

# **MEETING OF THE**

# **TEMPLE CITY COUNCIL**

## MUNICIPAL BUILDING

## **2 NORTH MAIN STREET**

## TEMPLE, TX

## THURSDAY, FEBRUARY 5, 2009

## 4:00 P.M.

# 3<sup>RD</sup> FLOOR CONFERENCE ROOM

## WORKSHOP AGENDA

- 1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, February 5, 2009.
- 2. Discuss alternate project delivery method options and the City's current local preference policy regarding the purchase of goods and services.
- 3. Discuss upcoming appointments to the following City boards and commissions:
  - (A) Building & Standards Commission two regular members and three alternate members to fill expiring terms through March 1, 2011
  - (B) Building Board of Appeals two members to fill expiring terms through March 1, 2013
  - (C) Development Standards Advisory Board three members to fill expiring terms through March 1, 2012
  - (D) Electrical Board one member to fill expiring term through March 1, 2012
  - (E) Library Board one member to fill unexpired term through September 1, 2009
  - (F) Parks and Leisure Services Advisory Board four members to fill expiring terms through March 1, 2012
  - (G) Tree Board two members to fill expiring terms through March 1, 2012
  - (H) Zoning Board of Adjustment two regular members and two alternate members to fill expiring terms through March 1, 2011

#### 5:00 P.M. CITY COUNCIL CHAMBERS – 2<sup>ND</sup> FLOOR

#### **TEMPLE CITY COUNCIL**

#### **REGULAR MEETING AGENDA**

## I. CALL TO ORDER

- 1. Invocation
- 2. Pledge of Allegiance

#### **II. PUBLIC COMMENTS**

Citizens who desire to address the Council on any matter may sign up to do so prior to this meeting. Public comments will be received during this portion of the meeting. Please limit comments to 3 minutes. No <u>discussion</u> or final action will be taken by the City Council.

#### III. CONSENT AGENDA

All items listed under this section, Consent Agenda, are considered to be routine by the City Council and may be enacted by one motion. If discussion is desired by the Council, any item may be removed from the Consent Agenda at the request of any Councilmember and will be considered separately.

3. Consider adopting a resolution approving the Consent Agenda items and the appropriate resolutions for each of the following:

#### <u>Minutes:</u>

(A) January 15, 2009 Special Called Meeting and Regular Meeting

#### Contracts, Leases & Bids:

- (B) 2009-5630-R: Consider adopting a resolution authorizing a construction contract with Bell Contractors, Inc., of Belton for construction of the 27<sup>th</sup> Street Waterline Improvement Project in the amount of \$746,953.16.
- (C) 2009-5631-R: Consider adopting a resolution authorizing a contract with Pall Advanced Separation Systems of Cortland, New York for the purchase of Flow Meter Differential Transmitters and Manifolds for the Water Treatment Plant in the amount of \$58,352.16.

- (D) 2009-5632-R: Consider adopting a resolution authorizing a contract with Water Utility Chemical, Inc., of Caldwell, Texas for installation of new filter units at the Membrane Water Treatment Plant (Filter Trak 660 Laser Nephaelometer Sensors with a SC100 controller), replacing existing obsolete filter units in the amount of \$30,626.89.
- (E) 2009-5633-R: Consider adopting a resolution authorizing a 5 year lease agreement with Temple Community Free Clinic, Inc., for lease of space in the Jeff Hamilton Community Center for continued operation of a free clinic.
- (F) 2009-5634-R: Consider adopting a resolution authorizing a one year lease agreement with Wings Over Texas Aviation, Inc., for the rental of a hangar for the purpose of operating a flight training and aircraft rental service business at the Draughon-Miller Central Texas Regional Airport.

#### Ordinances:

- (G) 2009-4276: SECOND READING Z-FY-09-12: Consider adopting an ordinance authorizing the zoning change from Light Industrial District (LI) to Central Area District (CA) on the West 25 Feet of Lot 11, the East 25 Feet of the West 50 Feet of Lot 12, and 17, Block 34, Original Town, located at 11, 13 and 17 East Avenue B.
- (H) 2009-4277: SECOND READING Z-FY-09-06: Consider adopting an ordinance authorizing a Conditional Use Permit to allow the sale of beer and wine on Lot 11, Block 34 of Original Town Addition, located at 13 East Avenue B.
- (I) 2009-4278: SECOND READING Z-FY-09-07: Consider adopting an ordinance authorizing a zoning change from Agricultural District (A) to Single Family Two District (SF-2) on 62.87 ± acres of land out of the Maximo Moreno Survey, Abstract Number 14, located on the east side of South 5<sup>th</sup> Street, south of Echo Village Phase I and Echo Vista Subdivisions.
- (J) 2009-4279: SECOND READING Z-FY-09-08: Consider adopting an ordinance authorizing a Conditional Use Permit for a warehouse addition on Lot 1, Block 1, Moores Railroad Addition, located at 810 West Calhoun Avenue.
- (K) 2009-4280: SECOND READING Z-FY-09-10: Consider adopting an ordinance authorizing the zoning change from Agricultural District (A) to Single Family Two District (SF-2) on 95.6 ± acres of land being part of the John J. Simmons Survey, Abstract Number 737 and described as Windmill Farms Phases II & III.
- (L) 2009-4281: SECOND READING Z-FY-09-11: Consider adopting an ordinance authorizing the zoning change from Two Family District (2F) and Light Industrial District (LI) to Commercial District (C) on Lots 2 and 3, Block 13, Addition, located at 707 South 6<sup>th</sup> Street and 704 South Martin Luther King Jr. Drive.

#### <u>Misc.</u>

(M) 2009-5635-R: Consider adopting a resolution authorizing acceptance of a Texas Department of Transportation, Aviation Division, Routine Airport Maintenance Grant, to assist with airfield crack filling and runway/taxiway pavement markings at the Draughon-Miller Central Texas Regional Airport in the amount of \$100,000 with a City match of \$50,000.

- (N) 2009-5636-R: Consider adopting a resolution authorizing acceptance of an Economic Development Initiative-Special Project grant for downtown redevelopment/Performing Arts Center in the amount of \$137,200.
- (O) 1. 2009-5637-R: Consider granting a petition to institute voluntary annexation proceedings, known as the Woods Robins Trust Voluntary Annexation for a 192.831 acre tract of land located in the vicinity of Airport Road and SH317.

2. 2009-5638-R: Consider adopting a resolution directing the City Manager to develop a municipal services plan and calling public hearings to consider the petition.

- (P) 2009-5639-R: Consider adopting a resolution abandoning a 20' wide utility easement traversing from north to south, 380<u>+</u> linear feet (7,600 square feet), west of Lot 2 in the Subramanian Subdivision for the Hindu Temple located at 4309 Midway Drive.
- (Q) 2009-5640-R: Consider adopting a resolution authorizing budget amendments for fiscal year 2008-2009.

## IV. REGULAR AGENDA

#### **Ordinances**

- 4. 2008-4266: FIFTH READING PUBLIC HEARING Consider adopting an ordinance renewing the franchise agreement with Atmos Energy Corporation.
- 5. 2009-4282: FIRST READING PUBLIC HEARING Z-FY-09-09: Consider adopting an ordinance authorizing a zoning change from Single Family Two District (SF-2) to Planned Development Single Family Two District (PD-SF-2) and Planned Development Single Family Three District (PD-SF-3) on 50.3± acres located on the south side of Tarver Drive and the north side of Hogan Road 506± feet east of State Highway 317, being a part of the Baldwin Robertson Survey, Abstract No. 17 and including The Village of Sage Meadows Phase II, Section 1.
- 2009-4283: FIRST READING PUBLIC HEARING Consider adopting an ordinance designating a tract of land consisting of approximately 66.561 acres located on Moore's Mill Road west of Wendland Road, as City of Temple Tax Abatement Reinvestment Zone Number Fourteen for commercial/industrial tax abatement.

#### **Board Appointments**

7. 2009-5641-R: Consider adopting a resolution appointing one member to the Hill Country Transit District Board of Directors.

# The City Council reserves the right to discuss any items in executive (closed) session whenever permitted by the Texas Open Meetings Act.

I hereby certify that a true and correct copy of this Notice of Meeting was posted in a public place at 1:35 PM, on February 2, 2009.

Clydette Entzminger

**City Secretary** 

I certify that this Notice of Meeting Agenda was removed by me from the outside bulletin board in front of the City Municipal Building on \_\_\_\_\_ day of \_\_\_\_\_2009.\_



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(A) Consent Agenda Page 1 of 1

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Clydette Entzminger, City Secretary

#### **ITEM DESCRIPTION:** Approve Minutes:

(A) January 15, 2009 Special Called Meeting & Regular Meeting

**STAFF RECOMMENDATION:** Approve minutes as presented in item description.

**ITEM SUMMARY:** Copies of minutes are enclosed for Council review.

FISCAL IMPACT: N/A

#### **ATTACHMENTS:**

January 15, 2009 Special Called Meeting & Regular Meeting

# **TEMPLE CITY COUNCIL**

#### **JANUARY 15, 2009**

The City Council of the City of Temple, Texas Conducted a Special Meeting on Thursday, January 15, 2009 at 3:00pm in the 3rd Floor Conference Room, 2 North Main Street.

#### Present:

Councilmember Marty Janczak Councilmember Tony Jeter Mayor Pro Tem Patsy Luna Councilmember Russell Schneider Mayor William A. Jones, III

# 1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, January 15, 2009.

Consent Agenda Item 3(C): David Blackburn, City Manager, stated the third lowest bidder for this project was a local vendor, Matous Construction, which was 3.6% higher than the low bid received from Excel Construction. Mr. Blackburn added that staff will always recommend the lowest responsible bidder and the Council can determine whether to invoke the local preference option.

Councilmember Jeter stated he would like to discuss the local preference policy at a worksession in the near future as he is concerned contractors might stop submitting bids for City projects.

Mr. Blackburn stated the local preference policy can potentially affect non-local bids. The goal is to attract firms that are qualified to do the work.

#### 2. Discuss proposed locations for the new Fire Station No. 8.

David Blackburn, City Manager, presented this item to the Council. He reminded Council that Fire Station No. 8 will be funded from the 2009 GO bonds in the amount of \$4,775,160 and remaining 2007 Certificate of Obligation funds in the amount of \$83,021.

Mr. Blackburn also reviewed some of location selection criteria presented in the Fire Master Plan prepared by ESCi. He noted that some of the possible locations being considered are on Airport property and all construction there must have FAA approval prior to construction. Currently, Airport personnel are doing an excellent job with AARF protection. If a fire station is located on Airport property it would simply provide an opportunity, in the distant future, to provide AARF protection should the need arise.

Several possible locations were presented, including pros and cons for each and maps showing the response time for that particular location. The locations included Option 4 - Old Howard Road and SH 36 (Bioscience Park at Central Pointe); Option 2 - Airport Trail (adjacent to the new Central Pointe Development); and Option 1- Airport by Water Tower, off SH 36. Mr. Blackburn stated the staff is recommending Option 1 because it allows both the training classroom and emergency operations center to be combined into this facility. This location next to a main highway also provides an increase in percentage area covered

by 4 and 6 minute time models. The only negative aspect of the site is that a future drill field would need to be located at a separate site.

# 3. Discuss ordinance relating to the submission of applications and permits under the state vested rights statute.

Jonathan Graham, City Attorney, presented this item to the Council, beginning with an explanation of what vested rights are, which is a concept recognizing the right of a owner/developer to develop his property in accordance with the rules and standards in affect when he commences the process of getting his project underway. The City of Temple adopted an ordinance in the early 1990s recognizing vested rights.

Mr. Graham also reviewed the vested rights statute, Chapter 245 of the Local Government Code. The City can provide that an application will expire in a certain period of time, but not less than 45 days if the application is technically incomplete as to form or content. The applicant must be advised in writing within 10 days of how the application is deficient and when it expires. The application expires if the applicant fails to cure the defect before the end of the period. Mr. Graham suggested the Council consider adopting an ordinance addressing incomplete applications, with an expiration term of 90 to 180 days.

Next, Mr. Graham discussed some of the permits that are never vested. He also discussed one additional local option which would allow a city to put an expiration date of two years on an individual permit, or five years on an entire project, if no action occurs to further that project for a length of time. Mr. Graham explained what is considered progress toward completion of a project. He recommended City staff look at specific permits we issue to see if there is a need for expiration dates on some of them and come back to the Council in the future with a recommendation. Plats already have an expiration of two years.

Councilmember Schneider questioned whether the expiration on plats was needed. It can be a lengthy time period between the development of subdivisions that have multiple phases.

# 4. Discuss process for amending the City of Temple Charter and potential proposed amendments to the current City of Temple Charter.

David Blackburn, City Manager, stated he felt it was a good practice to periodically review the Charter. At this time, he was not aware of any substantial changes that are needed. Most of the changes he would recommend would be considered housekeeping items to reflect current practices.

Jonathan Graham, City Attorney, explained the process to review and amend a city charter, which is governed by the Local Government Code. All changes to the Charter must be approved by the voters, whether they are City Council initiated, recommended by a Charter Review Committee, or presented in a petition.

Councilmember Schneider agreed with reviewing the Charter periodically for housekeeping changes. He stated he was not in favor of establishing a Charter Review Committee at this time because he didn't think there were any substantial changes that need to be addressed.

Councilmember Jeter stated he felt a provision needs to be added to the Charter to require a periodic Charter review. Also, Section 4.9, Conflict of Interest, is ambiguous and should be clarified. It is good to have an independent review by an outside group of people.

Councilmember Schneider stated the first decision to be made is whether this will be an inhouse review or done by a committee. If we do this in-house, the Council needs to review the Charter to see if there are any substantial or housekeeping changes to be made.

Councilmember Jeter stated he felt there was some benefit to a full review because the end product would be better.

Councilmember Schneider stated he agreed with a periodic staff review, not necessarily review by a committee.

Councilmember Janczak agreed a periodic review could be beneficial. Staff is fully engaged with many projects at this time and he felt the Charter review was not a high priority at this time.

Councilmember Jeter replied he was not advocating a huge undertaking by staff, just a thoughtful, diligent review. He added he does not like Section 4.9 as it is currently written and would like to see it changed.

Mayor Pro Tem Luna agreed with a periodic review since perspectives do change over time but agreed with Councilmembers Schneider and Janczak that there is no urgency in doing so at this time.

Councilmember Schneider stated the Council needs to resolve the issue with Section 4.9, Conflict of Interest. We just need to go by the rules and if the rules change in the future, we will go by the new rules.

Mr. Blackburn stated if directed, the staff can review the Charter for clarity. If changes to the Charter are desired, these should come from the Council, not staff.

#### 5. Receive update regarding the Temple Medical Education District (TMED).

David Blackburn, City Manager, gave a brief update to the Council on the TMED project. He began by presenting background information regarding the District, including the members of the coordinating group and other partners, the role of the coordinating group and the vision for the development of the TMED.

Mr. Blackburn presented some of the ideas being discussed, including the creation of a promenade on 1st Street in front of the VA Hospital, developing a park around the lake on the VA property and redeveloping a high density commercial strip across from the VA to multi-story retail and condos. Ideas for developing areas east of Temple College include redeveloping 1st Street with wide sidewalks, benches, landscape and pavers; mixed use/suburban style development between the railroad and Martin Luther King, Jr. Drive and clustered around the park; and the expansion of the Temple College campus to Avenue U and east through the existing golf course, with possible relocation of the golf course to the lake.

Ideas regarding the area between Temple College and Scott & White include locating an anchor, such as a performing arts theater, in the heart of this area; locating new medical

school just west of the anchor; establishing a major mixed use/multi story development between the medical school and the Loop; and expanding the Summit Recreation Center to a Family Life Center.

Some ideas being discussed for the overall district include creating pedestrian friendly streets on Avenue R, 1st, 5th and 31st Streets; developing hike/bike trails that connect Scott & White, Temple College, VA, the medical school and existing residential; turning Travis Middle School into a Health and Science Magnet with an adjacent new elementary magnet school; creating a brand that identifies the district using gateway markers, monumentation, landscape and streetscape; updating architectural and planning design standards to define and guide development; and offer financial incentives to improve existing residential homes and commercial areas and to attract high density, mixed use quality development.

Mr. Blackburn stated next steps include individual charettes/master plans of each campus or anchor facility, beginning with the 1st Street Veteran's Memorial Promenade, streetscape and median to the south. When this is complete the design standards for 1st Street can be finalized.

The City Council of the City of Temple, Texas conducted a Regular Meeting on Thursday, January 15, 2009 at 5:00 PM in the Council Chambers, Municipal Building, 2nd Floor, 2 North Main Street.

#### Present:

Councilmember Marty Janczak Councilmember Tony Jeter Mayor Pro Tem Patsy E. Luna Councilmember Russell Schneider Mayor William A. Jones, III

#### I. CALL TO ORDER

#### 1. Invocation

Reverend Shelton C. Rhodes, Greater Zion Church of God in Christ, voiced the Invocation.

#### 2. Pledge of Allegiance

Reverend Shelton C. Rhodes, Greater Zion Church of God in Christ, led the Pledge of Allegiance.

#### II. PUBLIC COMMENTS

There were no public comments made at this meeting.

#### III. CONSENT AGENDA

3. Consider adopting a resolution approving the Consent Agenda items and the appropriate resolutions for each of the following:

(A) December 18, 2008 Special Called Meeting and Regular Meeting

(B) 2009-5623-R: Consider adopting a resolution authorizing an out of scope contract with CH2MHill/OMI of Englewood, Colorado for replacement of the belt press feed pump #2 in the not to exceed amount of \$48,571.15.

(C) 2009-5624-R: Consider adopting a resolution authorizing a construction contract with Excel Construction Services, LLC, of Leander, for the construction and installation of new chemical bulk tanks at the Membrane Water Treatment Plant in the amount of \$593,900.

(D) 2009-5625-R: Consider adopting a resolution authorizing the purchase agreement with L3 Communications Mobile-Vision, Inc from Boonton, New Jersey for six (6) motorcycle based video recording systems in the amount of \$26,670.

(E) 2009-5626-R: Consider adopting a resolution supporting the TEX-21 2009 Legislative Agenda.

(F) 2009-5627-R: Consider adopting a resolution accepting the 2007-2008 Risk Management Annual Report.

(G) 2009-5628-R: Consider adopting a resolution authorizing budget amendments for fiscal year 2008-2009.

Motion by Mayor Pro Tem Patsy E. Luna to adopt resolution approving Consent Agenda, with exception of item (C), seconded by Councilmember Marty Janczak.

Motion passed unanimously.

# (C) 2009-5624-R: Consider adopting a resolution authorizing a construction contract with Excel Construction Services, LLC, of Leander, for the construction and installation of new chemical bulk tanks at the Membrane Water Treatment Plant in the amount of \$593,900.

Bruce Butscher, Director of Public Works, stated this project is to install a series of storage tanks at the Membrane Plant to adequately clean the membranes. He explained some issues that are currently being experienced and the consultant's recommendation to remedy those issues.

David Blackburn, City Manager, stated this project will assist us in increasing the capacity of the plant, which is more critical every year as our demands increase. Three bids were received, the low bid being from Excel Construction Services, LLC, which staff is recommending. The third low bidder is from Temple, Matous Construction, and their bid is within 5% allowed by State law for invoking the local preference option. It is the Council's decision whether or not to invoke the local preference.

Councilmember Janczak asked where the funds are coming from to pay for the project.

Mr. Butscher replied this is a bond project.

Councilmember Jeter stated the engineer's estimate was low. He asked if the difference can be absorbed.

Mr. Butscher replied yes, due to savings on other projects that have already bid.

Councilmember Jeter asked if we anticipated any change orders on this project.

Mr. Butscher explained the process for authorizing change orders. It depends on whether the change order is an addition to the project or quantity adjustments. No additions are anticipated at this time but staff is always looking for change orders that reduce contract costs.

Mr. Graham stated there are restrictions on what we can do on change orders. We can't change the unit price but can change the quantity or add other work. The total cost cannot exceed 25% of the original contract amount.

Councilmember Janczak asked about the time schedule for this project.

Mr. Butscher stated the project needs to be complete by early to mid May.

Bruce Matous, owner of Matous Construction, stated they are a local contractor with an office located in Temple. Their normal line of work is building wastewater treatment plants. They have 72 employees living in the Temple-Belton area. He stated he was asked to identify local vendors that will be used on this project and he has done that. Matous Construction does about \$20 million work per year, have worked for the City in the past and have a good relationship with the Staff and Kasberg, Patrick and Associates. Their company has also worked on this membrane plant and the conventional water plant. The project is a good fit for his company but it will be challenging to complete in the time period allotted.

Councilmember Jeter asked Mr. Matous if he had a problem with the vendor list being included in the contract.

Mr. Matous replied no, this is what was bid and it will be honored.

Councilmember Janczak asked if there are any other issues that might prevent Matous Construction from finishing this project on time.

Mr. Matous replied no, they would issue purchase orders immediately and incorporate these timeframes into that process. Their firm has the expertise to make this project happen.

Ken Higdon, President of the Temple Chamber of Commerce, stated Mr. Matous spends his money locally and that does make a difference in the community. There is a multiplier effect for those dollars being reinvested in the community.

Motion by Councilmember Tony Jeter to adopt resolution invoking the local preference option and awarding the contract to Matous Construction in the amount of \$615,000, to include the list of subcontractors and vendors to be used on this project, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

#### IV. REGULAR AGENDA

4. 2009-4276: FIRST READING - PUBLIC HEARING - Z-FY-09-12: Consider adopting an ordinance authorizing the zoning change from Light Industrial District (LI) to Central Area District (CA) on the West 25 Feet of Lot 11, the East 25 Feet of the West 50 Feet of Lot 12, and 17, Block 34, Original Town, located at 11, 13 and 17 East Avenue B.

Brian Mabry, Senior Planner, presented this case to the City Council. The zoning change is requested to accommodate a wine and beer bar to be addressed in the next case. Off street parking would be required if the Light Industrial zoning district is retained and this would be difficult for the applicant to obtain. Mr. Mabry displayed an aerial photograph of the subject property, as well as surrounding properties. This zoning change complies with the Future Land Use Plan for the area and the Thoroughfare Plan. Adequate utilities are in place. One notice was returned in favor and none were received in opposition. The Planning and Zoning Commission recommended approval of the requested rezoning and staff concurred.

Mayor Jones declared the public hearing open with regard to agenda item 4 and asked if anyone wished to address this item. There being no comments, Mayor Jones closed the public hearing.

Motion by Councilmember Marty Janczak to adopt ordinance, with second reading set for February 5, 2009, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

# 5. 2009-4277: FIRST READING - PUBLIC HEARING - Z-FY-09-06: Consider adopting an ordinance authorizing a Conditional Use Permit to allow the sale of beer and wine on Lot 11, Block 34 of Original Town Addition, located at 13 East Avenue B.

Brian Mabry, Senior Planner, presented this case to the City Council. This request is for a Conditional Use permit to allow on premise alcoholic beverage sales or consumption in a bar. The proposed ordinance sets out the general conditions associated with all conditional use permits and Mr. Mabry reviewed those conditions, as well as the specific conditions relating to the consumption of beer or mixed drinks. A site plan will also be included as part of the ordinance. Mr. Mabry displayed aerial photographs of the subject property, as well as the Future Land Use and Character Map. Six notices were mailed to surrounding property owners, with one being returned in support and none in opposition. The Planning and Zoning Commission recommended approval of the requested Conditional Use Permit with the conditions contained in the ordinance and staff concurred in that recommendation for approval.

Mayor Jones declared the public hearing open with regard to agenda item 5 and asked if anyone wished to address this item.

Mr. Thomas Preston, the father of the applicant, addressed the Council. Food will not

be prepared on-site, but pre-packaged food will be available. Beer and wine only will be served. This will basically be one open building with restrooms. It is intended to be an upper end wine bar, focusing on Texas wines and the over 30 crowd. The business will close at 11:00 pm, which will fit in with and compliment the general integrity of the downtown area that has been renovated.

Scott Motsinger, representing Louie Flores, the property owner, stated this is a 1100 square feet building with one open room. The owner is putting some money into the entire block to approve the appearance.

There being no further comments, Mayor Jones closed the public hearing.

Motion by Mayor Pro Tem Patsy E. Luna to adopt ordinance, with second reading set for February 5, 2009, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

 2009-4278: FIRST READING - PUBLIC HEARING - Z-FY-09-07: Consider adopting an ordinance authorizing a zoning change from Agricultural District (A) to Single Family Two District (SF-2) on 62.87 ± acres of land out of the Maximo Moreno Survey, Abstract Number 14, located on the east side of South 5th Street, south of Echo Village Phase I and Echo Vista Subdivisions.

Brian Mabry, Senior Planner, presented this case to the City Council. This rezoning is for a proposed single family subdivision. The plat has not been submitted for complete review as of yet. The property is currently being used for pasture land. Mr. Mabry displayed an aerial photograph of the property and the surrounding subdivisions. The rezoning request is in compliance with the Future Land Use and Character Map and Thoroughfare Plan and adequate public facilities are available. Mr. Mabry explained the development standards for the SF-2 zoning district. Forty-two notices were mailed to surrounding property owners, with two being received in approval and three in disapproval. The Planning and Zoning Commission approved the requested zoning change and staff concurred in that recommendation.

Mayor Jones declared the public hearing open with regard to agenda item 6 and asked if anyone wished to address this item.

Mr. Garret Nordyke, on behalf of the developer, asked for Council support for this rezoning request. A linear park is planned along the area where the residents expressing opposition to this subdivision live so they will have some open space. This will connect the other subdivisions to South 5th Street.

Councilmember Schneider stated the City has required other subdivisions in this area to match the existing fencing and he would like for the City to continue that practice in the future.

There being no further comments, Mayor Jones closed the public hearing.

Motion by Mayor Pro Tem Patsy E. Luna to adopt ordinance, with second reading set for February 5, 2009, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

# 7. 2009-4279: FIRST READING - PUBLIC HEARING - Z-FY-09-08: Consider adopting an ordinance authorizing a Conditional Use Permit for a warehouse addition on Lot 1, Block 1, Moores Railroad Addition, located at 810 West Calhoun Avenue.

Brian Mabry, Senior Planner, presented this case to the City Council. The property was zoned O-2 in 1999 and currently has a 4000 square foot warehouse. The applicant is proposing an expansion so the masonry ordinance would not apply. Mr. Mabry reviewed the standard conditions in the Conditional Use Permit. He also displayed an aerial photograph of the property, noting uses on surrounding properties, and the site plan. Mr. Mabry explained this request was submitted before the new screening standards were adopted by the Council. He reviewed the applicant's proposal, as well as the staff proposal. The Planning and Zoning Commission recommended the chain link fencing with vinyl slats and barb wire on top, with the addition of landscaping on the east side. Staff concurred with the Planning and Zoning Commission recommendation. Two notices were mailed to surrounding property owners and both were returned in favor of the requested Conditional Use Permit.

Mayor Jones declared the public hearing open with regard to agenda item 7 and asked if anyone wished to address this item.

Barbara Bozon, Temple Housing Authority, addressed the Council, asking for their support of the requested Conditional Use Permit. They feel this will be a good use of their property. All of the surrounding apartments are Housing Authority properties.

There being no further comments, Mayor Jones closed the public hearing.

Motion by Councilmember Russell Schneider to adopt ordinance, with second reading set for February 5, 2009, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

#### 2009-4280: FIRST READING - PUBLIC HEARING - Z-FY-09-10: Consider adopting an ordinance authorizing the zoning change from Agricultural District (A) to Single Family Two District (SF-2) on 95.6 ± acres of land being part of the John J. Simmons Survey, Abstract Number 737 and described as Windmill Farms Phases II & III.

Brian Mabry, Senior Planner, presented this rezoning case to the City Council. This single family subdivision is already in the process of development. This is a City-initiated zoning change with no objection from the land owner. SF-2 zoning is required to issue building permits. Mr. Mabry displayed an aerial photograph showing the connection to the existing subdivision and typical homes in this development. The rezoning request complies with the Future Land Use and Character Map. Forty-four notices were mailed to surrounding property owners, with three being returned in favor and none in opposition. The Planning and Zoning Commission recommended

approval of the rezoning and staff concurred.

Mayor Jones declared the public hearing open with regard to agenda item 8 and asked if anyone wished to address this item. There being no comments, Mayor Jones closed the public hearing.

Motion by Councilmember Russell Schneider to adopt ordinance, with second reading set for February 5, 2009, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

 2009-4281: FIRST READING - PUBLIC HEARING - Z-FY-09-11: Consider adopting an ordinance authorizing the zoning change from Two Family District (2F) and Light Industrial District (LI) to Commercial District (C) on Lots 2 and 3, Block 13, Addition, located at 707 South 6th Street and 704 South Martin Luther King Jr. Drive.

Brian Mabry, Senior Planner, presented this case to the City Council. The rezoning will allow classroom additions to Our Lady of Guadalupe Church Fellowship Hall. An aerial photograph of the property showed current and surrounding zoning districts. Mr. Mabry also displayed photos of the subject property and surrounding properties. The Commerical zoning district is required to allow more buildable area. The request is in compliance with the Future Land Use and Character Map and Thoroughfare Plan. Eighteen notices were mailed to surrounding property owners, with one being returned in favor and none in opposition. The Planning and Zoning Commission approved the rezoning request and staff concurred.

Mayor Jones declared the public hearing open with regard to agenda item 9 and asked if anyone wished to address this item.

Paul Ramirez, parishioner of Our Lady of Guadalupe Church, representing Father Tom Chamberlain, addressed the Council and asked for support for the expansion of their classrooms.

There being no further comments, Mayor Jones closed the public hearing.

Motion by Mayor Pro Tem Patsy E. Luna to adopt ordinance, with second reading set for February 5, 2009, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

# 10. 2009-5629-R: Consider adopting a resolution appointing members to the Killeen-Temple Urban Transportation Study Policy Board.

Mayor Jones stated Councilmember Schneider has asked to step down from the Policy Board but is willing to serve as an alternate on that board. Councilmember Janczak has indicated his desire to serve as the regular member.

Motion by Mayor Pro Tem Patsy E. Luna to adopt resolution appointing Councilmember Marty Janczak as a regular member and Councilmember Russell Schneider as the alternate member on the Killeen-Temple Urban Transportation Study Policy Board, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

William A. Jones, III, Mayor

Clydette Entzminger

ATTEST:

City Secretary



# COUNCIL AGENDA ITEM MEMORANDUM

02/05/09 Item #3(B) Consent Agenda Page 1 of 2

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce A. Butscher, P.E., Director of Public Works Nicole Torralva, P.E., Assistant Director of Public Works / Operations

**ITEM DESCRIPTION**: Consider adopting a resolution authorizing a construction contract with Bell Contractors, Inc., of Belton for construction of the 27<sup>th</sup> Street Waterline Improvement Project in the amount of \$746,953.16.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** For many years, the Utility Services Department has experienced numerous line breaks on an existing 12" cast iron waterline located on 27<sup>th</sup> Street, between Avenue H and Avenue M. This existing waterline moves water from the Avenue G Pump Station to the new 25<sup>th</sup> Street Elevated Storage Tank which supplies water to Scott & White Hospital and surrounding neighborhoods. Replacement of the existing line with a larger line will provide a reliable feed from the Avenue G Pump Station and will reduce the potential for major disruptions to the medical district.

