

OUT PROCESSING ZONING CHECKLIST

Left side of file:

- Original Application
- Corporate Resolution/Partnership Agreement (if needed)
- Authorization to sign/Power of Attorney (if needed)
- Deed Restrictions/Warranty Deed
- Field Notes (if applicable)
- Site Plan (if applicable)

Right side of file:

- Ordinance/CC Memo (Ord. Number 09-002)
- Owner Approval Letter/Dated 1-21-09
- CC Minutes (Date 1-13-09)
- CC Agenda (Date 1-13-09)
- CC Packet:** (CCMO, Minutes, Considerations, Application, SPO Responses)
- Public Notice
- P&Z Minutes (Signed Copy) (Date 12-22-08)
- P&Z Agenda (Date 12-22-08)
- P&Z Packet:** (P&Z Memo, Considerations, Application, Maps, SPO responses)
- PVT
- SPO Responses (if any)
- PO/SPO Letter: 9 Sent 1 Support
 Opposed Undelivered
- SPO Map
- Copy of SPO Database
- Receipt for application fee
- CUP (site plan if applicable)
- Label made for outside folder
- Copy of Ordinance given to Mapping (Date 1-20-09)



**CITY OF KILLEEN
ZONE CHANGE APPLICATION**

CASE #:
Z08-55

Name(s) of Property Owner (s): W & B Development, Ltd.

Address: 3000 Illinois, Ste 100

City: Killeen State: Texas Zip: 76543 - _____

Home Phone: () _____ Business Phone: (254) 953-5055 Cell Phone: _____

Name of Applicant: Same As Above

Address: _____

City: _____ State: _____ Zip: _____ - _____

Address/ Location of Property to be Rezoned: East side of Featherline Rd., about 1000 feet south of the intersection of Stagecoach Rd and Featherline Rd, and about 1000 feet north of the Police Headquarters
Additon . _____

Has the property been platted? Y/N _____

Legal description: 87.15 acres out of the the Samuel D. Carothers Survey, A-177, in the City of Killeen, Bell County, Texas, according to the attached metes and bounds.

Is there a simultaneous plat of this property? No

Type of Ownership: X Sole Ownership ___ Partnership ___ Corporation ___ Other

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

Present Zoning: R1 Present Land Use: Undeveloped-Agriculture

Proposed Zoning: P.U.D. - R1 Proposed Land Use: Residential Development

APPOINTMENT OF AGENT

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

Name of Agent: W & B Development, Ltd

Mailing Address: 3000 Illinois Ave, Ste 100

City: Killeen State: Texas Zip: 76543

Home Phone: () _____ Business Phone: (254) 953-5353

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

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

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

Signature of Agent _____ Title Vice President

Printed/Typed Name of Agent W & B Development, Ltd Date _____

Signature of Property Owner _____ Title Vice President & Sec. Treasurer

Printed/Typed Name of Property Owner: W & B Development, Ltd
by G.W. Development, Inc. Date _____

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner: _____ Date _____

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

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WARRANTY DEED

EFFECTIVE DATE: September 1, 2008

GRANTOR: WBW LAND INVESTMENTS, LP.

GRANTOR'S MAILING ADDRESS: 3000 Illinois Ave. Ste. 100 Killeen, Texas 76543

GRANTEE: W & B Development II, LLC

GRANTEE'S MAILING ADDRESS: 3000 Illinois Ave. Ste. 100 Killeen, Texas 76543

CONSIDERATION: TEN AND NO/100 (\$10.00) DOLLARS and other valuable consideration.

PROPERTY: 87.12 acres of land as described on attached Exhibit "A"

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

This conveyance is made and accepted subject to the following matters, to the extent same are in effect at this time: any and all reservations, restrictions, covenants, conditions and easements, if any, relating to the here in above described property, but only to the extent they are still in effect, shown of record in the hereinabove mentioned County and State, and to all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect, relating to the hereinabove described property.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, GRANTS, SELLS, AND CONVEYS to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, TO HAVE AND HOLD IT to Grantee, Grantee's heir's, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part hereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

WBW Land Investments, LP
By: WBW Land Investments
Group, LLC, its General Partner

By Bruce Whitis, Manager

CORPORATE ACKNOWLEDGMENT

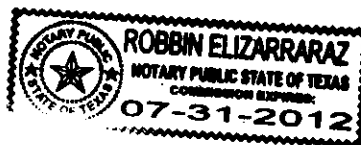
STATE OF TEXAS
COUNTY OF BELL

This instrument was acknowledged before me on the 23 day of October 2008 by Bruce Whitis, in his capacity as Manager of WBW, LAND INVESTMENTS GROUP, LLC, General Partner of WBW Land Investments, LP, a Texas limited partnership.

Robbin Elizarraraz
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:

Bruce Whitis
3000 Illinois Suite 100
Killeen Texas 76549



3000 Illinois Ave, Ste 100
Killeen, TX
Phone: 254-953-5055 ext 223
FAX: 254-953-5057

W & B Development

Letter of Transmittal

To: CITY PLANNING DEPARTMENT **Job:** YOWELL RANCH, PHASE ONE

Attention: RAY SHANAA, CITY PLANNER

Date: 19 NOVEMBER 2008

Re: PRELIMINARY PLAT RESUBMITTAL

WE ARE SENDING YOU

Attached

Under separate cover via _____ the following items:

Shop drawings

Plans

Specifications

Copy of letter

COPIES	DATE	DESCRIPTION
11	19 November 2008	PRELIMINARY PLAT
3	19 November 2008	ENGINEERING PLANS
1	19 November 2008	UTILITY PLANS
1	19 November 2008	APPLICATION FEE
1	19 November 2008	FIELD NOTES
1	19 November 2008	WARRANTY DEED
1	19 November 2008	APPLICATION

THESE ARE TRANSMITTED as checked below:

For Approval

For your use

For field use (Embeds)

For field use (final)

For Fabrication

REMARKS

Signed: _____

If enclosures are not as noted, kindly notify us at once.

YOWELL RANCH PHASE 1
ZONING REVIEW CHECK LIST
 ORD # 09-002 PUD

Project Address: _____ **Submission Date:** _____

Applicant Name: _____ **Company Name:** _____

Applicants seeking single family building permits within Yowell Ranch Phase 1 sub-division must complete this form by initialing appropriate items to verify completion before a permit application can be accepted.

Site requirements:

_____ All lots shall have a 10' utility easement adjacent to right-of-ways.

_____ Building setbacks shall be as follows unless otherwise noted or shown hereon.
 Front – 20' Rear – 20' Interior side – 5' Street side – 15'

_____ The front yards of all lots, from the front property line to the front wall of the house, shall be fully sodded, and at least one tree and five bushes shall be planted in the front yard prior to occupancy of the residence located on the lot.

_____ No direct vehicular access to Stagecoach Road shall be allowed for Lot 1, Block 1, and Lots 25-29, Block 3. No direct vehicular access to Featherline Road shall be allowed for Lots 1-5, Block 3, Lots 1- 14, Block 12, Lots 1-10, Block 15.

Building Requirements:

_____ The exterior walls of all one-story dwelling shall be constructed of a combination of native stone, brick and/or cementitious siding products which collectively comprise a 90% masonry veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work.

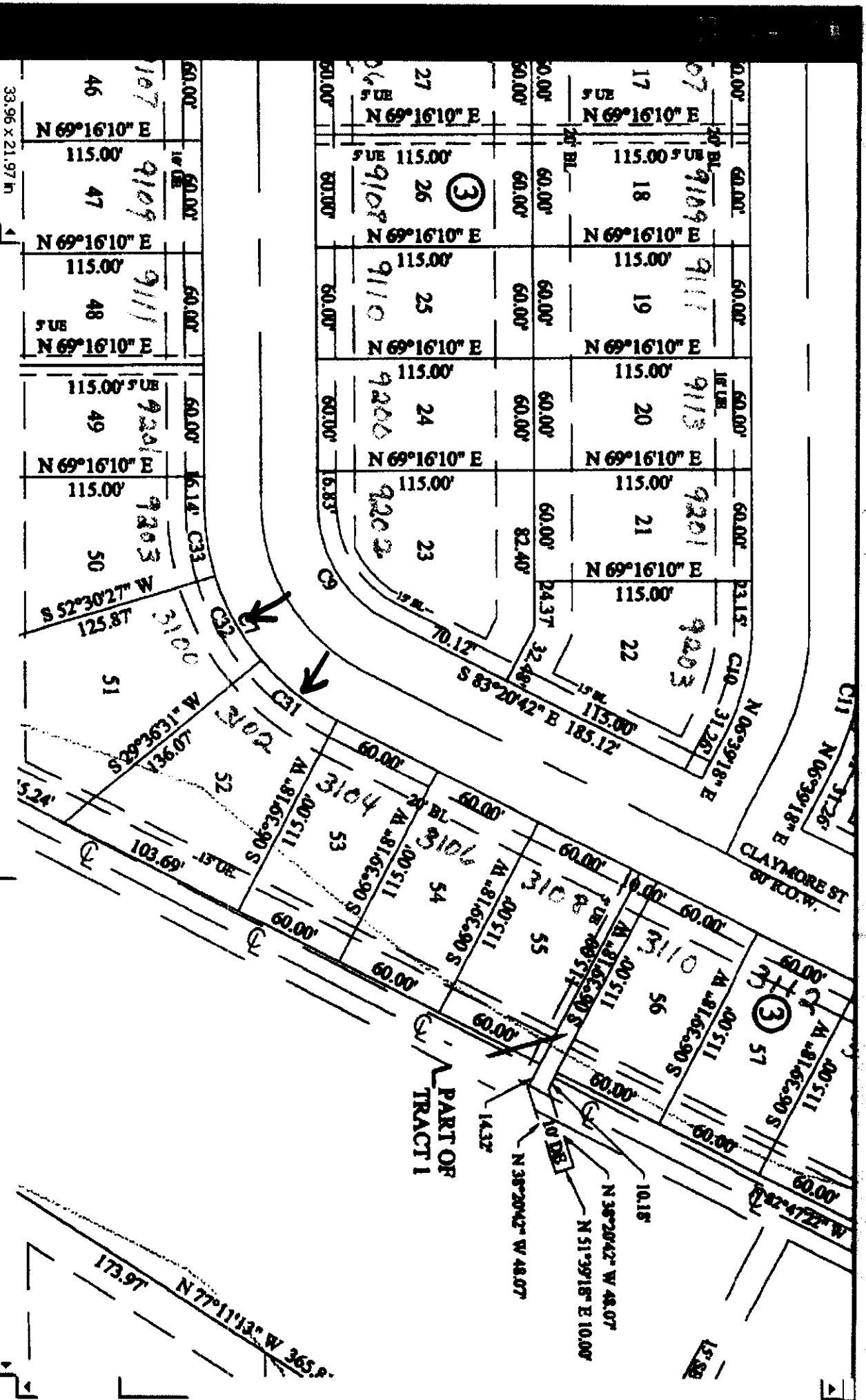
_____ The front exterior and the side exterior walls of the first floor of all two-story dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which collectively comprise a 90% masonry veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work.

