE	TX	75165	106 GARDEN GROVE DR WAXAHACHE TX 75165
272695	HALTERNA CAPITAL PARTNERS LLC	7 67	5 J B & A ADAMS 7 67 ACRES	3718 RAVENS ST STE 1200	DALLAS	TX	75219	628 GARDEN VALLEY PKWY WAXAHACHE TX 75165
272696	HALTERNA CAPITAL PARTNERS LLC	13 17	5 J B & A ADAMS 13 17 ACRES	3718 RAVENS ST STE 1200	DALLAS	TX	75219	628 GARDEN VALLEY PKWY WAXAHACHE TX 75165

(16)

RECEIVED DEC - 9 2020



City of Waxahachie, Texas  
Notice of Public Hearing  
Case Number: ZDC-159-2020

LETT KAYLA N & JAMES R  
117 VALLEY RANCH DR  
WAXAHACHIE, TX 75165

The Waxahachie Planning & Zoning Commission will hold a Public Hearing on Tuesday, December 15, 2020 at 7:00 p.m. and the Waxahachie City Council will hold a Public Hearing on Monday, December 21, 2020 at 7:00 p.m. in the Council Chamber at the Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas to consider the following:

1. Request by Clint Nolen, Kalterra Capital Partners LLC, for a Zoning Change from a Multiple-Family Residential-2 zoning district to Planned Development-Multiple-Family Residential-2, located near the SW corner of Park Place Blvd at Garden Valley Pkwy (Property ID 275563) - Owner: KALTERRA CAPITAL PARTNERS LLC (ZDC-159-2020)

You received this notice because your property is within the area of notification as required by law. As an interested party you are welcome to make your views known by attending the hearings. If you cannot attend the hearings, you may express your views by filling in and returning the bottom portion of this notice. Please contact the Planning Department at (469) 309-4290 or via email: [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) for additional information on this request.

Case Number: ZDC-159-2020

City Reference: 232355

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on Wednesday, December 9, 2020 to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

☐ SUPPORT

☒ OPPOSE

Comments:

The Park Place Apts are plenty. It is Ridiculous to Fill in the little bit of space left w/ even more apts !!!

Signature

Kayla Lett / James Lett  
Printed Name and Title

Date

12/9/2020  
117 Valley Ranch Drive  
Address Waxahachie TX 75165

It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)

If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.



(14)

RECEIVED DEC - 1 2020

City of Waxahachie, Texas  
Notice of Public Hearing  
Case Number: ZDC-159-2020



GARDEN VALLEY APARTMENTS LLC  
3710 RAWLINS ST STE 1390  
DALLAS, TX 75219

The Waxahachie Planning & Zoning Commission will hold a Public Hearing on Tuesday, December 15, 2020 at 7:00 p.m. and the Waxahachie City Council will hold a Public Hearing on Monday, December 21, 2020 at 7:00 p.m. in the Council Chamber at the Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas to consider the following:

1. Request by Clint Nolen, Kalterra Capital Partners LLC, for a **Zoning Change** from a Multiple-Family Residential-2 zoning district to Planned Development-Multiple-Family Residential-2, located near the SW corner of Park Place Blvd at Garden Valley Pkwy (Property ID 275563) - Owner: KALTERRA CAPITAL PARTNERS LLC (ZDC-159-2020)

You received this notice because your property is within the area of notification as required by law. As an interested party you are welcome to make your views known by attending the hearings. If you cannot attend the hearings, you may express your views by filling in and returning the bottom portion of this notice. Please contact the Planning Department at (469) 309-4290 or via email: [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) for additional information on this request.

Case Number: ZDC-159-2020

City Reference: 242239

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on *Wednesday, December 9, 2020* to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

☒ SUPPORT

☐ OPPOSE

Comments:

Phillip Sanchez  
Signature

12/1/2020  
Date

PHILLIP SANCHEZ, MANAGER  
Printed Name and Title

3710 RAWLINS, STE 1390, DALLAS, TX  
Address  
75219

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*



(16)

City of Waxahachie, Texas  
Notice of Public Hearing  
Case Number: ZDC-159-2020

RECEIVED DEC - 2 2020

PROMISE MINISTRIES  
PO BOX 801  
WAXAHACHIE, TX 75168

The Waxahachie Planning & Zoning Commission will hold a Public Hearing on Tuesday, December 15, 2020 at 7:00 p.m. and the Waxahachie City Council will hold a Public Hearing on Monday, December 21, 2020 at 7:00 p.m. in the Council Chamber at the Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas to consider the following:

1. Request by Clint Nolen, Kalterra Capital Partners LLC, for a Zoning Change from a Multiple-Family Residential-2 zoning district to Planned Development-Multiple-Family Residential-2, located near the SW corner of Park Place Blvd at Garden Valley Pkwy (Property ID 275563) - Owner: KALTERRA CAPITAL PARTNERS LLC (ZDC-159-2020)

You received this notice because your property is within the area of notification as required by law. As an interested party you are welcome to make your views known by attending the hearings. If you cannot attend the hearings, you may express your views by filling in and returning the bottom portion of this notice. Please contact the Planning Department at (469) 309-4290 or via email: [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) for additional information on this request.

Case Number: ZDC-159-2020

City Reference: 253043

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on *Wednesday, December 9, 2020* to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

☐ SUPPORT

☒ OPPOSE

Comments:

H. Waishes  
Signature

12-1-20  
Date

Halston Waishes - Director  
Printed Name and Title

980 Garden Valley Pkwy  
Address

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*



(14)

RECEIVED NOV 9 2020

City of Waxahachie, Texas  
Notice of Public Hearing  
Case Number: ZDC-159-2020

BERNARD LISA B & JAMES R  
102 NORTH STAR LN  
WAXAHACHIE, TX 75165

The Waxahachie Planning & Zoning Commission will hold a Public Hearing on Tuesday, December 15, 2020 at 7:00 p.m. and the Waxahachie City Council will hold a Public Hearing on Monday, December 21, 2020 at 7:00 p.m. in the Council Chamber at the Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas to consider the following:

1. Request by Clint Nolen, Kalterra Capital Partners LLC, for a **Zoning Change** from a Multiple-Family Residential-2 zoning district to Planned Development-Multiple-Family Residential-2, located near the SW corner of Park Place Blvd at Garden Valley Pkwy (Property ID 275563) - Owner: KALTERRA CAPITAL PARTNERS LLC (ZDC-159-2020)

You received this notice because your property is within the area of notification as required by law. As an interested party you are welcome to make your views known by attending the hearings. If you cannot attend the hearings, you may express your views by filling in and returning the bottom portion of this notice. Please contact the Planning Department at (469) 309-4290 or via email: [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) for additional information on this request.

Case Number: ZDC-159-2020

City Reference: 258757

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on *Wednesday, December 9, 2020* to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

☒ SUPPORT

☐ OPPOSE

Comments:

Lisa Bernard

Signature

11/30/2020

Date

Lisa Bernard

Printed Name and Title

102 Northstar Ln

Address

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*

(16)

Case Number: **ZDC-159-2020**

City Reference: 258785

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on **Wednesday, December 9, 2020** to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

☐ SUPPORT

☒ OPPOSE

RECEIVED DEC - 3 2020

Comments:

Kathryn Burchfield  
Signature

12-1-20  
Date

Kathryn Burchfield  
Printed Name and Title Homeowner

109 Blue Moon Dr  
Address

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*





(14)

City of Waxahachie, Texas  
Notice of Public Hearing  
Case Number: ZDC-159-2020

RECEIVED DEC - 1 2020

KALTERRA CAPITAL PARTNERS LLC  
3710 RAWLINS ST STE 1390  
DALLAS, TX 75219

The Waxahachie Planning & Zoning Commission will hold a Public Hearing on Tuesday, December 15, 2020 at 7:00 p.m. and the Waxahachie City Council will hold a Public Hearing on Monday, December 21, 2020 at 7:00 p.m. in the Council Chamber at the Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas to consider the following:

1. Request by Clint Nolen, Kalterra Capital Partners LLC, for a **Zoning Change** from a Multiple-Family Residential-2 zoning district to Planned Development-Multiple-Family Residential-2, located near the SW corner of Park Place Blvd at Garden Valley Pkwy (Property ID 275563) - Owner: KALTERRA CAPITAL PARTNERS LLC (ZDC-159-2020)

You received this notice because your property is within the area of notification as required by law. As an interested party you are welcome to make your views known by attending the hearings. If you cannot attend the hearings, you may express your views by filling in and returning the bottom portion of this notice. Please contact the Planning Department at (469) 309-4290 or via email: [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) for additional information on this request.