On January 20, 2009, bids were received for construction of the project. Per the attached bid tabulation, Bell Contractors submitted the low bid on the project with ductile iron pipe in the amount of \$746,953.16. Clark and Fuller's opinion of probable construction cost for the project was \$1.2M dollars.

**FISCAL IMPACT:** Funding in the amount of \$1,350,000 is currently appropriated in account 561-5200-535-6934, Project #100388, for the 27<sup>th</sup> Street Waterline Improvements Project from the 2008 Utility Revenue Bond Issue. After funding engineering related expenses in the amount of \$160,933.34, a balance of \$1,189,066.66 remains available to fund construction of the project.

#### **ATTACHMENTS:**

Engineer's Letter of Recommendation Project Map Bid Tabulation Resolution



2010 SW HK Dodgen Loop, Suite 105 Temple, Texas 76504 (254) 899-0899 Fax (254) 899-0901

January 23, 2009

City of Temple Nicole Torralva, P.E. 3210 E. Ave. H, Bldg. A Temple, Texas 76501

Re: City of Temple, 27<sup>TH</sup> Street Water Line Improvements Project

Dear Mrs. Torralva,

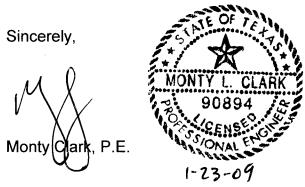
We have reviewed the bids for the above referenced project. Bell Contractors, Inc. submitted a Base Bid of \$746,953.16 and an Alternate Base Bid of \$687,328.16. *Please see the enclosed Bid Tabulation Sheet for detailed information.* 

We are recommending that you award the contract to Bell Contractors, Inc. In addition, we also recommend that you accept the Base Bid to construct the new 18" Class 250 Ductile Iron Water Main. We do not recommend acceptance of the Addendum No. 1 which allows substitution of 18" PVC DR 18 Class 235 C905 Water Main as an alternate to the 18" Ductile Iron Water Main required in the Base Bid.

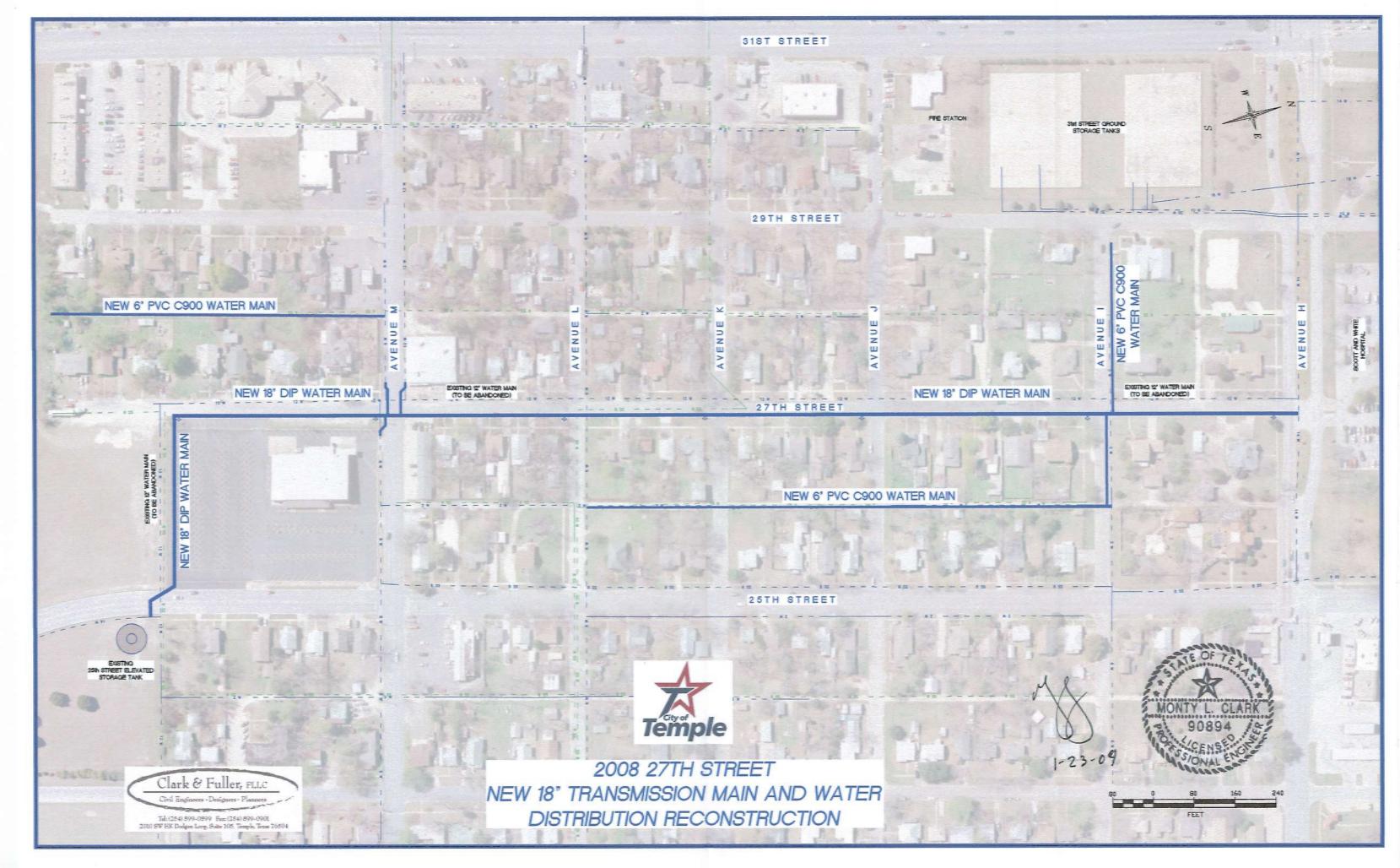
We believe, through personal experience, that Bell Contractors, Inc. is qualified and is capable of providing the new water main improvements as required in this project.

Bell Contractors, Inc. is a proven company with many successfully completed projects and we look forward to working with them on this project.

Please advise us as to which contractor you select.



Cc: Belinda Mattke, City of Temple, Purchasing



# Bid Tabulation Sheet 27th Street Water Line Improvement Project

lo. Item Descr.	Est. Quan.	UOM	Shelton & Shelto	Shelton Plumbing, LP Total Cost	TTG Uti Unit Price	lities, Inc. Total Cost	K&S Backhoe Unit Price	e Services, Inc. Total Cost	Bell Contr Unit Price	actors, Inc. Total Cost	McLean C Unit Price	onstruction Total Cost	Smetana & Unit Price	& Associates Total Cost
Exhibit "A" BID Schedule-Site Preparation										1				
1 Site R.O.W. Preparation & Clearing	53	STA	\$ 492.13		\$ 25.00	\$ 1,325.00	\$ 75.48				<ul> <li>A support of the second se second second sec</li></ul>	\$ 18,974.00	The second states of the secon	100 CONTRACTOR 100 CONTRA
2 Mobilization, Bonds, Permits, & Insurance	100%	LS	\$ 30,167.00		\$ 14,250.00	\$ 14,250.00		\$ 37,321.18		\$ 37,347.66		\$ 26,592.00	\$ 26,654.00	
Saw Cut, Removal & Replace Ex. HMAC Pavement	700		\$ 40.91											A REAL REAL PROPERTY AND A REAL PROPERTY A REAL PROPERTY AND A REA
Pavement Planing & Texturizing Ex. HMAC Pavement	5690	SY		\$ 24,353.20							The second secon		12 CONTRACTOR (12 CON	Carl Carlos Carlos
5 Provide New 2" HMAC Pavement Section	5690	SY	\$ 11.33											and the second sec
Sawout, Remove & Replace Concrete Pavement	12		\$ 46.58											
Remove & Replace Limestone Base Pavement	1950	SY	\$ 9.18						2000 2000 AND					
Remove & Replace Ex. Painted Pipe Fencing	60	LF	\$ 57.50										A CONTRACTOR OF A CONTRACT OF	
9 Provide & Implement a Traffic Control Plan 0 Provide & Implement a Trench Safety Plan	100% 100%	LS LS	\$ 14,088.00 \$ 4,610.00				\$ 22,951.00 \$ 1.800.00	\$ 22,951.00 \$ 1,800.00		\$ 8,500.00 \$ 2,500.00				
Subtotal Site Preparation Bid:				\$ 214,257.25		\$ 161,599.00		\$ 172,530.12		\$ 182,091.16		\$ 286,197.00		\$ 243,706
New Water Main Construction 1 Provide 18" Class 250 Ductile Iron Water Main	2650	LF	\$ 85.26	S 225,939.00	\$ 85.60	\$ 226,840.00	\$ 69.68	\$ 184.652.00	S 62.50	\$ 165.625.00	\$ 80.00	\$ 212,000,00	\$ 74.29	\$ 196,868.
2 Provide 12" PVC C900 Class 150 Water Main	2000	LF	\$ 39.68			\$ 3,960.00		s 3.314.40	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	\$ 1,686.00		\$ 2.760.00	1010 0010000000	Control Contro
Provide 12 PVC C900 Class 150 Water Main	30	LF	\$ 33.56		200 Sectored 10					\$ 618.00				
Provide 6" PVC C900 Class 150 Water Main	2600	LF	\$ 34.06				255) St17521924			\$ 45,448.00			14.51 State 1.55 State 1.55	
Provide Temporary 2" PVC Water Main	500	LF	\$ 26.84							\$ 4,150.00	1.1	N		1 N N N N N N N N N N N N N N N N N N N
Provide 30° Steel Pipe Encasement	105	LF	\$ 179.46						207	\$ 18,165.00				
Provide 30' Steel Pipe Encasement	20	LF	\$ 113.26							\$ 1,346.00				
Connection to Existing Water Main	7	EA	\$ 2,269.00							\$ 7,700.00	Second Seco		The second states and the	
Inline Connection to Existing Water Main	3	EA	\$ 3.507.00										\$ 3,561.00	
Temporary Connection to Existing Water Main	2	EA	\$ 1,753.00		2 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	1.05 C	Sector Sector Sector Sector		1.					1. C.
Provide 16" x16" MJ Tapping Sleeve & Valve Assembly		EA	\$ 10,992.00	-	1 A						the second se			
Provide 10" x10" ma rapping Gleeve & Valve Assembly Provide 12" x6" MJ Tapping Sleeve & Valve Assembly	4	EA	\$ 2.121.00										\$ 2,496.00	
Provide 12 x0 wa rapping cleave a valve Assembly Provide 14" x14" MJ Tapping Sleave & Valve Assembly		EA	\$ 10,303.00											
Provide 8" x8" MJ Tapping Sleeve & Valve Assembly	Q 2	EA	\$ 2,492.00										\$ 2,990.00	
Provide 18" MJ Gate Value	10	EA	\$ 9,186.00											
Provide 12" MJ Gate Value	3	EA	\$ 2.025.00											
Provide 8" MJ Gate Value	2	EA	S 1,187.00											
Provide 6" MJ Gate Value	18		\$ 909.00										100 100 100 100 100 100 100 100 100 100	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Provide 2" MJ Gate Value	1	EA	S 550.00										Active and a second second second	
Provide 18" x18" MJ Tee	2	EA	\$ 2,481.00										Carl Salateria	
Provide 18" x12" MJ Tee	1	EA	\$ 2,019.00											Contraction of the second s
Provide 6" x6" MJ Tee	7	EA	\$ 530.00									22		
Provide 2" x2" MJ Tee	1	EA	\$ 391.00		the second se						The second se		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	1. A.
Provide 18" MJ 45 Degree Bend	2	EA	S 1,601.00				\$ 1.298.82		\$ 2,200.00	\$ 4,400.00	\$ 1,150.00			\$ 3.68
Provide 18" MJ 11.25 Degree Bend	2	EA	\$ 1,599.00				\$ 1,305.37	\$ 2,610.74	\$ 1,300.00	\$ 2,600.00	\$ 1,085.00	\$ 2,170.00	\$ 1,833.00	\$ 3,66
Provide 18" x16" MJ Reducer	1	EA	\$ 1,389.00											
Provide 18" x16" MJ Reducer	1	EA	\$ 1,328.00											
Provide 18" MJ Plug	1	EA	\$ 628.00											
Provide 12" MJ 45 Degree Bend	4	EA	\$ 748.00											- C
Provide 8" MJ 90 Degree Bend	1	EA	\$ 535.00											
Provide 8" MJ 45 Degree Bend	2	EA	\$ 523.00				Charles Charles Charles							
Provide 6" MJ 45 Degree Bend	8	EA	\$ 428.00											
Provide 6" MJ Plug	2	EA	\$ 303.00								1 2 3 3 4 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5		(1997) (1997) (1997) (1997) (1997)	
Provide 6* x4* MJ Reducer	1	EA	\$ 355.00											
Provide 2" MJ 45 Degree Bend	2	EA	\$ 232.00		Contract of the second s								A STATE OF A	
Provide 2" x4" MJ Reducer	1	EA	\$ 248.00								San		and the second sec	
Provide 2" MJ Plug	-	EA	\$ 170.00											
Provide Standard Fire Hydrant Assembly	12		\$ 4,070.00	5 C						\$ 35,904.00	Constant and the second second		Contraction of the second s	
Provide 6* End of Line Flush Assembly	1	EA	\$ 562.00					A STATE AND A STAT	A State of the	\$ 1,100.00				
Provide 4" Standard Air/Vacuum Release Assembly	3	EA	\$ 7,945.00											
Provide Vater Sampling Station	3	EA	\$ 1,621.00					and the second se		\$ 4,200.00				and the second se
Provide Domestic Water Service Connection & Meter Box	50		\$ 992.00											
Remove & Relocate Existing Water Service	700		\$ 19.7											201 CARE 10
Salvage & Remove Ex. Water Sampling Station	100	EA	\$ 334.00											
Salvage & Remove Ex. Fire Hydrant Assembly	-	EA	\$ 334.00											
Salvage & Remove Existing Gate Valve		EA	\$ 334.00							\$ 1,560.00				
Provide All Testing per TCEQ & C.O.T.	100%	LS	\$ 11,945.00	2 CONTRACTOR 1 CON						\$ 4,800.00				
25012														

			Sh	elton & Si	helton Pl	lumbing, LP	TTG U	tilities	s, Inc.	ł	(&S Backhoe	e Ser	vices, Inc.		Bell Contra	ctors, li	nc.		McLean Co	onstru	uction	Smetar	a & A	ssociates
No. Item Descr.	Est. Quan	UOM	Uni	it Price	т	otal Cost	Unit Price	-	Total Cost	l	Unit Price	1	Total Cost	Un	nit Price	Total	l Cost	Ur	nit Price	To	tal Cost	Unit Price	-	Total Cost
New Sanitary Sewer Main Construction									_		_													
58 Provide 8" PVC SDR 26 Class 160 Sanitary Sewer Mair	350	LF	\$	68.20	S	23,870.00	\$ 55.00	S	19,250.00	S	27.00	S	9,450.00	S	24.30	S	8,505.00	s	38.10	\$	13,335.00	\$ 60.2	2 \$	21,077.0
59 Provide 4' Dia. Precast Conc. Manhole w/ 32" Ring & Li		EA	\$	3,659.00	S	10,977.00	\$ 2,400.00	S	7,200.00	S	2,300.00	S	6,900.00	\$	2,200.00	S	6,600.00	Ş	2,146.00	\$	6,438.00	\$ 2,660.0	0 \$	7,980.0
60 Provide Connection To Ex. Sanitary Sewer Main	1	EA	\$	3,410.00	S	3,410.00	\$ 775.00	S	775.00	S	350.00	\$	350.00	S	930.00	S	930.00	\$	2,563.00	\$	2,563.00	\$ 1,904.0	0 \$	1,904.0
61 Provide New Sanitary Sewer Service & Service Connect	ion 22	EA	S	1,573.00	S	34,606.00	\$ 470.00	S	10,340.00	S	700.00	\$	15,400.00	\$	680.00	\$ 1	14,960.00	\$	647.00	\$	14,234.00	\$ 945.0	0 \$	20,790.0
62 Provide Misc. Sanitary Sewer Service Pipe & Replacen	ent 200	LF	\$	50.59	S	10,118.00	\$ 23.60	S	4,720.00	S	15.55	s	3,110.00	S	21.40	S	4,280.00	\$	26.20	\$	5,240.00	\$ 20.0	0\$	4,000.0
Subtotal Site Preparation Bid:					s	82,981.00		\$	42,285.00			\$	35,210.00			\$3	35,275.00			\$	41,810.00		\$	55,751.0
			Sh	elton & Si	heiton Pi	lumbing, LP	TTG U	tilities	s, Inc.	8	(&S Backhoe	e Ser	vices, Inc.		Bell Contra	ictors, li	inc.		McLean Co	onstru	uction	Smetar	a & A	ssociates
Total Bid Exhibit "A"					s	1,010.552.25		\$	802.490.00			S	766.674.57			\$ 74	6.953.16			\$ 9	939,939.00		s	1.013,971.

			Shelt	ton & Sh	elton Plumbing, LP	TTG U	tilitie	s, Inc.	K&S I	Backhoe	Serv	vices, Inc.	Bell	Contra	actors, Inc.		McLean (	Constr	ruction	Smeta	ana & .	Associates
No. Item Descr.	Est. Quan.	UOM	Unit P	Price	Total Cost	Unit Price	_	Total Cost	Unit F	Price	Te	otal Cost	Unit Pri	ce	Total Co	st	Unit Price	T	otal Cost	Unit Pric	e	Total Cost
Bid Alternate Item #1 11 Deduct Provide 18" Class 250 Ductile Iron Water Main 11 Add Provide 18" PVC DR 18 Class 235 Water Main	2650 2650	LF LF	s s	85.26 62.82	\$ 225,939.00 \$ 166,473.00	1.2 M		226,840.00 173,575.00		69.68 49.05		184,652.00 129,982.50		2.50 0.00	\$ 165,62 \$ 106,00			35.0	212,000.00 162,710.00		.29 \$ .29 \$	196,868. 149,168.
Subtotal Site Preparation Bid:					\$ 653,848.00		\$	545,341.00			\$	504,264.95			\$ 469,96	2.00		s	562,642.00		\$	666,814.
			Shelt	ton & Sh	elton Plumbing, LP	тта и	tilitie	s, Inc.	K&S	Backhoe	Serv	vices, Inc.	Bell	Contr	actors, Inc.		McLean (	Const	ruction	Smet	ana & .	Associates
Total Bid With Alternate Item #1					\$ 951.086.25		s	749.225.00			s	712.005.07			\$ 687.32	8.16		\$	890,649.00		\$	966,271.





#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONSTRUCTION CONTRACT WITH BELL CONTRACTORS, INC., OF BELTON, TEXAS, FOR CONSTRUCTION OF THE 27<sup>TH</sup> STREET WATERLINE IMPROVEMENT PROJECT, IN THE AMOUNT OF \$746,953.16; AND PROVIDING AN OPEN MEETINGS CLAUSE.

**Whereas,** on January 20, 2009, the City received 6 bids for construction of the 27<sup>th</sup> Street Waterline Improvement Project;

**Whereas,** the Staff recommends accepting the bid (\$746,953.16) received from Bell Contractors, Inc., of Belton, Texas;

**Whereas,** funds are available for this project in Account No. 561-5200-535-6934, Project #100388; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

# Now, Therefore, Be it Resolved by the City Council of the City of Temple, Texas, That:

<u>**Part 1:**</u> The City Council authorizes the City Manager, or his designee, to execute a construction contract, not to exceed \$746,953.16 with Bell Contractors, of Belton, Texas, after approval as to form by the City Attorney, for construction of the 27<sup>th</sup> Street Waterline Improvement Project.

<u>**Part 2:**</u> It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 5<sup>th</sup> day of February, 2009.

#### THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

ATTEST:

Clydette Entzminger City Secretary Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(C) Consent Agenda Page 1 of 1

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce A. Butscher, P.E., Director of Public Works Nicole Torralva, P.E., Assistant Director of Public Works / Operations

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a contract with Pall Advanced Separation Systems of Cortland, New York for the purchase of Flow Meter Differential Transmitters and Manifolds for the Water Treatment Plant in the amount of \$58,352.16.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** To maintain TCEQ's regulatory requirements related to water system accountability, flows to the distribution system must be monitored. Many of these units, at both the conventional and membrane plants, are obsolete. As a result, City staff prepared plans and specifications for the purchase and installation of seventeen new transmitters located at both water plants.

On January 20, 2009, two bids were received for this project. Per the attached bid tabulation, Pall Advanced Separation Systems submitted the low bid on the project in the amount of \$58,352.16.

**FISCAL IMPACT:** Funding in the amount of \$55,000 is appropriated in account 520-5100-535-63-10, project # 100444, for the purchase and installation of Flow Meter Differential Transmitter and Manifold Project in the FY 2009 operating budget. A balance of \$54,953 is available to fund this purchase for the Water Treatment Plant. Attached is a budget adjustment for Council's approval in the amount of \$3,400 reallocating funds from project # 100445, Filter Trak Sensor, to fund the remaining cost of the project.

#### ATTACHMENTS:

Bid Tabulation Budget Adjustment Resolution

### Tabulation of Bids Received on January 20, 2009 at 2:30 p.m. Flow Meter Differential Transmitter & Manifold

				BIDDERS				
			ustries, Inc.	Pall Advanced Separation Systems				
		Ten	nple	Cortland, NY				
Description	Unit Price	Total Price	Unit Price	Total Price				
Flow Meter Differential Transmitters	17	\$2,949.00	\$50,133.00	\$3,432.48	\$58,352.16			
Manifolds	17	\$677.00	\$11,509.00	Included	in price above			
Total Bid Price		\$61,6	42.00	\$58,352.16				
Delivery		Y	es	Yes				
Local Preference		No	one	None				
Exceptions?		Y	es	None				
Credit Check Authorization		Y	es	Yes				

I hereby certify that this is a correct and true tabulation of all bids received.

Belinda Mattke Belinda Mattke, Director of Purchasing

20-Jan-09 Date Note: Shaded bid is recommended for Council approval.

-		•	~	~	~
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#### **BUDGET ADJUSTMENT FORM**

Use this form to make adjustments to your budget.	All adjustments must balance within a Department.
Adjustments should be re	ounded to the nearest \$1.

			+			-	
ACCOUNT NUMBER	PROJECT #	ACCOUNT DESCRIPTION	INCREA	SE	DE	CREASE	
							T
520-5100-535-63-10	100444	Building & Grounds	3,	400			T
520-5100-535-63-10	100445	Building & Grounds				3,400	
							L
							L
							L
							L
TOTAL			\$    3,·	400	\$	3,400	L
account are available.		<b>REQUEST-</b> Include justification for increases Differential Flow Meter Transmitters and Manifo					
DOES THIS REQUEST REQU DATE OF COUNCIL MEETIN		CIL APPROVAL? X 2/5/2009	Yes	N	0		
WITH AGENDA ITEM?		X	Yes	N			
Department Head/Divisior	n Director	Date			pprove isappro		
Finance		Date			pprove isappro		
City Manager		Date	[		pprove isappro		

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONTRACT WITH PALL ADVANCED SEPARATION SYSTEMS OF CORTLAND, NEW YORK, FOR THE PURCHASE OF FLOW METER DIFFERENTIAL TRANSMITTERS AND MANIFOLDS FOR THE WATER TREATMENT PLANT, IN THE AMOUNT OF \$58,352.16; AND PROVIDING AN OPEN MEETINGS CLAUSE.

**Whereas,** on January 20, 2009, 2 bids were received for purchasing Flow Meter Differential Transmitters and Manifolds for the Water Treatment Plant;

**Whereas,** the Staff recommends accepting the bid (\$58,352.16) from Pall Advanced Separation Systems of Cortland, New York, for this purchase;

Whereas, funds are available for this purchase but an amendment to the FY2008-2009 budget needs to be approved to transfer the funds to the appropriate expenditure account; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

# Now, Therefore, Be it Resolved by the City Council of the City of Temple, Texas, That:

<u>**Part 1:**</u> The City Council authorizes the City Manager, or his designee, to execute a contract, for a cost not to exceed \$58,352.16, with Pall Advanced Separation Systems of Cortland, New York, after approval as to form by the City Attorney, for the purchase of Flow Meter Differential Transmitters and Manifolds for the Water Treatment Plant.

**Part 2:** The City Council approves an amendment to the FY2008-2009 budget, substantially in the form of the copy attached as Exhibit A, for this project.

<u>**Part 3:**</u> It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **5**<sup>th</sup> day of **February**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

ATTEST:

Clydette Entzminger City Secretary

Jonathan Graham City Attorney



# COUNCIL AGENDA ITEM MEMORANDUM

02/05/09 Item #3(D) Consent Agenda Page 1 of 1

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce A. Butscher, P.E., Director of Public Works Nicole Torralva, P.E., Assistant Director of Public Works / Operations

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a contract with Water Utility Chemical, Inc., of Caldwell, Texas for installation of new filter units at the Membrane Water Treatment Plant (Filter Trak 660 Laser Nephaelometer Sensors with a SC100 controller), replacing existing obsolete filter units in the amount of \$30,626.89.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** The Membrane Water Treatment Plant utilizes a series of filter units to measure outgoing turbidity levels before sending potable water into the distribution system. To adequately prepare for and maintain TCEQ regulatory requirements related to the water system, properly calibrated turbidity units must be operational. The existing units are no longer able to be calibrated and parts for the units are obsolete. As a result, City staff prepared plans and specifications for the removal of old units and installation of new units at the Membrane Plant.

On January 20, 2009, three bids were received. Per the attached bid tabulation, Water Utility Chemical, Inc., submitted the low bid on the project in the amount of \$30,626.89.

**FISCAL IMPACT:** Funding in the amount of \$34,953 is available in account 520-5100-535-63-10, project # 100445, for the installation of Filter Trak Sensor Units at the Membrane Plant in the FY 2009 operating budget.

ATTACHMENTS: Bid Tabulation Resolution

#### Tabulation of Bids Received on January 20, 2009 at 2:30 p.m. Filter Trak Sensors for Membrane Plant

		BIDDERS												
		: Sales Inc idge, TN		company and, CO	Water Utility Chemical Inc. Caldwell, TX									
Description	Qty	Unit Price	Total Price	Unit Price	<b>Total Price</b>	Unit Price	Total Price							
Filter Trak Sensors	7	\$4,730.00	\$33,110.00	\$5,094.69	\$35,662.83	\$4,375.27	\$ <mark>30,626.89</mark>							
Delivery		Ye	s/No	Yes		Yes								
Local Preference		N	one	N	one	N	one							
Exceptions?		N	one	Y	'es	None								
Credit Check Authorization		Y	'es	Y	'es	Yes								

I hereby certify that this is a correct and true tabulation of all bids received.

Note: Shaded bid is recommended

Belinda Mattke20-Jan-09Belinda Mattke, Director of PurchasingDate

for Council approval.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONTRACT WITH WATER UTILITY CHEMICAL, INC., OF CALDWELL, TEXAS, FOR INSTALLATION OF NEW FILTER UNITS AT THE MEMBRANE WATER TREATMENT PLANT (FILTER TRAK 660 LASER NEPHAELOMETER SENSORS WITH A SC100 CONTROLLER), REPLACING EXISTING OBSOLETE FILTER UNITS, IN THE AMOUNT OF \$30,626.89; AND PROVIDING AN OPEN MEETINGS CLAUSE.

**Whereas,** on January 20, 2009, 3 bids were received for installation of new filter units at the Membrane Water Treatment Plant, to replace existing obsolete filter units;

**Whereas,** the Staff recommends accepting the bid (\$30,626.89) from Water Utility Chemical, Inc., of Caldwell, Texas, for this project;

Whereas, funds are available in Account 520-5100-535-6310, Project #100445, for this project ; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

Now, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

<u>Part 1:</u> The City Council authorizes the City Manager, or his designee, to execute a contract, for a cost not to exceed \$30,626.89, with Water Utility Chemical, Inc., of Caldwell, Texas, after approval as to form by the City Attorney, for installation of new filter units at the Membrane Water Treatment Plant (Filter Trak 660 Laser Nephaelometer Sensors with a SC100 controller), to replace existing obsolete filter units.

<u>**Part 2:**</u> It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 5<sup>th</sup> day of February, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Clydette Entzminger City Secretary

ATTEST:

Jonathan Graham City Attorney



# COUNCIL AGENDA ITEM MEMORANDUM

02/05/09 Item #3(E) Consent Agenda Page 1 of 1

#### DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a 5 year lease agreement with Temple Community Free Clinic, Inc., for lease of space in the Jeff Hamilton Community Center for continued operation of a free clinic.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** In May, 1992, the City entered into a lease agreement with Temple Community Free Clinic to utilize approximately 2,742 square feet in the Jeff Hamilton Community Center for operation of a free clinic. In September, 1996, the lease was amended to expand the lease area used by the free clinic to 4,800 square feet. The lease expired on December 31, 2008, and Temple Community Free Clinic has requested that a new lease be considered to continue their use of the facility as a free clinic at a rental rate of \$1 per year for a period of 5 years with the option to extend the lease for 1 additional 5-year term upon the agreement of both parties.

The City currently pays utility charges for water and sewer, and the Temple Community Free Clinic pays all other utility charges, including electricity, heat, gas, and telephone service, directly to the utility companies. The City pays annual property insurance on the building, however, Temple Community Free Clinic is responsible for insuring all its contents and equipment.

The Staff recommends approval of the lease.

**FISCAL IMPACT**: The City pays for water and sewer services for the Jeff Hamilton Center which is on the same meter with the Parks Administration Building, and for the annual premium for property insurance on the building which is approximately \$288.

#### ATTACHMENTS:

Resolution

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A LEASE AGREEMENT WITH TEMPLE COMMUNITY FREE CLINIC, INC., FOR LEASE OF SPACE IN THE JEFF HAMILTON COMMUNITY CENTER FOR CONTINUED OPERATION OF A FREE CLINIC; AND PROVIDING AN OPEN MEETINGS CLAUSE.

**Whereas,** the lease between the City of Temple and the Temple Community Free Clinic, Inc., for lease of space in the Jeff Hamilton Community Center for the operation of a free clinic expired on December 31, 2008;

Whereas, the Temple Community Free Clinic, Inc., requested that the lease be renewed for another 5-year term with the option to extend the lease for 1 additional 5-year term upon agreement of both parties;

Whereas, the Staff recommends approval of the lease under the same terms and conditions as the previous lease; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

Now, Therefore, Be it Resolved by the City Council of the City of Temple, Texas, That:

<u>**Part 1:**</u> The City Council authorizes the City Manager, or his designee, to execute a lease agreement with Temple Community Free Clinic, Inc., after approval as to form by the City Attorney, for lease of space in the Jeff Hamilton Community Center for continue operation of a free clinic.