_____ All residents shall contain not less than 1200 square feet of enclosed living space, exclusive of porches (open or covered), decks, and garages.

_____ There shall be no repeat or duplicate elevation within a group of five homes.

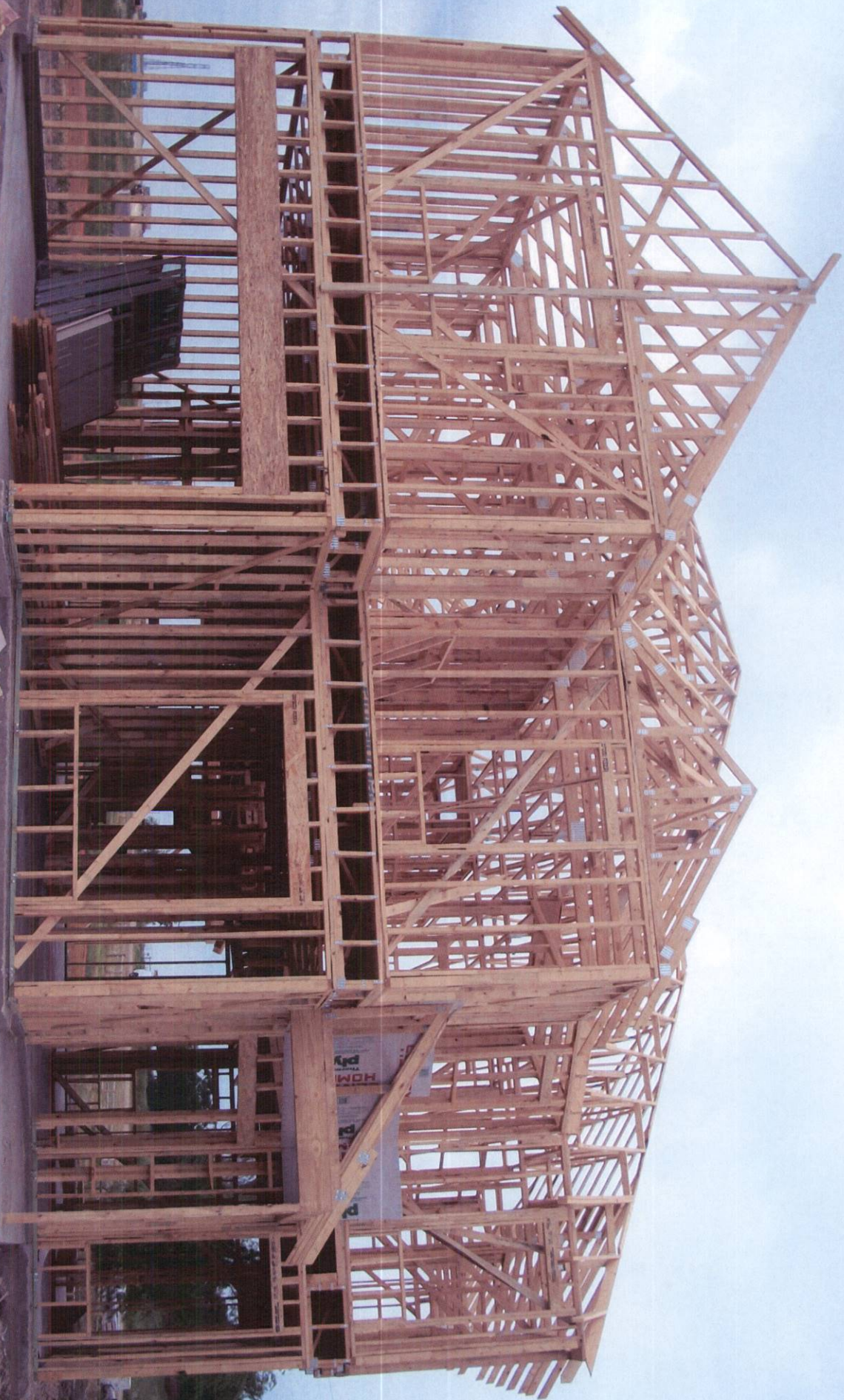
I certify that all of the above items are complete and ready for permit application review. In addition, I fully understand that permits for new residential construction cannot commence or will be suspended if any of the items are not true, violations or errors are found, subdivision lot(s) have not been released or filed addressed plats have not been received by the Building Inspections Division.

Applicant Signature: _____ **Date:** _____





3100 CLAYMORE ST

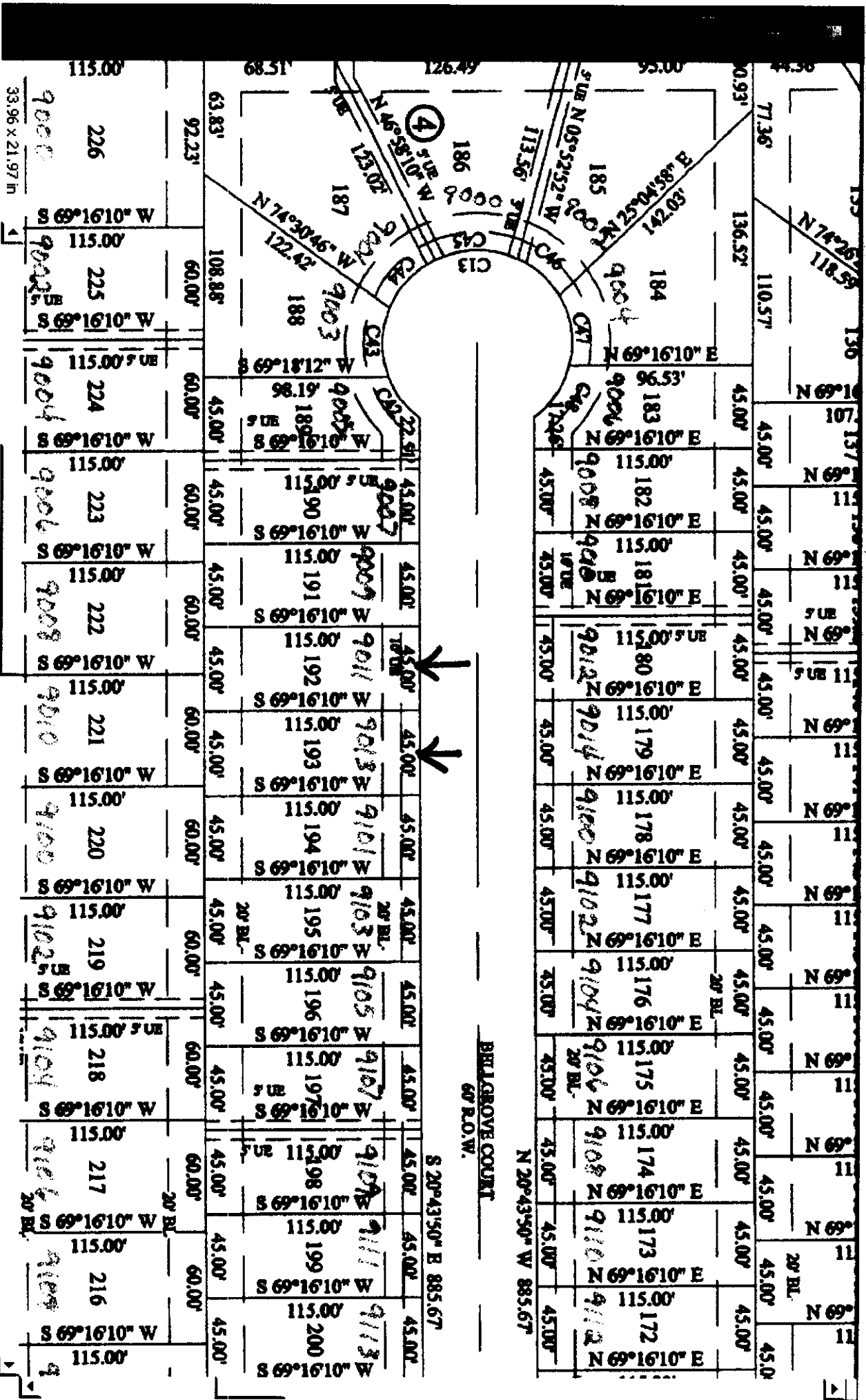


#2

3102 Cwymon St

Create Combine Collaborate Secure Sign Forms Multimedia Comment

2 / 2 124% Find



Start

Inbox - Microsoft... Reminders Windows Media... <http://ps1.cld...> Yowell Ranch, P... Yowell Ranch, ...