Case Number: ZDC-159-2020

City Reference: 275562

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on *Wednesday, December 9, 2020* to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

☒ SUPPORT

☐ OPPOSE

Comments:

*Phillip Sanchez*  
Signature

*12/1/2020*  
Date

*PHILLIP SANCHEZ, MANAGER*  
Printed Name and Title

*3710 RAWLINS, STE 1390, DALLAS, TX*  
Address

*75219*

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*



(16)

City of Waxahachie, Texas  
Notice of Public Hearing  
Case Number: ZDC-159-2020

RECEIVED DEC - 1 2020

KALTERRA CAPITAL PARTNERS LLC  
3710 RAWLINS ST STE 1390  
DALLAS, TX 75219

The Waxahachie Planning & Zoning Commission will hold a Public Hearing on Tuesday, December 15, 2020 at 7:00 p.m. and the Waxahachie City Council will hold a Public Hearing on Monday, December 21, 2020 at 7:00 p.m. in the Council Chamber at the Waxahachie City Hall, 401 South Rogers Street, Waxahachie, Texas to consider the following:

1. Request by Clint Nolen, Kaltterra Capital Partners LLC, for a **Zoning Change** from a Multiple-Family Residential-2 zoning district to Planned Development-Multiple-Family Residential-2, located near the SW corner of Park Place Blvd at Garden Valley Pkwy (Property ID 275563) - Owner: KALTERRA CAPITAL PARTNERS LLC (ZDC-159-2020)

You received this notice because your property is within the area of notification as required by law. As an interested party you are welcome to make your views known by attending the hearings. If you cannot attend the hearings, you may express your views by filling in and returning the bottom portion of this notice. Please contact the Planning Department at (469) 309-4290 or via email: [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) for additional information on this request.

Case Number: ZDC-159-2020

City Reference: 275563

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on *Wednesday, December 9, 2020* to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

☒ SUPPORT

☐ OPPOSE

Comments:

Signature

Phillip Sanchez, Manager  
Printed Name and Title

Date

12/1/2020  
3710 RAWLINS, STE 1390 DALLAS, TX  
Address

75219

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*

(17)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A ZONING CHANGE FROM MULTI FAMILY-2 (MF2) TO PLANNED DEVELOPMENT-MUTI FAMILY-2 (PD-MF2), LOCATED AT THE SOUTHWEST CORNER OF PARK PLACE BLVD AND GARDEN VALLEY PKWY, IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING 13.17 ACRES KNOWN AS A PORTION OF PROPERTY ID 275563 OF ABSTRACT 5 OF THE JB AND A ADAMS SURVEY, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:**

**WHEREAS,** the City Council of the City of Waxahachie having heretofore adopted a zoning ordinance and map showing the classification of the various property located within the city limits of said City; and

**WHEREAS,** a proper application for a PD, with Concept Plan has been made in accordance with the zoning ordinances in the City of Waxahachie and said application has been assigned case number ZDC-159-2020. Said application, having been referred to the Planning and Zoning (P&Z) Commission for their final report, was recommended by the P&Z Commission for zoning change approval of the subject property from MF2 to PD-MF2, with Concept Plan; and

**WHEREAS,** proper notification has been published for the time and in the manner as prescribed by the city ordinance of the City of Waxahachie for a public hearing thereon; and

**WHEREAS,** a proper hearing was held as required by law and the Council having heard all arguments for and against said zoning amendment;

**NOW, THEREFORE,** this property is rezoned from MF2 to PD-MF2, with Concept Plan in order to facilitate development of the subject property in a manner that allows multi family residential (apartments) structures on the following property: a portion of Property ID 275563 of Abstract 5 of the JB and A Adams Survey, which is shown on Exhibit A, and Planned Development Packet shown as Exhibit B.

### **PLANNED DEVELOPMENT**

#### **Purpose and Intent**

The purpose of this planned development to create a multi family residential (apartments) development, and to establish appropriate restrictions and development controls necessary to ensure predictable land development, safe and efficient vehicular and pedestrian circulation, compatible uses of land and compliance with appropriate design standards.

(17)

### Development Standards

All development on land located within the boundaries of this Planned Development District shall adhere to the rules and regulations set forth in this ordinance. The locations of buildings, driveways, parking areas, amenity areas, trails, fencing, and other common areas shall substantially conform to the locations shown on the approved Planned Development Regulations (Exhibit B).

### Development Regulations

1. A mutually agreed upon Development Agreement will be required for the property.
2. The minimum side yard setback shall be 30ft. along the western boundary of the property. The eastern boundary side yard setback shall be 100ft.
3. The minimum rear yard setback shall be 30ft.
4. A minimum of 66 attached enclosed garages, 66 carports, and 135 surface area parking spaces shall be provided for the development.
5. The minimum roof pitch shall be 4:12.
6. A 6ft. ornamental iron fence with masonry columns spaced every 30ft. shall be constructed adjacent to Single Family and Multi Family zoning properties (side(s) and rear).
7. Every multi-family dwelling unit shall be located within 330 ft.
8. The maximum unit count shall be 175 units.
9. The maximum density shall be 13.57 dwelling units per acre.
10. The exterior of the project shall consist of 70% stucco and 30% stone.
11. The Site Plan shall conform as approved by the City Council under case number ZDC-159-2020.
12. Any zoning, land use requirement, or restriction not contained within this zoning ordinance or Development Agreement shall conform to those requirements and/or standards prescribed in Exhibits B – Planned Development Packet. Where regulations are not specified in Exhibits B or in this ordinance, the regulations of Multi Family-2 zoning of the City of Waxahachie Zoning Ordinance shall apply to this development.
13. A detailed Site Plan packet shall be administratively reviewed and approved in accordance with the Site/Concept Plan.
14. The development shall maintain compliance with all Federal, State and Local regulations; including, but not necessarily limited to, all applicable standards and regulations of the City of Waxahachie Municipal Code and City of Waxahachie Zoning Ordinance.

An emergency is declared to exist in that needed and approved improvements will be unnecessarily delayed if this ordinance is not effective upon passage and this ordinance is to be effective upon passage.

The zoning map of the City of Waxahachie is hereby authorized and directed to be demarked in accordance therewith.

171

**PASSED, APPROVED, AND ADOPTED** on this 21<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

STATE OF TEXAS	§	DEVELOPMENT AGREEMENT
	§	FOR THE FITZGERALD APARTMENTS
COUNTY OF ELLIS	§	

This Development Agreement for The Fitzgerald Apartments ("Agreement") is entered into between Kalterra Capital Partners, LLC ("KCP") and the City of Waxahachie, Texas ("City"). KCP and the City are sometimes referred herein together as the "Parties" and individually as a "Party."

**Recitals:**

1. KCP is the owner of approximately 13.17 acres of real property generally located at the Southwest corner of Park Place Blvd and Garden Valley Pkwy, parcel number 275563, in the City of Waxahachie, Texas (the "Property"), for which he has requested a change in the Property's Multi Family-2 zoning to a Planned Development ("PD") Multi Family-2 zoning, revising specific development standards. The Property is currently zoned Multi Family-2 by the City, and is anticipated to have the zoning changed to a new PD zoning on December 21, 2020.

2. The planned use of the Property is to create a Planned Development to allow for the development of multi family residential structures (apartments). The PD zoning process is utilized to ensure that the Property would develop in a manner that meets the City's desired development standards, as well as providing KCP with agreed-upon and negotiated standards consistent with their business objectives.

3. As is reflected by the public records of the City, significant discussions and negotiations between representatives of KCP and the City of Waxahachie staff have occurred during various meetings, in an effort to obtain an agreed-upon and negotiated set of zoning and development standards to be reflected in the PD zoning amendment Ordinance No. (TBD) (the "The Fitzgerald Apartments PD Ordinance"), a copy of which is attached hereto as *Exhibit A* and which contains the negotiated zoning and development standards for The Fitzgerald Apartments.

4. This Agreement seeks to incorporate the negotiated and agreed upon zoning and development standards contained in The Fitzgerald Apartments PD Ordinance as contractually-binding obligations between the City of Waxahachie and KCP, and to recognize KCP's reasonable investment-backed expectations in The Fitzgerald Apartments PD Ordinance and the planned development of The Fitzgerald Apartments.