<u>**Part 2:**</u> It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **5**<sup>th</sup> day of **February**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

ATTEST:

Clydette Entzminger City Secretary Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(F) Consent Agenda Page 1 of 2

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Sharon Rostovich, Airport Director

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a one year lease agreement with Wings Over Texas Aviation, Inc., for the rental of a hangar for the purpose of operating a flight training and aircraft rental service business at the Draughon-Miller Central Texas Regional Airport.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** The Wings Over Texas Aviation lease expired January 31, 2009. Wings Over Texas has operated the flight training and aircraft rental business since January 2007 and has proven to be a responsive tenant on our Airport. Wings Over Texas would like to continue to provide the flight training and aircraft rental services on the Airport through January 31, 2010 with three one-year renewal options if business arrangements are satisfactory to the City.

Wings Over Texas has demonstrated they are capable of operating an effective and productive flight training and aircraft rental service business on the Airport and continue to support the Airport and the Community. Wings Over Texas has made valuable improvements to the City owned 3,640 square foot hangar to include a major refurbishment and repair of the facility in 2007; upgrading hangar lighting and refurbishing the hangar floor in 2008; and will continue to make valued improvements in 2009. In consideration for these improvements, Wings Over Texas has requested the rent be set at \$400 per month. This represents a \$50 reduction; however, the loss of rental revenue will be more than made up with improvements to the 41 year old facility.

Staff recommends approval of the lease with Wings Over Texas Aviation, Inc. to run through January 31, 2010.

**FISCAL IMPACT:** The Airport will receive \$5,400 in hangar rent plus additional revenue from flight activity and fuel sales. The Airport receives valuable support and contributions throughout the year to include the annual Central Texas Airshow.

02/05/09 Item #3(F) Consent Agenda Page 2 of 2

ATTACHMENTS: Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A ONE YEAR LEASE AGREEMENT WITH WINGS OVER TEXAS AVIATION, INC., FOR THE RENTAL OF A HANGAR FOR THE PURPOSE OF OPERATING A FLIGHT TRAINING AND AIRCRAFT RENTAL SERVICE BUSINESS AT THE DRAUGHON-MILLER CENTRAL TEXAS REGIONAL AIRPORT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, Wings Over Texas Aviation, Inc., leases a hangar at the Draughon-Miller Central Texas Regional Airport for the purpose of operating a flight training and aircraft rental services business and other general aviation services at the Airport;

**Whereas,** the lease expired on January 31, 2009, and Wings Over Texas Aviation, Inc., requested another one year lease;

Whereas, the Staff recommends approving the lease agreement because Wings Over Texas has demonstrated that they are capable of operating an effective and productive flight training and aircraft rental service business on the Airport; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

# Now, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

<u>**Part 1:**</u> The City Council authorizes the City Manager, or his designee, to execute a one year lease agreement between the City of Temple, Texas, and Wings Over Texas Aviation, Inc., after approval as to form by the City Attorney, for the rental of a hangar for the purpose of operating a flight training and aircraft rental services business at the Draughon-Miller Central Texas Regional Airport.

<u>**Part 2:**</u> It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **5<sup>th</sup>** day of **February**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

ATTEST:

Clydette Entzminger City Secretary

Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(G) Consent Agenda Page 1 of 2

# **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-09-12: Consider adopting an ordinance authorizing the zoning change from Light Industrial District (LI) to Central Area District (CA) on the West 25 Feet of Lot 11, the East 25 Feet of the West 50 Feet of Lot 12, and 17, Block 34, Original Town, located at 11, 13 and 17 East Avenue B.

**PLANNING & ZONING COMMISSION RECOMMENDATION:** At its January 5, 2009 meeting, the Planning and Zoning Commission voted 7/0 in accordance with staff recommendation to recommend approval of a zoning change from LI to CA for the following reasons:

- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities serve the property.

Commissioners Barton and Talley were absent.

**<u>STAFF RECOMMENDATION</u>**: Adopt ordinance as presented in item description, on second and final reading.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-09-12, from the Planning and Zoning Commission meeting, January 5, 2009. The applicant's request is for a zoning change to accommodate a beer and wine bar in downtown Temple and to bring the applied area into compliance with the Comprehensive Plan.

At its December 2, 2008 meeting, the Planning and Zoning Commission heard and unanimously approved the applicant's request for a Conditional Use Permit (CUP) for the beer and wine bar that is proposed to be established on the subject property (see staff report for case Z-FY-09-06). However, further research from Staff revealed that when the applicant applies for a building permit for the bar, he will be required to provide off-street parking in the ratio of one space per three seats, making it difficult since the building containing the proposed bar takes up the entire lot.

The applicant chose to apply for a zoning change to the CA zoning district, which has mutual benefit both to him and to the City. The CA zoning district benefits the applicant because the Zoning Ordinance exempts this zoning district from off-street parking requirements. It benefits the City

because the granting of the rezoning would remove the LI, Light Industrial, zoning designation from the subject property, thus removing potentially incompatible industrial uses from the downtown area.

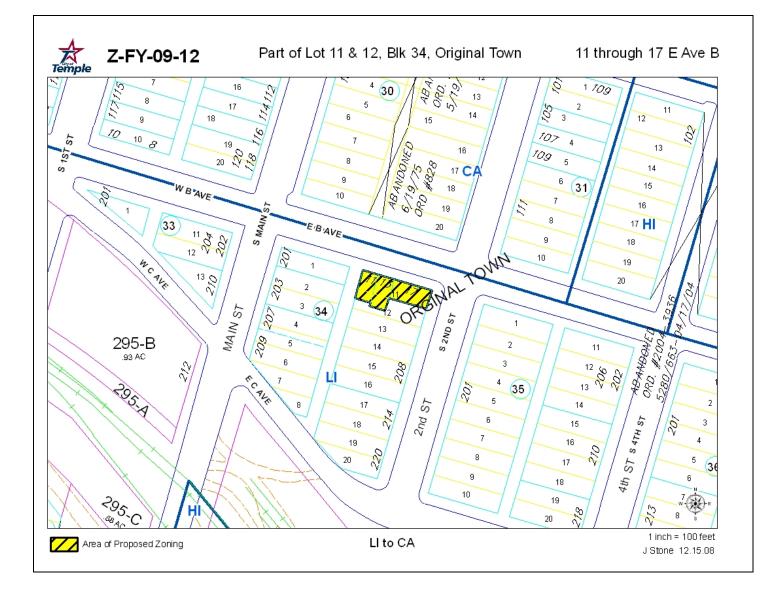
The Commission did not raise any issues requiring additional staff attention.

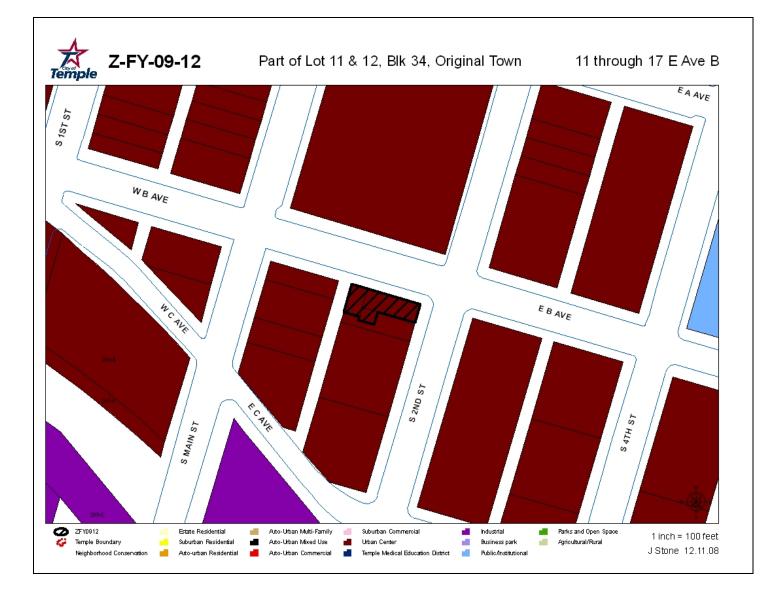
# FISCAL IMPACT: NA

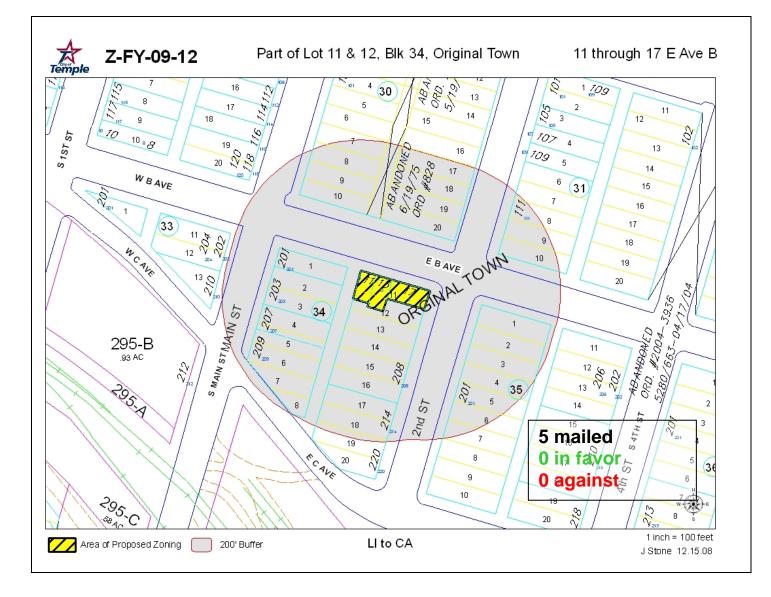
# **ATTACHMENTS:**

Aerial Zoning Map Land Use and Character Map Notice Map P&Z Staff Report (Z-FY-09-12) P&Z Minutes (January 5, 2009) Ordinance









PLANNING AND ZONING COMMISSION AGENDA ITEM

01/05/08 Item #8 Regular Agenda Page 1 of 2

# APPLICANT / DEVELOPMENT: Isaac Fleener for Louie Flores

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION: Z-FY-09-12**: Hold a public hearing to discuss and recommend action on a zone change from Light Industrial District (LI) to Central Area District (CA) on part of Lots 11 and 12, Block 34, Original Town, located at 11, 13 and 17 East Avenue B. Zoned LI.

**BACKGROUND:** The applicant's request is for a zone change to accommodate a beer and wine bar in downtown Temple and to bring the applied area into compliance with the Comprehensive Plan. At its December 2, 2008 meeting, the Planning and Zoning Commission heard and unanimously approved the applicant's request for a Conditional Use Permit (CUP) for the bar. However, further research from Staff revealed that when the applicant applies for a building permit for the bar, he will be required to provide off-street parking in the ratio of one space per three seats, making it difficult since the building containing the proposed bar takes up the entire lot.

Staff informed the applicant that he would either need to:

- 1) Execute a parking agreement with one of the surrounding parking lot owners; or
- 2) Apply for a rezoning to the CA, Central Area zoning district.

The applicant chose the second option, which has mutual benefit both to him and to the City. The CA zoning district benefits the applicant because the Zoning Ordinance exempts this zoning district from off-street parking requirements. It benefits the City because the granting of the rezoning would remove the LI, Light Industrial zoning designation from the subject property, thus removing potentially incompatible industrial uses from the downtown area.

In contrast to the previously approved CUP application, which only applied to the lease space for the proposed bar, this rezoning is for the entire block face on the south side of E. Ave. B between S. 2<sup>nd</sup> St. and S. Main St.

# Surrounding Property and Uses

The following table shows the existing zoning and current land uses abutting the subject property:

Direction	Zoning	Current Land Use	
North	CA	E. Ave B / Government Office	
East	LI	S. 2 <sup>nd</sup> St. / Parking Lot	
South	LI	Vacant	
West	LI	Vacant	

A zoning request should be reviewed for compliance with the Comprehensive Plan.

# Future Land Use and Character

The Future Land Use and Character map designates the subject property Urban Center. The zone change request complies with the Future Land Use and Character Map.

Thoroughfare Plan – This request conforms to the Thoroughfare Plan.

<u>Adequacy of Public Facilities</u> – Adequate public facilities serve this site.

# **Development Regulations**

The purpose of the CA zoning district is to address development in the Central Business District of the City, allowing most retail and office uses. Typical prohibited uses include industrial uses and heavy commercial uses such as mini-warehouses.

# Public Notice

Five notices were sent out. As of Wednesday, December 30 at 5 PM, only one notice was returned in favor of the request. The newspaper printed notice of the public hearing on December 6, 2008 in accordance with state law and local ordinance.

**STAFF RECOMMENDATION:** Staff recommends approval of the zone change from LI, Light

Industrial zoning district to CA, Central Area zoning district because:

- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities serve the property.

# FISCAL IMPACT: Not Applicable

# ATTACHMENTS:

Zoning Map Land Use and Character Map Aerial Notice Map

# EXCERPTS FROM THE

#### PLANNING & ZONING COMMISSION MEETING

#### MONDAY, JANUARY 5, 2009

#### **ACTION ITEMS**

8. **Z-FY-09-12:** Hold a public hearing to discuss and recommend action on a zone change from Light Industrial District (LI) to Central Area District (CA) on part of Lots 11 and 12, Block 34, Original Town, located at 11, 13 and 17 East Avenue B. Zoned LI. (Applicant: Isaac Fleener for Louie Flores.)

Mr. Brian Mabry, Senior Planner presented the request to the Commission and stated this request is for a zone change to accommodate a beer and wine bar in downtown Temple and to bring the applied area into compliance with the Comprehensive Plan. At the December 2, 2008 meeting, the Planning and Zoning Commission heard and unanimously approved the applicant's request for a Conditional Use Permit for the bar. Further research revealed that when the applicant applied for a building permit for the bar, he would be required to provide off-street parking in the ratio of one space per three seats, making it difficult since the building containing the proposed bar took up the entire lot.

Staff informed applicant he would either need to execute a parking agreement with one of the surrounding parking lot owners or apply for a rezoning to the CA, (Central Area) zoning district and the applicant chose to rezone.

Staff recommended approval of this zone change from LI (Light Industrial) to CA (Central Area) zoning because the request complies with the Future Land Use and Character map, the Thoroughfare Plan and adequate public facilities serve the property.

Commissioner Luck made a motion to approve the zone change from LI (Light Industrial) to CA (Central Area District), and Commissioner Martin seconded the motion.

Motion approved. (7:0)

#### ORDINANCE NO.

#### [PLANNING NO. Z-FY-09-12]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM LIGHT INDUSTRIAL DISTRICT (LI) TO CENTRAL AREA DISTRICT (CA) ON THE WEST 25 FEET OF LOT 11, THE EAST 25 FEET OF THE WEST 50 FEET OF LOT 12 AND 17, BLOCK 34, ORIGINAL TOWN, LOCATED AT 11, 13 AND 17 EAST AVENUE B; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

# BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

**Part 1**: The City Council approves a zoning change from Light Industrial District (LI) to Central Area District (CA) on the west 25 feet of Lot 11, the east 25 feet of the west 50 feet of Lot 12 and 17, Block 34, Original Town, located at 11, 13 and 17 East Avenue B, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**<u>Part 2:</u>** The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

**Part 3**: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

<u>**Part 4**</u>: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

<u>**Part 5**</u>: It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **15<sup>th</sup>** day of **January**, 2009.

PASSED AND APPROVED on Second Reading on the 5<sup>th</sup> day of February, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Clydette Entzminger City Secretary

ATTEST:

Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(H) Consent Agenda Page 1 of 2

# **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-09-06: Consider adopting an ordinance authorizing a Conditional Use Permit to allow the sale of beer and wine on Lot 11, Block 34 of Original Town Addition, located at 13 East Avenue B.

**PLANNING & ZONING COMMISSION RECOMMENDATION:** At its December 2, 2008 meeting, the Planning and Zoning Commission voted 7/0, in accordance with staff recommendation, to recommend approval of a Conditional Use Permit (CUP) for a beer and wine bar, subject to the following conditions:

- 1. The permittee must design and operate the establishment in such a manner that the proposed use or actual use of the premises shall not substantially increase traffic congestion or create overcrowding in the establishment or the immediately surrounding area.
- 2. The permittee must comply with applicable licensing and permit provisions of the Alcoholic Beverage Code.
- 3. The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
- 4. The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to determine the number of qualified employees necessary to meet his obligations hereunder.
- 5. The establishment must provide adequate parking spaces to accommodate its members and their guests provided, however, the number of parking spaces shall never be less than those required for similar uses in that zoning district where the establishment is located.
- 6. The permittee must operate the establishment in such a manner as to prevent excessive noise, dirt, litter and odors in the establishment or in the surrounding area and operate the establishment in such a manner as to minimize disturbance to surrounding property owners.
- 7. The City Council may deny or revoke this conditional use permit if it affirmatively determines that the issuance of the permit is (a) incompatible with the surrounding uses of property, or (b) detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
- 8. The conditional use permit runs with the property. Changes in the owner or lessee of a permitted establishment do not affect the permit.

- 9. The conditional use permit may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-608 of the Zoning Ordinance.
- 10. The applicant's site plan and application are exhibits to the conditional use permit.

Commissioners Pilkington and Secrest were absent.

**<u>STAFF RECOMMENDATION</u>**: Adopt ordinance as presented in item description, on second and final reading.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-09-06, from the Planning and Zoning Commission meeting, December 2, 2008. This CUP request is to allow the sale and on-premise consumption of alcoholic beverages in a future wine and beer bar to be located on the property.

Section 7-611(b) of the Zoning ordinance places 10 conditions on CUPs allowing the on-premise consumption of alcohol. The Planning & Zoning Commission Recommendation section above lists these conditions. No CUP may be granted if the establishment for which a permit is sought is within 300 feet of a church, school, public hospital, publicly owned park, or any residentially zoned or developed lot. The property is more than 300 feet away from any of these uses.

The applicant has submitted a zoning change request from the LI, Light Industrial zoning district to the CA, Central Area zoning district for the block face on which the proposed bar is located (please see the staff report for case Z-FY-09-12). The bar may be established in the LI or CA zoning district. The applicant requests the zoning change in order to be exempted from off-street parking requirements and to bring the block face in conformance with the Future Land Use and Character Map.

The Commission did not raise any issues requiring additional staff attention.

# FISCAL IMPACT: NA

#### ATTACHMENTS:

Aerial Zoning Map Land Use and Character Map CUP Site Plan Notice Map P&Z Staff Report (Z-FY-09-06) P&Z Minutes (December 2, 2008) Ordinance



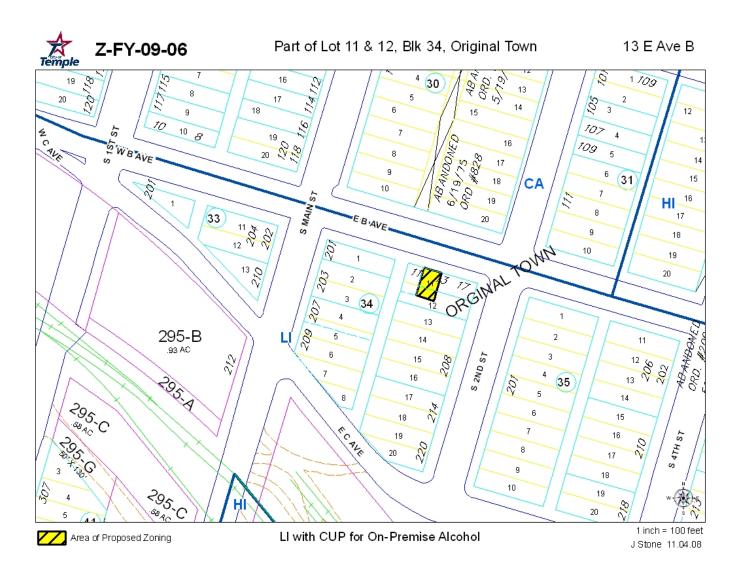
Z-FY-09-06

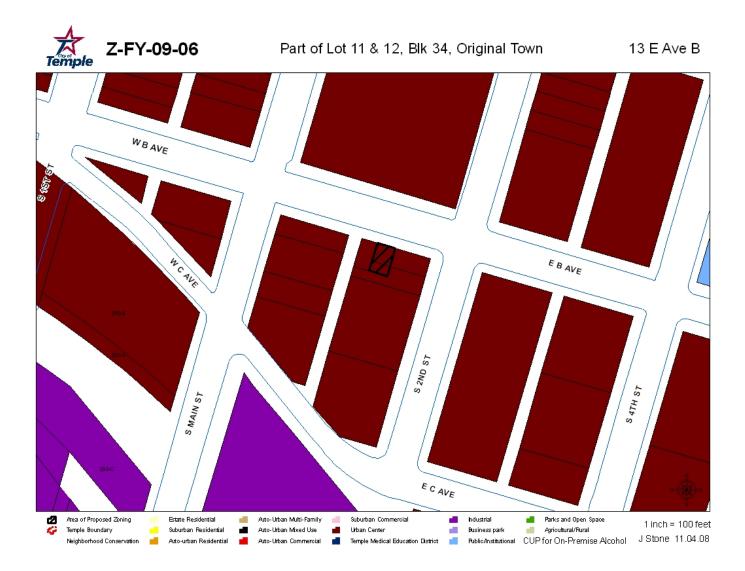


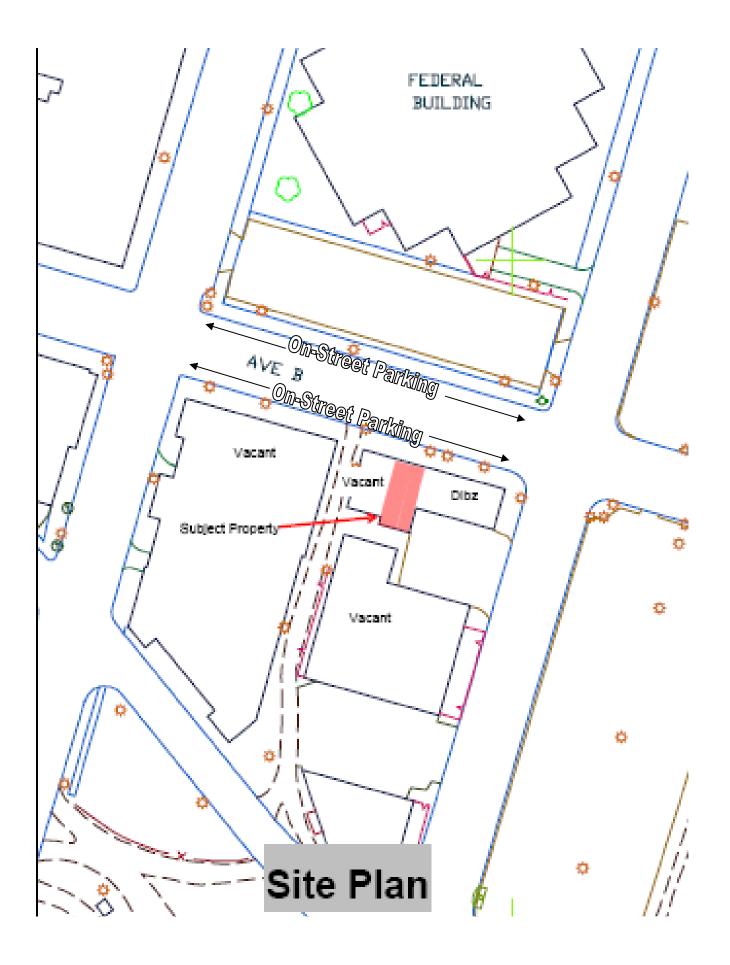
Z Area of Proposed Zoning

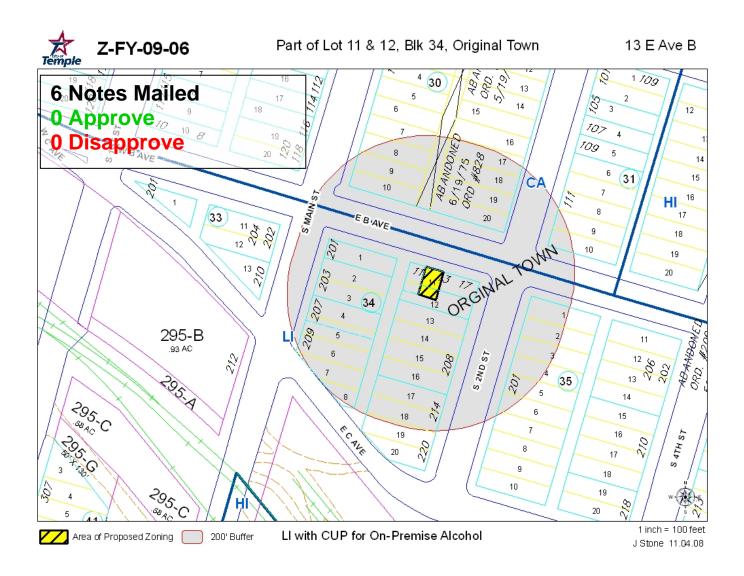
LI with CUP for On-Premise Alcohol

1 inch = 100 feet J Stone 11.04.08









PLANNING AND ZONING COMMISSION AGENDA ITEM

12/02/08 Item #2 Regular Agenda Page 1 of 2

# APPLICANT / DEVELOPMENT: Isaac Fleener for Louie Flores

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION:** Z-FY-09-06 Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow the sale of beer and wine on Lot 11, Block 34 of Original Town Addition located at 13 East Avenue B. Zoned LI. (Applicant: Isaac Fleener for Louie Flores)

**<u>BACKGROUND</u>**: This Conditional Use Permit (CUP) request is to allow the sale and on-premise consumption of alcoholic beverages in a future wine and beer bar to be located on the property.

<u>Surrounding Property and Uses</u> - The subject property is zoned LI, Light Industrial. The LI zoning district permits on-premise alcoholic beverage sales or consumption in a bar or club with a CUP. This proposed use is compatible with the surrounding uses.

The following table shows the existing zoning and current land uses abutting the subject property:

Direction	Zoning	Current Land Use
North	CA	Ave B / Government Office
East	LI	Restaurant
South	LI	Vacant Building
West	LI	Vacant Building

#### Surrounding Property and Uses

A CUP request should be reviewed for compliance with the Comprehensive Plan.

<u>Future Land Use Plan and Character Map</u>– The CUP request conforms with the Future Land Use and Character Map which designates the property as Urban Center.

Thoroughfare Plan – This request conforms to the Thoroughfare Plan.

<u>Adequacy of Public Facilities</u> – Adequate public facilities serve this site.

#### **Development Regulations**

This application conforms to the area requirements and uses permitted in the LI District. Section 7-611(b) of the Zoning ordinance places 10 conditions on CUPs allowing the on-premise consumption of alcohol. The Staff Recommendation section below lists these conditions. Condition #11 is based on Section 7-604 providing for the site plan and application to become part of the CUP.

No CUP may be granted if the establishment for which a permit is sought is within 300 feet of a church, school, public hospital, publicly owned park, or any residentially zoned or developed lot. The property is more than 300 feet away from any of these uses.

# **Double Sided**

# Public Notice

Six notices were sent out. As of Monday, November 24 at 5 PM, no notices were returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the public hearing on November 22, 2008 in accordance with state law and local ordinance

**STAFF RECOMMENDATION:** Staff recommends approval of the CUP with the following conditions in accordance with Section 7-611 of the Zoning Ordinance:

- 1. The permittee must design and operate the establishment in such a manner that the proposed use or actual use of the premises shall not substantially increase traffic congestion or create overcrowding in the establishment or the immediately surrounding area.
- 2. The permittee must comply with applicable licensing and permit provisions of the Alcoholic Beverage Code within 6 months from the date of the issuance of the conditional use permit by the City Council, such limitation in time being subject to review and possible extension by the City.
- 3. The permittee bears the burden of showing that the establishment does not exceed the limitation on gross receipts from sales of alcoholic beverages applicable to its conditional use permit. The permittee must maintain accounting records of the sources of its gross revenue and allow the City to inspect such records during reasonable business hours.
- 4. The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
- 5. The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to determine the number of qualified employees necessary to meet his obligations hereunder.
- 6. The establishment must provide adequate parking spaces to accommodate its members and their guests provided, however, the number of parking spaces shall never be less than those required for similar uses in that zoning district where the establishment is located.
- 7. The permittee must operate the establishment in such a manner as to prevent excessive noise, dirt, litter and odors in the establishment or in the surrounding area and operate the establishment in such a manner as to minimize disturbance to surrounding property owners.
- 8. The City Council may deny or revoke this conditional use permit if it affirmatively determines that the issuance of the permit is (a) incompatible with the surrounding uses of property, or (b) detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
- 9. The conditional use permit runs with the property. Changes in the owner or lessee of a permitted establishment do not affect the permit.
- 10. The conditional use permit may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-608 of the Zoning Ordinance.
- 11. The applicant's site plan and application are exhibits to the conditional use permit.

# FISCAL IMPACT: Not Applicable

# ATTACHMENTS:

Zoning Map Land Use and Character Map Aerial CUP Site Plan Notice Map Response Letters (if any)

# EXCERPTS FROM THE

#### PLANNING & ZONING COMMISSION MEETING

#### **DECEMBER 2, 2008**

**Z-FY-09-06:** Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow the sale of beer and wine on Lot 11, Block 34 of Original Town Addition located at 13 East Avenue B. Zoned LI. (Applicant: Isaac Fleener for Louie Flores)

Mr. Brian Mabry, Senior Planner presented this item and stated this request was for a beer and wine bar without the sale of hard liquor. Mr. Mabry also stated that the review of the Planning & Zoning Commission and approval of City Council is required for any Conditional Use Permit (CUP).

Staff recommended approval of this CUP along with the 11 standard conditions stated in the presentation.

Mr. Mabry also stated that the Commission and Council may make recommendations related to standards not in the Zoning Ordinance such as hours of operation.

Chair Pope opened the public hearing and Mr. Thomas Preston, representative of the property, approached the Commission.

Mr. Preston stated his hours of operation ran from 4:00p.m. to 12 midnight. Mr. Preston also stated he has been proactively involved in promoting revitalization of downtown growth and local business and has worked to transform downtown into a more prominent area for businesses, entertainment, tourism, cultural and family activities, and preserving the historic look of downtown and the buildings as much as possible.

Commissioner Luck asked for clarity on Condition No. 3 regarding not to exceed the limitations in gross receipts on the sale of alcoholic beverages under a CUP. Mr. Mabry stated that this applied more to a restaurant, not a beer and wine bar.