Monday, May 10, 2010 01:21 PM 1:21 PM



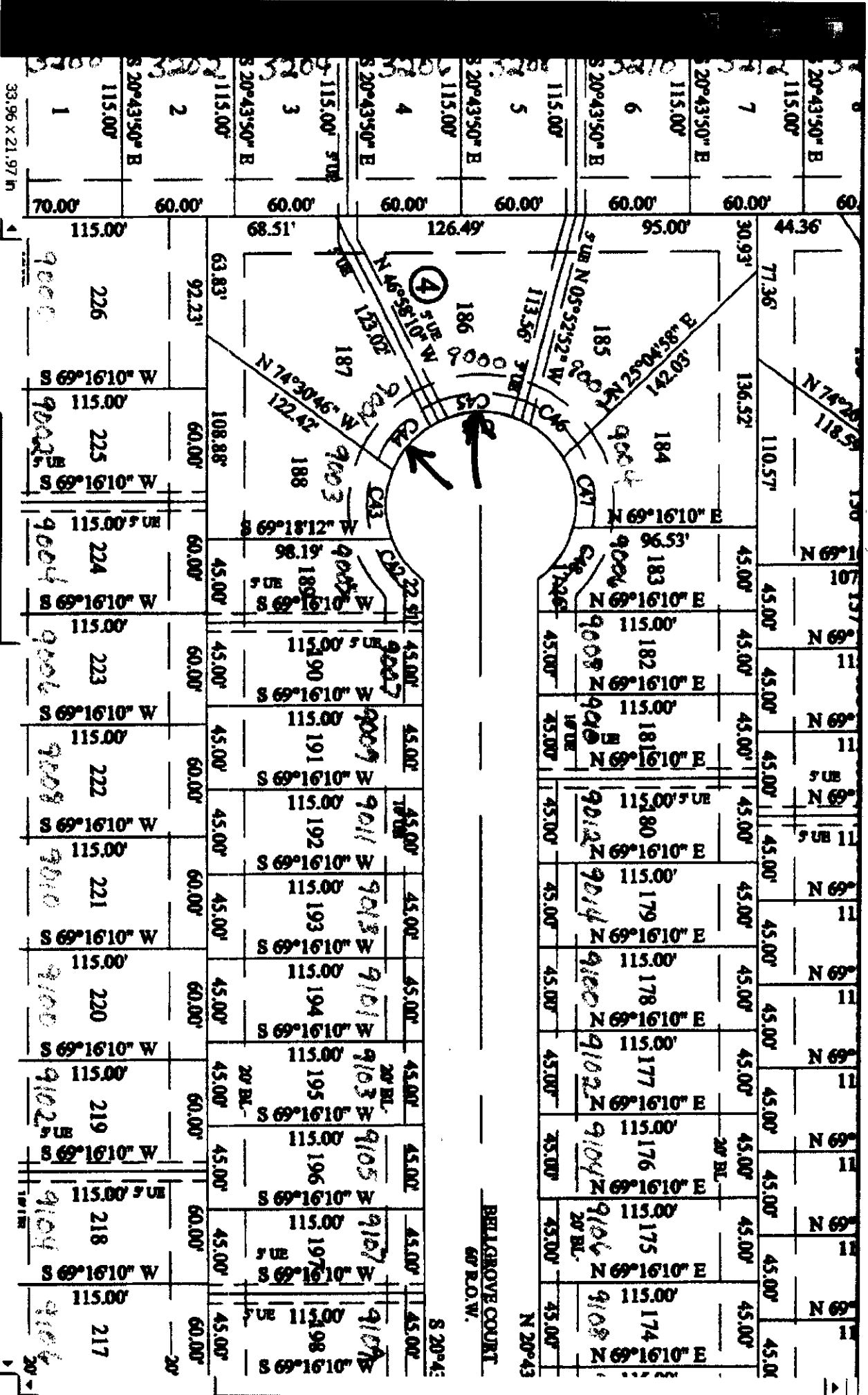
9013 BELLECOVE CT

#6



9011 BULLCROVE CT

#6





9000 Ben Lane Ct

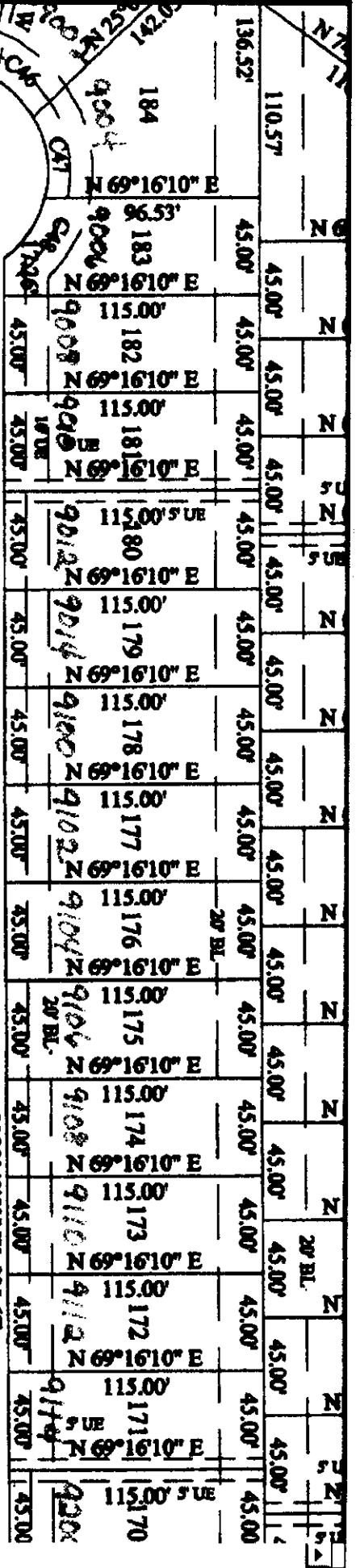


Sold
CENTEX

LELAND STAFFORD
CENTEX HOMES

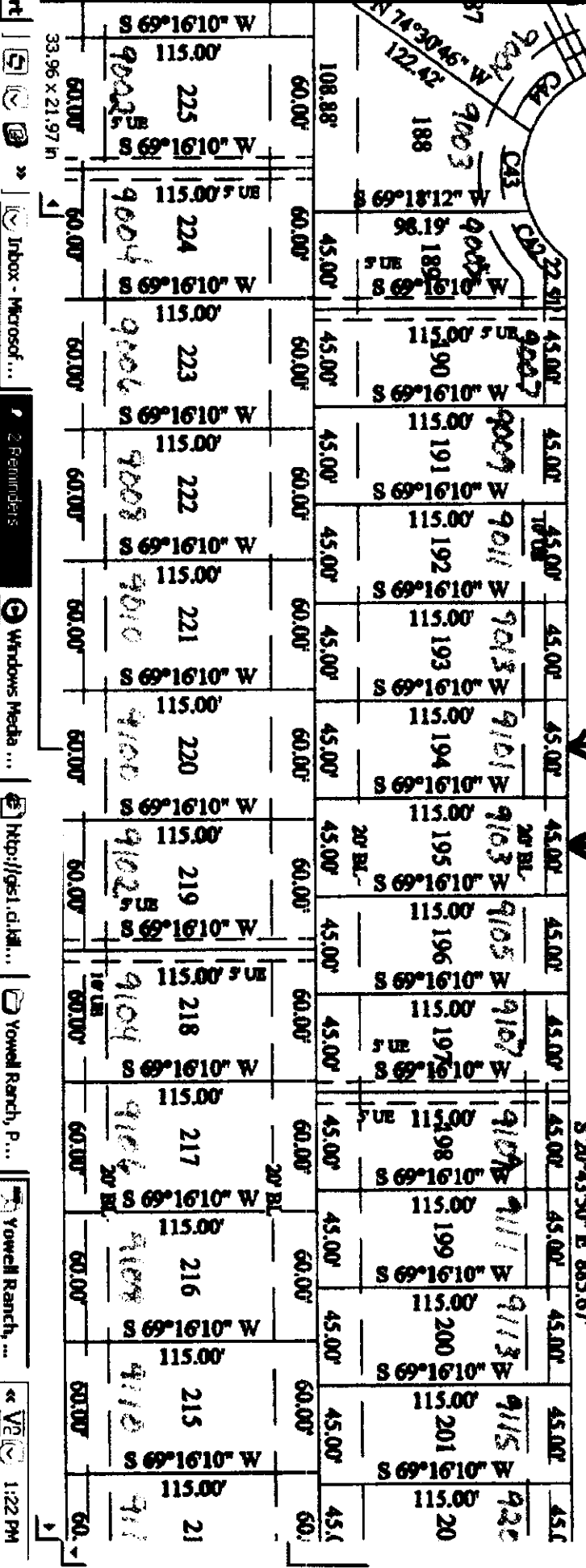
#4

9001 Bell Grove CT



BELLEVUE COURT
60' R.O.W.

S 20°43'50" E 885.67'





9103 BELL CROWE CT



Sold
Call us

901

#5

9101 BELLGROVE CT



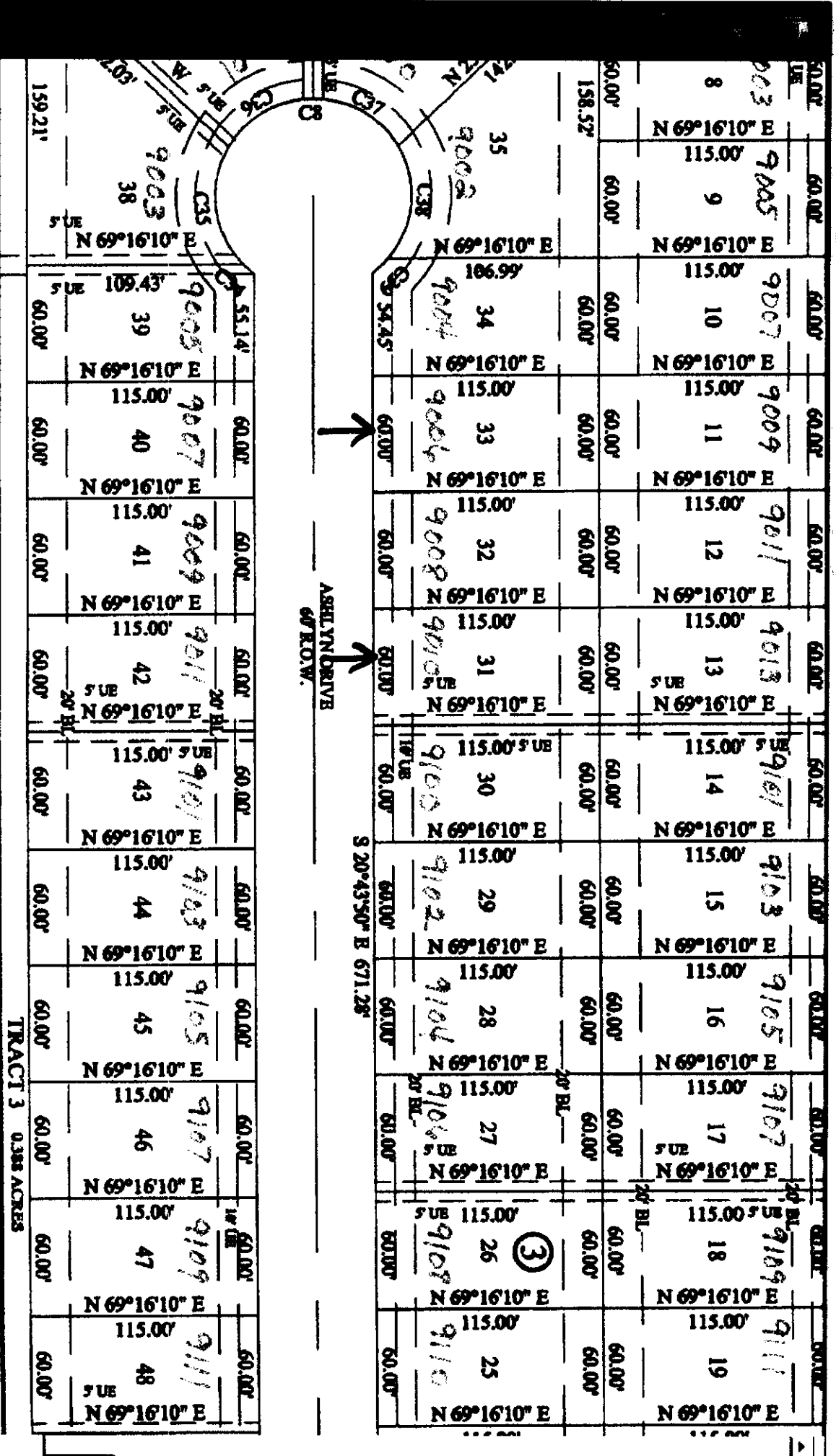
B1

9213 BELLEROW CT



9211 BELL GROVE CT

#1



TRACT 3 0.388 ACRES

2186.54'

33.96 x 21.97 h



#3

9010 ASHLYN DR



9006

4/3

9006 ASHLYN DR.

ORDINANCE 09-002

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

WHEREAS, W & B Development has presented to the City of Killeen a request for amendment of the Zoning Ordinance of the City of Killeen by changing the classification of the hereinafter described property from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-Family Residential District), said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 22nd day of December 2008, and due notice of the filing of said request and the date of hearing thereon was given as required by law, and hearing on said request was set for 6:00 P.M., on the 13th day of January 2009, at the City Hall, City of Killeen;

WHEREAS, , the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission and the evidence in support thereof, and the City Council being of the opinion that the request should be approved;

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

SECTION I. That the zoning classification of the following described tract be changed from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-Family Residential District) for approximately 87.12 acres, being part of the Simeon D. Carothers Survey, Abstract No. 177, for property located on the east right-of-way of Featherline

Road and north of the Police Headquarters Addition, Killeen, Texas.