**NOW, THEREFORE**, for and in consideration of the above and foregoing premises, the benefits to each of the Parties from this Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, the Parties do hereby agree as follows:

**Section 1. Incorporation of Premises.** The above and foregoing Recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

**Section 2. Term.** This Agreement shall be effective as of the date of execution of this Agreement by the last of the Parties to do so ("**Effective Date**"). This Agreement shall remain in full force and effect from the Effective Date until terminated by the mutual agreement of all of the Parties in writing ("**Term**").

**Section 3. Agreements.** The Parties agree as follows:

**Incorporation of Zoning and Recognition of Investment-Backed Expectations:** The negotiated and agreed upon zoning and development standards contained in The Fitzgerald Apartments PD Ordinance, which incorporate by reference the general zoning regulations of the City of Waxahachie zoning ordinance, are hereby adopted and incorporated into this Agreement as contractually-binding obligations of the developer.

The Developer agrees to:

- (A) A mutually agreed upon Development Agreement will be required for the property.
- (B) The minimum side yard setback shall be 30ft. along the western boundary of the property. The eastern boundary side yard setback shall be 100ft.
- (C) The minimum rear yard setback shall be 30ft.
- (D) A minimum of 66 attached enclosed garages, 66 carports, and 135 surface area parking spaces shall be provided for the development.
- (E) The minimum roof pitch shall be 4:12.
- (F) A 6ft. ornamental iron fence with masonry columns spaced every 30ft. shall be constructed adjacent to Single Family and Multi Family zoning properties (side(s) and rear).
- (G) Every multi-family dwelling unit shall be located within 330 ft.
- (H) The maximum unit count shall be 175 units.
- (I) The maximum density shall be 13.57 dwelling units per acre.
- (J) The exterior of the project shall consist of 70% stucco and 30% stone.
- (K) The Site Plan shall conform as approved by the City Council under case number ZDC-159-2020.
- (L) A detailed Site Plan packet shall be administratively reviewed and approved in accordance with the Site/Concept Plan.

- (M) The development shall maintain compliance with all Federal, State and Local regulations; including, but not necessarily limited to, all applicable standards and regulations of the City of Waxahachie Municipal Code and City of Waxahachie Zoning Ordinance.

In consideration of KCP's agreement in this regard, the City of Waxahachie agrees that KCP has reasonable investment-backed expectations in The Fitzgerald Apartments PD Ordinance, and that the City of Waxahachie may not unilaterally change the zoning and development standards contained in The Fitzgerald Apartments PD Ordinance without impacting KCP's reasonable investment-backed expectations.

#### **Section 4. Miscellaneous**

- A. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of law rules. In the event of any dispute or action under this Agreement, venue for any and all disputes or actions shall be instituted and maintained in Ellis County, Texas.
- B. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the Parties.
- C. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- D. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law statute, ordinance, or otherwise. The failure by any Party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such Party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies any Party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement, except as otherwise expressly set forth herein.
- E. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- F. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.



G. This Agreement is made subject to the existing provisions of the City of Waxahachie, its present rules, regulations, procedures and ordinances, and all applicable laws, rules, and regulations of the State of Texas and the United States.

H. The undersigned officers and/or agents of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

I. This Agreement may be only amended or altered by written instrument signed by the Parties.

J. The headings and captions used in this Agreement are for the convenience of the Parties only and shall not in any way define, limit or describe the scope or intent of any provisions of this Agreement.

K. This Agreement is the entire agreement between the Parties with respect to the subject matters covered in this Agreement. There are no other collateral oral or written agreements between the Parties that in any manner relates to the subject matter of this Agreement, except as provided or referenced in this Agreement.

L. This Agreement shall be recorded in the real property records of Ellis County, Texas. This Agreement and all of its terms, conditions, and provisions is and shall constitute a restriction and condition upon the development of the Property and all portions thereof and a covenant running with the Property and all portions thereof, and is and shall be binding upon KCP and all heirs, successors, and assigns and the future owners of the Property and any portion thereof; provided, however, this Agreement shall not constitute an obligation of or be deemed a restriction or encumbrance with respect to any platted residential lot upon which a completed structure has been constructed.

(18)

**{Signature Pages Follow}**

(18)

**EXECUTED** by the Parties on the dates set forth below, to be effective as of the date first written above.

**CITY OF WAXAHACHIE, TEXAS**

By: \_\_\_\_\_  
Michael Scott, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Secretary

**: Clint Nolen (Applicant)**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**: Kalterra Capital Partners, LLC (Owner)**

By: \_\_\_\_\_

Date: \_\_\_\_\_

(18)

STATE OF TEXAS       §  
                                  §  
COUNTY OF ELLIS     §

Before me, the undersigned authority, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared MICHAEL SCOTT, City Manager of the City of Waxahachie, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal]

By: \_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF ELLIS     §

Before me, the undersigned authority, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared \_\_\_\_\_, representative of Kalterra Capital Partners, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal]

By: \_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**EXHIBIT A****The Fitzgerald Apartments PD Ordinance**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A ZONING CHANGE FROM MULTI FAMILY-2 (MF2) TO PLANNED DEVELOPMENT-MUTI FAMILY-2 (PD-MF2), LOCATED AT THE SOUTHWEST CORNER OF PARK PLACE BLVD AND GARDEN VALLEY PKWY, IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING 13.17 ACRES KNOWN AS A PORTION OF PROPERTY ID 275563 OF ABSTRACT 5 OF THE JB AND A ADAMS SURVEY, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:**

**WHEREAS**, the City Council of the City of Waxahachie having heretofore adopted a zoning ordinance and map showing the classification of the various property located within the city limits of said City; and

**WHEREAS**, a proper application for a PD, with Concept Plan has been made in accordance with the zoning ordinances in the City of Waxahachie and said application has been assigned case number ZDC-159-2020. Said application, having been referred to the Planning and Zoning (P&Z) Commission for their final report, was recommended by the P&Z Commission for zoning change approval of the subject property from MF2 to PD-MF2, with Concept Plan; and

**WHEREAS**, proper notification has been published for the time and in the manner as prescribed by the city ordinance of the City of Waxahachie for a public hearing thereon; and

**WHEREAS**, a proper hearing was held as required by law and the Council having heard all arguments for and against said zoning amendment;

**NOW, THEREFORE**, this property is rezoned from MF2 to PD-MF2, with Concept Plan in order to facilitate development of the subject property in a manner that allows multi family residential (apartments) structures on the following property: a portion of Property ID 275563 of Abstract 5 of the JB and A Adams Survey, which is shown on Exhibit A, and Planned Development Packet shown as Exhibit B.

**PLANNED DEVELOPMENT****Purpose and Intent**

The purpose of this planned development to create a multi family residential (apartments) development, and to establish appropriate restrictions and development controls necessary to ensure predictable land development, safe and efficient vehicular and pedestrian circulation, compatible uses of land and compliance with appropriate design standards.

Development Standards

All development on land located within the boundaries of this Planned Development District shall adhere to the rules and regulations set forth in this ordinance. The locations of buildings, driveways, parking areas, amenity areas, trails, fencing, and other common areas shall substantially conform to the locations shown on the approved Planned Development Regulations (Exhibit B).

Development Regulations

1. A mutually agreed upon Development Agreement will be required for the property.
2. The minimum side yard setback shall be 30ft. along the western boundary of the property. The eastern boundary side yard setback shall be 100ft.
3. The minimum rear yard setback shall be 30ft.
4. A minimum of 66 attached enclosed garages, 66 carports, and 135 surface area parking spaces shall be provided for the development.
5. The minimum roof pitch shall be 4:12.
6. A 6ft. ornamental iron fence with masonry columns spaced every 30ft. shall be constructed adjacent to Single Family and Multi Family zoning properties (side(s) and rear).
7. Every multi-family dwelling unit shall be located within 330 ft.
8. The maximum unit count shall be 175 units.
9. The maximum density shall be 13.57 dwelling units per acre.
10. The exterior of the project shall consist of 70% stucco and 30% stone.
11. The Site Plan shall conform as approved by the City Council under case number ZDC-159-2020.
12. Any zoning, land use requirement, or restriction not contained within this zoning ordinance or Development Agreement shall conform to those requirements and/or standards prescribed in Exhibits B – Planned Development Packet. Where regulations are not specified in Exhibits B or in this ordinance, the regulations of Multi Family-2 zoning of the City of Waxahachie Zoning Ordinance shall apply to this development.
13. A detailed Site Plan packet shall be administratively reviewed and approved in accordance with the Site/Concept Plan.
14. The development shall maintain compliance with all Federal, State and Local regulations; including, but not necessarily limited to, all applicable standards and regulations of the City of Waxahachie Municipal Code and City of Waxahachie Zoning Ordinance.