Commissioner Martin made a motion to grant the CUP, excluding Condition No. 3 and Commissioner Luck seconded the motion. Motion approved. (7:0)

#### ORDINANCE NO.

#### [PLANNING NO. Z-FY-09-06]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE SALE OF BEER AND WINE ON LOT 11, BLOCK 34 OF ORIGINAL TOWN ADDITION LOCATED AT 13 EAST AVENUE B; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the Comprehensive Zoning Ordinance of the City of Temple, Texas, provides for the issuance of conditional use permits under certain conditions and authorizes the City Council to impose such developmental standards and safeguards as the conditions and locations indicate to be important to the welfare or protection of adjacent property and for the protection of adjacent property from excessive noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glare, offensive view or other undesirable or hazardous conditions, and for the establishment of conditions of operation, time limits, location, arrangement and construction for any use for which a permit is authorized;

Whereas, the Planning and Zoning Commission of the City of Temple, Texas, after due consideration of the location and zoning classification of the establishment, has recommended that the City Council approve this application; and

Whereas, the City Council of the City of Temple, Texas, after public notice as required by law, has at a public hearing, carefully considered all the evidence submitted concerning the establishment at 13 East Avenue B, and has heard the comments and evidence presented by all persons supporting or opposing this matter at said public hearing, and after examining the location and the zoning classification of the establishment finds that the proposed use of the premises substantially complies with the comprehensive plan and the area plan adopted by the City Council.

# Now, Therefore, Be It Ordained By The City Council Of The City of Temple, Texas, That:

<u>**Part 1**</u>: The City Council approves a Conditional Use Permit to allow the sale of beer and wine on Lot 11, Block 34 of Original Town, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

<u>**Part 2**</u>: The owners/applicants, their employees, lessees, agents or representatives, hereinafter called "permittee" shall comply with the following developmental standards and conditions of operation:

- A. The sale and consumption of beer and wine shall occur only within the bar area, in accordance with the site plan attached as Exhibit B.
- B. The permittee must design and operate the establishment in such a manner that the proposed use or actual use of the premises shall not substantially increase traffic congestion or create overcrowding in the establishment or the immediately surrounding area.
- C. The permittee must comply with applicable licensing and permit provisions of the Alcoholic Beverage Code.
- D. The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
- E. The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to determine the number of qualified employees necessary to meet his obligations hereunder.
- F. The establishment must provide adequate parking spaces to accommodate its members and their guests. Provided, however, the number of parking spaces shall never be less than those required for similar uses in that zoning district where the establishment is located.
- G. The permittee must operate the establishment in such a manner as to prevent excessive noise, dirt, litter and odors in the establishment or in the surrounding area and operate the establishment in such a manner as to minimize disturbance to surrounding property owners.
- H. The City Council may deny or revoke a conditional use permit if it affirmatively determines that the issuance of the same is (a) incompatible with the surrounding uses of property, or (2) detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
- I. A conditional use permit issued under this section runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.

J. All conditional use permits issued under this section will be further conditioned that the same may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-609.

<u>**Part 3**</u>: The declarations, determinations and findings declared, made and found in the preamble of this ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

<u>Part 4</u>: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

<u>**Part 5**</u>: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

<u>**Part 6**</u>: It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **15<sup>th</sup>** day of **January**, 2009.

PASSED AND APPROVED on Second Reading on the 5<sup>th</sup> day of February, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger City Secretary Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(I) Consent Agenda Page 1 of 2

# **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-09-07: Consider adopting an ordinance authorizing a zoning change from Agricultural District (A) to Single Family Two District (SF-2) on 62.87  $\pm$  acres of land out of the Maximo Moreno Survey, Abstract Number 14, located on the east side of South 5<sup>th</sup> Street, south of Echo Village Phase I and Echo Vista Subdivisions.

**PLANNING & ZONING COMMISSION RECOMMENDATION:** At its January 5, 2009 meeting, the Planning and Zoning Commission voted 7/0, in accordance with staff recommendation, to recommend approval of a zoning change from A to SF-2 for the following reasons:

- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities will serve the property.

Commissioners Barton and Talley were absent.

**<u>STAFF RECOMMENDATION</u>**: Adopt ordinance as presented in item description, on second and reading.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-09-07, from the Planning and Zoning Commission meeting, January 5, 2009. The applicant's request is for a zone change to accommodate a single-family subdivision to be known as Echo Vista Phase II. Land to the north of the subject property was rezoned from the A zoning district to the SF-2 zoning district in March 2001 (for the Echo Village Subdivision) and June of 2005 (for the Echo Vista Phase 1 Subdivision). The subject property currently serves as pasture land.

The Commission did not raise any issues requiring additional staff attention.

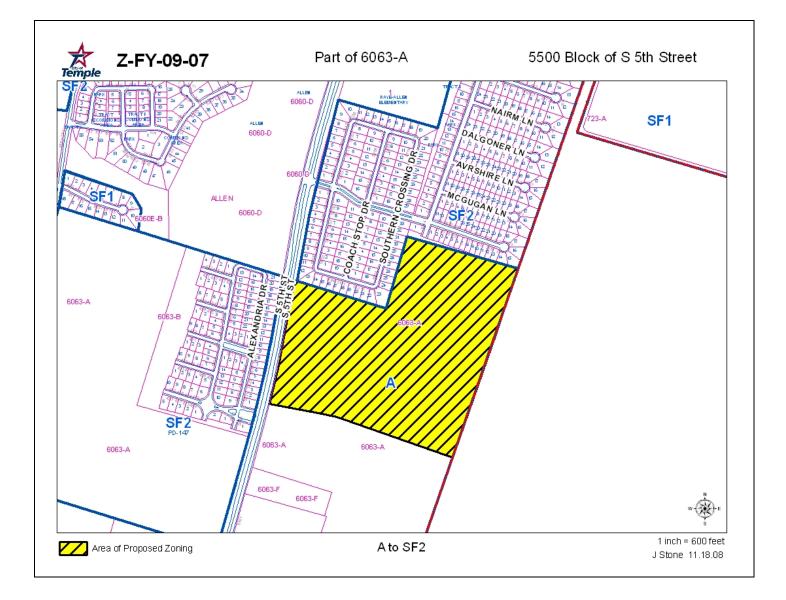
FISCAL IMPACT: NA

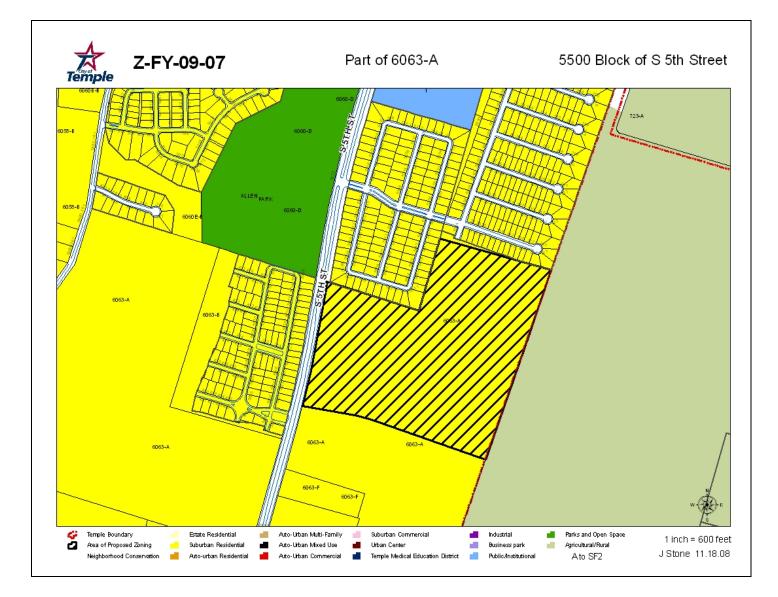
02/05/09 Item #3(I) Consent Agenda Page 2 of 2

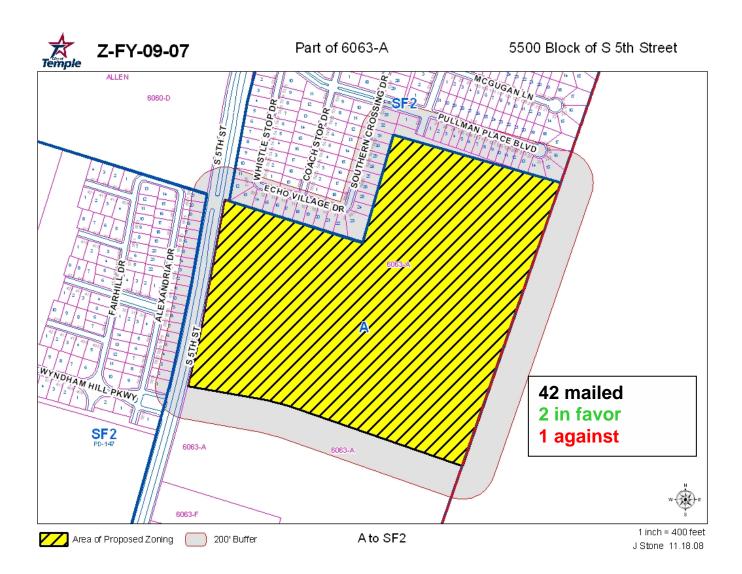
# **ATTACHMENTS:**

Aerial Zoning Map Land Use and Character Map Notice Map P&Z Staff Report (Z-FY-09-07) P&Z Minutes (01/05/09) Ordinance









PLANNING AND ZONING COMMISSION AGENDA ITEM

01/05/09 Item #2 Regular Agenda Page 1 of 2

# APPLICANT / DEVELOPMENT: Garrett Nordyke for Bruce Whitis

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION: Z-FY-09-07:** Hold a public hearing to discuss and recommend action on a zone change from Agricultural District (A) to Single Family Two District (SF-2) on 62.9± acres of land, out of the Maximo Moreno Survey, Abstract Number 14, located on the east side of South 5th Street, south of Echo Village Phase I and Echo Vista Subdivisions. Zoned A. (Applicant: Garrett Nordyke for Bruce Whitis).

**BACKGROUND:** The applicant's request is for a zone change to accommodate a single-family subdivision to be known as Echo Vista Phase II. The applicant will submit a preliminary plat for the Commission's review in the future. Land to the north of the subject property was rezoned from the A, Agricultural zoning district to the SF-2, Single-Family 2 zoning district in March 2001 (for the Echo Village Subdivision) and June of 2005 (for the Echo Vista Phase 1 Subdivision). The subject property currently serves as pasture land.

#### Surrounding Property and Uses

The following table shows the existing zoning and current land uses abutting the subject property:

Direction	Zoning	Current Land Use	
North	SF-2	Single-Family Subdivisions	
East	A	Railroad and Vacant	
South	A	Vacant	
West	SF-2	Single-Family Subdivision	

This proposed use is compatible with the surrounding uses. A zoning request should be reviewed for compliance with the Comprehensive Plan.

#### Future Land Use and Character

The Future Land Use and Character Map designate the subject property as suburban residential. The request complies with the Future Land Use and Character Map.

# Thoroughfare Plan

The street abutting the subject property, South 5<sup>th</sup> Street, is a major arterial road on the Thoroughfare Plan map. It is adequately sized to accommodate traffic from the subdivision. The request complies with the Thoroughfare Plan.

# Adequacy of Public Facilities

Upon approval of a Preliminary Plat for Echo Vista Phase 2, adequate public facilities including water and sewer will be scheduled to be extended to the property.

# **Development Regulations**

The purpose of the SF-2 is to provide for smaller single-family lots than allowed in the SF-1, Single-Family 1 zoning district which allows lot sizes a minimum of 7,500 square feet. This district may also be used as a zone of transition from the more restrictive single family district to lesser restrictive or denser residential districts.

Typical permitted uses include but are not limited to single-family homes and nonresidential support uses such as schools and places of worship.

The following table shows the dimensional requirements for the SF-2 zoning district for a residential use.

SF-2, Single-Family 2	
Min. Lot Area (sq. ft.)	5,000
Min. Lot Width (ft.)	50
Min. Lot Depth (ft.)	100
Max. Height (stories)	2 1/2
Min. Yard (ft)	
Front	25
Side	5
Side (street)	15
Rear	10

All of the lots on the corresponding Preliminary Plat for Echo Village Phase 2 are in compliance with the dimensional requirements for SF-2.

# Public Notice

Forty two notices were sent out. As of Wednesday, December 30 at 5 PM, two notices were returned in favor of and one was returned in opposition to the request. The newspaper printed notice of the public hearing on December 6, 2008 in accordance with state law and local ordinance.

**<u>STAFF RECOMMENDATION</u>**: Staff recommends approval of the zone change from A, Agricultural zoning district to SF-2, Single-Family 2 zoning district for the following reasons:

- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities will serve the property.

# FISCAL IMPACT: Not Applicable

# ATTACHMENTS:

Zoning Map Land Use and Character Map Aerial Notice Map

# EXCERPTS FROM THE

# PLANNING & ZONING COMMISSION MEETING

#### MONDAY, JANUARY 5, 2009

#### ACTION ITEMS

2. Z-FY-09-07: Hold a public hearing to discuss and recommend action on a zone change from Agricultural District (A) to Single Family Two District (SF-2) on 62.9± acres of land, out of the Maximo Moreno Survey, Abstract Number 14, located on the east side of South 5th Street, south of Echo Village Phase I and Echo Vista Subdivisions. Zoned A. (Applicant: Garrett Nordyke for Bruce Whitis)

Mr. Brian Mabry, Senior Planner presented this item and stated this request was for a zone change to accommodate a single-family subdivision to be known as Echo Vista Phase II. The subject property currently served as pasture land.

Staff recommended approval of this zone change from Agricultural District (A) to Single Family Two District (SF-2) because the request complied with the Future Land Use and Character Map; the Thoroughfare Plan; and adequate public facilities will serve the property.

Commissioner Pilkington made a motion to approve the zone change, and Commissioner Martin seconded the motion.

Motion approved. (7:0)

#### ORDINANCE NO.

# [PLANNING NO. Z-FY-09-07]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM AGRICULTURAL DISTRICT (A) TO SINGLE FAMILY TWO DISTRICT (SF-2) ON APPROXIMATELY 62.87 ACRES OF LAND OUT OF THE MAXIMO MORENO SURVEY, ABSTRACT NO. 14, LOCATED ON THE EAST SIDE OF SOUTH 5<sup>TH</sup> STREET, SOUTH OF ECHO VILLAGE PHASE I AND ECHO VISTA SUBDIVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

# BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

**Part 1**: The City Council approves a zoning change from Agricultural District (A) to Single Family Two District (SF-2) on approximately 62.87 acres of land out of the Maximo Moreno Survey, Abstract No. 14, located on the east side of South 5<sup>th</sup> Street, south of Echo Village Phase I and Echo Vista Subdivisions, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**<u>Part 2:</u>** The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

<u>Part 3</u>: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

<u>**Part 4**</u>: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

<u>**Part 5**</u>: It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **15<sup>th</sup>** day of **January**, 2009.

PASSED AND APPROVED on Second Reading on the 5<sup>th</sup> day of February, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Clydette Entzminger City Secretary

ATTEST:

Jonathan Graham City Attorney



### **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(J) Consent Agenda Page 1 of 2

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-09-08: Consider adopting an ordinance authorizing a Conditional Use Permit for a warehouse addition on Lot 1, Block 1, Moores Railroad Addition, located at 810 West Calhoun Avenue.

**PLANNING & ZONING COMMISSION RECOMMENDATION:** At its January 5, 2009 meeting, the Planning and Zoning Commission voted 7/0, in accordance with staff recommendation, to recommend approval of a Conditional Use Permit (CUP) for a warehouse addition provided that one evergreen tree, a minimum of five feet in height and two inches in caliper, is planted per 40 linear feet of fencing along the east side of the property, while allowing a chain link fence with vinyl slats topped by barbed wire on the proposed security fence.

Commissioners Barton and Talley were absent.

**<u>STAFF RECOMMENDATION</u>**: Adopt ordinance as presented in item description, on second and final reading.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-09-08, from the Planning and Zoning Commission meeting, January 5, 2009. The Temple Housing Authority (THA) submitted the CUP application for the warehouse two days before the second reading and adoption of the new fencing and screening standards, making it vested under the old standards. **Staff originally recommended that the THA provide a wood or masonry fence as required in the current fencing and screening standards as a condition of the CUP. However, the P&Z recommended the chain link fence, supplemented by vinyl slats and topped by barbed wire. This fence type is prohibited under the current screening and fencing standards. The Planning & Zoning Commission did agree with Staff's request to screen the fence with the recommended landscaping from the apartments along the east property line.** 

The Commission did not raise any issues requiring additional staff attention.

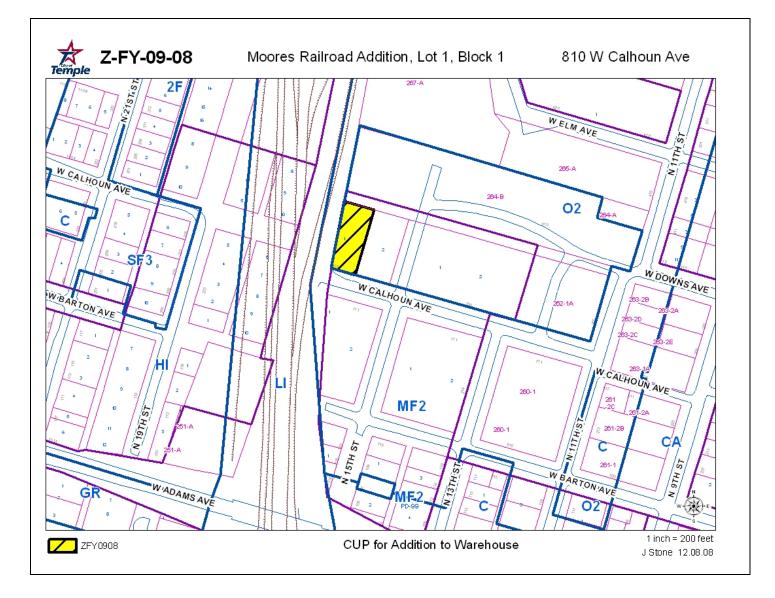
FISCAL IMPACT: NA

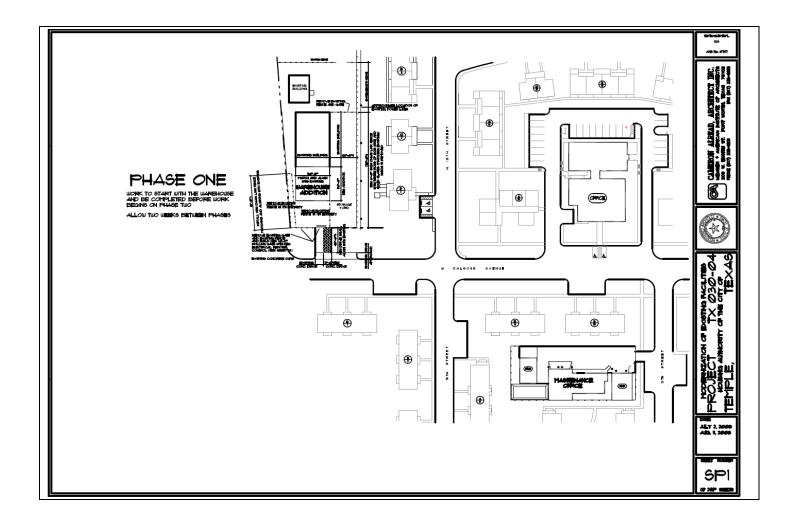
02/05/09 Item #3(J) Consent Agenda Page 2 of 2

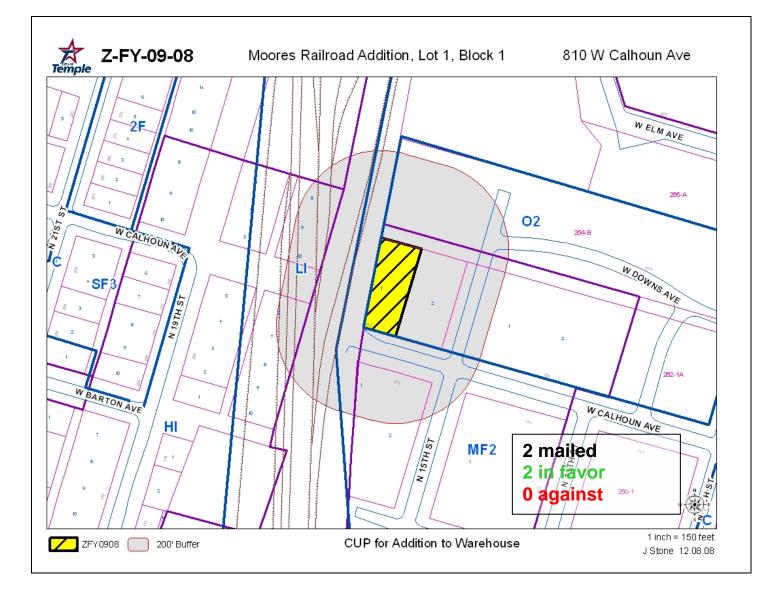
#### ATTACHMENTS:

Aerial Zoning Map CUP Site Plan Notice Map P&Z Staff Report (Z-FY-08-08) P&Z Minutes (January 5, 2008) Ordinance









PLANNING AND ZONING COMMISSION AGENDA ITEM

01/05/08 Item #3 Regular Agenda Page 1 of 2

#### **APPLICANT / DEVELOPMENT:** Temple Housing Authority

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

Temple

**ITEM DESCRIPTION: Z-FY-09-08:** Hold a public hearing to discuss and recommend action on a Conditional Use Permit for a warehouse on Lot 1, Block 1, Moores Railroad Addition, located at 810 West Calhoun Avenue. Zoned Office Two (O-2). (Applicant: Temple Housing Authority)

**BACKGROUND:** The subject property is zoned O-2, Office 2. The applicant's request is for a zone change to accommodate an addition onto a warehouse on the subject property. Such use requires a conditional use permit (CUP) in the O-1 zoning district. The use is allowed by right in the GR, General Retail; CA, Central Area; C, Commercial; LI, Light Industrial; and HI, Heavy Industrial zoning districts.

The purpose of a CUP is to allow uses that generally have unusual nuisance characteristics or are of a public or semi-public character often essential or desirable for the general convenience and welfare of the community. Because, however, of the nature of the use or possible adverse impact on neighboring properties, Planning and Zoning Commission and City Council review of the associated site plan is required.

The subject property and its surroundings were originally zoned O-2 in 1999. The proposed addition to the warehouse is a total of 2,500 square feet. Masonry is not required on the exterior of the warehouse since it is an addition. The applicant proposes a new chain link fence between six and eight feet in height with vinyl slats (shown below) to match the type of fence that was there before, but that has since been removed.



The fence standards in Section 13-102 of the zoning ordinance prohibits barbed wire fencing outside of the Agricultural zoning district and it prohibits slats in a chain link fence. These standards were adopted on December 3, 2008. The application for this CUP was submitted just two days prior so the

application is vested under the old standards. However, due to the fence's close proximity to the surrounding apartments, Staff recommends a wood or masonry fence in along the south and east sides of the building.

#### Surrounding Property and Uses

The following table shows the existing zoning and current land uses abutting the subject property:

Direction	Zoning	Current Land Use	
North	0-2	Service area for warehouse	
East	0-2	Apartments	
South	MF-2	Apartments	
West	MF-2	Railroad tracks	

With proper mitigation as suggested above and in the staff recommendation below, this proposed use is compatible with the surrounding uses.

#### Public Notice

Two notices were sent out. As of Wednesday, December 30 at 5 PM, two notices were returned in favor. The newspaper printed notice of the public hearing on December 27, 2008 in accordance with state law and local ordinance

**STAFF RECOMMENDATION:** Staff recommends approval of the conditional use permit for a warehouse provided that:

1. A wood or masonry fence is installed along the south and east sides of the property.

#### FISCAL IMPACT: Not Applicable

#### ATTACHMENTS:

Zoning Map Aerial CUP Site Plan Notice Map Response Letters (if any)

#### EXCERPTS FROM THE

#### PLANNING & ZONING COMMISSION MEETING

#### MONDAY, JANUARY 5, 2009

#### **ACTION ITEMS**

**3. Z-FY-09-08:** Hold a public hearing to discuss and recommend action on a Conditional Use Permit for a warehouse on Lot 1, Block 1, Moores Railroad Addition, located at 810 West Calhoun Avenue. Zoned Office Two (O-2). (Applicant: Temple Housing Authority).

Mr. Brian Mabry, Senior Planner presented this case to the Commission and stated the subject property is currently zoned Office Two (O2). The request is to accommodate an addition onto a warehouse on the subject property and such use requires a CUP in the O1 zoning district. The use is allowed by right in the GR (General Retail); CA (Central); C (Commercial); LI (Light Industrial); and HI (Heavy industrial) zoning districts.

Staff recommended approval of this CUP for a warehouse provided that a wood or masonry fence is installed along the south and east sides of the property.

Commissioner Martin made a motion to grant the CUP to the Texas Housing Authority with the exception to a masonry/wood fence, and to allow the current fencing to remain in place, to include barb wire on top for security purposes, on the east side fencing facing apartments, along with landscaping requirements of one planting every 40 feet along the east side fencing, and Commissioner Pilkington seconded the motion.

Motion approved. (7:0)

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

#### [PLANNING NO. Z-FY-09-08]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONDITIONAL USE PERMIT FOR A WAREHOUSE ADDITION ON LOT 1, BLOCK 1, MOORES RAILROAD ADDITION, LOCATED AT 810 WEST CALHOUN AVENUE; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the Comprehensive Zoning Ordinance of the City of Temple, Texas, provides for the issuance of conditional use permits under certain conditions and authorizes the City Council to impose such developmental standards and safeguards as the conditions and locations indicate to be important to the welfare or protection of adjacent property and for the protection of adjacent property from excessive noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glare, offensive view or other undesirable or hazardous conditions, and for the establishment of conditions of operation, time limits, location, arrangement and construction for any use for which a permit is authorized;

WHEREAS, the Planning and Zoning Commission of the City of Temple, Texas, after due consideration of the conditions, operation and location of land commonly known as 810 West Calhoun Avenue, recommends that the City Council approve the application for this Conditional Use Permit for a warehouse extension; and

WHEREAS, the City Council of the City of Temple, Texas, after public notice as required by law, has at a public hearing, carefully considered all the evidence submitted by the applicant concerning the proposed plans for operation of said establishment and has heard the comments and evidence presented by all persons supporting or opposing this application at said public hearing, and after examining the conditions, operation and the location of said establishment, finds that the proposed use of the premises substantially complies with the comprehensive plan and the area plan adopted by the City Council.

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

<u>**Part 1:**</u> The City Council approves a Conditional Use Permit for a warehouse addition on Lot 1, Block 1, Moores Railroad Addition, located at 810 West Calhoun Avenue, said location being more fully shown on Exhibit A, attached hereto and made a part hereof for all purposes. <u>**Part 2:**</u> The owner/applicant, his employees, lessees, agents or representatives, hereinafter called "permittee" shall comply with the following developmental standards and conditions of operation:

- A. The permittee is required to plant one evergreen tree of a minimum of 5 feet in height and 2 inches in caliper per 40 linear feet of fencing along the east side of the property while allowing a chain link fence with vinyl slats topped by barbed wire on the proposed security fence.
- B. The permittee must operate the establishment in such a manner as to prevent excessive noise, dirt, litter, and odors on the establishment or in the surrounding area and shall operate the establishment in such a manner as to minimize disturbance to surrounding property owners.
- C. The conditional use permit runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- D. The City Council may revoke, suspend or modify a conditional use permit after notice to property owner and hearing before the City Council if the City Council finds evidence of fraud or deception, violation of conditions of the conditional use permit, or as provided in Sections 7-609 and 7-610 of the Zoning Ordinance.

**Part 3**: The Director of Planning is hereby directed to make the necessary changes to the City Zoning Map accordingly.

<u>**Part 4:**</u> The declarations, determinations and findings declared, made and found in the preamble of this ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

<u>Part 5:</u> It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

<u>**Part 6:**</u> This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

<u>**Part 7:**</u> It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **15<sup>th</sup>** day of **January**, 2009.

PASSED AND APPROVED on Second Reading on the 5<sup>th</sup> day of February, 2009.

#### THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger City Secretary Jonathan Graham City Attorney



## **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(K) Consent Agenda Page 1 of 2

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-09-10: Consider adopting an ordinance authorizing the zoning change from Agricultural District (A) to Single Family Two District (SF-2) on 95.6 ± acres of land being part of the John J. Simmons Survey, Abstract Number 737 and described as Windmill Farms Phases II & III.

**PLANNING & ZONING COMMISSION RECOMMENDATION:** At its January 5, 2009 meeting, the Planning and Zoning Commission voted 7/0, in accordance with staff recommendation, to recommend approval of a zoning change from A to SF-2 for the following reasons:

- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities serve the property.

Commissioners Barton and Talley were absent.

**<u>STAFF RECOMMENDATION</u>**: Adopt ordinance as presented in item description, on second and final reading.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-09-10, from the Planning and Zoning Commission meeting, January 5, 2009. The applicant's request is for a zoning change to accommodate a single-family subdivision known as Windmill Farms Phases 2 and 3. The final plat for Phase 2 was approved in February 2008 and the final plat for Phase 3 was approved in May 2008. When building permit applications began to be submitted in November 2008, it was discovered that some of the property contains the A zoning district. The platted lots of the two phases meet the minimum requirements of the requested zoning district, SF-2. Staff requests rezoning the entire area to match the submitted field notes.

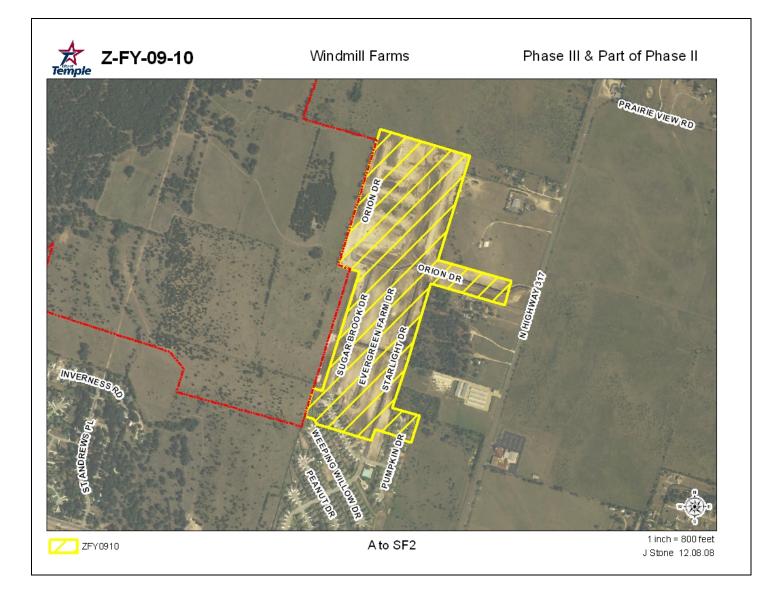
The Commission did not raise any issues requiring additional staff attention.