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

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

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

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 13th day of January 2009, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:


Timothy L. Hancock, MAYOR

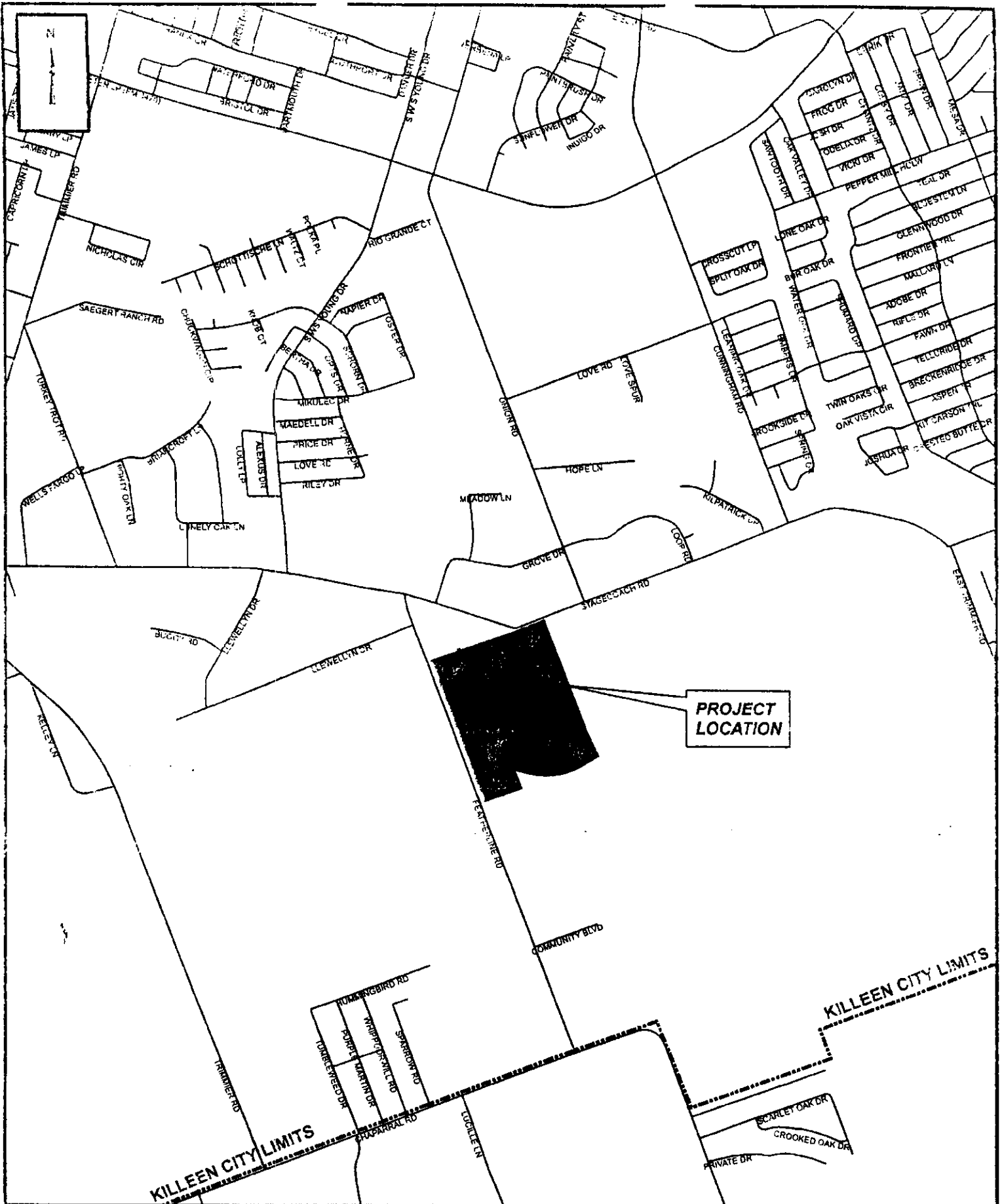
ATTEST:


Paula A. Miller, CITY SECRETARY

APPROVED AS TO FORM


Kathryn H. Davis, City Attorney

Case #Z08-55
Ord #09-_____.



Date: 12/08/08

87.15 ACRES

ZONING CASE #Z08-55

From R-1 To PUD w/R-1

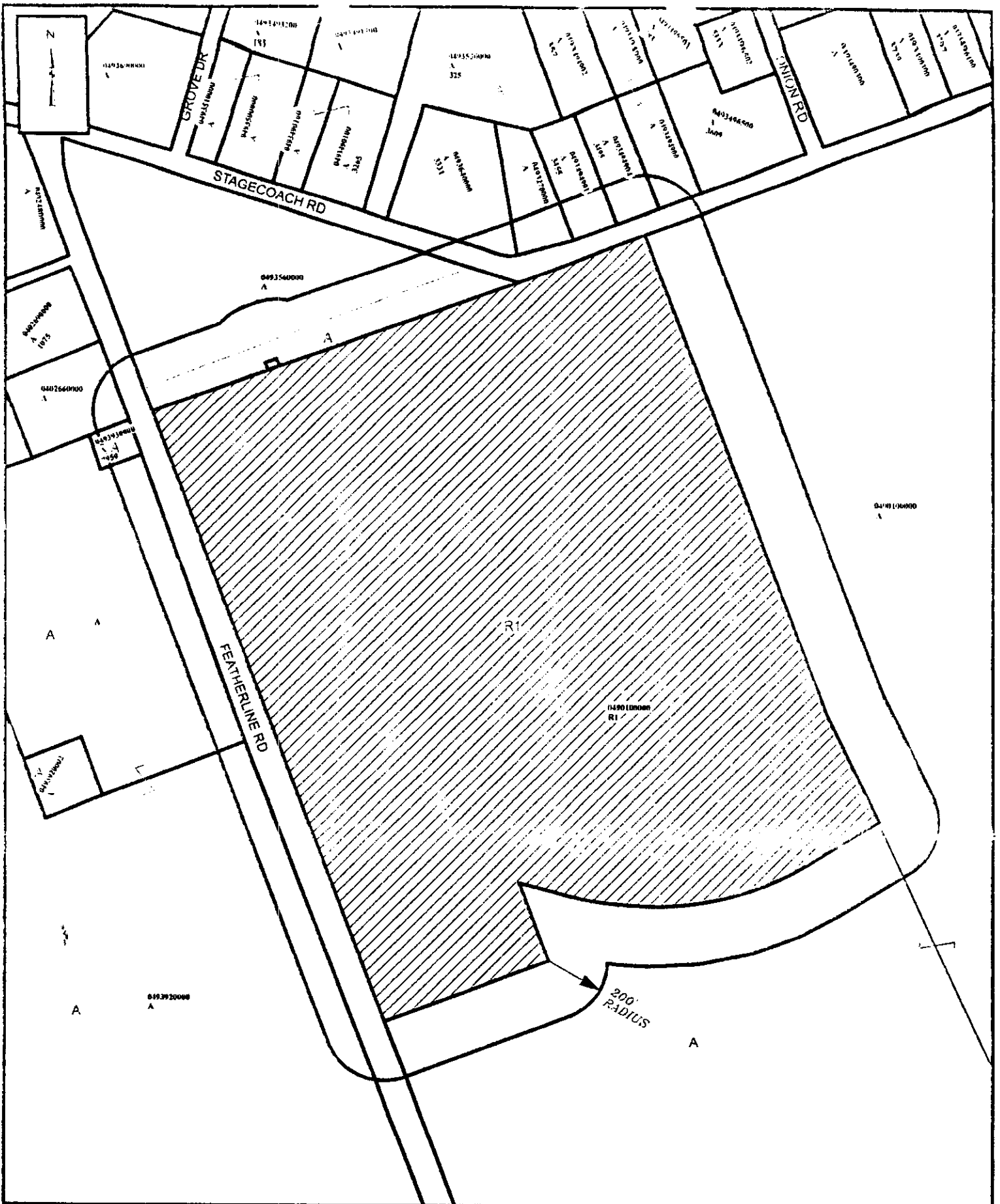


CITY OF KILLEEN

PLANNING/MAPPING

P.O. BOX 1329

KILLEEN, TEXAS, 76540-1329



Date: 12/08/08
 87.15 ACRES

ZONING CASE #Z08-55
 From R-1 To PUD w/R-1



CITY OF KILLEEN
 PLANNING/MAPPING
 P.O. BOX 1329
 KILLEEN, TEXAS, 76540-1329

CITY COUNCIL MEMORANDUM FOR ORDINANCE

AGENDA ITEM

**ZONING CASE #Z08-55
R-1 TO PUD WITH R-1**

ORIGINATING DEPARTMENT  PLANNING & DEVELOPMENT SERVICES

BACKGROUND INFORMATION

This is a request submitted by W&B Development to rezone approximately 87.12 acres, being part of the Simeon D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) consisting of 381 lots and 5 blocks for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road, Killeen, Texas.

The applicant proposes to rezone the property to allow for a residential development consisting of single-family homes and an open space/ amenity area. The proposed development will include seven common areas tracts totaling 15.5 acres. The PUD zoning would allow the applicant to develop single-family homes on lots greater than and less than 6,000 square feet. Some of the PUD develop standards are listed below in Table 1.

Table 1. Development Standards for Yowell Ranch PUD

Total Lots	381
Set backs	20' setback required for front and rear yards; 15' setback required for side yards that abut a street and 5' setback for interior side yards
Minimum floor area	1,000 square feet
Masonry requirements	One-story- 60% requirement of native stone, brick, or cementitious siding product which collectively comprise a masonry veneer. Two-story-75% requirement of combination of native stone, brick or cementitious siding product comprising a 75% masonry veneer for front exterior wall; 60% requirement of native stone, brick, or cementitious siding product which collectively comprise a masonry veneer for side exterior walls of first floor.
Landscaping requirements	Front-yard- fully-sodded with 1 tree, and 5 bushes

Legal staff has reviewed the bylaws, Articles of Incorporation and Declaration for the Yowell Ranch PUD zoning request and determined that the documents provided by the applicant meets the requirements of Section 31-805 of the Code of Ordinances. Also, letters of notification were

mailed to eleven (11) property owners in the 200-foot notification area. Staff received one response in support for the rezone request from Mr. Bruce Whitis.

If this rezone application is recommended for approval by the Commission, the Planning staff recommends the following five conditions:

- Provide a 42' wide street paving section for a minimum length of 100' as measured from all subdivision entrances.
- Increase the minimum floor area (enclosed living area) from 1,000 to 1,200 square feet.
- 90 % requirement of native stone, brick or other masonry product for an entire home.
- No repeat or duplicate elevation within a group of five homes.
- Provide information in the PUD document that details the proposed recreational uses within Tract 1.