An emergency is declared to exist in that needed and approved improvements will be unnecessarily delayed if this ordinance is not effective upon passage and this ordinance is to be effective upon passage.

The zoning map of the City of Waxahachie is hereby authorized and directed to be demarked in accordance therewith.

(18)

**PASSED, APPROVED, AND ADOPTED** on this 21<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary



**Exhibit A - Location Exhibit**



(18)

## Exhibit B - Planned Development Regulations

### Introduction

This PD request seeks to modify zoning on the subject property for the development of a conventional, multifamily residential community on approximately 12.7 acres. The subject property is located on Park Place Boulevard and Garden Valley Parkway.

### Proposed Uses

The proposed Planned Development would be for high density multifamily as the property is currently zoned, however the Planned Development would provide some variances to the current MF-2 standards as outlined below.

### Proposed Yard, Lot, and Space Regulations

The proposed project would decrease the minimum rear yard and side yard setbacks in accordance with Exhibit A – Concept Site Plan.

Standard	MF-2 Standards	Proposed PD
<b>Minimum Side Yard</b>	Adjacent to SF - 50'. 75' if over two stories. Adjacent to MF or Nonresidential - 25'. 100' if over 2 stories	75' at the east corner of Building 2 (as shown in the concept plan). 30' at the west side of Building 4 (as shown in the concept plan). All other side yard setbacks to comply with MF-2 Standards.
<b>Minimum Rear Yard</b>	Adjacent to residential; 50', over two story is 75'	Adjacent to residential; 30', over two story is 30'

### Building Elevations

See Exhibit B – Representative Building Elevation:

Standard	MF-2 Standards	Proposed PD
<b>Roof Pitch</b>	7:12	4:12
<b>Percent Masonry</b>	90%	90%

**Exhibit B - Planned Development Regulations****Parking**

Current MF-2 standards require that “at least one-half of the required minimum off-street spaces shall be provided in attached fully enclosed garages”. Due to recent experience with the recently completed and fully occupied adjacent multifamily property, this requirement has proven excessive and has not been utilized by the residents. Due to the inefficiency and the negative impact on design flexibility, the proposed development requests a reduction in the percentage of fully enclosed garages from 50% to 25% of overall parking. Additionally, the proposed development will provide an additional 25% of the overall parking via car ports.

**Access**

In accordance with Exhibit A – Concept Site Plan, access to the property will be limited to two driveways on Park Place Blvd and a connection to the pedestrian path will be provided with gated access.

**Landscaping and screening**

Landscaping and screening will be provided in accordance with Exhibit C – Concept Landscape Design. Any deviation from Exhibit C shall require the approval of the City of Waxahachie Planning Department.

**Accessory buildings**

Accessory buildings are not anticipated at this time, as the clubhouse and leasing facilities are anticipated to be incorporated into the larger central structure on the site; however, any accessory structure will comply with the requirements as set forth in the City of Waxahachie Zoning Ordinance.

**Signs**

All signage will comply with the City of Waxahachie Zoning Ordinance.

**Lighting**

All lighting will comply with the City of Waxahachie Zoning Ordinance.

**Project Phasing or scheduling**

The project is anticipated to be constructed in a single phase, with construction expected to commence approximately one year from zoning approval. Construction is expected to take approximately 18 months upon commencement.

**Management associations**

No management association has been identified for the project at this time. Professional leasing and management of the facility is expected.

**Other Issues**

**Refuse Facilities:** A waiver to the minimum distance to a trash facility is also requested to reduce resident trips to refuse facilities, and this waiver will allow for greater flexibility in placement to reduce impact on

(18)

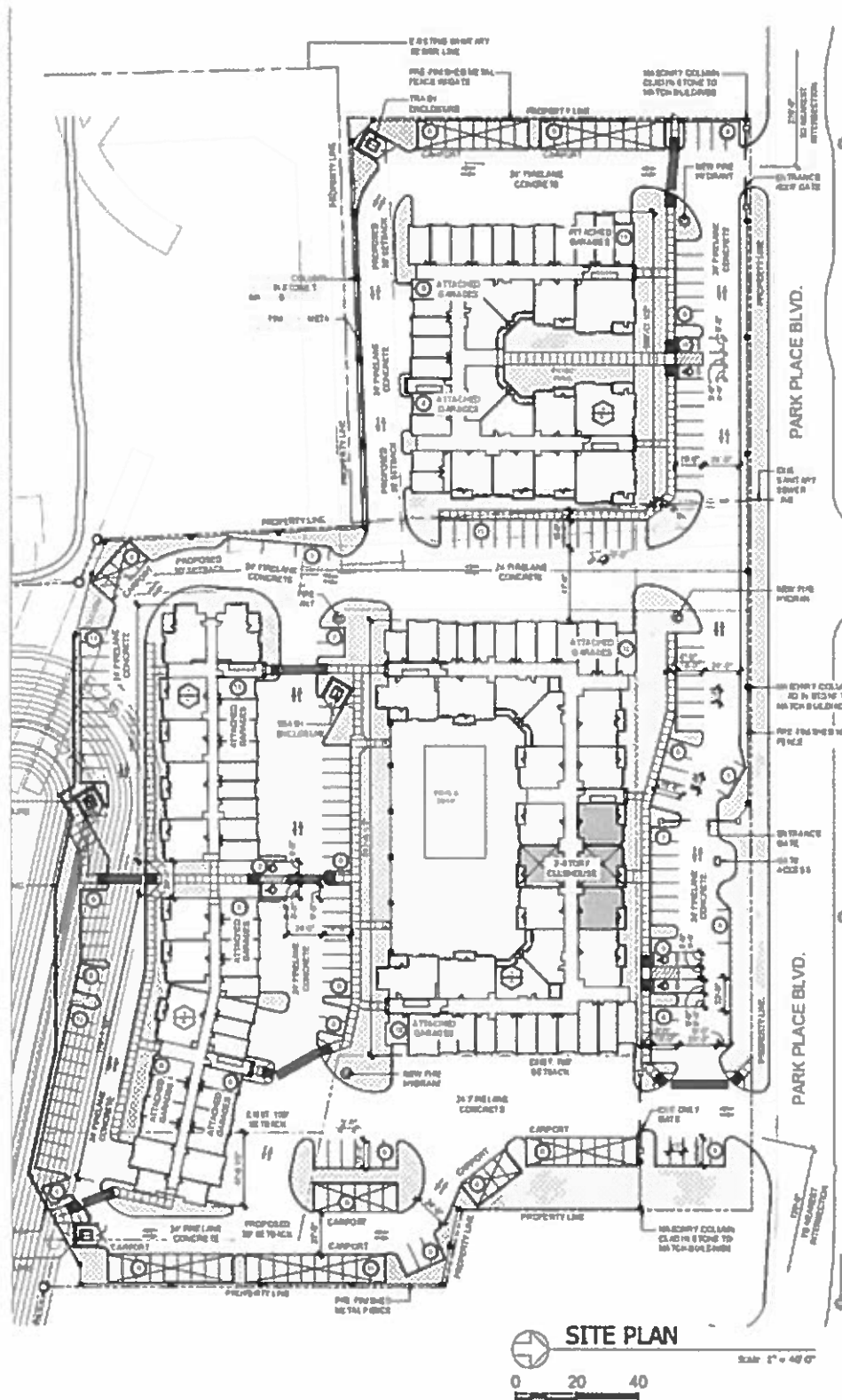
**Exhibit B - Planned Development Regulations**

the pedestrian path located on the south side of the property. No waiver is requested to the minimum number of facilities needed or required screening.