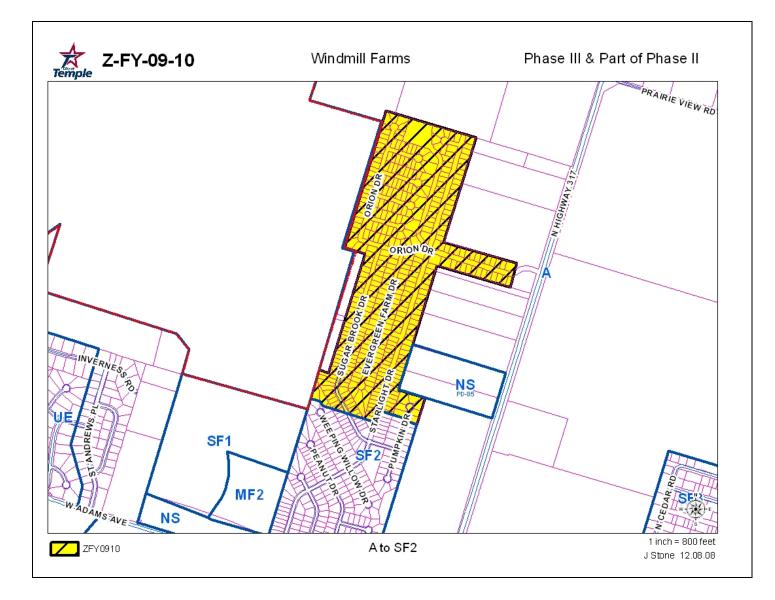
02/05/09 Item #3(K) Consent Agenda Page 2 of 2

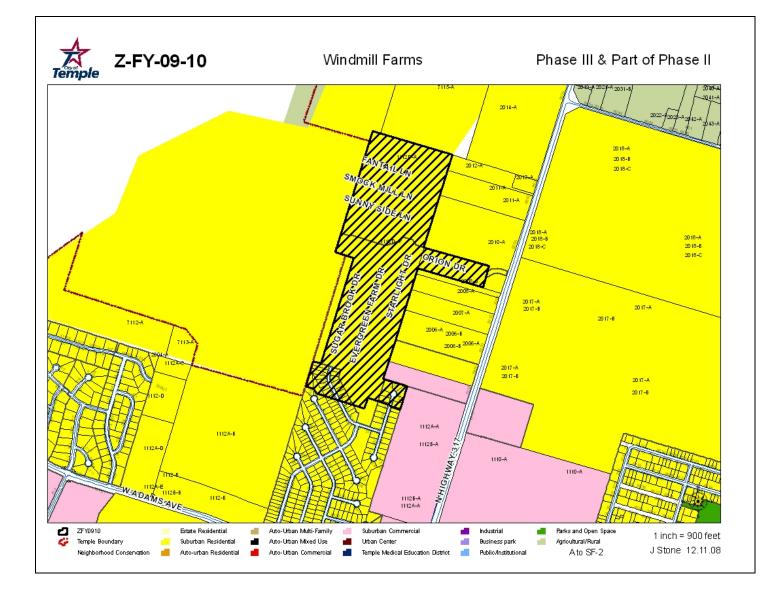
#### FISCAL IMPACT: NA

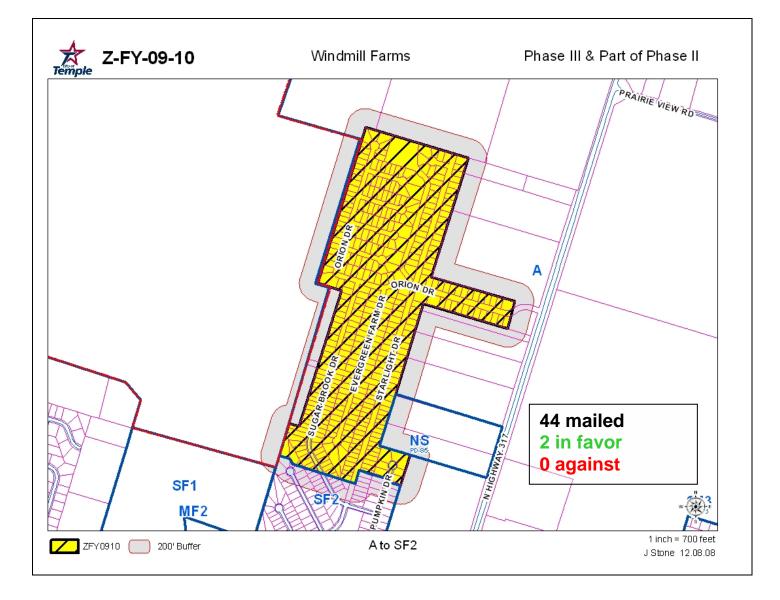
#### **ATTACHMENTS:**

Aerial Zoning Map Land Use and Character Map Notice Map P&Z Staff Report (Z-FY-09-10) P&Z Minutes (01/05/09) Ordinance











## PLANNING AND ZONING COMMISSION AGENDA ITEM

01/05/09 Item #6 Regular Agenda Page 1 of 2

#### APPLICANT / DEVELOPMENT: City of Temple

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION: Z-FY-09-10:** Hold a public hearing to discuss and recommend action from Agricultural District (A) to Single Family Two District (SF-2) on 95.6± acres of land being part of the John J. Simmons Survey, Abstract Number 737 and described as Windmill Farms Phases II & III, located west of SH 317 and north of FM 2305.

**BACKGROUND:** The applicant's request is for a zone change to accommodate a single-family subdivision known as Windmill Farms Phases 2 and 3. The final plat for Phase 2 was approved in February 2008 and the final plat for Phase 3 was approved in May 2008. When building permit applications began to be submitted in November 2008, it was discovered that the majority of the property contains Agriculture (A) zoning. The platted lots of the two phases meet the minimum requirements of the requested zoning district, SF-2.

#### Surrounding Property and Uses

The following table shows the existing zoning and current land uses abutting the subject property:

Direction	Zoning	Current Land Use		
North	А	Vacant	Vacant	
East	A	Large lot residential		
	PD-NS	Mini-storage facility		
South	SF-2	Single-family subdivision	Single-family subdivision	
West	A	Vacant		

The existing mini-storage facility faces State Highway 317. While no application is being contemplated, if the facility were proposed to be expanded to the rear, closer to the subject property, the owner would need to submit an application to amend the approved Planned Development - Neighborhood Service (PD-NS). The Planning and Zoning Commission and City Council could require increased buffering and screening on the mini-storage property. The proposed SF-2 use is compatible with the surrounding uses.

A zoning request should be reviewed for compliance with the Comprehensive Plan.

#### Future Land Use and Character

The Future Land Use and Character Map designate the subject property as suburban residential. The request complies with the Future Land Use and Character Map.

#### Thoroughfare Plan

The street abutting the subject property, State Highway 317, is a major arterial road on the Thoroughfare Plan map. It is adequately sized to accommodate traffic from the subdivision. The request complies with the Thoroughfare Plan.

#### Adequacy of Public Facilities

Adequate public facilities including water and wastewater serve the site.

#### **Development Regulations**

The purpose of the SF-2 is to provide for smaller single-family lots than allowed in the SF-1, Single-Family 1 zoning district which allows lot sizes a minimum of 7,500 square feet. This district may also be used as a zone of transition from the more restrictive single family district to lesser restrictive or denser residential districts. Typical permitted uses include but are not limited to single-family homes and nonresidential support uses such as schools and places of worship.

The following table shows the residential dimensional requirements for the SF-2 zoning district:

SF-2, Single-Family 2	
Min. Lot Area (sq. ft.)	5,000
Min. Lot Width (ft.)	50
Min. Lot Depth (ft.)	100
Max. Height (stories)	2 1/2
Min. Yard (ft)	
Front	25
Side	5
Side (street)	15
Rear	10

All of the lots in the Windmill Farms Phases 2 and 3 subdivisions are in compliance with the dimensional requirements for SF-2. The applicant has no objections to the city-initiated rezoning.

#### Public Notice

Forty four notices were sent out. As of Wednesday, December 30 at 5 PM, two notices were returned in favor of the request. The newspaper printed notice of the public hearing on December 6, 2008 in accordance with state law and local ordinance.

**<u>STAFF RECOMMENDATION</u>**: Staff recommends approval of the zone change from A, Agricultural zoning district to SF-2, Single-Family 2 zoning because:

- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities serve the property.

FISCAL IMPACT: Not Applicable

#### ATTACHMENTS:

Zoning Map Land Use and Character Map Aerial Notice Map

#### EXCERPTS FROM THE

#### PLANNING & ZONING COMMISSION MEETING

#### MONDAY, JANUARY 5, 2009

#### **ACTION ITEMS**

6. **Z-FY-09-10:** Hold a public hearing to discuss and recommend action from Agricultural District (A) to Single Family Two District (SF-2) on 95.6± acres of land being part of the John J. Simmons Survey, Abstract Number 737 and described as Windmill Farms Phases II & III, located west of SH 317 and north of FM 2305. (Applicant: City-Initiated)

Mr. Brian Mabry, Senior Planner presented the request to the Commission and stated this zone change is to accommodate a single-family subdivision known as Windmill Farms Phases II and III. The final plat for Phase 2 was approved in February 2008 and the final plat for Phase 3 was approved in May 2008. When building permit applications began in November 2008, it was discovered that some of the property contained Agricultural (A) zoning. The plotted lots of the two phases meet the minimum requirements of the requested zoning district, SF-2. Staff recommends rezoning the entire area SF-2.

Staff recommended approval of this zone change from A (Agricultural) to SF-2 (Single Family 2) because the request complied with the Future Land Use and Character Map, the Thoroughfare Plan and adequate public facilities will serve the property.

Commissioner Martin made a motion to approve the zone change, and Commissioner Hurd seconded the motion.

Motion approved. (7:0)

#### ORDINANCE NO.

#### [PLANNING NO. Z-FY-09-10]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM AGRICULTURE DISTRICT (A) TO SINGLE FAMILY TWO DISTRICT (SF-2) ON APPROXIMATELY 95.6 ACRES OF LAND BEING PART OF THE JOHN J. SIMMONS SURVEY, ABSTRACT NO. 737 AND DESCRIBED AS WINDMILL FARMS PHASES II AND III; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

## BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

**Part 1**: The City Council approves a zoning change from Agricultural District (A) to Single Family Two District (SF-2) on approximately 95.6 acres of land being part of the John J. Simmons Survey, Abstract No. 737, and described as Windmill Farms Phases II and III, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**<u>Part 2:</u>** The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

**Part 3**: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

<u>**Part 4**</u>: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

<u>**Part 5**</u>: It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **15<sup>th</sup>** day of **January**, 2009.

PASSED AND APPROVED on Second Reading on the 5<sup>th</sup> day of February, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Clydette Entzminger City Secretary

ATTEST:

Jonathan Graham City Attorney



### **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(L) Consent Agenda Page 1 of 2

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-09-11: Consider adopting an ordinance authorizing the zoning change from Two Family District (2F) and Light Industrial District (LI) to Commercial District (C) on Lots 2 and 3, Block 13, Addition, located at 707 South 6<sup>th</sup> Street and 704 South Martin Luther King Jr. Drive.

**PLANNING & ZONING COMMISSION RECOMMENDATION:** At its January 5, 2009 meeting, the Planning and Zoning Commission voted 7/0 in accordance with staff recommendation to recommend approval of a zoning change from 2F and LI to C for the following reasons:

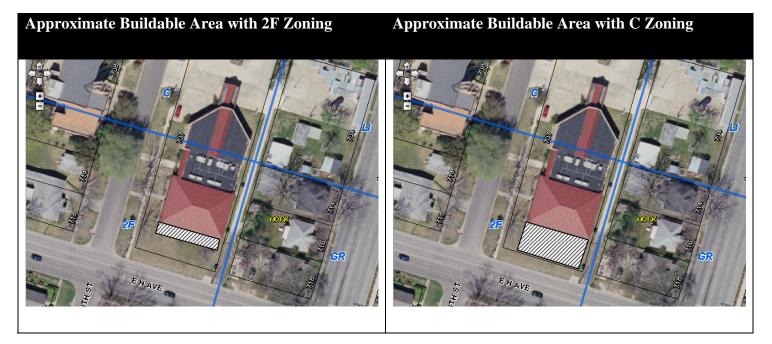
- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities serve the property.

Commissioners Barton and Talley were absent.

**<u>STAFF RECOMMENDATION</u>**: Adopt ordinance as presented in item description, on second and final reading.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-09-11, from the Planning and Zoning Commission meeting, January 5, 2009. The applicant's request is for a zoning change to allow the addition of classrooms in the church fellowship hall. The proposed classroom addition will have the effect of extending the building façade along East Avenue H toward the street. The existing zoning for this part of the fellowship hall, 2F, would require a 25' setback from the street right-of-way/property line, thus making expansion impractical. The requested C zoning district has a minimum front setback of 30' from the center of the street, thus allowing enough room for the expansion. The property on which the hall and associated fairgrounds sit has three different zoning districts: 2F, C and LI as shown in the table below.

02/05/09 Item #3(L) Consent Agenda Page 2 of 2

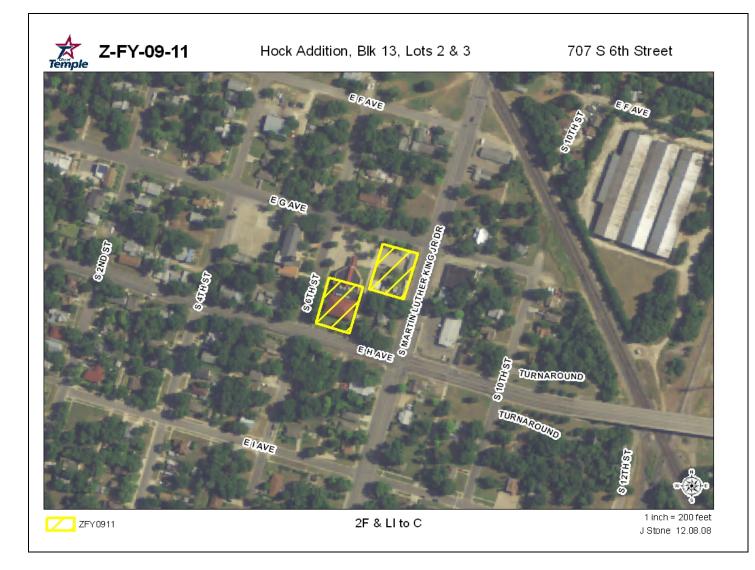


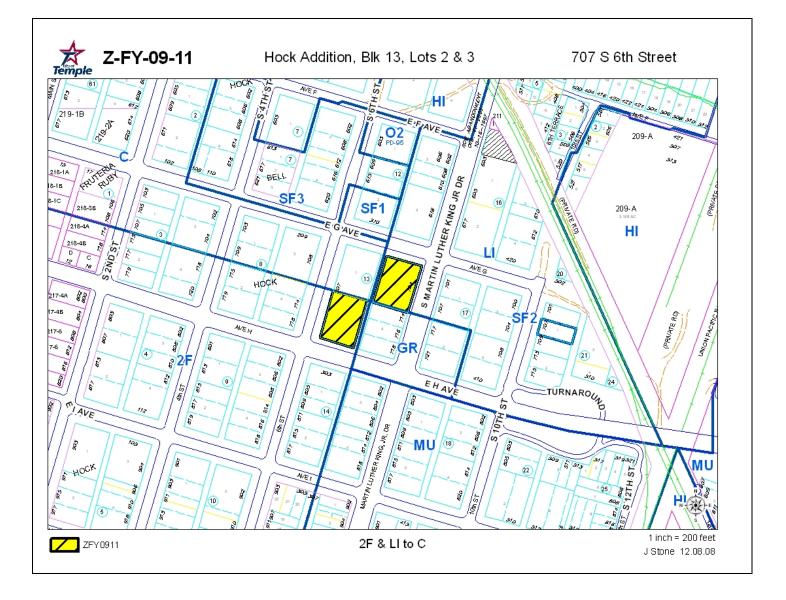
The Commission did not raise any issues requiring additional staff attention.

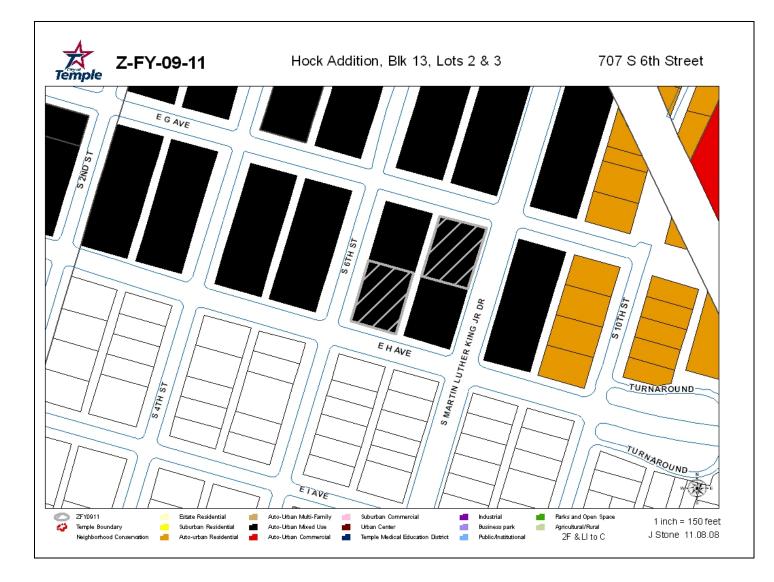
#### FISCAL IMPACT: NA

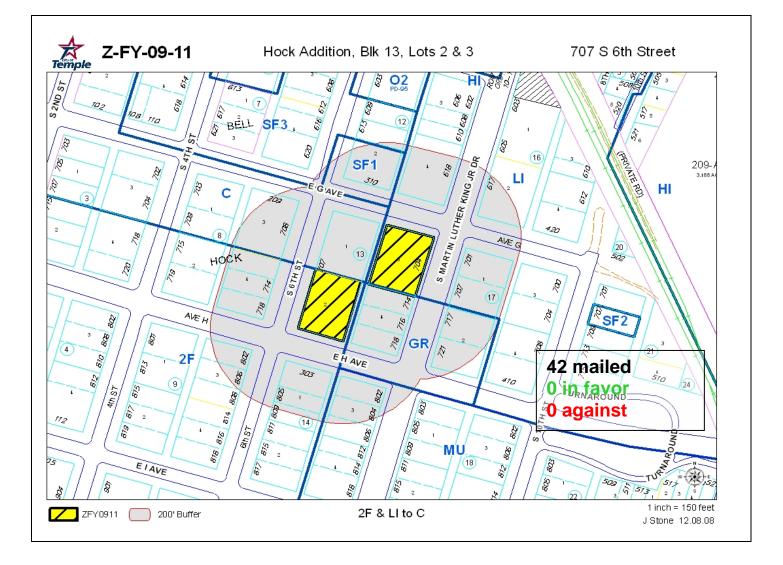
#### **ATTACHMENTS:**

Aerial Zoning Map Land Use and Character Map Notice Map P&Z Staff Report (Z-FY-09-11) P&Z Minutes (01/05/09) Ordinance









PLANNING AND ZONING COMMISSION AGENDA ITEM

01/05/08 Item #7 Regular Agenda Page 1 of 3

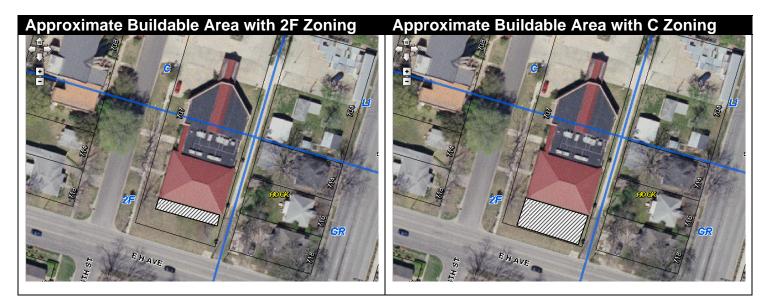
APPLICANT / DEVELOPMENT: Fr. Tom Chamberlain, Pastor, Our Lady of Guadalupe Church

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION: Z-FY-09-11:** Hold a public hearing to discuss and recommend action on a zone change from Two Family District (2F) and Light Industrial District (LI) to Commercial District on Lots 2 and 3, Block 13, Hock Addition, located at 707 South 6th Street and 704 South Martin Luther King Jr. Drive. Zoned 2F and LI.

**BACKGROUND:** The applicant's request is for a zone change to allow for the addition of classrooms in the fellowship hall of Our Lady of Guadalupe Catholic Church. The property on which the hall and associated fairgrounds sit has three different zoning districts: 2F, Two-Family; C, Commercial and LI, Light Industrial. This zone change would remove the 2F and LI designations and make all of the church's property on the block have the C zoning district designation.

The proposed classroom addition will have the effect of extending the building façade along E. Ave. H toward the street. The existing zoning for this part of the building, 2F, would require a 25' setback from the street right-of-way/property line, thus making expansion impractical. The requested C zoning district has a minimum front setback of 30' from the center of the street, thus allowing enough room for the expansion.



**Double Sided** 

#### Surrounding Property and Uses

The following table shows the existing zoning and current land uses abutting the subject property:

Direction	Zoning	Current Land Use	
North	С	Fellowship hall	
	LI	E. Ave. G / Vacant	
East	GR	Single-family dwelling	
	LI	S. MLK Dr. / Vacant	
South	2F	E. Ave. H / Single-family dwelling	
	GR	Single-family dwelling	
West	2F	Church	
	С	Church	

This proposed use is compatible with the surrounding uses. A zoning request should be reviewed for compliance with the Comprehensive Plan.

A zoning request should be reviewed for compliance with the Comprehensive Plan.

#### Future Land Use and Character

The Future Land Use and Character Map designate the subject property as Auto-Urban Mixed Use. The request complies with the Future Land Use and Character Map.

#### Thoroughfare Plan

The following table shows the streets abutting the subject property and their classifications on the Thoroughfare Plan Map.

Street	Thoroughfare Plan Map Classification
E. Ave. H	Major Arterial
S. MLK Dr.	Minor Arterial
E. Ave. G	Local Street
S. 6 <sup>th</sup> St.	Local Street

The request complies with the Thoroughfare Plan.

#### Adequacy of Public Facilities

Adequate public facilities serve the site.

#### **Development Regulations**

The purpose of the C, Commercial zoning district is to serve citywide or regional service areas. This district should also be located at the intersection of major thoroughfares. Permitted uses include all retail and most commercial land uses including auto dealerships with complete servicing facilities, building material sales, light industrial uses and heavy machinery sales and storage. Prohibited uses include, but are not limited to, apartments, heavy industrial uses, sexually oriented businesses, shooting ranges, and wrecker and salvage yards.

Minimum lot area and setback requirements are as follow:

C, Commercial	
Min. Lot Area (sq. ft.)	None
Min. Lot Width (ft.)	None
Min. Lot Depth (ft.)	None
Max. Height (stories)	None
Min. Yard (ft)	
Front	30 from street centerline
Side	10 adjacent to residential district
Rear	10 adjacent to residential district

#### Public Notice

Eighteen notices were sent out. As of Wednesday, December 30, at 5 PM, no notices were returned. The newspaper printed notice of the public hearing on December 6, 2008 in accordance with state law and local ordinance.

**STAFF RECOMMENDATION:** Staff recommends approval of the zone change from 2F, Two-Family zoning district and LI, Light Industrial zoning district to C, Commercial zoning district because:

- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities serve the property.

FISCAL IMPACT: Not Applicable

#### ATTACHMENTS:

Zoning Map Land Use and Character Map Aerial Notice Map

#### EXCERPTS FROM THE

#### PLANNING & ZONING COMMISSION MEETING

#### MONDAY, JANUARY 5, 2009

#### **ACTION ITEMS**

7. Z-FY-09-11: Hold a public hearing to discuss and recommend action on a zone change from Two Family District (2F) and Light Industrial District (LI) to Commercial District on Lots 2 and 3, Block 13, Hock Addition, located at 707 South 6th Street and 704 South Martin Luther King Jr. Drive. Zoned 2F and LI. (Applicant: Fr. Tom Chamberlain)

Mr. Brian Mabry, Senior Planner presented the request to the Commission and stated this request is to allow for the addition of classrooms in the fellowship hall of Our Lady of Guadalupe Catholic Church. The property on which the hall and associated fairgrounds sit have three different zoning districts: 2F (Two Family), C (Commercial) and LI (Light Industrial). This zone change would remove the 2F and LI designations and make all of the church's property on the block have the Commercial zoning district designation.

Staff recommended approval of this zone change from 2F (Two Family) and LI (Light Industrial) to C (Commercial because the request complied with the Future Land Use and Character Map, the Thoroughfare Plan and adequate public facilities will serve the property.

Commissioner Secrest asked if the purpose of the zone change could be accomplished with the GR (General Retail) zoning district. Mr. Mabry replied that no, the GR district has the same setback along a street as the existing 2F district.

Commissioner Secrest made a motion to approve the zone change, and Commissioner Pilkington seconded the motion.

Motion approved. (7:0)

#### ORDINANCE NO.

#### [PLANNING NO. Z-FY-09-11]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM TWO FAMILY DISTRICT (2F) AND LIGHT INDUSTRIAL DISTRICT (LI) TO COMMERCIAL DISTRICT (C) ON LOTS 2 AND 3, BLOCK 13, HOCK ADDITION, LOCATED AT 707 SOUTH 6<sup>TH</sup> STREET AND 704 SOUTH MARTIN LUTHER KING, JR. DRIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

# BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

<u>**Part 1**</u>: The City Council approves a zoning change from Two Family District (2F) and Light Industrial District (LI) to Commercial District (C) on Lots 2 and 3, Block 13, Hock Addition, located at 707 South 6<sup>th</sup> Street and 704 South Martin Luther King, Jr. Drive, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**<u>Part 2:</u>** The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

**Part 3**: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

<u>**Part 4**</u>: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

<u>**Part 5**</u>: It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **15<sup>th</sup>** day of **January**, 2009.

PASSED AND APPROVED on Second Reading on the 5<sup>th</sup> day of February, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Clydette Entzminger City Secretary

ATTEST:

Jonathan Graham City Attorney



02/05/09 Item #3(M) Consent Agenda Page 1 of 1

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Sharon Rostovich, Airport Director

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing acceptance of a Texas Department of Transportation, Aviation Division, Routine Airport Maintenance Grant, to assist with airfield crack filling and runway/taxiway pavement markings at the Draughon-Miller Central Texas Regional Airport in the amount of \$100,000 with a City match of \$50,000.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** The City of Temple, as part of our Airport Grant Assurance, has participated in the yearly grant program. TxDOT has provided matching funds up to \$50,000 for eligible projects such as lower cost airside and landside Airport improvements and maintenance projects. The \$50,000 City match was approved in the FY 2008/2009 Operating Budget to assist the Airport with runway/taxiway crack sealing and marking.

The RAMP grant is a pro-active, flexible grant program and allows the City to determine projects on an as-needed basis upon execution of the grant. Funds from the FY 2007/2008 RAMP program were used to seal cracks primarily on runway 15/33, accomplish enhanced taxiway markings to meet new FAA standards, and airfield markings primarily on runway 02/20. The FY 2008/2009 RAMP funds would be used to crack fill primarily runway 02/20 taxiways and ramp and complete airfield markings primarily on runway 02/20 and taxiways. Any remaining funds would be used to fill and grade runway 15 safety area. TxDOT has determined the project request meets the eligibility requirement.

The Resolution and Grant Agreement must be forwarded to TxDOT upon acceptance no later than February 28, 2009.

**FISCAL IMPACT:** Funds were appropriated in account 110-5900-560-6310, project # 100440 in the amount of \$100,000 in the FY 2008/2009 Operating Budget, this including the City's match of \$50,000 and the state's grant amount of \$50,000.

#### ATTACHMENTS:

Resolution

#### RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING ACCEPTANCE OF A TEXAS DEPARTMENT OF TRANSPORTATION, AVIATION DIVISION, ROUTINE AIRPORT MAINTENANCE GRANT, TO ASSIST WITH AIRFIELD CRACK FILLING AND RUNWAY/TAXIWAY PAVEMENT MARKINGS AT THE DRAUGHON-MILLER CENTRAL TEXAS REGIONAL AIRPORT, IN THE AMOUNT OF \$100,000, WITH A CITY MATCH OF \$50,000; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the City requested consideration for funding from TxDOT's Aviation Division, under the Routine Airport Maintenance Program (RAMP), to assist with airfield crack filling and runway/taxiway pavement marking at the Draughon-Miller Central Texas Regional Airport;

**Whereas,** TxDOT has approved Temple's project for inclusion in the FY2009 RAMP Program in the amount of \$100,000;

**Whereas,** the City's 50% share (\$50,000) is available in Account 110-5900-560-6310, Project #100440; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

Now, Therefore, be it Resolved by the City Council of the City of Temple, Texas, That:

<u>**Part 1**</u>: The City Council accepts the grant funds (\$100,000) from the Texas Department of Transportation, Aviation Division, for a Routine Airport Maintenance Program (RAMP) Grant in fiscal year 2009 to assist with airfield crack filling and runway/taxiway pavement markings at the Draughon-Miller Central Texas Regional Airport, and approves the City's 50% share (\$50,000) of the funds.

<u>**Part 2:**</u> The City Council authorizes the City Manager, or his designee, to authorize any documents, after approval as to form by the City Attorney, that may be necessary for this grant.

<u>**Part 3:**</u> It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **5<sup>th</sup>** day of **February**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Clydette Entzminger City Secretary

ATTEST:

Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(N) Consent Agenda Page 1 of 1

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Kim Foutz, Assistant City Manager

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing acceptance of an Economic Development Initiative-Special Project grant for downtown redevelopment/Performing Arts Center in the amount of \$137,200.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** In December 2008, the City was notified by the U.S. Department of Housing and Urban Development that the City had been awarded a federal project grant (Economic Development Initiative-Special Project grant) in the amount of \$137,200. The City had originally requested approximately \$1,000,000. The purpose of the request was general in nature, but funds were to go toward downtown redevelopment and/or a Performing Arts Center.

Approval of the resolution will allow the City to make final applications necessary to secure the funds and to execute a grant agreement.

The documentation that is necessary at this time requires that the City submit a detailed line item budget of the project costs. Due to the status of the Hawn Hotel and Performing Arts Center project, and the fact that no building plans exist at this time, it would be difficult to apply these funds to building rehabilitation. Therefore, staff recommends that the funds be utilized to upgrade the city-owned parking lot just west of the Hawn, fronting 4<sup>th</sup> Street and Central Avenue. Staff has spoken with both parties and they are in agreement that redevelopment of the parking lot would be beneficial for both redevelopment projects and the downtown area in general. Please note that these funds represent only partial funding of the proposed improvements at the parking lot (economic development negotiations still underway).

**FISCAL IMPACT:** A budget adjustment is presented for Council's approval appropriating the \$137,200 to be received from the Economic Development Initiative-Special Project grant. These grant funds will be used for partial funding of the upgrades to the city-owned parking lot west of the Hawn Hotel. There are no matching funds required for the grant.

#### ATTACHMENTS:

Budget Adjustment Resolution

FY 2009

### **BUDGET ADJUSTMENT FORM**

Use this form to make adjustments to your budget. All adjustments must balance within a Department. Adjustments should be rounded to the nearest \$1.