DISCUSSION/CONCLUSION

Bruce Whitis of W & B Development was present to represent the case. Chairman Frederick opened the public hearing, and Bill King spoke at the public hearing regarding concerns that he has with the proposed zoning. He stated that he is in favor of the projected green space with the amenities that are proposed, but he is in opposition to the density of housing even though he is aware that requiring 1-3 acre lots is not feasible. With no one else requesting to speak, the public hearing was closed.

FISCAL IMPACT

No fiscal impact is associated with this rezone application.

RECOMMENDATIONS

The Planning and Zoning Commission made a recommendation to approve rezone case #Z08-55 by a vote of 5 to 2 with the following conditions:

- The applicant shall provide a 42' wide street paving section for a minimum length of 100' as measured from all subdivision entrances.
- The applicant shall increase the minimum floor area (enclosed living area) for a home from 1,000 to 1,200 square feet.
- 90 % requirement of native stone, brick or other masonry product for an entire home.
- There is to be no repeat or duplicate elevation within a group of five homes.
- Provide information in the PUD document that details the proposed recreational uses within Tract 1 to include a playground, pool, hike and bike trail, and at least one pond.

applicants revised their request and amended it for a B-3 since that zoning would allow for the proposed application. There was one letter of opposition returned in response to the five letters of notification; however, the applicant indicated he would be agreeable to a B-3 zoning. The Planning and Zoning Commission voted unanimously to recommend B-3 zoning.

Mayor Hancock opened the public hearing.

Pat Nellis, 4201 Cunningham, and Leroy W. Nellis, 6418 Zadock Woods, Austin, Texas, appeared in support of the application.

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

Councilmember Workman moved to approve the ordinance [09-001], seconded by Councilmember Rivera. The motion was approved unanimously.

PH-2 A. **HOLD** a public hearing and consider a request by W&B Development (Case #Z08-55) to rezone approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-family Residential District), the property is located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

The caption of the ordinance was read as follows:

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

This rezoning request is submitted on property currently zoned R-1, and the applicant seeks to create a planned unit development (PUD) with an R-1 overlay. It will consist of 381 single-family homes. The PUD will allow for a deviation from the required 6,000 square foot lots. The Planning and Zoning Commission recommended approval of the request with the following conditions: a forty-two foot wide street paving section for a minimum length of one hundred from as measured from all subdivision entrances; minimum floor area shall be increased from 1,000 to 1,200 square feet; ninety percent requirement of native stone, brick, or other masonry produce for an entire home; no repeat or duplicate elevation within a group of five homes; and provide information in the PUD document detailing proposed recreational uses within Tract 1 to include a playground, pool, hike and bike trail, and at least one pond.

Councilmember Cole noted this item had been discussed at length during the workshop, and he asked why the applicant in this case had not been required to wait a year to return. City Planner Tony McIlwain advised that the one-year moratorium occurred when both the Planning and

Zoning Commission and the City Council rejected the application. The original application was to rezone from agricultural to PUD. Subsequently, the property has been rezoned R-1 and, thus, is a different case.

Mayor Hancock opened the public hearing.

Bill King, 186 Lonely Oaks, appeared in opposition to the request and cited concerns of density and incongruity with surrounding neighborhoods.

Don Clay, 3739 E. Stagecoach, expressed concerns of safety for children having to walk along Stagecoach Road and said there was no need for this amount of development at this time.

Fred Garvin, 2859 E. Stagecoach, advised he was opposed to the rezoning.

John Chomko, 477 Llewellyn, asked why a $\frac{3}{4}$ majority vote was not required. City Attorney Davis advised that notice was provided to residents within 200 feet of the property, and in order to require a $\frac{3}{4}$ majority vote, twenty percent of those would have to object to the rezoning. That did not happen in this case. As for the prior case, it was not “legally” denied; rather, it had not been approved by the required $\frac{3}{4}$ majority. While some of the aspects of this request are the same, this request is not the same as the prior request, and the applicant is not required to wait one year before bringing it back.

Virginia Deerkop, 3495 Stagecoach, expressed her concern that one of the entrances to the development was directly across from her driveway. She asked that the entrance be relocated.

Bruce Whitis, 3000 Illinois, said he has agreed with the recommendations of the Planning and Zoning Commission. There will be 381 residential lots with fifteen acres of open space that will include a pool, hike and bike trail, playground, and ponds. The entrances will be landscaped, and architectural controls will be placed in the PUD document. There will be no garage conversions allowed since two-car garages are requirements for all residences.

Brad Retz, 1878 Stagecoach, said the area is not ready for this type of development because of lack of water and sewer and improvements to the major roads.

B. J. Cummings, 198 Harlan Drive, said his main concern was traffic and the risk to children walking to schools in the area.

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

City Attorney Davis advised that if a motion to approve is made, it should include the recommendations of the Planning and Zoning Commission in addition to the PUD standards originally proposed.

Councilmember Evans moved to approve the ordinance [09-002] with the following requirements: 381 lots; twenty-foot setback required for front and rear yards, fifteen-foot setback for side yards that abut a street, and five-foot setback for interior side yards; minimum floor area

of 1,200 square feet; ninety percent requirement of native stone, brick, or other masonry product, fully sodded front yard with one tree and five bushes; forty-two-foot wide street paving section for a minimum length of one hundred feet as measured from all subdivision entrances; no repeat or duplicate elevation within a group of five homes; information in the PUD document detailing the proposed recreational uses in Tract 1. Councilmember Cosper seconded the motion, and noted that growth to the south is inevitable and the City had to be proactive. Councilmember Cole said he had been against the project from the beginning; however, the PUD as now proposed will provide more controls than would simply an R-1 development. Councilmember Rivera believed the PUD restrictions would be better for this area, and Mayor Pro-Tem Latham pointed out the road in the area will all have to be improved. The City Council has listened to the citizens. Councilmember Workman advised he is still in opposition to the development because of density, water and sewer issues, inadequate streets, and safety of children. Mayor Hancock noted the concerns of safety are valid and that the Council has listened to the citizens.

The motion was approved 6-1 (Councilmember Workman in opposition).

- B. Consider a request by W&B Development, Ltd (Case #08-069FS: Yowell Ranch Phase One (PUD)) for a plat of approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

This plat covers the development of the previous rezoning and creates 381 lots and green space. The plat meets all development regulations, and the Planning and Zoning Commission voted to recommend approval of the plat.

Councilmember Wells moved to approve the plat, seconded by Councilmember Evans. The motion was approved 6-1 (Councilmember Workman in opposition).

Ordinances / Resolutions

- OR-1 Consider a memorandum/resolution [09-007R] approving the appointment of members to the Airport Expansion Committee (AEC).

Mayor Pro-Tem Latham moved to appoint Jean Shine, John Sutton, and Glenn Morrison to the Airport Expansion Committee, seconded by Councilmember Cosper. The motion was approved unanimously.

- OR-2 Consider an ordinance to amend the police department civil service pay plan to authorize clothing assignment pay for police officers.

The caption of the ordinance was read as follows:

AN ORDINANCE OF THE CITY COUNCIL OF KILLEEN, TEXAS UPDATING THE POLICE DEPARTMENT PAY PLAN TO ESTABLISH CLOTHING ASSIGNMENT PAY AND THE CRITERIA AND CONDITIONS UNDER WHICH THIS PAYMENT MAY

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

YOWELL RANCH HOMEOWNERS
ASSOCIATION, INC.

A Residential Community in Bell County, Texas

Declarant: W.B. DEVELOPMENT, Ltd., a Texas limited partnership

Association: YOWELL RANCH HOMEOWNERS ASSOCIATION, INC., a Texas non-profit
corporation

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
YOWELL RANCH HOMEOWNERS ASSOCIATION, INC.**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
YOWELL RANCH HOMEOWNERS ASSOCIATION, INC.

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BELL §

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made by **W.B. DEVELOPMENT**, a Texas limited partnership (the "Declarant"), and is as follows:

RECITALS:

A. Declarant owns all of the Lots (as herein defined) in Yowell Ranch, a subdivision located in Bell County, Texas, according to the map or plat recorded in Cabinet_____, Slide _____ and _____, in the Official Public Records of Bell County, Texas.

B. Declarant desires to create upon the Property (as herein defined) a residential community and carry out a uniform plan for the improvement and development of the Property for the benefit of the present and all future owners thereof.

C. Declarant further desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the Property to the covenants, conditions, and restrictions set forth in this Declaration for the benefit of the Property.

NOW, THEREFORE, it is hereby declared: (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which shall run with the Property and shall be binding upon all parties having right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE 1

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

"Architectural Control Committee" ("ACC") shall mean the committee created pursuant to Section 7.02 of this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot.

"Articles" shall mean and refer to the Articles of Incorporation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

“Assessment” or **“Assessments”** shall mean assessments imposed by the Association under this Declaration.

“Association” shall mean and refer to the Yowell Ranch Homeowners Association, Inc., a Texas non-profit corporation.

“Board” shall mean the Board of Directors of the Association.

“Builder” shall mean any person or entity who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person’s or entity’s business.

“Bylaws” shall mean and refer to the Bylaws of the Association as adopted and as amended from time to time.

“Common Area and Facilities” shall mean and refer to all real property and any interest, including any Improvements located thereon, which is designated by Declarant as common area for the benefit of the Property, and is conveyed to the Association or is otherwise held by Declarant for the benefit of the Owners. The Common Area and Facilities shall include all areas that shall be or have been dedicated to all public authorities but not yet accepted by such authorities. The Common Area and Facilities shall be for the common use and enjoyment of the Owners. Common Area and Facilities may be designated by Declarant from time to time and at any time.

“Declarant” shall mean and refer to **W.B. DEVELOPMENT, LTD.**, a Texas limited partnership, its successors or assigns, including, without limitation, Builders who acquire Lots directly from Declarant; provided that any assignment(s) of the rights of Declarant must be expressly set forth in writing and recorded in the Official Public Records of Bell County, Texas.

The “Declarant” is the party who causes the Property to be developed for actual residential use. The Declarant enjoys special privileges to help protect its investment in the development. These special rights are described in this Declaration. These rights do not terminate until Declarant either: (i) has sold all Lots which may be created out of the Property; or (ii) voluntarily terminates these rights by a written instrument recorded in the Official Public Records of Bell County, Texas. The rights reserved by the Declarant may be assigned unilaterally in whole or in part to one or more third parties.

“Design Guidelines” shall mean the standards for design, construction, landscaping, and exterior items placed on a Lot adopted pursuant to *Section 7.02(cc)*, as amended. Declarant may (but will have no obligation to) adopt the initial Design Guidelines.

“Improvement” shall mean every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, play equipment, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

“Lot” shall mean and refer to a portion of the Property designated by Declarant or shown as a subdivided lot on a Plat other than Common Area and Facilities.

“Members” shall mean and refer to every person or entity who holds membership privileges in the Association.