Open Space requirements: A credit of one-third of the usable open space requirement is requested due to adjacency to the City's pedestrian network and Sports Complex, as well as credit for the swimming pool area and patio (approximately 2,500 sf)

## **Exhibit B - Planned Development Regulations**

## Exhibit A – Concept Site Plan



**Exhibit B - Planned Development Regulations**

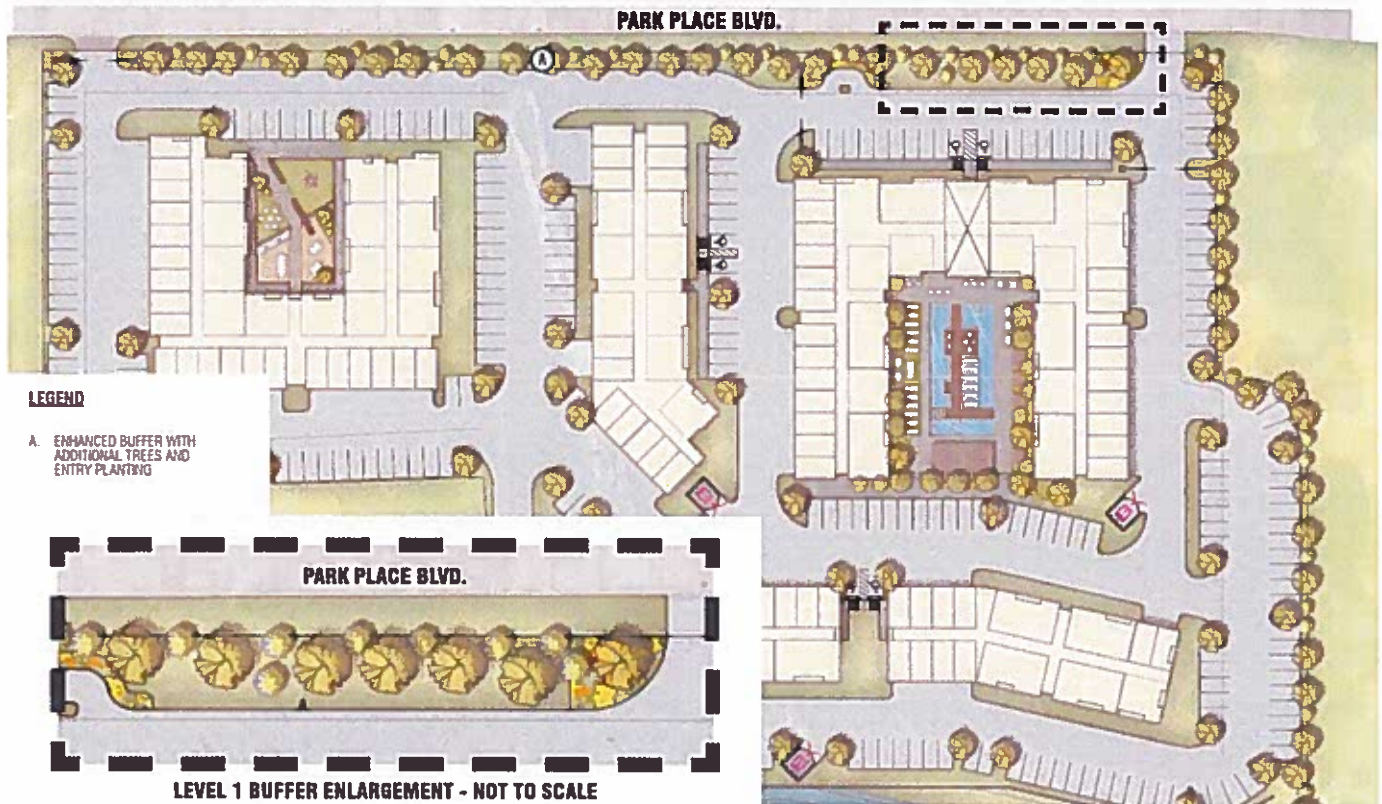
**Exhibit B – Representative Building Elevation**





**Exhibit B - Planned Development Regulations**

**Exhibit C – Concept Landscape Design**



(19)

## Planning & Zoning Department

### Zoning Staff Report

Case: ZDC-164-2020



#### MEETING DATE(S)

*Planning & Zoning Commission:* December 15, 2020

*City Council:* December 21, 2020

#### ACTION SINCE INITIAL STAFF REPORT

At the Planning & Zoning Commission meeting, held December 15, 2020, the Commission voted 7-0 to recommend approval of zoning change ZDC-164-2020, subject to staff comments.

#### CAPTION

Request by Jenny Nivens, Dancing Daiquiris, for a Specific Use Permit to allow for a **Convenience Store** (Daiquiri Shop) use within a Planned Development-37-General Retail zoning district located at 1014 Ferris Ave, Suite 110 (being a portion of Property ID 176876) – Owner: LEDBETTER REAL ESTATE LTD (ZDC-164-2020)

#### APPLICANT REQUEST

The applicant is requesting a zoning change from Planned Development -37-General Retail to Planned Development General Retail with Specific Use Permit to allow for a Convenience Store with alcohol sales (Daiquiri Shop).

#### CASE INFORMATION

*Applicant:* Jenny Nivens

*Property Owner(s):* Ledbetter Real Estate LTD

*Site Acreage:* 0.576 acres

*Current Zoning:* PD-37-GR/P

*Requested Zoning:* PD-37-GR/P with SUP

#### SUBJECT PROPERTY

*General Location:* 1014 Ferris Ave, Suite 110

*Parcel ID Number(s):* 176876

*Existing Use:* Commercial/Retail Office Building

*Development History:* This site is platted as lots 1, 2, and 4, Block 17 of the Williams Addition. Planned Development Ordinance 1738 was established on January 20, 1992 to better regulate parking standards for this location.

**Adjoining Zoning & Uses:**

Direction	Zoning	Current Use
North	GR	Pollo Regio Restuarant
East	PD-GR/P	Parking Lot
South	GR	Auto Zone
West	GR	Vape Shop

**Future Land Use Plan:**

Retail

**Comprehensive Plan:**

Retail includes areas that have restaurants, shops, grocery stores, and personal service establishments. Retail businesses generally require greater visibility than do other types of nonresidential land use (e.g., office, commercial).

**Thoroughfare Plan:**

This property is accessible via Ferris Ave, W Criddle St, and 6<sup>th</sup> Street.

**Site Image:****PLANNING ANALYSIS****Purpose of Request:**

The purpose of this request is to allow a proposed Daiquiri Shop within an existing retail center (Ferris Plaza). Per the City of Waxahachie Zoning Ordinance, a convenience store with alcohol sales requires a Specific Use Permit.

**Proposed Use:**

The applicant is requesting approval to allow a proposed Daiquiri Shop within an existing retail center (Ferris Plaza), located along Ferris Avenue. The proposed development, Dancing Daiquiris, will provide



food, wine-based daiquiris, a limited beer selection, soda, and water. There will also be a kitchen installed so food can be provided to the customers, while the applicant intends to make minor interior remodeling changes, the applicant does not intend on expanding the building in any way. The proposed alcohol to food percentage sales ratio will be sixty percent (60%) alcohol to forty percent (40%) food.

Per the Operational Plan, in addition to the owner, there will be four additional employees working a mix of full and part time hours. Business hours will be:

- Monday & Tuesday closed
- Wednesday: 12:00 – 9:00
- Thursday: 12:00-10:00
- Friday: 12:00-11:00
- Saturday: 11:00-11:00
- Sunday: 12:00-8:00

#### **PON RESPONSES**

Staff has received one (1) letter of opposition for the proposed development.

#### **PUBLIC NOTIFICATIONS**

To comply with State law contained in Local Government Code Chapter 211 and the City's public hearing notice requirements, 23 notices were mailed to property owners within 200 feet of the request. In addition, a notice was published in the Waxahachie Sun and a sign was visibly posted at the property.

#### **RECOMMENDATION**

Based on the details provided in this Staff Report and the present status of the documents subject to the request, the Planning and Zoning Department recommends:

- ☐ Denial
- ☐ Approval, as presented.
- ☒ Approval, per the following comments:
  1. The business must conform to the City of Waxahachie requirements as well as adhere to TABC provisions, as defined in the Alcoholic Beverage Code of the State of Texas.
  2. The operator must maintain compliance with State regulations and local ordinances for food service operations.
  3. If approved, City Council reserves the right to review the Specific Use Permit at any point in the future, if needed.

#### **ATTACHED EXHIBITS**

1. PON Responses
2. Exhibit A – Location Map
3. Exhibit B – Floor Plan
4. Business Plan

#### **APPLICANT REQUIREMENTS**

1. If approved by City Council, applicant can apply for building permits from the Building and Community Services Department.