				+	-	
ACCOUNT NUMBER	PROJECT #	ACCOUNT DESCRIP	TION	INCREASE	DECREASE	
260-3300-531-63-17	100484	Parking Lot Improvements	\$	137,200		
260-0000-431-01-63		Federal Grant Revenue		137,200		٦
						٦
						٦
TOTAL			\$	274,400	\$ -	
account are available. To appropriate funds from the	e U.S. Departi al Project grar	<b>TREQUEST-</b> Include justification ment of Housing and Urban Deve nt) for the partial funding to upgra	elopment received	l as a federal e	armark (Economic	
DOES THIS REQUEST REQU DATE OF COUNCIL MEETIN		CIL APPROVAL? 2/5/2009	xYe	s	No	
WITH AGENDA ITEM?			<b>x</b> Ye	s I	No	
Department Head/Divisior	n Director		Date		Approved Disapproved	
Finance					Approved	
			Date		Disapproved	

Revised form - 10/27/06

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS; AUTHORIZING ACCEPTANCE OF AN ECONOMIC DEVELOPMENT INITIATIVE – SPECIAL PROJECT GRANT FOR DOWNTOWN REDEVELOPMENT/PERFORMING ARTS CENTER IN THE AMOUNT OF \$137,200; AND PROVIDING AN OPEN MEETINGS CLAUSE.

**Whereas**, the United States Department of Housing and Urban Development has awarded the City of Temple an Economic Development Initiative – Special Project grant in the amount of \$137,200 for downtown redevelopment/ performing arts center;

**Whereas**, the Staff recommends that the funds be utilized to upgrade the city-owned parking lot just west of the Hawn Hotel, fronting 4<sup>th</sup> Street and Central Avenue, which would be beneficial for both redevelopment projects and the downtown area in general;

**Whereas,** the grant funds need to be accepted by the City and an amendment to the FY2008-09 budget needs to be approved to appropriate the funds; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

# Now, Therefore, be it Resolved by the City Council of the City of Temple, Texas, That:

**Part 1:** The City Council authorizes acceptance of an Economic Development Initiative – Special Project grant in the amount of \$137,200 for downtown redevelopment/performing arts center, and authorizes the City Manager, or his designee, to execute any documents, after approval as to form by the City Attorney, that may be necessary for the grant.

**<u>Part 2</u>**: The City Council approves an amendment to the FY2008-09 budget, substantially in the form of the copy attached as Exhibit A, to appropriate the funds for this grant.

<u>**Part 3:**</u> It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **5**<sup>th</sup> day of **February**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III Mayor

APPROVED AS TO FORM:

ATTEST:

Clydette Entzminger

City Secretary

Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #3(O)(1)- (2) Consent Agenda Page 1 of 2

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Jonathan Graham, City Attorney

**ITEM DESCRIPTION:** (1) Consider granting a petition to institute voluntary annexation proceedings, known as the Woods Robins Trust Voluntary Annexation for a 192.831 acre tract of land located in the vicinity of Airport Road and SH317.

(2) Consider adopting a resolution directing the City Manager to develop a municipal services plan and calling public hearings to consider the petition.

**<u>STAFF RECOMMENDATION</u>**: Adopt proposed resolutions to accept petition for voluntary annexation and complete steps to institute annexation proceedings.

**ITEM SUMMARY:** Woods Robins Trust filed a petition on January 20, 2009, seeking voluntary annexation of approximately 192.831 acres into the City of Temple.

Voluntary annexation is governed by Section 43.028 of the Texas Local Government Code and applies only to the annexation of an area that is:

- 1. Less than one-half mile in width,
- 2. Contiguous to the annexing municipality, and
- 3. Vacant and without residents or on which fewer than three qualified voters reside.

The landowner's petition meets the statutory requirements and is recommended to be granted.

The proposed dates for initial public hearings are February 19, 2009 (regular meeting) and February 20, 2009 (special meeting). The resolution sets the time and place for the special meeting. No on-site hearing will be necessary, as there are no residents on the land proposed to be annexed. Planning staff will present a Municipal Services Plan as required by state law, showing how the City will serve the area proposed to be annexed into the City. The proposed schedule anticipates completion of annexation proceedings on April 2, 2009.

FISCAL IMPACT: Future tax revenue.

02/05/09 Item #3(O)(1)- (2) Consent Agenda Page 2 of 2

ATTACHMENTS: Petition and Map Annexation schedule Resolutions

#### Voluntary Petition for Annexation

January 20, 2009

To the City Council of the City of Temple:

We are the sole owners of an approximately 192.831 acre tract of land, more particularly described as follows:

EXHIBIT "A, consisting of two parts, Part I, a sketch of this tract, and Part 2, a metes and bounds description, is attached hereto and made a part hereof by reference for all pertinent purposes.

Said tract of land is one half-mile or less in width; contiguous to the current limits of the City of Temple or which will be at the time this petition is considered by the City Council; and has less than three qualified voters as residents. We are petitioning the City Council to take the appropriate action to annex said tract pursuant to Section 43.028 of the Local Government Code.

Woods Robins Trust Name of Owner

'a Jame of Owner

STATE OF TEXAS §

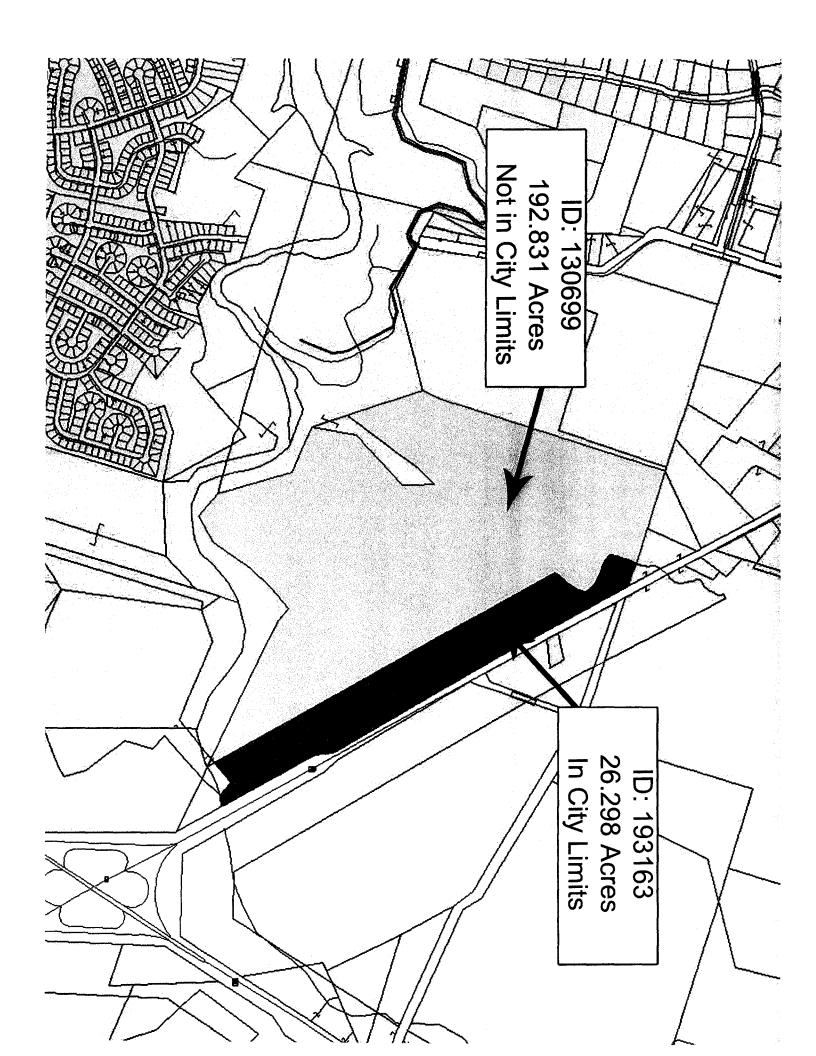
COUNTY OF BELL §

Paul MARK Woods BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_ 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 purpose and consideration therein expressed.

2009.

Carlos lic, State of Texas

GEORGANNA G. CARLINEE MY COMMISSION EXPIRES June 17, 2009



### SCHEDULE PETITION FOR VOLUNTARY ANNEXATION AIRPORT ROAD

DATE	ACTION	TIME LIMIT
Jan 20 2009	CITY RECEIVED PETITION of landowners	
	to annex sparsely occupied area	
Feb 5 2009	COUNCIL GRANTS PETITION	Hear and grant or deny petition after
Thursday	16 days after petition filed	the 5 <sup>th</sup> day but on or before the 30 <sup>th</sup>
Regular meeting		day after petition is filed. §43.028(d)
		Local Government Code (LGC).
	COUNCIL ADOPTS RESOLUTION	Before publication of notice of 1 <sup>st</sup>
	Directing staff to develop service plan	hearing required under §43.065 LGC.
	Calling public hearings on Feb. 19 & Feb. 20	
Feb 8 2009	CITY SECRETARY PUBLISHES NOTICES	Publish hearing notice on or after the
Sunday	FOR PUBLIC HEARINGS ON ANNEXATION	20 <sup>th</sup> day but before the 10 <sup>th</sup> day
	Posts notice on City web site	before the date of the hearing
	Publish notice in Telegram	§43.063(c)LGC
	Sent notice to affected railroads by certified	
	mail	
	11 <sup>th</sup> day before 1 <sup>st</sup> public hearing	
	12 <sup>th</sup> day before 2 <sup>nd</sup> public hearing	
Feb 19 2009	COUNCIL HOLDS 1st PUBLIC HEARING	Hold hearings on or after the 40 <sup>th</sup> day
Thursday	Staff presents service plan	but before the 20 <sup>th</sup> day before the
Regular Meeting		date of institution of annexation
Regular meeting	28 days before 1 <sup>st</sup> reading of ordinance	proceedings with 1 <sup>st</sup> reading of
Feb 20 2009	COUNCIL HOLDS 2 <sup>nd</sup> PUBLIC HEARING	ordinance. §43.063(a) LGC.
Friday	Staff presents service plan	
Special Meeting		
	27 days before 1st reading of ordinance	
Mar 19 2009	COUNCIL CONSIDERS ANNEXATION	First reading institutes proceedings
Thursday	ORDINANCES ON 1 <sup>ST</sup> READING & HOLDS	for purposes of statutory time limits.
Regular meeting	PUBLIC HEARING	
Apr 2 2009		Complete annexation proceedings
Thursday	ORDINANCES ON 2 <sup>ND</sup> READING	within 90 days from first reading.
Regular Meeting		§43.064(A) LGC.

\* This scenario requires publication of one public hearing notice & one special Council meeting.

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ACCEPTING THE PETITION TO INSTITUTE VOLUNTARY ANNEXATION PROCEEDINGS, KNOWN AS THE *WOODS ROBINS TRUST VOLUNTARY ANNEXATION*, FOR A TRACT OF LAND CONSISTING OF 192.831 ACRES LOCATED IN THE VICINITY OF AIRPORT ROAD AND HIGHWAY 317, PURSUANT TO SECTION 43.028 OF THE LOCAL GOVERNMENT CODE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the owner of a tract of land consisting of 192.831 acres located in the vicinity of Airport Road and Highway 317 petitioned the City to annex the tract;

**Whereas,** Section 43.028 of the Texas Local Government Code authorizes municipalities to annex a sparsely occupied area on petition of area landowners;

Whereas, the landowner's petition meets the requirements of Section 43.028 that the petition be made in writing, describe the area by metes and bounds, and be acknowledged in the manner required for deeds by each person having an interest in the area;

Whereas, the area requested to be annexed meets the conditions in Section 43.028, that is, the area is (1) one-half mile or less in width; (2) contiguous to the annexing municipality; and (3) vacant and without residents or on which fewer than three qualified voters reside; and

Whereas, the City Council has considered the matter and deems it in the public interest to accept the landowner's petition for voluntary annexation.

# Now, Therefore, Be it Resolved by the City Council of the City of Temple, Texas, That:

<u>Part 1:</u> The City Council accepts the petition for voluntary annexation, a copy of which is attached hereto as Exhibit A, for a 192.831 acre tract of land located in the vicinity of Airport Road and Highway 317, pursuant to Section 43.028 of the Local Government Code.

<u>**Part 2:**</u> It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 5<sup>th</sup> day of February, 2009.

#### THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Clydette Entzminger City Secretary

Jonathan Graham City Attorney

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, DIRECTING THE CITY MANAGER TO DEVELOP A MUNICIPAL SERVICES PLAN AND CALLING PUBLIC HEARINGS FOR FEBRUARY 19, 2009, AND FEBRUARY 20, 2009, TO CONSIDER A PETITION FOR VOLUNTARY ANNEXATION, KNOWN AS THE WOODS ROBINS VOLUNTARY ANNEXATION, FOR A TRACT OF LAND CONSISTING OF 192.831 ACRES LOCATED IN THE VICINITY OF AIRPORT ROAD AND HIGHWAY 317; AND PROVIDING AN OPEN MEETINGS CLAUSE.

**Whereas**, on February 5, 2009, the City Council granted a petition to voluntarily annex a tract of land consisting of 192.831 acres to the city limits of Temple;

**Whereas**, the Staff recommends that the City prepare a municipal services plan to indicate the level of commitment to be made in conjunction with the annexation, and to identify public improvements necessary to serve the area proposed for annexation and how it plans to provide those services within specified time periods; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

# Now, Therefore, Be it Ordained by the City Council of the City of Temple, Texas, That:

<u>**Part 1**</u>: The schedule for the voluntary annexation, which is more fully described herein, attached hereto and made a part hereof for all purposes, as Exhibit A, is adopted.

<u>**Part 2**</u>: The City Manager, or his designee, is hereby directed to prepare a municipal services plan for the annexation area as follows:

a 192.831 acre tract of land located in the vicinity of Airport Road and Highway 317 in the City of Temple, Texas

The above tract is more fully described by metes and bounds contained in field notes which is attached hereto and made a part of this Resolution for all purposes as Exhibit B.

<u>**Part 3**</u>: The City Council hereby calls two public hearings to gather comment concerning the proposed annexation described in Section 2 above, with the first public hearing scheduled for the Regular City Council Meeting on February 19, 2009, 2009, at 5:00 PM, and the second public hearing at a Special Called City Council Meeting on February 20, 2009, at 8:00 AM, both public hearings to be held in the City Council Chambers on the 2nd floor of the Municipal Building located at Main and Central in Temple, Bell County, Texas.

<u>**Part 4**</u>: The City Staff is hereby authorized to relocate the second public hearing to a suitable location within the area to be annexed in the event of protest.

<u>**Part 5**</u>: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 5<sup>th</sup> day of February, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger City Secretary Jonathan Graham City Attorney



# COUNCIL AGENDA ITEM MEMORANDUM

02/05/09 Item #3(P) Consent Agenda Page 1 of 1

#### **DEPT. /DIVISION SUBMISSION & REVIEW:**

Tim Dolan, AICP, Planning Director

**ITEM DESCRIPTION:** Consider adopting a resolution abandoning a 20' wide utility easement traversing from north to south, 380<u>+</u> linear feet (7,600 square feet), west of Lot 2 in the Subramanian Subdivision for the Hindu Temple located at 4309 Midway Drive.

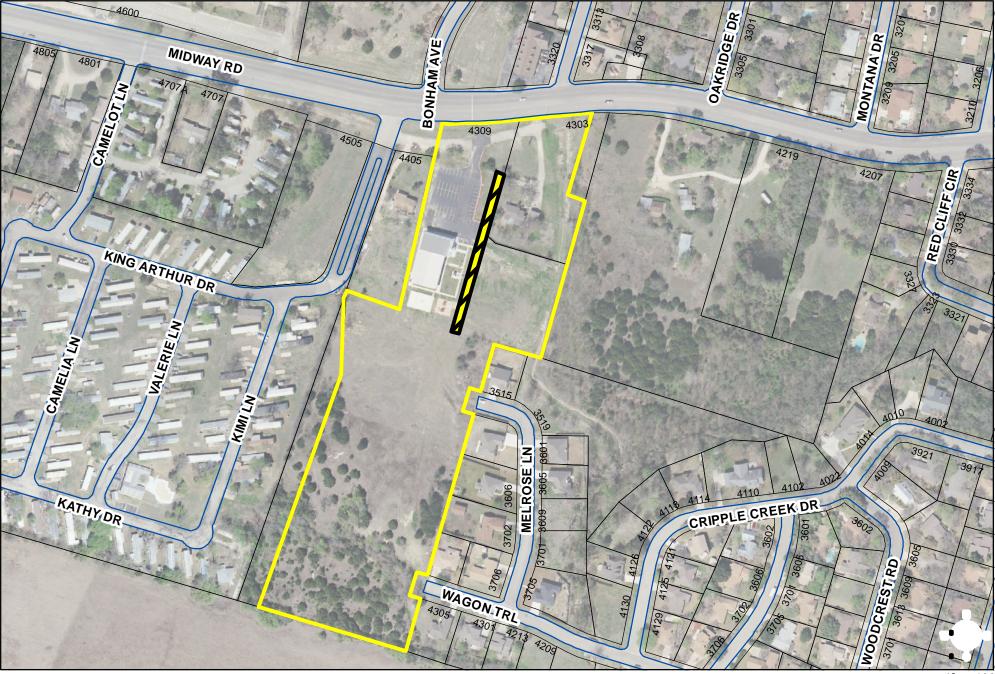
**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

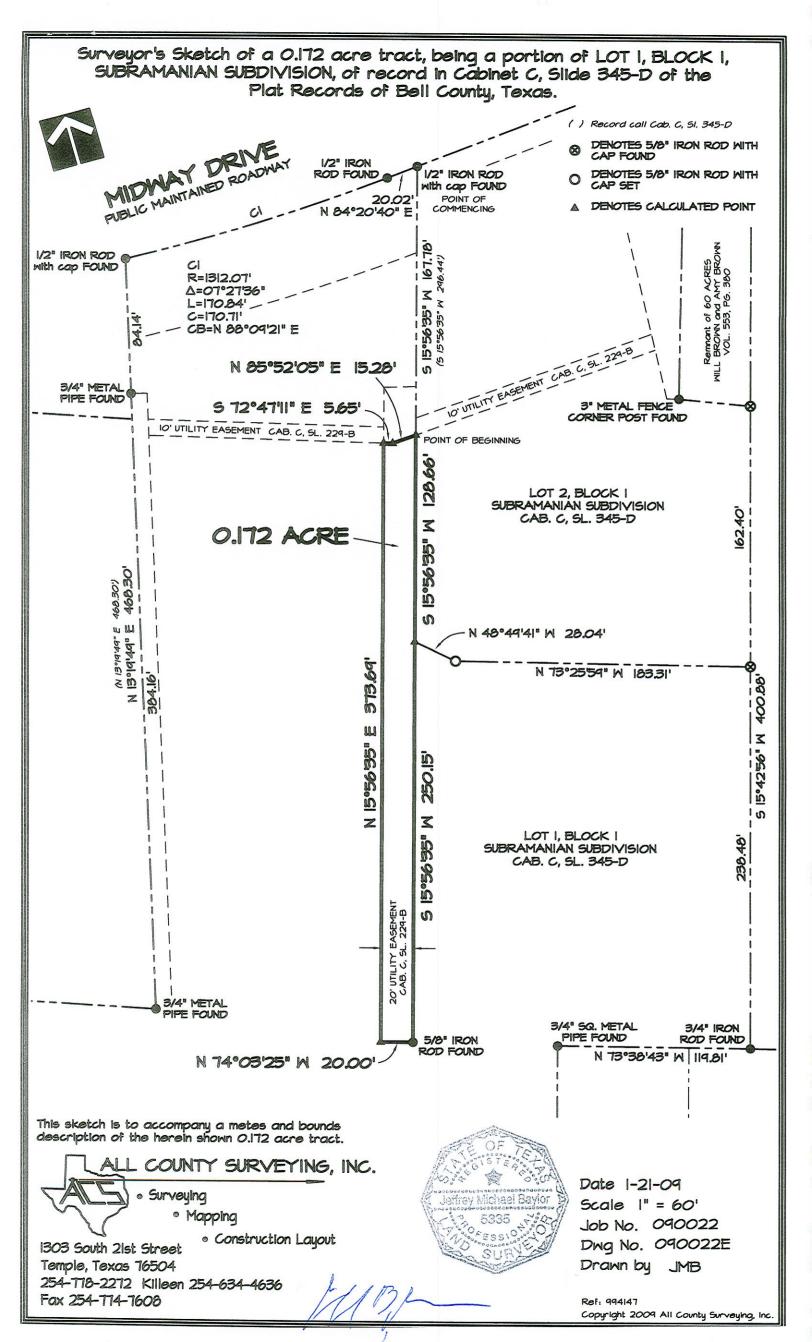
**ITEM SUMMARY:** The applicant requests the abandonment for future building expansion. The Final Plat is encumbered by a utility easement which contains no utility lines, with no plans for expansion. Atmos Energy, Centrovision and Time Warner also have no utilities in this easement. Oncor Electric and AT&T also agree to the abandonment since it allows the existing down guy, attached anchor supporting a power pole which provides electrical and telephone service to this and other area properties.

FISCAL IMPACT: NA

ATTACHMENTS: Aerial Locator Map Plat Map showing proposed abandoned area Resolution







#### FIELD NOTES PREPARED BY ALL COUNTY SURVEYING, INC.

January 23, 2009

Surveyor's Field Notes for Y. V. RAO, for:

**0.172 Acre**, being part of the **GEORGE GIVENS SURVEY**, **ABSTRACT NO. 345**, in the City of Temple, Bell County, Texas, and being a portion of LOT 1, BLOCK 1 of SUBRAMANIAN SUBDIVISION, a subdivision of record in Cabinet C, Slide 345-D of the Plat Records of Bell County, Texas, and being a portion of that certain 20' UTILITY EASEMENT situated on said LOT 1, as shown on the plat of said SUBRAMANIAN SUBDIVISION; said 0.172 acre tract was surveyed by All County Surveying, Inc., and is more particularly described by these metes and bounds as follows:

**COMMENCING** at a 1/2" iron rod with cap found in the south right-of-way line of a public maintained roadway known as MIDWAY DRIVE, said iron rod being the northeast corner of said LOT 1, same being the northwest corner of LOT 2, BLOCK 1 of said SUBRAMANIAN SUBDIVISION.

**THENCE** in a southerly direction, leaving the south right-of-way line of said MIDWAY DRIVE, with the east line of said LOT 1 (record call S 15 deg 56 min 35 sec W, 296.44 feet), same being the west line of said LOT 2, **SOUTH 15 deg 56 min 35 sec WEST**, passing the northeast corner of said 20' UTILITY EASEMENT, with the east line of said 20' UTILITY EASEMENT, a distance of 167.78 feet to a calculated point in the south line of that certain 10' UTILITY EASEMENT that crosses said LOT 1 and said LOT 2, as shown on the plat of said SUBRAMANIAN SUBDIVISION, said point being the POINT OF BEGINNING and northeast corner of this tract.

**THENCE** in a southerly direction, continuing with the east line of said LOT 1, same being the west line of said LOT 2, and continuing with the east line of said 20' UTILITY EASEMENT, **SOUTH 15 deg 56 min 35 sec WEST, a distance of 128.66 feet** to a calculated point, being an interior corner of said LOT 1, same being the southwest corner of said LOT 2.

**THENCE** in a southerly direction, leaving the east line of said LOT 1, and crossing said LOT 1, continuing with the east line of said 20' UTILITY EASEMENT, **SOUTH 15 deg 56 min 35 sec WEST, a distance of 250.15 feet** to a 5/8" iron rod found for the southeast corner of said 20' UTILITY EASEMENT.

THENCE in a westerly direction, continuing across said LOT 1, with the south line of said 20' UTILITY EASEMENT, NORTH 74 deg 03 min 25 sec WEST, a distance of 20.00 feet to a calculated point, being the southwest corner of said 20' UTILITY EASEMENT.

**THENCE** in a northerly direction, continuing across said LOT 1, with the west line of said 20' UTILITY EASEMENT, **NORTH 15 deg 56 min 35 sec EAST, a distance of 373.69 feet** to a calculated point in the south line of said 10' UTILITY EASEMENT.

**THENCE** in an easterly direction, continuing across said LOT 1, leaving the west line of said 20' UTILITY EASEMENT, and crossing said 20' UTILITY EASEMENT, with the south line of said 10' UTILITY EASEMENT, **SOUTH 72 deg 47 min 11 sec EAST, a distance of 5.65 feet** to a calculated point.

THENCE in an easterly direction, continuing across said LOT 1, and continuing across said 20' UTILITY EASEMENT, with the south line of said 10' UTILITY EASEMENT, NORTH 85 deg 52 min 05 sec EAST, a distance of 15.28 feet to the Point of Beginning, containing 0.172 Acre.

Survey monuments found along the west line of said LOT 1 were used for directional control. This description accompanies a Surveyor's Sketch of said 0.172 acre tract.

Surveyed January 21, 2009

ALL COUNTY SURVEYING, INC. 1 (800) 749 - PLAT File: 090022E.fns



Jeffreý M. Baylór Registered Professional Land Surveyor Registration No. 5335

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ABANDONING A PORTION OF A 20 FOOT WIDE UTILITY EASEMENT LOCATED ON LOT 1, BLOCK 1, SUBRAMANIAN SUBDIVISION AND LOCATED AT 4309 MIDWAY DRIVE; AUTHORIZING THE EXECUTION OF ANY LEGAL INSTRUMENT NECESSARY TO EVIDENCE THE ABANDONMENT OF SAID EASEMENT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

**Whereas**, the City has been requested by the property owners of 4309 Midway Drive to abandon a portion of a 20 foot wide utility easement located on Lot 1, Block 1, Subramanian Subdivision, for future building expansion;

**Whereas**, abandoning a portion of the utility easement will not interfere with any existing utilities or inhibit the expansion of future utilities; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this abandonment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS:

**Part 1:** The City of Temple, Texas, and the general public, permanently relinquish and abandon, a portion of a 20 foot wide utility easement consisting of approximately 0.172 acres on Lot 1, Block 1 of Subramanian Subdivision, a subdivision of record in Cabinet C, Slide 345-D of the Plat Records of Bell County, Texas, said abandoned area being more fully described by metes and bounds and surveyor's drawing contained in Exhibit A, attached hereto and made a part hereof for all purposes.

<u>**Part 2:**</u> Upon request the City of Temple will provide a copy of this resolution and any other evidence of abandonment of a portion of the utility easement, which may be reasonably required.

<u>**Part 3:**</u> It is hereby officially found and determined that the meeting at which this resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on the **5<sup>th</sup>** day of **February**, 2009.

THE CITY OF TEMPLE, TEXAS

### WILLIAM A. JONES, III, Mayor

### APPROVED AS TO FORM:

ATTEST:

Clydette Entzminger City Secretary Jonathan Graham City Attorney

STATE OF TEXAS §

COUNTY OF BELL §

This instrument was acknowledged before me on the \_\_\_\_\_ day of February, 2009, by WILLIAM A. JONES, III, Mayor of the City of Temple, Texas.

Notary Public, State of Texas



# COUNCIL AGENDA ITEM MEMORANDUM

02/05/09 Item #3(Q) Consent Agenda Page 1 of 1

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Traci Barnard, Director of Finance

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing budget amendments for fiscal year 2008-2009.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** This item is to recommend various budget amendments, based on the adopted FY 2008-2009 budget. The amendments will involve transfers of funds between contingency accounts, department and fund levels.

**FISCAL IMPACT:** The total amount of budget amendments is \$67,849.

#### ATTACHMENTS:

Budget amendments Resolution

	CITY OF TEMPLE BUDGET AMENDMENTS FOR FY 2009 BUDGET				
	February 5, 2009				
			APPROPR		
ACCOUNT # PROJECT #	DESCRIPTION Judgments & Damages (Police Dept.)	\$	<b>Debit</b> 238		Credit
10-2000-521-2510	Contingency Judgments & Damages	φ	238	\$	23
	Attorney fees for lawsuit filed against the City by Steven Taylor				
110-2000-521-2516	Judgments & Damages (Police Dept.)	\$	1,411		
10-1500-515-6531	Contingency Judgments & Damages	Ψ	1,111	\$	1,41
	Deductible reimbursement to Texas Municipal League for attorney fees for a suit filed by Bruce Wayne Ervin against peace officers serving on a task force. Claim arises out of seizure of items in Ervin's possession when his premises were searched. Erwin is appealing a judgment for the officers.				
10-3600-560-6310 100481	Capital Building & Grounds - Fuel Farm Improvements (Airport)	\$	40,000		
10-3600-560-6310 100482	Capital Building & Grounds - Filter Upgrades	\$	25,000	\$	
10-0000-446-3530	Miscellaneous Airport Revenue			\$	65,0
	As part of new aviation fuel contract with Western Petroleum, Western is providin \$65,000 to be used for upgrades to fueling operation. Funds will be used to upgrade filtration system and electronic inventory system.	g			
110-3700-524-2516	Judgments & Damages (Construction Safety)	\$	238		
10-1500-515-6531	Contingency Judgments & Damages			\$	2
	Attorney fees for lawsuits filed against the City by Centex Investments, Inc. (\$190.00) and Martinson (\$47.50).				
260-4000-555-2221	Computer Equipment (Library)	\$	481		
260-0000-490-2582	Transfer In			\$	4
10-9100-591-8160	Transfer Out - Grant Fund	\$	481	٩	
110-0000-461-0111 110-4000-555-2111	Interest Income Computer Supplies			\$ \$	3
	Appropriate City matching funds and allocate interest through 12/31/2008 for the Gates PAC-HUG Grant. The grant funds are received in advance and the interest earned is program income for the grant. The city matching funds are for the expenditures in excess of the original budget.				
	TOTAL AMENDMENTS	\$	67,849	\$	67,8
	GENERAL FUND Beginning Contingency Balance Added to Contingency Sweep Account Carry forward from Prior Year Taken From Contingency Net Balance of Contingency Account			\$ \$ \$ \$	
	Beginning <b>Judgments &amp; Damages</b> Contingency Added to Contingency Judgments & Damages from Council Contingency Taken From Judgments & Damages			\$ \$ \$	70,0

#### CITY OF TEMPLE BUDGET AMENDMENTS FOR FY 2009 BUDGET

February 5, 2009

		February 5, 2009		
				RIATIONS
ACCOUNT #	PROJECT #	DESCRIPTION	Debit	Credit
		Beginning SAFER Grant Match Contingency		\$ 46,82
		Added to Master Plan Implementation Contingency		\$
		Taken From Master Plan Implementation Contingency		\$
		Net Balance of Master Plan Implementation Contingency Accoun		\$ 46,82
		Beginning Compensation Contingency		\$ 184,70
		Added to Compensation Contingency		\$
		Taken From Compensation Contingency		\$
		Net Balance of Compensation Contingency Account		\$ 184,70
		Net Balance Council Contingency		<mark>\$ 280,18</mark>
		Beginning Balance Budget Sweep Contingency		\$
		Added to Budget Sweep Contingency		\$
		Taken From Budget Sweep		\$
		Net Balance of Budget Sweep Contingency Account		\$
		WATER & SEWER FUND		<b>•</b>
		Beginning Contingency Balance		\$ 174,12
		Added to Contingency Sweep Account		\$
		Taken From Contingency		\$ (3,00
		Net Balance of Contingency Account		\$ 171,12
		Beginning Compensation Contingency		\$ 34,33
		Added to Compensation Contingency		\$
		Taken From Compensation Contingency		\$
		Net Balance of Compensation Contingency Account		\$ 34,33
		Beginning Approach Mains Contingency		\$ 500,00
		Added to Approach Mains Contingency		\$
		Taken From Approach Mains Contingency		\$ (11,73
		Net Balance of Approach Mains Contingency Account		\$ 488,27
		Beginning T-BRSS Future Plant Expansion Contingency		\$ 450,00
		Added to T-BRSS Future Plant Expansion Contingency		\$
		Taken From T-BRSS Future Plant Expansion Contingency		\$
		Net Balance of T-BRSS Future Plant Expansion Contingency		\$ 450,00
		Net Balance Water & Sewer Fund Contingency		<u>\$ 1,143,72</u>
		HOTEL/MOTEL TAX FUND		
		Beginning Contingency Balance		\$ 75,22
		Added to Contingency Sweep Account		\$
		Taken From Contingency		\$
		Net Balance of Contingency Account		\$ 75,22
		Beginning Compensation Contingency		\$ 5,40
		Added to Compensation Contingency		\$
		Taken From Compensation Contingency		\$
		Net Balance of Compensation Contingency Account		\$ 5,40
		Net Balance Hotel/Motel Tax Fund Contingency		<mark>\$ 80,62</mark>
		DRAINAGE FUND		
		Beginning Contingency Balance		\$
		Added to Contingency Sweep Account		\$
		Taken From Contingency		\$
		Net Balance of Contingency Account		\$

		CITY OF TEMPLE BUDGET AMENDMENTS FOR FY 2009 BUDGET February 5, 2009		
			APPROPR	 
ACCOUNT #	PROJECT #	DESCRIPTION	Debit	 Credit
	E	Beginning Compensation Contingency		\$ 4,631
	A	Added to Compensation Contingency		\$ -
	Т	Taken From Compensation Contingency		\$ -
	Ν	Net Balance of Compensation Contingency Account		\$ 4,631
	Ν	Net Balance Drainage Fund Contingency	-	\$ 4,631
		FED/STATE GRANT FUND		
	E	Beginning Contingency Balance		\$ 7,962
	C	Carry forward from Prior Year		\$ 99,254
	A	Added to Contingency Sweep Account		\$ -
	Т	Taken From Contingency		\$ -
	Ν	Net Balance of Contingency Account		\$ 107,216

#### RESOLUTION NO.

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING BUDGET AMENDMENTS TO THE 2008-2009 CITY BUDGET; AND PROVIDING AN OPEN MEETINGS CLAUSE.