“Mortgage” or **“Mortgages”** shall mean any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

“Mortgagee” or **“Mortgagees”** shall mean the holder(s) of any Mortgage(s).

“Owner” shall mean the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but shall not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

“Plat” shall mean a subdivision plat of any portion of the Property as recorded in the Official Public Records of Bell County, Texas, and any amendments thereto.

“Property” shall mean all Lots and the Common Areas and Facilities in Yowell Ranch, a subdivision located in Bell County, Texas, according to the map or plat recorded in Cabinet D, Slide 72 D and 73 A, in the Official Public Records of Bell County, Texas, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 11.03* and *Section 11.04* of this Declaration.

“Restrictions” shall mean the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, or in any rules and regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time.

ARTICLE 2

GENERAL RESTRICTIONS

2.01 General. All Lots shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to: (i) the applicable conditions, restrictions, reservations, and easements contained in this Declaration; (ii) the Design Guidelines; and (iii) any rules and regulations adopted by the Board.

NOTICE

This Declaration, the Design Guidelines, and the rules and regulations adopted by the Board are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with this Declaration, the Design Guidelines, and the rules and regulations, as they may change from time to time.

2.02 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, at its discretion.

2.03 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

2.04 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area and Facilities or the improvements located thereon, without the prior written approval of the Board.

2.05 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

2.06 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.07 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Property. No Owner may keep on such Owner's Lot more than four (4) cats and dogs, in the aggregate, not more than two (2) of which may be dogs. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. All animal waste shall be removed immediately by Owner from neighboring Lots and Common Areas and Facilities when walking the pet. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Control Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

2.08 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view. Each Owner shall contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.09 Maintenance. The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Architectural Control Committee, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this *Section 2.09* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Architectural Control Committee, in its sole discretion:

- (i) Lawn mowing and edging.
- (ii) Tree and shrub pruning.

- (iii) Watering of exterior landscaping (including, without limitation, all trees, bushes, shrubs, lawns and other plantings on the Lot).
- (iv) Keeping exterior lighting and mechanical facilities in working order.
- (v) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (vi) Keeping sidewalks and driveways in good repair.
- (vii) Complying with all government, health and police requirements.
- (viii) Repainting of Improvements.
- (ix) Repair of exterior damage, and wear and tear to Improvements.
- (x) Keeping Lots and Improvements free of trash, litter, refuse, wastes, and other unsightly material.

2.10 Antennae. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained or placed on a Lot without the prior written approval of the Architectural Control Committee; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- (iii) an antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location, size, and screening as may be set forth in rules adopted by the Architectural Control Committee, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

2.11 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area and Facilities, or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the other areas of the Property. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Architectural Control Committee are as follows:

- (i) Attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots, Common Area and Facilities, and the street; then

(ii) Attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots, Common Area and Facilities, and the street.

The Architectural Control Committee may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

Satellite dishes one meter or less in diameter, e.g., DirectTV or Dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the Architectural Control Committee from time to time. Please contact the Architectural Control Committee for the current rules regarding installation and placement.

2.12 Signs. No sign of any kind shall be displayed to the public view on any Lot without the prior written approval of the Architectural Control Committee, except for:

(i) signs which are part of Declarant's overall marketing or construction plans or activities for the Property;

(ii) one (1) temporary "For Sale" sign placed on the Lot being advertised "For Sale". The sign will be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade from the spot where the sign is located may not exceed three (3) feet. The sign must be removed within two (2) business days following the sale or lease of the Lot;

(iii) one (1) temporary "For Rent" sign limited to a maximum face area of five (5) square feet, to be placed only in the window of the home.

(iv) one (1) small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal residence constructed upon the Lot;

(v) permits as may be required by legal proceedings; and

(vi) one (1) political sign limited to a maximum face area of five (5) square feet. The sign may be displayed no sooner than sixty (60) days before an election and no later than thirty (30) days after an election.

(vii) permits as may be required by any governmental entity.

An Owner will be permitted to post a "no soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign not exceed twenty-five (25) square inches. Any advertising and/or sales program for the sale of Lots, other than advertising and/or sales programs initiated or maintained by the Declarant, must be approved in advance by the Architectural Control Committee.

2.13 Tanks / Swimming Pools. The Architectural Control Committee must approve any tank used or proposed in connection with a single-family residential structure, including tanks for storage of fuel, water, oil, gas, or LPG, and swimming pool filter tanks. No elevated tanks, including a elevated

swimming pool, of any kind shall be erected, placed or permitted on any Lot without the advance written approval of the Architectural Control Committee. All tanks shall be screened so as not to be visible from any other portion of the Property. In-ground pools must receive approval from the ACC prior to construction. All pools and hot tubs must be fully enclosed with a self-closing and self-latching fence and gate.

2.14 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the prior written approval of the Architectural Control Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner shall be permitted, without Architectural Control Committee approval, to erect one (1) outbuilding on the Owner's Lot if: (i) the surface area of the pad on which the outbuilding is placed is less than or equal to one hundred (100) square feet; (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to eight (8) feet; (iii) the outbuilding is constructed within an area completely enclosed by a privacy fence of not less than six (6) feet in height; (iv) the exterior and roof of the outbuilding is constructed of the same or substantially similar materials as the exterior and roof of any residence located on the Lot; and (v) the outbuilding is constructed within building setback lines set forth on the Plat. The Architectural Control Committee shall be entitled to determine, in its sole and absolute discretion, whether an outbuilding constructed on any Lot complies with the foregoing requirements.

2.15 Window Air Conditioning and Water Cooler Units. No window air conditioning or water cooler units shall be attached to the exterior wall of the residence.

2.16 Rain Water Collectors. Collectors of these types are not allowed on the Lot or on the Improvements thereon except in the rear yard, obstructed from public view.

2.17 Solar Panels. Solar panels are prohibited within the Subdivision.

2.18 Unightly Articles and Vehicles. No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from adjoining Lots, Common Areas or Facilities, or from public or private thoroughfares. Without limiting the generality of the foregoing, play equipment, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have no fewer than one (1) garage space.. Lot Owners shall not keep more than two (2) automobiles in such a manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any roadway within the Property. No garage may be permanently enclosed or otherwise used for habitation unless approved in advance by the Architectural Control Committee.

2.19 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time, and no

motor homes, travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining Lots, Common Areas and Facilities, or from public or private thoroughfares at any time.

2.20 Basketball Goals; Permanent and Portable. Permanent basketball goals are permitted between the curb and the front of the residence on a Lot provided the basketball goal is located a minimum of 20 feet from the street curb or midway between the house and the end of the driveway, which ever is applicable. The basketball goal backboard must be perpendicular to the street and mounted on a black metal pole permanently installed in the ground. Basketball goals must be properly maintained and painted, with the net in good repair. Backboards are not allowed to be attached to the residence. Portable basketball goals are **NOT ALLOWED** within the Subdivision. All basketball goals must be approved by the Architectural Control Committee prior to being installed on any Lot.

2.21 Window Coverings and Treatments. No aluminum foil, newspaper, reflective film bed sheet or linens or similar treatments will be placed on windows or glass doors of the residence.

2.22 Exterior Decorations and Seasonal Holiday Decorations. Lighting or decorations which constitute a nuisance or unreasonable source of annoyance to the owners of adjacent Lots may not be used. Sole determination of what constitutes a nuisance or annoyance will be at the sole discretion of the Board or its assigns. Holiday Decorations can be displayed 30 days in advance, and must be removed within 30 days after, the applicable Holiday.

2.23 Compliance with Association Restrictions. Each Owner his or her family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Association Restrictions as the same may be amended from time to time. Failure to comply with any of the Association Restrictions shall constitute a violation of the Association Restrictions and may result in a fine levied against the Owner in accordance with *Section 6.09* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, together with reasonable attorney's fees and costs incurred, which may be maintainable by the Declarant, the manager, the Board on behalf of the Association, the Architectural Control Committee, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Association Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 2.22 (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

If you fail to comply with Association Restrictions, you can be fined or a claim may be pursued against you in court.

2.24 Liability of Owners for Damage to Common Area and Facilities. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area and Facilities without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area and Facilities and any improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as the Assessments.

2.25 No Warranty of Enforceability. Declarant and Builder make no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant and Builder harmless therefrom.

ARTICLE 3

USE AND CONSTRUCTION RESTRICTIONS

3.01 Single-Family Residential Use. The Lots shall be used solely for private single-family residential purposes and there shall not be constructed or maintained thereon more than one detached single-family residence. No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot, except an Owner or occupant of a residence may conduct business activities within a residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (ii) the business activity conforms to all R1 zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents within the Property; (iv) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required. Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or an Owner engaged in the business of constructing homes for resale who acquires a Lot for the purpose of constructing a residence thereon for resale to a third party.

3.02 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for

terms of at least six (6) months. All leases shall be in writing. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. The Owner must provide to its lessee copies of the Restrictions, the Bylaws, and the rules and regulations of the Association.

3.03 Garages. Each Lot must contain a private garage for not fewer than one (1) automobile. The location and orientation of all garages must be approved in advance by the Architectural Control Committee. All garages shall be maintained for the parking of automobiles, and no garage may be permanently enclosed or otherwise used for habitation.

3.04 Fences; Sidewalks. All fences and walls will comply with all applicable governmental ordinances. Fencing which encloses the rear yard of a Lot may not exceed six (6) feet in height and shall be constructed with #1 grade cedar pickets and with treated pine or cedar railings and posts. No fence or wall may be erected, placed or altered on a lot nearer to the front street than the front wall of the single family dwelling which is located on the Lot. Construction of gates or other access openings in subdivision perimeter fencing shall not be allowed on any Lot without prior written consent by the Architectural Committee. The location, design, and materials to be incorporated into any fence must be approved in advance by the Architectural Control Committee. Any fencing which is constructed on a street side must have the smooth portion exposed to the street side; the rail side of the fencing will face the interior of the lot. Only clear protective stain is allowed to treat fences. Any other color of stain must be approved by the Architectural Control Committee. If required by the Plat, the Owner of each Lot shall construct, at such Owner's sole cost and expense and prior to occupying any Improvement, a sidewalk on such Owner's Lot, located and designed in conformance with the Plat.

3.05 Driveways. No painted driveways are permitted. A driveway may be sealed with clear sealant only.

3.06 Dwelling Size; Building Materials. All residences shall contain not less than 1,000 square feet of enclosed living space, exclusive of porches (open or covered), decks, and garages. All building materials shall be approved by the Architectural Control Committee, and only new building materials (except for used brick) shall be used for construction of any Improvements. Exposed metal roof decks are prohibited. Other roofing materials may be used with the prior written consent of the Architectural Committee, which may specify a minimum quality or grade of materials. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project, or shall be of a color approved by the Architectural Control Committee. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

The masonry requirements for single and two-story dwellings shall be as follows:

One-Story Dwellings. The exterior walls of all single family dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which collectively comprise a 60 % masonry" veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors and trim work.