**STAFF CONTACT INFORMATION***Prepared by:*

Chris Webb

Planner

[cwebb@waxahachie.com](mailto:cwebb@waxahachie.com)*Reviewed by:*

Shon Brooks, AICP

Director of Planning

[sbrooks@waxahachie.com](mailto:sbrooks@waxahachie.com)

(19)

Case Number: **ZDC-164-2020**

City Reference: 173190

Your response to this notification is optional. If you choose to respond, please return this form by 5:00 P.M. on **Wednesday, December 9, 2020** to ensure inclusion in the Agenda Packet. Forms can be e-mailed to [Planning@Waxahachie.com](mailto:Planning@Waxahachie.com) or you may drop off/mail your form to City of Waxahachie, Attention: Planning, 401 South Rogers Street, Waxahachie, TX 75165.

RECEIVED NOV 3 0 2020

☐ SUPPORT

☒ OPPOSE

Comments:

*We do not wish to have this at our back door.*

*Melony J. Jordan*

Signature

*Nov. 30, 2020*

Date

*Melony Jordan Owner*

Printed Name and Title

*413 Dunn St.*

Address

*It is a crime to knowingly submit a false zoning reply form. (Texas Penal Code 37.10)*

*If you are not the addressee at the top of this form, but would like to submit a response, please contact the City for a blank form.*

(19)

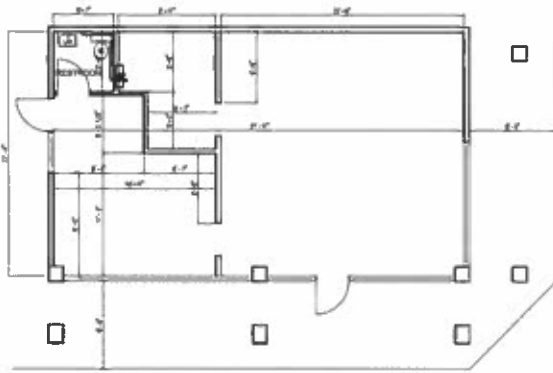
Case ZDC-164-2020  
 Responses Received Inside Required 200' Notification Area  
 Support: 0 Oppose: 1

PropertyID	Owner's Name	Acreage	Legal Description	Owner's Address	Owner's City	Owner's State	Owner's ZIP	Physical Address
173189	LEDBETTER REAL ESTATE LTD	0.284	LOT 1 DYESS-BALES ADD 0.284 AC	105 RIDGECREST DR.	WAXAHACHIE	TX	75165	CRIDDLE ST WAXAHACHIE TX 75165
173190	JORDAN IRVIN D & MELONY A	0.142	LOT 2 DYESS-BALES ADD 0.142 AC	415 DUNN ST	WAXAHACHIE	TX	75165	415 DUNN ST WAXAHACHIE TX 75165
174786	VIEN LADD	0.142	LOT 2 LYONN PLACE 142 AC	1015 FERRIS AVE	WAXAHACHIE	TX	75165	415 DUNN ST WAXAHACHIE TX 75165
176865	CHANEY BOYS	0.165	LOT 3 BLK 17 WILLIAMS-REV 0.165 AC	1601 LIVE OAK ST	COMMERCE	TX	75428	1008 FERRIS AVE WAXAHACHIE TX 75165
176866	AXL & L ENTERPRISES LLC	0.4313	ALL 18 WILLIAMS 0.4313 ACRES	3711 FM 1446	WAXAHACHIE	TX	75167	1102 FERRIS AVE WAXAHACHIE TX 75165
176867	MDJ CORP SONIC DRIVE IN	0.39	ALL 18A WILLIAMS 0.39 ACRES	1104 FERRIS AVE	WAXAHACHIE	TX	75165	1104 FERRIS AVE WAXAHACHIE TX 75165
176875	LEDBETTER REAL ESTATE LTD	0.234	LOT 1 BLK 16 WILLIAMS-REV 0.234 AC	105 RIDGECREST DR.	WAXAHACHIE	TX	75165	1006 FERRIS AVE WAXAHACHIE TX 75165
176876	LEDBETTER REAL ESTATE LTD	0.576	LOT 1,2,4 BLK 17 WILLIAMS-REV 0.576 AC	105 RIDGECREST DR.	WAXAHACHIE	TX	75165	1014 FERRIS AVE WAXAHACHIE TX 75165
176877	COOPER SHERRI & RANDY PAMETICKY	0.136	LOT 5 BLK 9 WILLIAMS-REV 0.136 AC	206 W CRIDDLE ST	WAXAHACHIE	TX	75165	206 W CRIDDLE ST WAXAHACHIE TX 75165
176883	BARTON MICHAEL G	0.163	4 8 WILLIAMS 0.163 ACRES	129 COUNTRY DR	WAXAHACHIE	TX	75165	409 DUNN ST WAXAHACHIE TX 75165
176887	BRADLEY CONNIE	0.262	LOT 3 BLK 9 WILLIAMS-REV .262 AC	503 DUNN ST	WAXAHACHIE	TX	75165	503 DUNN ST WAXAHACHIE TX 75165
176888	KARAMATIC DANA H	0.433	LOT 4 BLK 9 WILLIAMS-REV .433 AC	501 DUNN ST	WAXAHACHIE	TX	75165	501 DUNN ST WAXAHACHIE TX 75165
176889	SHARP RYAN & AMBER D	0.199	LOT 3 BLK 7 WILLIAMS-REV .199 AC	306 W ROSS ST	WAXAHACHIE	TX	75165	306 W ROSS ST WAXAHACHIE TX 75165
176890	MC ENTIRE SAM & RACHAEL	0.175	4 7 WILLIAMS 0.175 ACRES	403 DUNN ST	WAXAHACHIE	TX	75165	403 DUNN ST WAXAHACHIE TX 75165
176893	BUCKNER GERALD E & CINDY L	0.098	LOT 3 BLK 8 WILLIAMS-REV 0.098 AC	3541 FM 878	WAXAHACHIE	TX	75165	306 W 6TH ST WAXAHACHIE TX 75165
176897	BALSAMO THERESE A	0.098	LOT 1 BLK 7 WILLIAMS-REV 0.098 AC	305 W 6TH ST	WAXAHACHIE	TX	75165	305 W 6TH ST WAXAHACHIE TX 75165
176898	BLACK AMBER M	0.175	2 7 WILLIAMS 0.175 ACRES	405 DUNN ST	WAXAHACHIE	TX	75165	405 DUNN ST WAXAHACHIE TX 75165
176941	KAH III LLC DBA KS HOOGLAND III LLC	0.7285	LOT 2B-R BLK 28 WILLIAMS-REV 0.7285 AC	2500 LEHIGH AVE	GLENVIEW	IL	60026	1107 FERRIS AVE WAXAHACHIE TX 75165
176945	ONE FERRIS PROPERTY LLC	0.406	LOT 1 BLK 26 WILLIAMS-REV .406 AC	1007 FERRIS AVE	WAXAHACHIE	TX	75165	1007 FERRIS AVE WAXAHACHIE TX 75165
176948	VIEN LADD & G LOWRIE	0.414	PT 1 27 WILLIAMS 0.414 ACRES	1015 FERRIS AVE	WAXAHACHIE	TX	75165	1015 FERRIS AVE WAXAHACHIE TX 75165
176949	VIEN LADD	0.12	LOT 2A BLK 27 WILLIAMS-REV .12 AC	1015 FERRIS AVE	WAXAHACHIE	TX	75165	402 W 6TH ST WAXAHACHIE TX 75165
176950	VIEN LADD	0.294	LOT 2B BLK 27 WILLIAMS-REV .294 AC	1015 FERRIS AVE	WAXAHACHIE	TX	75165	1009 FERRIS AVE WAXAHACHIE TX 75165
197757	AUTOZONE INC #1338	0.505	1A 16 WILLIAMS REV 0.505 ACRES	PO BOX 2198	MEMPHIS	TN	38101	1000 FERRIS AVE WAXAHACHIE TX 75165

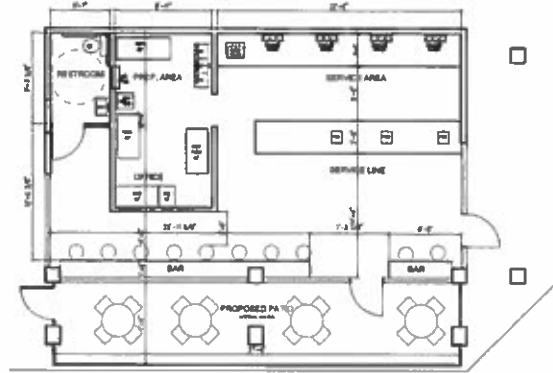
(19)



(19)