**Whereas**, on the 28<sup>th</sup> day of August, 2008, the City Council approved a budget for the 2008-2009 fiscal year; and

**Whereas**, the City Council deems it in the public interest to make certain amendments to the 2008-2009 City Budget.

Now, Therefore, Be it Resolved by the City Council of the City of Temple, Texas, That:

<u>**Part 1**</u>: The City Council approves amending the 2008-2009 City Budget by adopting the budget amendments which are more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

<u>**Part 2**</u>: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 5<sup>th</sup> day of February, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger City Secretary Jonathan Graham City Attorney



# COUNCIL AGENDA ITEM MEMORANDUM

02/05/09 Item #4 Regular Agenda Page 1 of 1

#### **DEPT./DIVISION SUBMISSION & REVIEW:**

Jonathan Graham, City Attorney

**ITEM DESCRIPTION:** FIFTH READING – PUBLIC HEARING - Consider adopting an ordinance renewing the franchise agreement with Atmos Energy Corporation.

**<u>STAFF RECOMMENDATION</u>**: Conduct public hearing and adopt ordinance as presented in item description, on fifth and final reading.

**ITEM SUMMARY:** The current franchise agreement with Atmos expires January 19, 2009.

We have completed our negotiations with ATMOS energy and the final piece of our discussions was an agreement by ATMOS energy to begin making quarterly franchise payments to the City in lieu of the single annual payment made by ATMOS Energy under the expiring agreement. Effectively the Agreement provides that beginning in May 2009, ATMOS will make quarterly payments. On the expiring franchise ATMOS collected franchise fees from their customers during this calendar year but wouldn't have made another payment to the City until February 2010. Under the new franchise agreement they will make 4 payments (e.g., May 2009, August 2009, November 2009 & February 2010) so we get our franchise payments sooner.

In all other respects, the franchise fee is similar to the expiring franchise agreement and the Staff recommends approval of the proposal franchise as presented.

**FISCAL IMPACT:** The franchise fee payment received from Atmos Energy Corporation in January 2009, was in the amount of \$937,368.05 and is recognized as revenue in FY 2008-2009. This amount reflects higher than normal natural gas prices in calendar year 2008. The amount received from Atmos Energy Corporation in January 2008 was \$816,474.54.

In the FY 2008-2009 operating budget, \$800,000 is budgeted for the receipt of gas franchise fees.

#### ATTACHMENTS:

#### Ordinance

#### ORDINANCE NO. 2008-4266

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS GRANTING A FRANCHISE TO ATMOS ENERGY CORPORATION TO USE THE PUBLIC STREETS, ALLEYS AND EASEMENTS TO SELL AND TRANSPORT GAS IN AND THROUGH THE CITY; SETTING A TERM OF FIFTEEN YEARS; PROVIDING COMPENSATION FOR SUCH USE; PRESCRIBING CERTAIN RIGHTS AND DUTIES; AND PROVIDING AN EFFECTIVE DATE.

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

<u>**Part 1:**</u> *Definitions.* For the purposes of this Ordinance, the following words or phrases shall have the meanings given herein.

- *Affiliate* means in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company.
- City means the City of Temple, Texas, a home rule city located in Bell County, Texas.
- *Company or Atmos Energy* means Atmos Energy Corporation, Mid-Tex Division, and its successors and assigns.
- *Distribution system* means all interrelated distribution pipelines, mains, laterals and other reasonably appurtenant equipment within the City used or necessary for the storage, transportation, or delivery of gas to the customers of Company within the City.
- *Franchise* means the rights, privileges, and obligations granted to or assumed by Company pursuant to this Ordinance.
- *Gas* means natural gas and any synthetic gas distributed by Company through the distribution system.
- *Gross Revenues* shall mean all revenues received by Company from the sale of gas to all classes of customers (excluding gas sold to another gas utility in the City for resale to its customers within City) within the City;
  - (1) all revenues received by Company from the transportation of gas through the System of Company within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);
  - (2) the value of gas transported by Company for Transport Customers through

the System of Company within the City ("Third Party Sales")(excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Company's monthly Weighted Average Cost of Gas charged to industrial customers, as reasonably near the time as the transportation service is performed; and

(3) "Gross revenues" shall also include:

(a) other revenues derived from the following 'miscellaneous charges':

- i. charges to connect, disconnect, or reconnect gas within the City;
- ii. charges to handle returned checks from consumers within the City;
- iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
- iv. contributions in aid of construction" ("CIAC"); and
- (b) revenues billed but not ultimately collected or received by Company.
- (4) "Gross revenues" shall not include:
  - (a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of Company;
  - (b) sales taxes;
  - (c) any interest income earned by Company; and
  - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way.
- *Public Property* means the present and future public streets, alleys, highways, easements, thoroughfares, and public grounds within the City, the terms, conditions, or limitations upon which are not inconsistent with the reasonably safe, adequate, and efficient construction, maintenance and operation of a gas distribution system.

<u>Part 2</u>: *Granting of Non-Exclusive Franchise*. City grants a non-exclusive franchise to Atmos Energy to use and occupy such public property within the City limits as is useful and safe for the purposes of laying, maintaining, constructing, operating and replacing therein a distribution system necessary to deliver and sell gas to the public. The terms of this franchise shall apply to newly-annexed areas upon the effective date of such annexation. The right to

use and occupy said public property for the purposes set forth herein is not exclusive, and the City reserves the right to grant similar franchises to other providers during the term of this franchise.

Part 3: Term. This franchise is granted for a term ending December 31, 2023.

<u>Part 4</u>: *Use and Restoration of Public Property.* (a) Atmos Energy shall lay, maintain, construct, operate, and replace its distribution system so as to interfere as little as possible with traffic. Atmos Energy shall promptly clean up and restore to as good or better condition, at its own cost, all public property which it may disturb. When Atmos Energy shall make any excavation or place any other obstruction in or on public property, Atmos Energy shall place barriers, lights or other appropriate safety and warning devices to prevent personal injury or property damage. The location of Atmos Energy's distribution system is subject to the approval of the City Manager or his designee.

(b) In determining the location of Atmos Energy's pipeline within the City, due consideration will be given to minimizing any interference with existing underground structures of the City or other utility franchises. Likewise, in determining the location of the facilities of the City and other utility franchisees within the City, due consideration will be given to minimizing any interference with existing facilities of Atmos Energy. If additional easements are necessary, the acquisition of the same shall be the responsibility of Atmos Energy. All use of public property shall be in conformance with applicable portions of the City's Charter and ordinances as well as applicable State law, as they currently exist or may provide in the future.

<u>Part 5</u>: *City Not Liable*. City reserves the right to lay, or permit to be laid by others, for the public benefit, water, sewer, telephone, electrical, gas, water, cable or other utility lines, cables or conduits, beneath, above, across or adjacent to Atmos Energy's distribution system in or on public property. In permitting or causing such work to be done, City, its officers, agents and employees, shall not be liable to Atmos Energy for any damage to Atmos Energy's distribution system, provided however, nothing contained herein shall relieve any other person or business from liability for damage to Atmos Energy's distribution system. In constructing, maintaining, and operating its distribution system, Atmos Energy shall not be liable to City for any damage to the City's water or wastewater distribution pipelines.

<u>Part 6</u>: *Duty to Relocate Distribution System*. (a) Whenever by reason of changes in the location, width, or grade of a street, alley or highway or in the location, materials, or manner of constructing water, sewer, or other above- or below-ground facilities operated by the City, it is deemed necessary by the City for Atmos Energy to remove, alter, change, relocate, adapt, or conform the distribution system of Atmos Energy for governmental purposes, Atmos Energy shall do so at its own expense as soon as practicable when ordered in writing by the City. Schedules for this work shall be mutually developed by representatives of City

and Atmos Energy. If a schedule for such work can not be mutually agreed upon, the City Manager, after consultation with Atmos Energy, shall establish a schedule providing for a minimum of thirty days between notice to Atmos Energy and commencement of work by Atmos Energy. Atmos Energy shall exercise due diligence in completing any such work requested by City.

(b) When Atmos Energy is required to relocate its mains, laterals, and other facilities to accommodate construction, and Atmos Energy is eligible under federal, state, county, local or other programs for reimbursement for its costs and expenses incurred as a result of such relocation, and such reimbursement is required to be handled through the City, Atmos Energy costs and expenses shall be included within any application by City for reimbursement, provided that Atmos Energy submits the appropriate cost and expense documentation to City prior to such application. City shall make a reasonable effort to provide sufficient notice to Atmos Energy to allow the submittal of appropriate documentation of the costs and expenses of such relocation to the City.

**Part 7:** *Indemnification.* (a) Atmos Energy, in partial consideration for the granting of this franchise, shall defend, indemnify and hold the City, its agents, officers and employees, harmless against any and all claims for damages to persons or property arising out of the performance or granting of this franchise, when the claimed injury is caused, or alleged to have been caused, in whole or in part by any act or omission on the part of Atmos Energy, its officers, agents, employees or contractors, or by any other person or entity for whose acts or omissions Atmos Energy is by law legally responsible, and from and against all costs, attorney's fees, and expenses therein; provided however, Atmos Energy need not indemnify the City for any injury or damage to the extent that such injury or damage is attributable to the negligence or wrongful act or omission of City, its agents, officers or employees.

(b) The City shall promptly notify Atmos Energy of any claim or cause of action which may be asserted against the City relating to or covering any matter against which Atmos Energy has agreed, as set forth above, to indemnify, defend, and hold harmless the City. City reserves the right, but not the obligation, to employ such attorneys, expert witnesses and consultants as it deems necessary to defend against a claim or cause of action described herein. The City further reserves the right to take total or partial control of such defense. In the event that the City is in control of the defense of a claim, either totally or partially, Atmos Energy shall, to the extent of the total or partial defense by the City, be released from its obligation to defend such claim and to reimburse the City for any reasonably incurred expenses related to such defense, but not the obligation to pay any judgment rendered against the City.

<u>Part 8</u>: Service charges and standards. (a) Atmos Energy's service rules and regulations shall be subject to the original jurisdiction of the City or other regulatory authorities having jurisdiction from time to time. In addition to the rates charged for gas

supplied, Atmos Energy may subject to regulatory authority review make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business including a charge for services rendered in the inauguration of natural gas service, and may require before furnishing service the execution of a contract therefore.

(b) In order to insure uniform and reasonable application of conditions for service and to insure availability of service to all without discrimination, the City reserves the right as a regulatory authority to review and approve, consistent with the terms of this franchise and applicable State law, Atmos Energy's rules, regulations, practices, charges including transportation charges, terms, conditions, or standards governing the conduct of business of Atmos Energy as it seeks to implement same.

(c) To assist the City in its review, Atmos Energy shall file with the City Secretary, at least thirty (30) days prior to the date proposed for implementation, any such proposed Atmos Energy rules, regulations, practices, terms, conditions, or standards governing the conduct of its business. All such rules, regulations, practices, terms, conditions or standards shall comply with applicable State laws, regulations, or standards. City may from time to time, after reasonable notice and hearing, establish rules and regulations in the public interest regarding service, administration of customer accounts, or other matters reasonably related to the administration of this franchise.

(d) Atmos Energy shall furnish reasonably safe, adequate, and efficient service to the public, at reasonable rates and charges therefore. Atmos Energy shall maintain its property, equipment and appliances in good order and condition so as to meet all reasonable demands without undue interruptions or fluctuations. Atmos Energy shall make service connections without undue delay.

**Part 9:** *Extensions of Service.* (a) Atmos Energy may contract with customers regarding connection to the distribution system. Atmos Energy shall not be required to extend distribution mains in any Public Property more than one hundred feet (100') for any one customer of gas; provided that no extension of distribution mains is required if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum. Atmos Energy shall not be required to extend transmission mains in any Public Property within the City or to make a tap on any transmission main within the City except pursuant to a written agreement between Atmos Energy and a customer.

**Part 10:** Compensation. (a) The consideration payable by Atmos Energy for the rights and privileges granted to Atmos Energy by the franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by Atmos Energy is four percent (4%) of the Gross Revenues, as defined herein, received by Atmos Energy.

Payment for the rights and privileges granted hereunder for the period of January 1, 2009 through December 31, 2009 was paid on or before February 1, 2009 based upon the previous calendar year.

Thereafter, franchise payments shall be prepaid on a quarterly basis according to the schedule below:

Payment Date	Based Upon	Privilege Period in the Following Year
May 15	Jan 1 – March 31	Jan 1 – March 31
Aug 15	April 1 – June 30	April 1 – June 30
Nov 15	July 1 – Sept 30	July 1 – Sept 30
Feb 15	Oct 1 – Dec 31	Oct 1 – Dec 31

The initial prospective quarterly payment shall be made on or before May 15, 2009, based upon the Gross Revenues during the January 1 – March 31, 2009 calendar quarter and for the privilege of January 1 – March 31, 2010. The last payment hereunder shall be made on February 15, 2023 for the rights and privileges of the October 1 – December 31, 2023.

- 1. Calculation and Payment of Franchise Fees Based on CIAC
  - a. The franchise fee amounts based on "Contributions in aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.
  - b. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year.
- 2. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy
  - a. If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the

amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms, and the Company may choose to agree with the waiver.

- 3. Atmos Energy Franchise Fee Recovery Tariff
  - a. Atmos Energy may file with the City a tariff amendment(s) to provide for the recovery of the franchise fees under this amendment.
  - b. City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy' franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.
  - c. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.
- 4. Lease of Facilities Within City's Rights-of-Way

Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within the City's public rightsof-way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee, or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Sections I.A. and I.B. of this Ordinance. The authority to Lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees. (b) Atmos Energy agrees that on the same date that payment are made, as provided in this Section, it will file with the City Secretary a showing the gross receipts received by Atmos Energy from the sale of gas and the transportation of gas thorough the distribution system to its customers in the city during the time period on which the payment is based. City may, if it sees fit, have the books and records of Atmos Energy examined by an agent or representative of the City during normal business hours to ascertain the correctness of the reports.

**<u>Part 11</u>**: *Effective Date; Acceptance.* This ordinance shall take effect January 1, 2009 if Atmos Energy files, within sixty days of adoption by the City Council of this ordinance, its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

Atmos Energy Corporation, Mid-Tex Division, acting by and through the undersigned authorized officer, hereby accepts, on this the \_ day of \_\_\_\_\_, 2009, Ordinance No. \_\_\_, granting a franchise to Atmos Energy Corporation, Mid-Tex Division.

for Atmos Energy Corporation

**Part 12:** *Police Power.* Atmos Energy shall remain subject at all times during the term of this franchise to all lawful exercise of the City's police and regulatory power. City, by the granting of this franchise, does not surrender or to any extent lose, waive, imperil or lessen the lawful powers and rights now or hereinafter vested in the City under State law or the Charter and laws promulgated by the City Council.

<u>**Part 13:**</u> *Termination.* (a) City reserves the right to terminate this franchise and rights and privileges held by Atmos Energy herein under in the event of a material breach by Atmos Energy. A material breach of the franchise shall include, but not be limited to, the following:

- Failure to pay the franchise fee provided in Section 10;
- Failure to materially provide the services provided for in this franchise;
- Material misrepresentation of fact in the application for or negotiation of the franchise; or

• Conviction of any director, officer, employee, or agent of Atmos Energy of the offense of bribery or fraud connected with or resulting from the awarding of this franchise.

(b) Prior to terminating this franchise for a material breach, City shall make a written demand that Atmos Energy comply with any provision, rule, order, or determination under or pursuant to this franchise. If such violation continues for a period of not less than thirty days after receiving notice from the City, or if the violation is of a type that it cannot be cured or rectified within thirty days, the City Council may without further notice terminate this franchise. City shall cause to be served upon Atmos Energy, at least twenty days prior to the date when the City Council is schedule to take action, a written notice of intent to terminate this franchise. Public notice shall also be given of the meeting in which the City Council will consider termination. After a public hearing on the grounds for termination at which all interested parties may speak, the City Council shall make a decision which shall be final.

**Part 14:** Assignment of Franchise. Atmos Energy may not assign or transfer this franchise, except to an Affiliate, without the prior approval of the City Council. In the event the City Council authorizes assignment of this franchise, all provisions of this franchise shall be binding upon Atmos Energy's successors or assigns, whether expressly so stated herein or not, and all grants, rights and privileges secured by this franchise to Atmos Energy shall inure to the benefit of its legal and bona fide representatives, successors and assigns. Atmos Energy shall provide City with notice of all mergers, takeovers, or consolidations affecting Atmos Energy.

<u>**Part 15**</u>: *Notices.* All notices required or permitted to be given to either party to this franchise shall be given as follows:

City:City Manager<br/>City of Temple<br/>2 North Main<br/>Temple, Texas 76501Atmos Energy:Manager<br/>Atmos Energy Corporation

\_\_\_\_\_, Texas \_\_\_\_\_

<u>Part 16</u>: *Acquisition of Franchise by City.* City shall have the right to lease, purchase, or acquire by condemnation, Atmos Energy's distribution system within the City limits as provided in Sections 3.15, 3.16 & 3.17 of the City Charter.

**Part 17:** Severability. If any provision of this ordinance or the application of any provision to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable. All ordinances, resolutions, or parts thereof, inconsistent or in conflict with this ordinance are hereby repealed.

**<u>Part 18</u>**: *Compliance with Open Meetings Act.* It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act.

PASSED AND APPROVED on First Reading on the 6<sup>th</sup> day of November, 2008.

PASSED AND APPROVED on Second Reading on the 20<sup>th</sup> day of November, 2008.

PASSED AND APPROVED on Third Reading and Public Hearing on the  $4^{th}$  day of **December**, 2008.

PASSED AND APPROVED on Fourth Reading and Public Hearing on the 18<sup>th</sup> day of December, 2008.

PASSED AND APPROVED on Fifth Reading and Public Hearing on the 5<sup>th</sup> day of **February**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger City Secretary Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #5 Regular Agenda Page 1 of 3

## **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING - Z-FY-09-09: Consider adopting an ordinance authorizing a zoning change from Single Family Two District (SF-2) to Planned Development Single Family Two District (PD-SF-2) and Planned Development Single Family Three District (PD-SF-3) on 50.3± acres located on the south side of Tarver Drive and the north side of Hogan Road 506± feet east of State Highway 317, being a part of the Baldwin Robertson Survey, Abstract No. 17 and including The Village of Sage Meadows Phase II, Section 1.

**PLANNING & ZONING COMMISSION RECOMMENDATION:** At its January 20, 2009 meeting, the Planning and Zoning Commission voted 8/0 in accordance with staff recommendation to recommend approval of a zoning change from SF-2 to PD-SF-2 and PD-SF-3 with the following stipulations:

- 1. All lots shall be developed according to the SF-2 zoning district regulations for the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hog Pen Creek, including the area across from the lots platted as Stonebrook Estates.
- 2. All other lots shall be developed according to the SF-3 zoning district regulations.
- 3. Houses shall be limited to a maximum building height of one story for all lots adjacent to the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hogpen Creek, including the area across from the Stonebrook Estates subdivision.
- 4. One hardwood evergreen tree a minimum of five feet in height and two inches in caliper shall be planted in the back yard of all lots that back to Stonebrook Estates.
- 5. All garages shall be set back 20 feet from the front property line.
- 6. A Home Owners Association (HOA) with mandatory membership and deed restrictions shall be put in place for the subdivision.
- 7. Houses shall be designed in the Craftsman style and the exterior siding shall be composed of fibrous cement.
- 8. All single-family lots shall have sod, five five-gallon shrubs planted along the base of the home and one two-inch caliper tree in the front yard.
- 9. A privacy fence six feet in height shall be installed along Hogan Road, Tarver Drive, Hog Pen drainage area and the Stonebrook Estates subdivision. The fence shall have metal posts and pressure treated rails and cedar stained pickets and shall be owned and maintained by the HOA. The fence shall be built prior to any house being permitted in the adjacent area.
- 10. In addition to the privacy fence in stipulation 9 above, the south side of Tarver Drive and north side of Hogan Road shall have a three- split rail cedar fence and cedar posts similar to Village of Sage Meadows Phase 1.

- 11. The south side of Tarver Drive and north side of Hogan Road shall have the following minimum plantings per 100 linear feet of frontage: two three-inch caliper live oaks a minimum of five feet in height, one 10-gallon dwarf yaupon holly and twenty five-gallon shrubs of some other variety.
- 12. The area described as Tract J, next to the Hog Pen drainage area shall contain a crushed granite trail and play area, containing equipment similar in design used in Village of Sage Meadows Phase 1.
- 13. Access from Hogan Road shall be limited to Phase 7 of the development.
- 14. Prior to issuance of the first building permit for Phase 7, the developer shall build its one-half of Hogan Road to collector street standards by adding nine additional feet of pavement width and six-inch raised curb and gutter for the portion of Hogan Road adjacent to the subject property.

Commissioner Martin was absent.

**<u>STAFF RECOMMENDATION</u>**: Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for February 19, 2009.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-09-09, from the Planning and Zoning meeting, January 20, 2009. The applicant's request is to accommodate a single-family subdivision, the Village of Sage Meadows Phases 2 through 7. The applicant agrees with the Planned Development stipulations which exceed the requirements of the Zoning Ordinance and the Subdivision Regulations and which are listed in the staff and P&Z recommendation above.

Staff conducted further research on several topics that came up at the Planning and Zoning meeting on January 20<sup>th</sup>. These topics are presented below.

#### Right-of-Way Dedication Along Hogan Road

During the public hearing, a citizen asked if other subdivisions had dedicated right-of-way along Hogan Road. The following table shows the amount of land that subdivisions along Hogan Road have dedicated for right-of-way. The subject area was annexed in 1997, so Bell County reviewed and approved any subdivision platted before that time.

Subdivision	Date Platted	ROW Dedication (ft)	Perimeter Street Fees Paid	Approx. Adjacent Paved Width (ft)
Stonebrook Estates	June 2005	13	NA	19
Reid	Dec. 2003	12	\$66	21
Westwood Development III	Replat with sufficient ROW existing			
Westwood Development II	May 2002	20	NA	23
Lisenbe Estates	Nov. 1999	20	NA	25
Oak Hills Sec. II Phase I	Feb 1984	10	NA	23
The Oaks at Westwood I	April 2000	NA	NA	23
Village of Sage Meadows, Ph. 2-7	Feb 2009	20	Widening ½ of street to Collector standards and providing curb and gutter in lieu of fee	18

Planning's records indicate that perimeter street fees were not paid for the subdivisions above because more right-of-way was dedicated than would have normally been required. The plat for Village of Sage Meadows, Phases 2-7, that was approved at the January 20<sup>th</sup> P&Z meeting, shows a right-of-way dedication of 20 feet along Hogan Road and the commitment to widen Hogan Road for that portion of the road adjacent to the subdivision.

#### Elevation of Subject Property

During the public hearing, a citizen claimed that surrounding properties are higher in elevation than the subject property and that newly planted trees and a 6' privacy fence would not be effective screening devices. The applicant has produced an elevation map (see attached) that shows that the subject property is, for the most part, higher in elevation than its surroundings. While rooftops of the proposed development may be visible to surrounding property owners, in no instance would a neighbor be looking down into the back yards of homes in the proposed development. Photographs of the property support this conclusion.

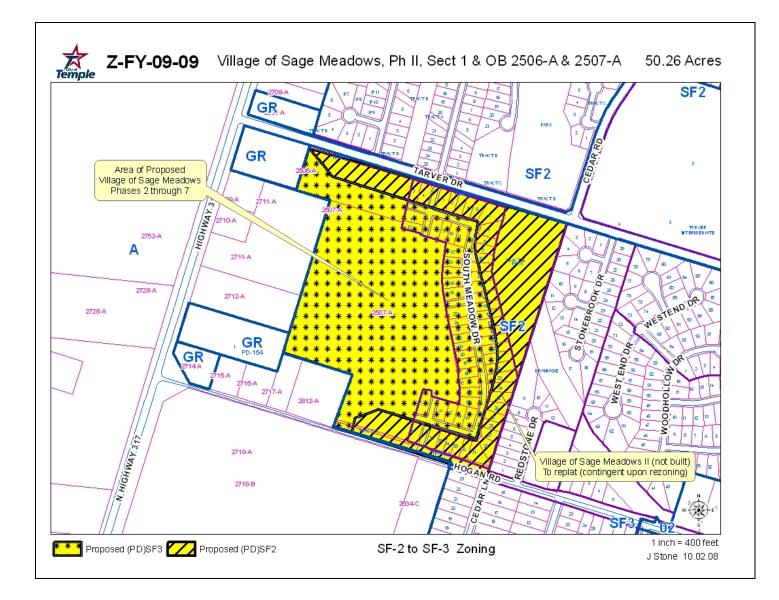
### Mailed Notice

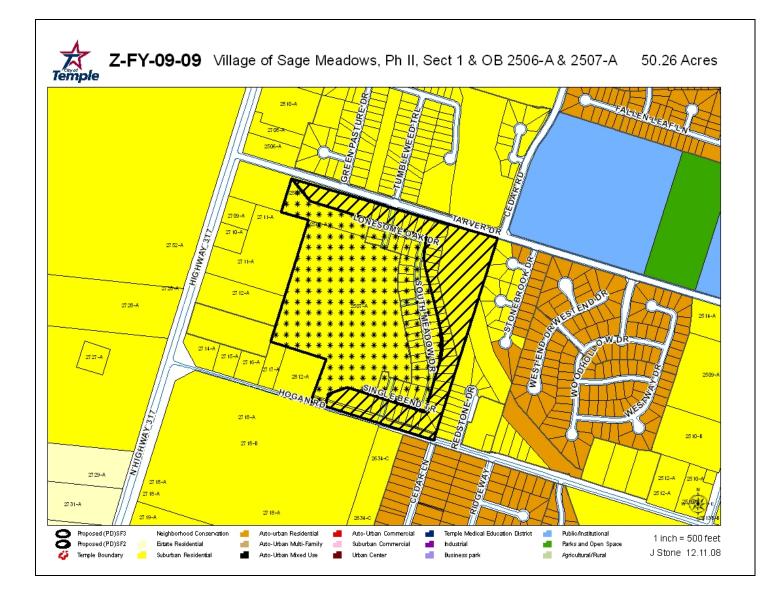
During the public hearing, citizens claimed that the public notification mailings were insufficient and that the results were misleading. Notice of the public hearing for the Planned Development was mailed and published in the newspaper two different times. In addition, notice was mailed and published for the original public hearing in 2008 which was withdrawn before review by the City Council, for a total of three public notifications. A citizen wanted to know how many individuals (rather than schools, home builders that still owned platted lots, etc.) received notice of the rezoning. Planning's records indicate that 26 notices for the second P&Z meeting for the Planned Development were mailed out. These notices went to 22 households and four institutions or businesses (Belton Independent School District, Homebuilders, Inc., Village of Sage Meadows HOA and KB Home). As of January 20<sup>th</sup> at 5 PM, prior to the P&Z public hearing, four individuals recommended denial and two individuals recommended approval. The newspaper printed notice of the second P&Z public hearing on January 10, 2009 in accordance with state law and local ordinance.