Two-Story Dwellings. The front exterior wall of all two-story single family dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which, collectively, comprise a 75% masonry" veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work. The

side exterior walls of the first floor of all two-story single family dwellings shall be constructed of a combination of native stone, brick and/or cementitious siding products which, collectively, comprise a 60% masonry" veneer, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, trim and decorative work.

3.07 Dwelling Height. No residence constructed on a Lot may exceed two (2) stories in height without the prior written approval of the Architectural Committee.

3.08 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement shall be performed only with the prior written approval of the Architectural Control Committee.

3.09 Trash Containers. Trash containers and recycling bins must be stored in one of the following locations:

(i) Inside the garage of the single-family residence constructed on the Lot; or in such a manner that the trash container and recycling bin are not visible from any street, alley, or adjacent Lot.

(ii) All disposal containers and trash must be removed and screened from view on or before 24 hours after container has been emptied by waste service collection.

The Architectural Control Committee shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

3.10 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Architectural Control Committee. If the backyard is not sodded, it will be the Owner's responsibility to ensure there is not a negative impact of drainage or erosion for the Owner of the Lot or adjacent Lots.

3.11 Landscaping. The front yards of all Lots, from the front property line to the front wall of the house, shall be fully sodded with St. Augustine, Bermuda, or other sod approved by the Architectural Control Committee and at least one (1) tree shall be planted in the front yard and five (5) bushes prior to occupancy of the residence located on the Lot. In no way will any landscaping installed by the Owner of the Lot, impede, hinder, or cause a negative impact for drainage for the Lot or adjacent Lots, this includes but not limited to, flower beds, fountains, ponds, and gardens.

3.12 Decorative Ground Cover. Rock or similar decorative ground cover may not exceed 20% of the total area of front and side yard and must be approved by the ACC.

3.13 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Architectural Control Committee in its sole good faith judgment, the Architectural Control Committee shall have the authority to seek an injunction to stop such construction.

In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Architectural Control Committee may contract for or cause such debris to be removed, and the Owner of the Lot shall be liable for all expenses incurred in connection therewith.

3.14 Declarant / Builder – Development and Construction. Notwithstanding any other provision herein, Declarant and its successors and assigns, and any Builders, will be entitled to conduct on the Property all activities normally associated with and convenient to the development of the property and the construction and sale of dwellings on the Property.

ARTICLE 4

YOWELL RANCH HOMEOWNERS ASSOCIATION, INC.

4.01 Membership.

(a) Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

If you acquire a Lot you automatically become a member of the Association. Membership is Mandatory.

(b) Every Member shall have a right and easement of enjoyment in and to all of the Common Area and Facilities and an access easement by and through any Common Area and Facilities, which easements shall be appurtenant to and shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:

- (i) The right of the Association to suspend the Member's voting rights and right to use the Common Area and Facilities for any period during which any Assessment against such Member's Lot remains past due and for any period during which such member is in violation of any provision of this Declaration;
- (ii) The right of the Association to dedicate or transfer all or any part of the Common Area and Facilities to any public agency, authority or utility;
- (iii) The right of the Association to borrow money for the purpose of improving the Common Area and Facilities and, in furtherance thereof, mortgage the Common Area and Facilities;
- (iv) The right of the Association to make reasonable rules and regulations regarding the use of the Common Area and Facilities and any Improvements thereon; and
- (v) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

4.02 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members shall be calculated as follows:

(a) Class A Members shall include each Owner of each Lot and shall have one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot into two or more Lots, the number of votes to which such Lot is entitled shall be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, e.g., each Lot resulting from the re-subdivision will be entitled to one (1) vote. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights and Assessments shall continue to be determined according to the number of original Lots contained in such consolidated Lot, unless otherwise approved by the Board. Nothing in this Declaration shall be construed as authorization for any re-subdivision or consolidation of Lots, such actions being subject to the conditions and restrictions of this Declaration.

(b) Class B Membership shall be the Declarant which shall have ten (10) votes for each Lot owned by the Declarant. The Class B Membership shall convert to a Class A Membership upon the earlier to occur of: (i) the Declarant has conveyed all Lots to owners; or (ii) the Declarant voluntarily converts the Class B Membership to a Class A Membership by written instrument recorded in the Official Public Records of Bell County, Texas.

(c) When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities shall be Members. The vote or votes (or fraction thereof) for such Lot shall be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event shall the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 4.02*.

(d) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such owner's Lot(s) remains past due, or for any period during which such Owner or such Owners' Lot(s) are in violation of this Declaration.

4.03 Right of Entry and Enforcement. The Association will have the right to enter at any time in an emergency or, in the case of a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon, for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in *Article 6* hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors, or assigns.

4.04 Common Area and Facilities. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

(a) To accept, own, operate and maintain all Common Area and Facilities which may be conveyed or leased to it by Declarant, together with all Improvements of whatever kind and for whatever

purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real or personal, conveyed or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements and other Association property owned by or leased to the Association. Such maintenance shall include, but not be limited to, painting, mowing and removal of rubbish or debris of any kind.

(b) To pay all real and personal property taxes and other taxes and Assessments levied upon or with respect to Common Area and Facilities or any other property owned by or leased to the Association to the extent that such taxes and Assessments are not levied directly upon the Members of the Association. The Association shall have all rights granted by law to contest the legality of the amount of such taxes and Assessments.

(c) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment of the Common Area and Facilities. Such insurance shall be in an amount as the Board shall deem appropriate.

(d) To borrow money and to mortgage, pledge or hypothecate any or all of the Common Area and Facilities as security for money borrowed or debts incurred subject to the limitations set forth in this Declaration, with the consent of at least two-thirds ($2/3^{\text{ds}}$) of the number of votes entitled to be cast pursuant to *Section 4.02* hereof.

(e) Common Areas and Facilities. No land within any Common Area and Facilities shall be improved, used or occupied, except in such manner as shall have been approved by a two-thirds vote of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, with the same quorum as required for Special Assessments herein. Such required approval shall extend to the nature and type of use, occupancy and improvement. Notwithstanding the foregoing provisions, during the time that Declarant owns Lots within the Subdivision, Declarant shall have the right to construct Improvements within the Common Areas, including park areas, if any, without the consent of the Members or the Association. Access to any Common Area and Facilities may be limited to persons currently paying Assessments, fees and other charges, or otherwise conditioned or restricted, or made available to non-owners, all upon such terms and conditions as the Board may determine.

(f) Condemnation. If all or part of the Common Area and Facilities is taken or threaten to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in the proceedings incident thereto. The expense of participation in such proceedings by the Association shall be a common expense to be paid out of Assessments. The Association is specifically authorized to obtain and to pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other person as the Association, in its discretion, deems necessary or advisable to aid it in any matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association, The Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to contest or defend any such proceedings, to make any settlement with respect thereto or to convey such property to the condemning authority in lieu of condemnation.

ARTICLE 5

INSURANCE

5.01 Insurance. Each Owner shall be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association shall not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary to, among other things, insure the Common Areas and Facilities and the acts or omissions of the Association. Insurance premiums for such policies shall be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot, or any Improvements or personal property located on a Lot.

5.02 Restoration. In the event of any fire or other casualty, the Owner shall promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month shall be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH SUCH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 5.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

5.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this *Article 5*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair,

restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 6

COVENANT FOR ASSESSMENTS

6.01 Assessments.

(a) Right to Levy Uniform Assessments. The Association may from time to time levy Assessments against each Lot which has been improved with a completed single-family residence. The level of Assessments shall be equal and uniform between and among all Lots. No Assessments hereunder shall be levied against any Lot unless a completed single-family residence has been constructed on the Lot. Declarant will not be charged Lot Assessments.

(b) Proration of Assessments. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

(c) Assessments as Secured Personal Obligations. Each Assessment together with such interest thereon and costs of collection as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment is levied and shall be secured by a lien hereby granted and conveyed by the Declarant to the Association against each such Lot and all Improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, shall be deemed granted and conveyed at the time that such Lot is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Declaration.

(d) Builders Subsidy. Builders shall hereby covenant and agree that in the event the annual maintenance fund and replacement fund revenues are insufficient to pay the operating expenses of the Association, all the Builders shall pay, within thirty (30) days of receipt of a written request for payment thereof, a prorated share according to the total percentage of Lots that each Builder has committed to purchase in the entire community. Any Builder who no longer owns a Lot for the purpose of constructing a dwelling will not be required to pay subsidies. The subsidy will be prorated for the year in which the Builder owns the last Lot.

6.02 Exemptions. The following areas within the Property shall be exempt from the Assessments provided for in this Article:

(a) All areas dedicated and accepted by public authority, by the recordation of an appropriate document in the Official Records of Bell County, Texas;

(b) The Common Area and Facilities; and

(c) Any portion of the Property or any Lot owned by the Declarant or Builder.

6.03 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing

the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

6.04 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular annual Assessments per Lot for the year 2006 exceed the sum of \$375. Thereafter, at the Board's sole and absolute discretion, the maximum regular annual Assessments per Lot permitted hereunder may be increased by no more than five percent (5%) per year (which may be cumulative – i.e., 5% for each year not previously increased), unless approved by the Declarant (unless Declarant has relinquished such approval right by written instrument recorded in the Official Public Records of Bell County, Texas) and at least two-thirds of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, with the same quorum as required for Special Assessments herein.

6.05 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments to enable the Board to carry out the mandatory functions of the Association under the Restrictions, upon the approval of the Declarant (unless Declarant has relinquished such approval right by written instrument recorded in the Official Public Records of Bell County, Texas) and at least two-thirds of the Owners of Lots within the Property at a meeting called for that purpose, by adequate notice, with at least sixty percent (60%) of the Owners of Lots within the Property or their proxies present at said meeting. If sixty percent (60%) of the Owners of Lots within the Property do not attend, a second meeting may be called with the same notice and the quorum needed for said second meeting shall be thirty percent (30%) of the Owners of Lots within the Property or their proxies.

6.06 Late Charges. If any Assessment, whether regular or special, is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) shall be a charge upon the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge shall never exceed the maximum charge permitted under applicable law.

6.07 Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein shall be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefore (or if there is no such highest rate, then at the rate of one and one half percent (1 ½%) per month, together with all costs and expenses of collection, including reasonable attorneys fees.

6.08 Assessment Lien and Foreclosure.

(a) All sums assessed in the manner provided in this Article but unpaid shall, together with interest as provided in *Section 6.07* hereof and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first Mortgage lien of record, securing in either instance sums borrowed for the improvement of the Lot in question. Any foreclosure by the holder of a first Mortgage lien of record shall terminate the liability of the Lot for delinquent, pre-foreclosure Association Assessments. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination must be signed by a duly authorized officer of the Association. To evidence the aforesaid Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Bell County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due. Mortgagees are not required to collect any assessments, which may be owed on any lot. Failure to pay assessments does not constitute a default under an insured mortgage.