**1 FLOOR PLAN - EXISTING**  
1/4" = 1'-0"



**2 FLOOR PLAN - PROPOSED**  
1/4" = 1'-0"

PROJECT SUMMARY:  
OWNER: M. T. H. COMPANY  
PROPOSED: 100,000 SQ. FT. BUILDING  
BUILT: 2005 (RENOVATED) 2007  
PROJECT AREA: 100,000 SQ. FT.  
PROPOSED: 100,000 SQ. FT. (200,000 SQ. FT. TOTAL)  
PROPOSED: 100,000 SQ. FT. (200,000 SQ. FT. TOTAL)

## Exhibit B - Floor Plan

OWNER	PROJECT	CASE NO.
Jordan B. Myers	LEIBETTER REAL ESTATE	700-164-300
100 Kline Lane	100 KLINE LANE	PROPERTY ID: 178878
Waco, Texas 76706	WACO, TEXAS 76706	3.6 ACRES
466 337 333		LOT 12 & BLOCK 17
		Williams Addition
		WACO, TEXAS

CONTRACT NO. 100-164-300  
PROJECT NO. 100-164-300  
DATE: 10/1/10  
BY: J. B. MYERS

A NEW STORE FOR:  
**Dancing Daiquiris**  
100 KLINE LANE, SUITE 100, WACO, TEXAS

**Dancing Daiquiris**



**h u g o m o n s a n t o**  
100 KLINE LANE, SUITE 100, WACO, TEXAS 76706  
700-164-300

DATE: 10/1/10

**A1**

DATE OF DESIGN: 10/1/10

(19)



1 WEST ELEVATION  
1/4" = 1' - 0"



2 SOUTH ELEVATION  
1/4" = 1' - 0"

**SIGNAGE:**

MAXIMUM ALLOWED SIGNAGE = 1 SF / 1 LF OF FRONTAGE = 4721+47 SF  
PROPOSED SIGNAGE = 42 SF

ALL SIGNS ARE TO BE  
CONSTRUCTED IN ACCORDANCE  
WITH THE FOLLOWING  
SPECIFICATIONS:  
1. ALL SIGNS SHALL BE  
MADE OF ALUMINUM OR  
STAINLESS STEEL.  
2. ALL SIGNS SHALL BE  
MADE TO LAST.

A NEW STORE FOR  
**Dancing Daiquiris**  
104 FERNES AVE, SUITE 101, WAXAHACHE, TEXAS



h u r c h i e c i  
a r c h i t e c t  
1000 South Highway 100, Suite 100, Waxahatche, Texas 76798  
940.268.2828  
www.hurchiect.com

200 FERNES AVE, SUITE 101, WAXAHACHE, TEXAS 76798

OWNER	ELIOTTYER REAL ESTATE	PROPERTY ID = 178829
122 KRAMER LANE	104 RIDGECREST DR	64 ACRES
WAXAHACHE, TEXAS 76798	WAXAHACHE, TEXAS 76798	LOT 12.4 BLOCK 17
468 137 3635	Williams Address	
	WAXAHACHE, ELLIS COUNTY	

WEST PLANS  
**A3**  
SHEET 17 OF 20 (SHEET 18 IS  
SHEET 19)

(19)

Dancing Daiquiris  
1014 Ferris Ave, Ste 110  
Waxahachie, TX 75165

### **Menu**

Zagala's Pizza 12"

Supreme  
Pepperoni  
Cheese  
Meat Lovers  
Veggy

Daiquiris – 12 flavors

Soft drinks, bottle water

Specialty Beer – 3 varieties, sold in can

### **Hours of Operation**

Monday & Tuesday closed

Wednesday: 12:00 – 9:00

Thursday: 12:00-10:00

Friday: 12:00-11:00

Saturday: 11:00-11:00

Sunday: 12:00-8:00

### **Business Model**

Customers can come in and order and eat, take it to go, or call order in and we will deliver to car, to minimize contact.

My forecast percentage of sales: alcohol 60%, food 40%.



(50)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A SPECIFIC USE PERMIT (SUP) TO PERMIT A CONVENIENCE STORE WITH ALCOHOL SALES (DAIQUIRI SHOP) USE WITHIN A PLANNED DEVELOPMENT-37-GENERAL RETAIL/PARKING (PD-37-GR/P) ZONING DISTRICT, LOCATED AT 1014 FERRIS AVE, SUITE 110, BEING PROPERTY ID 176876, IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING PART OF LOTS 1, 2, AND 4, BLOCK 17 IN THE WILLIAMS ADDITION SUBDIVISION, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

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

**WHEREAS**, the City Council of the City of Waxahachie having heretofore adopted a zoning ordinance and map showing the classification of the various property located within the city limits of said City; and

**WHEREAS**, the described property is classified in said ordinance and any amendments thereto as PD-37-GR/P; and

**WHEREAS**, a proper application for an SUP has been made in accordance with the zoning ordinances in the City of Waxahachie and said application has been assigned case number ZDC-164-2020. Said application having been referred to the Planning and Zoning (P&Z) Commission was recommended by the P&Z Commission for approval and the issuance thereof; and

**WHEREAS**, proper notification has been published for the time and in the manner as prescribed by the city ordinance of the City of Waxahachie for a public hearing thereon; and,

**WHEREAS**, a proper hearing was held as required by law and the Council having heard all arguments for and against said SUP;

**NOW, THEREFORE**, this property is rezoned from PD-37-GR/P to PD-37-GR/P, with an SUP in order to permit a Convenience Store with Alcohol Sales (Daiquiri Shop) use on the following property: Part of Lots 1, 2, and 4, Block 17 Williams Addition subdivision, which is shown on Exhibit A, in accordance with the Site Layout Plan attached as Exhibit B.

### **SPECIFIC USE PERMIT**

#### **Purpose and Intent**

The purpose of this Ordinance is to provide the appropriate restrictions and development controls that ensure this Specific Use Permit is compatible with the surrounding development and zoning and to also ensure that the development complies with the City's Comprehensive Plan and Zoning Ordinance.

(20)

### Specific Use Permit

**FOR OPERATION OF A SPECIFIC USE PERMIT FOR A CONVENIENCE STORE WITH ALCOHOL SALES (DAIQUIRI SHOP) USE IN THE GENERAL RETAIL (GR) DISTRICT;**  
the following standards and conditions are hereby established as part of this ordinance:

1. The site plan shall conform as approved by the City Council under case number ZDC-164-2020.
2. The development shall maintain compliance with all Federal, State, and Local regulations; including, but not limited to, all applicable standards and regulations of the City of Waxahachie Municipal Code and City of Waxahachie Zoning Ordinance.
3. The business must conform to City of Waxahachie requirements as well as adhere to TABC provisions, as defined in the Alcoholic Beverage Code of the State of Texas.
4. The operator must maintain compliance with State regulations and local ordinances for food service operations.
5. The development shall adhere to the City Council approved Location Map (Exhibit A) and Floor Plan (Exhibit B).
6. If approved, City Council reserves the right to review the Specific Use Permit at any point in the future, if needed.

### Compliance

All development must conform to the approved site plan and all exhibits incorporated as exhibits to this ordinance, as well as those incorporated herein by reference.

1. It shall be unlawful for the owner, manager, or any person in charge of a business or other establishment to violate the conditions imposed by the City Council when a Specific Use Permit is granted, and the violation of those conditions could result in a citation being issued by the appropriate enforcement officers of the City of Waxahachie.
2. Furthermore, by this Ordinance, if the premises covered by this Specific Use Permit is vacated and/or ceases to operate for a period exceeding six months (6 months), a new Specific Use Permit shall be required to reestablish the use.
3. This Specific Use Permit shall run with the land and therefore may be transferred from owner to owner; however, each new owner shall obtain a new Certificate of Occupancy.
4. The Certificate of Occupancy shall note the existence of this Specific Use Permit by its number and title.

An emergency is declared to exist in that needed and approved improvements will be unnecessarily delayed if this ordinance is not effective upon passage and this ordinance is to be effective upon passage.

(20)

The zoning map of the City of Waxahachie is hereby authorized and directed to be demarked in accordance therewith.

**PASSED, APPROVED AND ADOPTED** on this 21<sup>st</sup> day of December, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

(21)

## Planning & Zoning Department

### Zoning Staff Report

---

**Case: ZDC-166-2020**

---



#### **MEETING DATE(S)**

*Planning & Zoning Commission:* December 15, 2020

*City Council:* December 21, 2020

#### **ACTION SINCE INITIAL STAFF REPORT**

At the Planning & Zoning Commission meeting, held December 15, 2020, the Commission voted 7-0 to recommend approval of case number ZDC-166-2020, subject to staff comments.