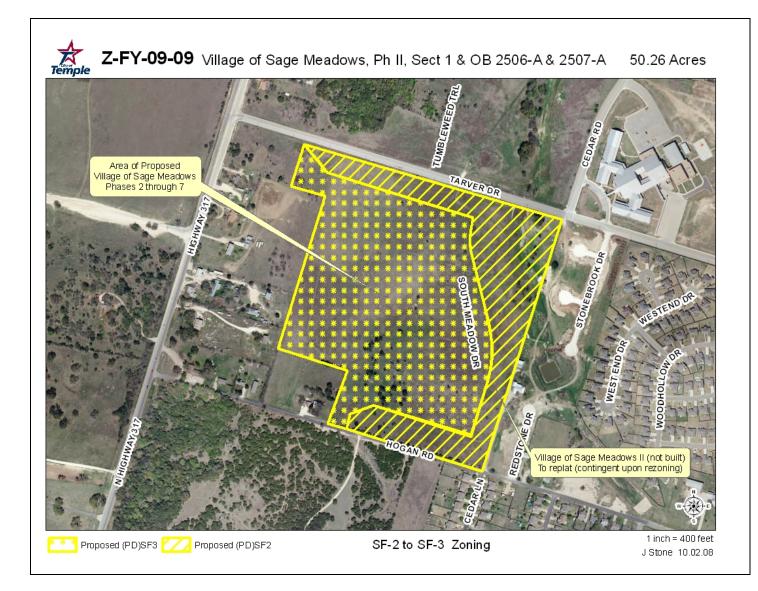
# FISCAL IMPACT: NA

## ATTACHMENTS:

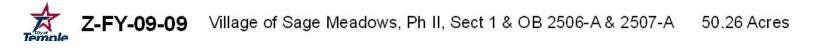
Aerial Zoning Map Land Use and Character Map PD Development Plan Elevation Map P&Z Staff Report (Z-FY-09-09) P&Z Minutes (January 20, 2009) Ordinance

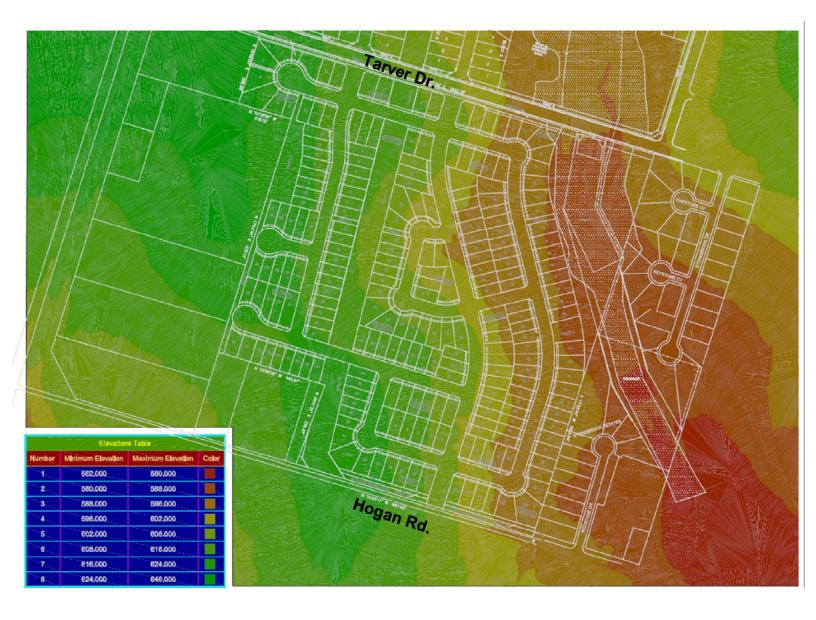












PLANNING AND ZONING COMMISSION AGENDA ITEM

01/05/09 Item #2 Regular Agenda Page 1 of 5

# APPLICANT / DEVELOPMENT: Applicant: Anthony Beach c/o KB Home for Thomas Hoherd

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION: Z-FY-09-09:** Hold a public hearing to discuss and recommend action on a zone change from Single Family Two District (SF-2) to Planned Development Single Family Two District (PD-SF-2) and Planned Development Single Family Three District (PD-SF-3) on 50.3 ± acres located on the south side of Tarver Drive and the north side of Hogan Road approximately 506 feet east of State Highway 317, being a part of the Baldwin Robertson Survey, Abstract No. 17 and including The Village of Sage Meadows Phase II, Section 1. Zoned SF-2.

**BACKGROUND:** The applicant's request is for a Planned Development and zone change from SF-2, Single-Family Two zoning district to PD-SF-2, Planned Development Single Family Two zoning district and PD-SF-3, Planned Development Single Family Three zoning district to allow for a single-family subdivision, the Village of Sage Meadows Phases 2 through 7.

## **History**

On October 20, 2008, the Planning and Zoning Commission recommended denial on a rezoning case for the subject property in which the applicant requested a zone change from SF-2 to SF-3 for the entire property. The applicant withdrew the item before City Council review. Due to concerns from surrounding property owners in addition to uncertainty regarding whether the property would be developed in a suburban style as recommended by the Future Land Use and Character Map, the Planning and Zoning Commission recommended a Planned Development, noting concern with Tarver Drive and Hogan Road.

Prior to the January 5, 2009 Planning and Zoning Commission meeting, the applicant requested withdrawal from the agenda to allow more time to meet with adjacent property owners and to reschedule the case for the meeting on January 20.

On Tuesday, January 13, the applicant met with surrounding property owners at the KB Home model home in the Village of Sage Meadows Phase 1. The conditions below address the concerns the property owners expressed at that meeting and at the October Planning and Zoning Commission meeting.

## **Current**

The applicant wishes to provide more certainty regarding how the property will be developed by submitting Planed Development and base zone change request for a combined SF-2 and SF-3. The applicant agrees that the following items, which go beyond the base requirements of the Zoning Ordinance and Subdivision Regulations, will be binding and part of the planned development ordinance:

- 1. All lots shall be developed according to the SF-2 zoning district regulations for the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hog Pen Creek, including the area across from the lots platted as Stonebrook Estates.
- 2. All other lots shall be developed according to the SF-3 zoning district regulations.
- 3. Houses shall be limited to a maximum building height of one story for all lots adjacent to the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hogpen Creek, including the area across from the Stonebrook Estates subdivision.
- 4. One evergreen tree a minimum of five feet in height and two inches in caliper shall be planted in the back yard of all lots that back to Stonebrook Estates.
- 5. All garages shall be set back 20 feet from the front property line.
- 6. A Home Owners Association (HOA) with mandatory membership and deed restrictions shall be put in place for the subdivision.
- 7. Houses shall be designed in the Craftsman style and the exterior siding shall be composed of fibrous cement.
- 8. All single-family lots shall have sod, five five-gallon shrubs planted along the base of the home and one two-inch caliper tree in the front yard.
- 9. A privacy fence six feet in height shall be installed along Hogan Road, Tarver Drive and Hog Pen drainage area and the Stonebrook Estates subdivision. The fence shall have metal posts and pressure treated rails and cedar stained pickets and shall be owned and maintained by the HOA. The fence shall be built prior to any house being permitted in the adjacent area.
- 10. The south side of Tarver Drive and north side of Hogan Road shall have the following minimum plantings per 100 linear feet of frontage: two three-inch caliper live oaks, one 10-gallon dwarf yaupon holly and twenty five-gallon shrubs of some other variety.
- 11. The south side of Tarver Drive adjacent to the Hog Pen drainage channel shall have a threesplit rail cedar fence and cedar posts similar to Village of Sage Meadows Phase 1.
- 12. The area described as Tract J, next to the Hog Pen drainage area shall contain a crushed granite trail and play area, containing equipment similar in design used Village of Sage Meadows Phase 1.
- 13. Access from Hogan Road shall be limited to Phase 7 of the development.
- 14. Prior to issuance of the first building permit for Phase 7, the developer shall install the pavement width of 36 feet with curb and gutter for the portion of Hogan Road adjacent to the subject property.

# Surrounding Property and Uses

The following table shows the existing zoning and current land uses abutting the subject property:

Direction	Zoning	Current Land Use	
North	SF-2	Tarver Drive / Single-family subdivision	
East	SF-2	Single-family subdivision	
South	SF-2	Hogan Road / Single-family subdivision	
	А	Vacant	
West	GR	Single-family dwellings	
VVE51	А	Single-family dwellings	

A zoning request should be reviewed for compliance with the Comprehensive Plan.

## Future Land Use and Character

The Future Land Use and Character map designates the property suburban residential. The Plan states that the suburban residential character district is for mid-size single family lots, allowing for greater separation between dwellings and more emphasis on green spaces versus the streets and driveways that predominate in an auto-urban setting.

The development plan and preliminary plat for the subdivision also shows privately maintained open space. The central and western portions of the subject property are suitable for the more dense SF-3 zoning because the fact that the property is adjacent to GR-zoned property to the west and would serve as a transitional area between this nonresidential area and the SF-2 property to the east, and its close proximity to State Highway 317. Apartments are unsuitable for this area.

## Thoroughfare Plan

The Thoroughfare Plan map shows Tarver Drive as a minor arterial and Hogan Road as a collector street. The preliminary plat (Next Agenda Item) for the property shows right-of-way dedication for the widening of Hogan Road up to collector street standards. The Assistant City Engineer has completed a study of Hogan Road and determined that although it is currently narrow (18'-22' in width), the road is in good shape in regard to maintenance and materials. As stated above, the subdivision will not have direct access to Hogan Road until the final phase (Phase 7) of the development. As indicated in the staff recommendation, the paved width of Hogan Road will be required to be increased prior to houses being permitted in the final phase of the development. The request complies with the Thoroughfare Plan.

## Adequacy of Public Facilities

Upon approval of the preliminary plat for the Village of Sage Meadows Phases II through IV, adequate public facilities including water and sewer will be scheduled to be extended to the property.

# **Development Regulations**

The purpose of the SF-2 zoning district is to provide for smaller single family lots. This district may also be used as a zone of transition from the more restrictive single family district to lesser restrictive or denser residential districts.

The purpose of the SF-3 zoning district is to provide single family development at urban densities in locations well served by public utilities and roadways. This district should have adequate thoroughfare access and be relatively well connected with community and neighborhood facilities such as schools, parks, and shopping areas and transit services.

Typical permitted uses in the SF-2 and SF-3 zoning districts include, but are not limited to: singlefamily detached dwellings and various supporting nonresidential uses such as churches and schools.

The following table shows the dimensional requirements for the PD-SF-2 and PD-SF-3 in the proposed development compared to the requirements in the SF-2 and SF-3 zoning districts.

Dimensions	PD-SF-2 & PD-SF-3	SF-2, Single-Family 2	SF-3, Single-Family 3
Min. Lot Area (sq. ft.)	5,000 and 4,000	5,000	4,000
Min. Lot Width (ft.)	50-40	50	40
Min. Lot Depth (ft.)	100	100	100
Max. Height (stories)	I story for lots next to Tarver Drive, Hogan Road, and the area adjacent to the Stonebrook Estates subdivision; 2 <sup>1</sup> / <sub>2</sub> stories for the remainder	2 1/2	2 1/2
Min. Yard (ft)			
Garages	20		
Front	15	25	15
Side	5	5	5
Side (street)	15	15	10
Rear	10	10	10

The development plan (which is also the Preliminary Plat) for the property shows a number of the lots in the PD-SF-2 and PD-SF-3 zoning district will be larger than the minimum of 4,000 square feet.

## Public Notice

Twenty seven notices were sent out January 9, 2009. As of Thursday, January 14 at noon, three notices were returned in favor of the request and four notices were returned in opposition. The newspaper printed notice of the public hearing on January 10, 2009\_in accordance with state law and local ordinance.

**<u>STAFF RECOMMENDATION</u>**: Staff requests the Commission recommend approval of the zone change request from SF-2 to PD-SF-2 and PD-SF-3 with the following stipulations:

- 1. All lots shall be developed according to the SF-2 zoning district regulations for the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hog Pen Creek, including the area across from the lots platted as Stonebrook Estates.
- 2. All other lots shall be developed according to the SF-3 zoning district regulations.
- 3. Houses shall be limited to a maximum building height of one story for all lots adjacent to the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hogpen Creek, including the area across from the Stonebrook Estates subdivision.
- 4. One hardwood evergreen tree a minimum of five feet in height and two inches in caliper shall be planted in the back yard of all lots that back to Stonebrook Estates.
- 5. All garages shall be set back 20 feet from the front property line.
- 6. A Home Owners Association (HOA) with mandatory membership and deed restrictions shall be put in place for the subdivision.
- 7. Houses shall be designed in the Craftsman style and the exterior siding shall be composed of fibrous cement.
- 8. All single-family lots shall have sod, five five-gallon shrubs planted along the base of the home and one two-inch caliper tree in the front yard.
- 9. A privacy fence six feet in height shall be installed along Hogan Road, Tarver Drive and Hog Pen drainage area and the Stonebrook Estates subdivision. The fence shall have metal posts and pressure treated rails and cedar stained pickets and shall be owned and maintained by the HOA. The fence shall be built prior to any house being permitted in the adjacent area.

- 10. The south side of Tarver Drive and north side of Hogan Road shall have the following minimum plantings per 100 linear feet of frontage: two three-inch caliper live oaks, one 10-gallon dwarf yaupon holly and twenty five-gallon shrubs of some other variety.
- 11. The south side of Tarver Drive adjacent to the Hog Pen drainage channel shall have a three- split rail cedar fence and cedar posts similar to Village of Sage Meadows Phase 1.
- The area described as Tract J, next to the Hog Pen drainage area shall contain a crushed granite trail and play area, containing equipment similar in design used Village of Sage Meadows Phase 1.
- 13. Access from Hogan Road shall be limited to Phase 7 of the development.
- 14. Prior to issuance of the first building permit for Phase 7, the developer shall install the pavement width of 36 feet with curb and gutter for the portion of Hogan Road adjacent to the subject property.

Staff requests the Commission recommend approval because:

- 1. The request complies with the Future Land Use and Character Map;
- 2. The request complies with the Thoroughfare Plan; and
- 3. Adequate public facilities will serve the property.

# FISCAL IMPACT: Not Applicable

# ATTACHMENTS:

Zoning Map Land Use and Character Map Aerial PD Development Plan Proposed Lots and Zoning Notice Map Response Letter

### EXCERPTS FROM THE

### PLANNING & ZONING COMMISSION MEETING

#### MONDAY, JANUARY 20, 2009

#### **ACTION ITEMS**

**Z-FY-09-09:** Hold a public hearing to discuss and recommend action on a zone change from Single Family Two District (SF-2) to Planned Development Single Family Two District (PD-SF-2) and Planned Development Single Family Three District (PD-SF-3) on 50.3 ± acres located on the south side of Tarver Drive and the north side of Hogan Road approximately 506 feet east of State Highway 317, being a part of the Baldwin Robertson Survey, Abstract No. 17 and including the area platted as The Village of Sage Meadows Phase II, Section 1. (Applicant: Anthony Beach c/o KB Home for Thomas Hoherd)

Mr. Brian Mabry, Senior Planner presented the request to the Commission and stated this request is for a Planned Development and zone change from SF-2, Single-Family Two zoning district to PD-SF-2, Planned Development Single Family Two zoning district and PD-SF-3, Planned Development Single Family Three zoning district to allow for a single-family subdivision, the Village of Sage Meadows Phases 2 through 7.

Mr. Mabry stated the applicant wishes to provide more certainty regarding how the property will be developed by submitting Planned Development and base zone change request for a combined SF-2 and SF-3. The applicant agrees that the following items, which go beyond the base requirements of the Zoning Ordinance and Subdivision Regulations, will be binding and part of the planned development ordinance:

1. All lots shall be developed according to the SF-2 zoning district regulations for the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hog Pen Creek, including the area across from the lots platted as Stonebrook Estates.

2. All other lots shall be developed according to the SF-3 zoning district regulations.

3. Houses shall be limited to a maximum building height of one story for all lots adjacent to the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hogpen Creek, including the area across from the Stonebrook Estates subdivision.

4. One evergreen tree a minimum of five feet in height and two inches in caliper shall be planted in the back yard of all lots that back to Stonebrook Estates.

5. All garages shall be set back 20 feet from the front property line.

6. A Home Owners Association (HOA) with mandatory membership and deed restrictions shall be put in place for the subdivision.

7. Houses shall be designed in the Craftsman style and the exterior siding shall be composed of fibrous cement.

8. All single-family lots shall have sod, five five-gallon shrubs planted along the base of the home and one two-inch caliper tree in the front yard.

9. A privacy fence six feet in height shall be installed along Hogan Road, Tarver Drive and Hog Pen drainage area and the Stonebrook Estates subdivision. The fence shall have metal posts and pressure treated rails and cedar stained pickets and shall be owned and maintained by the HOA. The fence shall be built prior to any house being permitted in the adjacent area.

10. The south side of Tarver Drive and north side of Hogan Road shall have the following minimum plantings per 100 linear feet of frontage: two three-inch caliper live oaks, one 10-gallon dwarf yaupon holly and twenty five-gallon shrubs of some other variety.

11. The south side of Tarver Drive adjacent to the Hog Pen drainage channel shall have a three- split rail cedar fence and cedar posts similar to Village of Sage Meadows Phase 1.

12. The area described as Tract J, next to the Hog Pen drainage area shall contain a crushed granite trail and play area, containing equipment similar in design used Village of Sage Meadows Phase 1.

13. Access from Hogan Road shall be limited to Phase 7 of the development.

14. Prior to issuance of the first building permit for Phase 7, the developer shall install the pavement width of 36 feet with curb and gutter for the portion of Hogan Road adjacent to the subject property.

Staff recommended approval of the zone change request from SF-2 to PD-SF-2 and PD-SF-3 with the following stipulations:

1. All lots shall be developed according to the SF-2 zoning district regulations for the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hog Pen Creek, including the area across from the lots platted as Stonebrook Estates.

2. All other lots shall be developed according to the SF-3 zoning district regulations.

3. Houses shall be limited to a maximum building height of one story for all lots adjacent to the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hogpen Creek, including the area across from the Stonebrook Estates subdivision.

4. One hardwood evergreen tree a minimum of five feet in height and two inches in caliper shall be planted in the back yard of all lots that back to Stonebrook Estates.

5. All garages shall be set back 20 feet from the front property line.

6. A Home Owners Association (HOA) with mandatory membership and deed restrictions shall be put in place for the subdivision.

7. Houses shall be designed in the Craftsman style and the exterior siding shall be composed of fibrous cement.

8. All single-family lots shall have sod, five five-gallon shrubs planted along the base of the home and one two-inch caliper tree in the front yard.

9. A privacy fence six feet in height shall be installed along Hogan Road, Tarver Drive and Hog Pen drainage area and the Stonebrook Estates subdivision. The fence shall have metal posts and pressure treated rails and cedar stained pickets and shall be owned and maintained by the HOA. The fence shall be built prior to any house being permitted in the adjacent area.

10. The south side of Tarver Drive and north side of Hogan Road shall have the following minimum plantings per 100 linear feet of frontage: two three-inch caliper live oaks, one 10-gallon dwarf yaupon holly and twenty five-gallon shrubs of some other variety.

11. The south side of Tarver Drive adjacent to the Hog Pen drainage channel shall have a three- split rail cedar fence and cedar posts similar to Village of Sage Meadows Phase 1.

12. The area described as Tract J, next to the Hog Pen drainage area shall contain a crushed granite trail and play area, containing equipment similar in design used Village of Sage Meadows Phase 1.

13. Access from Hogan Road shall be limited to Phase 7 of the development.

14. Prior to issuance of the first building permit for Phase 7, the developer shall install the pavement width of 36 feet with curb and gutter for the portion of Hogan Road adjacent to the subject property.

Mr. Mabry also stated Staff recommended approval because the request complies with the Future Land Use and Character Map; the Thoroughfare Plan; and adequate public facilities will serve the property.

Commissioner Pilkington made a motion to approve the zone change from SF-2, Single-Family Two zoning district to PD-SF-2, Planned Development Single Family Two zoning district and PD-SF-3, Planned Development Single Family Three zoning district including the 14 recommended Staff provisions with the appropriate changes to Stipulation No. 11 regarding the split rail fence; Commissioner Hurd seconded the motion.

Motion approved. (8:0)

#### ORDINANCE NO.

#### [PLANNING NO. Z-FY-09-09]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM SINGLE FAMILY TWO DISTRICT (SF-2) TO PLANNED DEVELOPMENT SINGLE FAMILY TWO DISTRICT (PD-SF-2) AND PLANNED DEVELOPMENT SINGLE FAMILY THREE DISTRICT (PD-SF-3) ON APPROXIMATELY 50.3 ACRES LOCATED ON THE SOUTH SIDE OF TARVER DRIVE AND THE NORTH SIDE OF HOGAN ROAD APPROXIMATELY 506 FEET EAST OF STATE HIGHWAY 317, BEING A PART OF THE BALDWIN ROBERTSON SURVEY, ABSTRACT NO. 17 AND INCLUDING THE VILLAGE OF SAGE MEADOWS PHASE II, SECTION 1, IN ACCORDANCE WITH SECTIONS 7-500 THROUGH 7-509 OF THE **COMPREHENSIVE** ZONING **ORDINANCE:** PROVIDING Α SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the owner of the property consisting of approximately 50.3 acres located on the south side of Tarver Drive and the north side of Hogan Road approximately 506 feet east of State Highway 317, being a part of the Baldwin Robertson Survey, Abstract No. 17 and including the Village of Sage Meadows Phase II, Section 1, has requested that the property be rezoned from Single Family Two District (SF-2) to Planned Development Single Family Two District (PF-SF-2) and Planned Development Single Family Three District (PD-SF-3); and

**Whereas**, the City Council, after notice and a public hearing, finds that it is in the public interest to authorize this action.

#### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

**Part 1**: The City Council approves a zoning change from Single Family Two District (SF-2) to Planned Development Single Family Two District (PF-SF-2) and Planned Development Single Family Three District (PD-SF-3) approximately 50.3 acres located on the south side of Tarver Drive and the north side of Hogan Road approximately 506 feet east of State Highway 317, being a part of the Baldwin Robertson Survey, Abstract No. 17 and including the Village of Sage Meadows Phase II, Section 1, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

<u>Part 2</u>: In accordance with Sections 7-500 through 7-509 of the Comprehensive Zoning Ordinance of the City of Temple, Texas, Ordinance No. 91-2101, is amended by changing the zoning classification of the property described in Part 1 above, to Planned Development Single Family Two District (PF-SF-2) and Planned Development Single

Family Three District (PD-SF-3), and shall comply with all applicable sections of the Code of Ordinances of the City of Temple, Texas, and all local, State and Federal laws and regulations as they may now read or hereafter be amended, including but not limited to the following conditions:

- (a) All lots shall be developed according to the SF-2 zoning district regulations for the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hog Pen Creek, including the area across from the lots platted as Stonebrook Estates.
- (b) All other lots shall be developed according to the SF-3 zoning district regulations.
- (c) Houses shall be limited to a maximum building height of one story for all lots adjacent to the area south of Tarver Drive, north of Hogan Road, and the area adjacent to Hogpen Creek, including the area across from the Stonebrook Estates subdivision.
- (d) One hardwood evergreen tree a minimum of five feet in height and two inches in caliper shall be planted in the back yard of all lots that back to Stonebrook Estates.
- (e) All garages shall be set back 20 feet from the front property line.
- (f) A Home Owners Association (HOA) with mandatory membership and deed restrictions shall be put in place for the subdivision.
- (g) Houses shall be designed in the Craftsman style and the exterior siding shall be composed of fibrous cement.
- (h) All single-family lots shall have sod, five five-gallon shrubs planted along the base of the home and one two-inch caliper tree in the front yard.
- (i) A privacy fence six feet in height shall be installed along Hogan Road, Tarver Drive and Hog Pen drainage area and the Stonebrook Estates subdivision. The fence shall have metal posts and pressure treated rails and cedar stained pickets and shall be owned and maintained by the HOA. The fence shall be built prior to any house being permitted in the adjacent area.
- (j) In addition to the privacy fence in stipulation (i) above, the south side of Tarver Drive and north side of Hogan Road shall have a three- split rail cedar fence and cedar posts similar to Village of Sage Meadows Phase 1.
- (k) The south side of Tarver Drive and north side of Hogan Road shall have the following minimum plantings per 100 linear feet of frontage: two three-inch caliper live oaks a minimum of five feet in height, one 10-gallon dwarf yaupon holly and twenty five-gallon shrubs of some other variety.
- (1) The area described as Tract J, next to the Hog Pen drainage area shall contain a crushed granite trail and play area, containing equipment similar in design used Village of Sage Meadows Phase 1.
- (m) Access from Hogan Road shall be limited to Phase 7 of the development.
- (n) Prior to issuance of the first building permit for Phase 7, the developer shall build its one-half of Hogan Road to collector street standards by adding nine additional feet of pavement width and six-inch raised curb and gutter for the portion of Hogan Road adjacent to the subject property.

These conditions shall be expressed conditions of any building permit issued for construction on the property which may be enforced by the City of Temple by an action either at law or in

equity, including the right to specifically enforce the requirements of the ordinance, and these requirements shall run with the land.

**Part 4:** The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

<u>Part 5:</u> It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

<u>**Part 6:**</u> This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

<u>**Part 7:**</u> It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 5<sup>th</sup> day of **February**, 2009.

PASSED AND APPROVED on Second Reading on the **19<sup>th</sup>** day of **February**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger City Secretary Jonathan Graham City Attorney



# **COUNCIL AGENDA ITEM MEMORANDUM**

02/05/09 Item #6 Regular Agenda Page 1 of 2

# **DEPT./DIVISION SUBMISSION & REVIEW:**

Jonathan Graham, City Attorney

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING – Consider adopting an ordinance designating a tract of land consisting of approximately 66.561 acres located on Moore's Mill Road west of Wendland Road, as City of Temple Tax Abatement Reinvestment Zone Number Fourteen for commercial/industrial tax abatement.

**<u>STAFF RECOMMENDATION</u>**: Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for February 19, 2009.

**ITEM SUMMARY:** The proposed ordinance designates the area consisting of approximately 66.561 acres located on Moore's Mill Road west of Wendland Road as a commercial/industrial tax abatement reinvestment zone. The designation of a tax abatement reinvestment zone lasts for five years and is a prerequisite for entering into a tax abatement agreement with a future economic development prospect.

Chapter 312 of the Texas Tax Code requires that property be within a tax abatement reinvestment zone (or an enterprise zone) to be eligible for tax abatement. The designation of a tax abatement reinvestment zone requires an ordinance, two readings and a public hearing. We are also required to give seven days prior notice to the other taxing entities before final approval of the ordinance, which will be done.

The proposed tax abatement reinvestment zone covers approximately 66.561 acres, and is proposed for commercial or industrial tax abatement (the property is currently zoned Commercial). Chapter 312 requires that the City make the following findings when it adopts an ordinance creating a tax abatement reinvestment zone: (1) that the creation of the tax abatement reinvestment zone will result in benefits to the City and to the land included in the zone after the term of any agreement, and that the improvements being sought are feasible; and (2) that the tax abatement reinvestment zone meets the criteria for creation of a zone under State law and the City's own criteria and guidelines for tax abatement. I have reviewed both the State law and our criteria and guidelines, and believe that the creation of the proposed reinvestment zone and subsequent approval of a tax abatement agreement with the property owner will lead to the retention of primary employment in the area, and the creation

of new real and personal property improvements in the area—as contemplated by our State and local criteria. The Staff recommends approval of the ordinance for the above reasons.

FISCAL IMPACT: None at this time.

ATTACHMENTS: Map Ordinance



#### ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, DESIGNATING A CERTAIN AREA AS TAX ABATEMENT REINVESTMENT ZONE NUMBER FOURTEEN FOR COMMERCIAL/INDUSTRIAL TAX ABATEMENT; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATING THERETO; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the City Council of the City of Temple, Texas (the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by creation of a reinvestment zone for commercial/industrial tax abatement, as authorized by Section 312.201 of the Texas Tax Code (hereinafter the "Code");

WHEREAS, the City held such public hearing after publishing notice of such public hearing, and giving written notice to all taxing units overlapping the territory inside the proposed reinvestment zone;

WHEREAS, the City at such hearing invited any interested person, or his attorney, to appear and contend for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the ordinance calling such public hearing should be included in such proposed reinvestment zone, the concept of tax abatement; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the reinvestment zone, and opponents of the reinvestment zone appeared to contest creation of the reinvestment zone.

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

**<u>Part 1:</u>** The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct.

**<u>Part 2:</u>** The City, after conducting such hearings and having heard such evidence and testimony, has made the following findings and determinations based on the testimony presented to it:

A. That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone;

B. That the boundaries of the reinvestment zone (hereinafter "REINVESTMENT ZONE NUMBER FOURTEEN") should be the **66.561 acre tract of land** as described in the survey attached as Exhibit "A."

C. That creation of REINVESTMENT ZONE NUMBER FOURTEEN will result in benefits to the City and to the land included in the zone after the term of any agreement executed hereunder, and the improvements sought are feasible and practical;

D. That REINVESTMENT ZONE NUMBER FOURTEEN meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Code in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City;" and

E. That REINVESTMENT ZONE NUMBER FOURTEEN meets the criteria for the creation of a reinvestment zone as set forth in the City of Temple Guidelines and Criteria for granting tax abatement in reinvestment zones.

<u>**Part 3:**</u> Pursuant to Section 312.201 of the Code, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing the 66.561 acre tract described by the survey in Exhibit "A" attached hereto and such REINVESTMENT ZONE is hereby designated and shall hereafter be officially designated as Tax Abatement Reinvestment Zone Number Fourteen, City of Temple, Texas.

<u>**Part 4:**</u> The REINVESTMENT ZONE shall take effect on February 19, 2009, or at an earlier time designated by subsequent ordinance.

<u>**Part 5:**</u> To be considered for execution of an agreement for tax abatement the commercial/industrial project shall:

A. Be located wholly within the Zone as established herein;

B. Not include property that is owned or leased by a member of the City Council of the City of Temple, Texas, or by a member of the Planning and Zoning Commission;

C. Conform to the requirements of the City's Zoning Ordinance, the CRITERIA governing tax abatement previously adopted by the City, and all other applicable laws and regulations; and

D. Have and maintain all land located within the designated zone, appraised at market value for tax purposes.

<u>**Part 6:**</u> Written agreements with property owners located within the zone shall provide identical terms regarding duration of exemption and share of taxable real property value exempted from taxation.

**Part 7:** Written agreements for tax abatement as provided for by Section 312.205 of the Code shall include provisions for:

A. Listing the kind, number and location of all proposed improvements of the property;

B. Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;

C. Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and

D. Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements as provided by the agreement.

<u>**Part 8:**</u> If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

<u>**Part 9:**</u> This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

<u>Part 10:</u> Sunset provision. The designation of Tax Abatement Reinvestment Zone Number Fourteen shall expire five years from the effective date of this ordinance. The designation of a tax abatement reinvestment zone may be renewed for periods not exceeding five years. The expiration of a reinvestment zone designation does not affect an existing tax abatement agreement authorized by the City Council.

**Part 11:** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 5<sup>th</sup> day of **February**, 2009.

PASSED AND APPROVED on Second Reading on the **19<sup>th</sup>** day of **February**, 2009.

# THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Clydette Entzminger

ATTEST:

City Secretary

Jonathan Graham City Attorney



# COUNCIL AGENDA ITEM MEMORANDUM

02/05/09 Item #7 Regular Agenda Page 1 of 1

## DEPT./DIVISION SUBMISSION & REVIEW:

William A. Jones, III, Mayor

**ITEM DESCRIPTION:** Consider adopting a resolution appointing one member to the Hill Country Transit District Board of Directors.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** Mayor Pro Tem Patsy Luna has been serving as the City of Temple's representative on the Hill Country Transit District (HCTD) Board of Directors since 2003. Her current term expired January 9, 2009. HCTD is requesting the City appoint its board representative, for a four-year term to expire January 9, 2013.

Mayor Pro Tem Luna has indicated her willingness to serve another term.

FISCAL IMPACT: None

ATTACHMENTS: None