#### **CAPTION**

**Public Hearing** on a request by Brian Gray for a Specific Use Permit (SUP) for **Accessory Building (Residential), Greater than or Equal to 700 SF** use within a Planned Development-23-Single-Family Residential-1 zoning district located at 101 Homestead Ln (Property ID 269680) - Owner: BRIAN & MARY GRAY (ZDC-166-2020)

#### **APPLICANT REQUEST**

The applicant is requesting to construct a +700 sq. ft. (2,400 sq. ft.) accessory structure in the rear of a single family property.

#### **CASE INFORMATION**

*Applicant:* Brian Gray

*Property Owner(s):* Brian Gray

*Site Acreage:* 1.001 acres

*Current Zoning:* Planned Development-23-Single-Family Residential-1

*Requested Zoning:* Planned Development-23-Single-Family Residential-1 with SUP

#### **SUBJECT PROPERTY**

*General Location:* 101 Homestead Ln.

*Parcel ID Number(s):* 269680

*Existing Use:* Single Family Residence

*Development History:* N/A

(21)

**Table 1: Adjoining Zoning & Uses**

Direction	Zoning	Current Use
North	PD-23-SF1	Homestead Estates
East	FD	Undeveloped Land
South	PD-23-SF1	Homestead Estates
West	PD-23-SF1	Homestead Estates

*Future Land Use Plan:*

Estate Residential

*Comprehensive Plan:*

This use is representative of traditional, single-family detached dwellings on large lots that are over one acre in size. This type of land is envisioned to primarily be located in the southern portion of the City and in the ETJ area south and west of Waxahachie.

*Thoroughfare Plan:*

The subject property is accessible via Homestead Ln.

*Site Image:*



## **PLANNING ANALYSIS**

### **Purpose of Request:**

The applicant is requesting to construct a +700 sq. ft. (2,400 sq. ft.) accessory structure in the rear of a single family property located at 101 Homestead Ln. Ellis County Appraisal District states that the primary structure on the property is 3,697 sq. ft. Per the City of Waxahachie Zoning Ordinance, an accessory structure that is equal to or greater than 700 square feet requires a SUP to be approved by City Council.

### **Proposed Use:**

The applicant is requesting approval to construct a 60 ft. x 40 ft. 16 ft. 10 in. tall (2,400 sq. ft.) accessory structure. The applicant is proposing to construct the structure out of metal, and intends to use the accessory structure to store parts and tools, as well as park additional vehicles. During site visits, staff noticed there are other accessory structures within the surrounding neighborhood area, yet none of

(21)

comparable size. However, it should be noted that the neighborhood (Homestead Estates), is a newly constructed residential development, and staff expects similar requests within the neighborhood area in the future.

Subject to approval of this application, an approved building permit will be required prior to the commencement of the construction. As part of the building permit review process, the Building Inspections department will ensure construction complies with all regulations.

#### **PUBLIC NOTIFICATIONS**

To comply with State law contained in Local Government Code Chapter 211 and the City's public hearing notice requirements, 10 notices were mailed to property owners within 200 feet of the request. In addition, a notice was published in the Waxahachie Sun and a sign was visibly posted at the property.

#### **RECOMMENDATION**

Based on the details provided in this Staff Report and the present status of the documents subject to the request, the Planning and Zoning Department recommends:

- ☐ Denial
- ☐ Approval, as presented.
- ☒ **Approval, per the following comments:**
  1. The applicant will need to obtain a building permit from the City of Waxahachie Building Inspections department prior to construction of the proposed structure.
  2. A concrete drive that leads from the home to the accessory structure shall be provided by the applicant.

#### **ATTACHED EXHIBITS**

1. Ordinance
2. Location Exhibit
3. Site Plan

#### **APPLICANT REQUIREMENTS**

1. If approved by City Council, applicant can apply for building permits from the Building and Community Services Department.

#### **STAFF CONTACT INFORMATION**

*Prepared by:*  
Colby Collins  
Senior Planner  
[ccollins@waxahachie.com](mailto:ccollins@waxahachie.com)

*Reviewed by:*  
Shon Brooks, AICP  
Director of Planning  
[sbrooks@waxahachie.com](mailto:sbrooks@waxahachie.com)

(28)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A SPECIFIC USE PERMIT (SUP) TO PERMIT A +700 SQUARE FOOT ACCESSORY STRUCTURE USE WITHIN A PLANNED DEVELOPMENT-23-SINGLE FAMILY-1 (PD-23-SF1) ZONING DISTRICT, LOCATED AT 101 HOMESTEAD LANE, PROPERTY ID 269680, BEING LOT 1, BLOCK B OF HOMESTEAD ESTATES, IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:**

**WHEREAS**, the City Council of the City of Waxahachie having heretofore adopted a zoning ordinance and map showing the classification of the various property located within the city limits of said City; and

**WHEREAS**, the described property is classified in said ordinance and any amendments PD-23-SF1; and

**WHEREAS**, a proper application for an SUP has been made in accordance with the zoning ordinances in the City of Waxahachie and said application has been assigned case number ZDC-166-2020. Said application having been referred to the Planning and Zoning (P&Z) Commission was recommended by the P&Z Commission for approval and the issuance thereof; and

**WHEREAS**, proper notification has been published for the time and in the manner as prescribed by the city ordinance of the City of Waxahachie for a public hearing thereon; and,

**WHEREAS**, a proper hearing was held as required by law and the Council having heard all arguments for and against said SUP;

**NOW, THEREFORE**, this property is rezoned from PD-23-SF1 to PD-23-SF1, with an SUP in order to permit an accessory structure exceeding 700 square feet on the following property: Lot 1, Block B of Homestead Estates, which is shown on Exhibit A, in accordance with the Site Plan attached as Exhibit B.

### **SPECIFIC USE PERMIT**

#### **Purpose and Intent**

The purpose of this Ordinance is to provide the appropriate restrictions and development controls that ensure this Specific Use Permit is compatible with the surrounding development and zoning and to also ensure that the development complies with the City's Comprehensive Plan and Zoning Ordinance.

(22)

### Specific Use Permit

**FOR OPERATION OF A SPECIFIC USE PERMIT FOR A +700 SQUARE FOOT ACCESSORY STRUCTURE USE IN THE PLANNED DEVELOPMENT-23-SF1 (PD-23-SF1) DISTRICT;** the following standards and conditions are hereby established as part of this ordinance:

1. The site plan shall conform as approved by the City Council under case number ZDC-166-2020.
2. The development shall adhere to the City Council approved in Exhibit A- Location Exhibit and Exhibit B – Site Plan.
3. The applicant will need to obtain a building permit from the City of Waxahachie Building Inspections department prior to construction of the proposed structure.
4. A concrete drive that leads from the home to the accessory structure shall be provided by the applicant.
5. The development shall maintain compliance with all Federal, State and Local regulations; including, but not necessarily limited to, all applicable standards and regulations of the City of Waxahachie Municipal Code and City of Waxahachie Zoning Ordinance.
6. If approved, City Council reserves the right to review the Specific Use Permit at any point in the future, if needed.

### Compliance

1. It shall be unlawful for the owner, manager, or any person in charge of a business or other establishment to violate the conditions imposed by the City Council when a Specific Use Permit is granted, and the violation of those conditions could result in a citation being issued by the appropriate enforcement officers of the City of Waxahachie.
2. Furthermore, by this Ordinance, if the premises covered by this Specific Use Permit is vacated and/or ceases to operate for a period exceeding six months (6 months), a new Specific Use Permit shall be required to reestablish the use.
3. The Certificate of Occupancy shall note the existence of this Specific Use Permit by its number and title.

An emergency is declared to exist in that needed and approved improvements will be unnecessarily delayed if this ordinance is not effective upon passage and this ordinance is to be effective upon passage.

The zoning map of the City of Waxahachie is hereby authorized and directed to be demarked in accordance therewith.

**PASSED, APPROVED AND ADOPTED** on this 21<sup>st</sup> day of December, 2020.



(22)

---


MAYOR

ATTEST:

---

City Secretary

**Exhibit A - Location Exhibit**

 ZDC-000168-2020 (SUP)

(22)

## Exhibit B - Site Plan

OLD ITALY ROAD  
35' R/W DEDICATION