(b) In addition to foreclosure by appropriate judicial proceedings, the Association may foreclose its lien against each Lot, in like manner as a Deed of Trust or contractual lien by nonjudicial foreclosure in accordance with Section 51.002 of the Texas Property Code or any future amendments or recodification thereof, without waiving its right to also proceed against the Owner on the Owner's personal liability. Each Owner, by acceptance of a deed to a Lot hereby expressly vests in the Board of Directors of the Association a power of sale to enforce the lien. The Board may exercise its power of sale by appointing an Agent or Agents, who may be removed and replaced at any time without any formality other than a written appointment, signed by the president or a vice president of the Association. The Board, acting on behalf of the Association, and acting through its appointed Agent or Agents, shall have the power to bid upon any Lot foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and to convey the same from and after the time that a foreclosure sale is conducted. The recitals in the conveyance to the purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs, assigns, executors, and administrators. In the event any sale is made of a Lot, the former Owner, his tenants and other persons in possession under him, shall forthwith upon the making of the sale, surrender and deliver possession of the Lot to the purchaser at the sale, and in the event of their failure to do so, any occupant shall become a tenant at sufferance of the purchaser at the foreclosure sale and the purchaser shall have the right to evict any persons by a proceeding brought in the Justice of the Peace Court where the Lot is situated. Any personal property left on the premises and not reclaimed within 10 days from the date of sale, shall be conclusively presumed to have been abandoned by the former Owner, his tenants or other parties in possession under him.

(c) In addition to the preceding, the Association is hereby given an assignment of rents and may directly collect from any tenant rents that are owed to an Owner in any amount that is owed to the Association that has not been paid by the Owner within thirty (30) days of written demand to the Owner at the last known address for the Owner as reflected in the books of the Association, such demand being effective upon being placed in the mail, certified mail, return receipt requested, postage prepaid. The Association is granted the right, without an obligation, to send a notice of Owner's non-payment to any lien holder on a Lot.

6.09 Fines and Damages Assessment. The Board may assess fines against an Owner for violations of any Restrictions which have been committed by an Owner, an occupant of the Owner's Lot, or the Owner or occupant's family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 6.09* shall be considered an Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area and Facilities by the Owner or the Owner's family, guests, agents, occupants, or tenants. The manager of the Association shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

The procedure for assessment of fines and damage charges shall be as follows:

- (a) the Association, acting through an officer, Board member or manager of the Association, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;
- (b) the notice of the fine or damage charge must describe the violation or damage;
- (c) the notice of the fine or damage charge must state the amount of the fine or damage charge;
- (d) the notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and
- (e) the notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges shall be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 6.07* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.01(c)* of this Declaration. Unless otherwise provided in this *Section 6.09*, the fine and/or damage charge shall be considered an Assessment for the purpose of this Article, and shall be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 6*.

ARTICLE 7

ARCHITECTURAL CONTROL COMMITTEE

7.01 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than the Declarant without the prior written approval of the Architectural Control Committee.

7.02 Architectural Control Committee.

(a) Composition. The Architectural Control Committee shall be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who shall review Improvements proposed to be made by any Owner other than Declarant. Declarant shall have the right to appoint and remove (with or without cause) all members of the Architectural Control Committee. Declarant may delegate this right to the Board by written instrument, and thereafter, the Board shall have the right to appoint and remove all members of the Architectural Control Committee. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the Architectural Control Committee. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties shall no longer be discharged by the Architectural Control Committee unless the sub-committee exercising such duties and responsibilities is dissolved by the Declarant. The right to create, dissolve, and appoint members of such sub-committees shall reside exclusively with the Declarant until such time as Declarant has delegated its right to appoint members of the Architectural Control Committee to the Board. The Architectural Control Committee shall have the right to employ consultants and advisors as it deems necessary or appropriate. Improvements constructed by the Declarant, or any assignee of Declarant's rights, need not be approved in advance by the Architectural Control Committee or any sub-committee thereof.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, shall be submitted in accordance with any rules adopted by the Architectural Control Committee together with any review fee which is imposed by the Architectural Control Committee in accordance with *Section 7.02(c)* to the Architectural Control Committee at the offices of Declarant designated in writing from time to time. No re-subdivision or consolidation shall be made, nor any Improvement placed or allowed on any Lot until the plans and specifications for the proposed structure or Improvement have been approved in writing by a majority of the members of the Architectural Control Committee. The Architectural Control Committee may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Architectural Control Committee or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Architectural Control Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Architectural Control Committee, in its sole discretion, may require. The Architectural Control Committee may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Architectural Control Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) Architectural Guidelines. The Architectural Control Committee, or any sub-committee thereof created pursuant to *Section 7.02(a)* (but any amendment to the Design Guidelines made by a sub-

committee shall only apply to the Improvements under the jurisdiction of such sub-committee) shall have the power, from time to time, to amend, modify, or supplement the Design Guidelines. All amendment, modifications and supplements to the Design Guidelines must be approved in advance by the Declarant unless the Declarant has relinquished such approval right by written instrument recorded in the Official Public Records of Bell County, Texas. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall control. In addition, the Architectural Control Committee shall have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges shall be held by the Architectural Control Committee and used to defray the administrative expenses incurred by the Architectural Control Committee in performing its duties hereunder; provided, however, that any excess funds held by the Architectural Control Committee shall be distributed to the Association at the end of each calendar year. The Architectural Control Committee shall not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the Architectural Control Committee. The Architectural Control Committee shall have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the Architectural Control Committee. The Architectural Control Committee may, by resolution unanimously adopted in writing, designate one or two of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the Architectural Control Committee, except the granting of variances. In the absence of such designation, the vote of a majority of all of the members of the Architectural Control Committee taken at a duly constituted meeting shall constitute an act of the Architectural Control Committee.

(e) Failure to Act. In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and the Architectural Control Committee shall fail either to approve or reject such plans and specifications for a period of ninety (90) days following such submission, no approval by the Architectural Control Committee shall be required, and approval of such plans and specifications shall be presumed; provided, however, that such ninety (90) day period shall not begin to run until all information required to be submitted by the Architectural Control Committee to assist in its review of any plans or specifications has been received by the Architectural Control Committee. Any failure of the Architectural Control Committee to act upon a request for a variance shall not be deemed a consent to such variance, and the Architectural Control Committee's written approval of all requests for variances shall be expressly required.

(f) Variances. The Architectural Control Committee may grant variances from compliance with any of the provisions of this Declaration, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, set-backs, building envelopes, colors, materials, or land use, when, in the opinion of the Architectural Control Committee, in its sole and absolute discretion, such variance is justified due to visual or aesthetic considerations or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Architectural Control Committee. Plans and specifications which have been approved by the Architectural Control Committee without conditions or exceptions and which reflect deviations from this Declaration shall constitute a writing for the purpose of the foregoing sentence. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any supplemental declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration, or any supplemental declaration, for any purpose except as to the particular

property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration.

(g) Duration of Approval. The approval of the Architectural Control Committee of any plans and specifications, whether by action or inaction, and any variances granted by the Architectural Control Committee shall be valid for a period of one hundred and twenty (120) days from the date of approval. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion thereafter, the Owner shall be required to resubmit such plans and specifications or request for a variance to the Architectural Control Committee, and the Architectural Control Committee shall have the authority to re-evaluate such plans and specifications in accordance with this *Section 7.02(g)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(h) No Waiver of Future Approvals. The approval of the Architectural Control Committee to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Architectural Control Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Architectural Control Committee.

(i) Work in Progress. The Architectural Control Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications.

(j) Address. Plans and Specifications shall be submitted to the Architectural Control Committee at 12301-B Riata Trace Parkway, Building 2, Austin, Texas, 78727, Attn. Cameron Scott, or such other address as may be designated from time to time.

(k) Non-Liability of Committee Members. Neither the Architectural Control Committee, nor any member shall be liable to any Owner or to any other person for any loss, damage or injury arising out of the performance of the Architectural Control Committee's duties under this Declaration, unless such loss, damage, or injury is due to the willful misconduct or bad faith of the Architectural Control Committee or one or more of its members, as the case may be.

ARTICLE 8

MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property.

8.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of Assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

8.02 Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

8.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law shall relate only to the individual Lots and not to any other portion of the Property.

ARTICLE 9

GENERAL PROVISIONS

9.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration shall run with and bind the portion of the Property described in such notice, and shall inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Records of Bell County, Texas, and continuing through and including January 1, 2035, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least ninety percent (90%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that such change shall be effective only upon the recording of a certified copy of such resolution in the Official Public Records of Bell County, Texas. Notwithstanding any provision in this *Section 9.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Texas law restricting the period of time that covenants on land may be enforced, such provision shall be stricken herefrom and the remaining provisions of this Declaration shall remain in full force and effect.

9.02 Eminent Domain. In the event it shall become necessary for any public authority to acquire all or any part of the Common Area and Facilities for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received shall be held by the Association for the benefit of the Owners.

9.03 Amendment. This Declaration may be amended or terminated by the recording in the Official Public Records of Bell County, Texas, of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (unless Declarant has relinquished such approval right by written instrument recorded in the Official Public Records of Bell County, Texas) and Members entitled to cast at least seventy-five percent (75%) of the number of votes entitled to be cast by members of the Association. No amendment shall be effective without the written consent of Declarant, its successors or assigns. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on Lots; (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development, or (e) to annex any other land to be governed by this Declaration. Amendments to any section of this Declaration regarding the following require the city's written consent: self-sustaining reserve fund for the operation, repair, and maintenance of all private infrastructure and common use facilities; providing for a current repair and maintenance plan for all private infrastructure and common use facilities; and mandatory membership in the association and payment of dues and assessments.

9.04 Roadway and Utility Easements. Declarant reserves the right to locate, relocate, construct, erect, and maintain or cause to be located, relocated, constructed, erected, and maintained in and on any streets maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Area and Facilities, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

9.05 Enforcement. The Association or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration shall not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

9.06 Higher Authority. The terms and provisions of this Declaration are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

NOTICE

Users of this Declaration and the Design Guidelines should periodically review statutes and court rulings that may modify or nullify the terms and provisions of those documents or their enforcement, or which may create rights or duties not contemplated therein.

9.07 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

9.08 Conflicts. If there is any conflict between the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted pursuant to the terms of such documents, the provisions of this Declaration shall govern.

9.09 Gender. Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

9.10 Acceptance by Grantees. Each grantee of Declarant of a Lot, or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. All impositions and obligations hereby imposed shall constitute covenants running with the land within the Property, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

9.11 Notices. Any notice permitted or required to be given to any person by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

9.12 City Permission. Permission is extended to the city for practical access to public infrastructure at any time without liability when on official business. This practical access will also extend to the city, without liability, permission to remove obstructions including, but not limited to any gate or any other type of obstacle that precludes the accomplishment of the official business. Yowell Ranch Home Owner's Association, as owner of common use facilities, agrees to release, and hold harmless the city, any governmental entity, and public utility for damages to common facilities occasioned by the reasonable use of such common facilities by the city, governmental entity, or public utility and for damages and injury arising from the condition of said common use facilities. Any amendment to this section requires the city's written consent.

ARTICLE 10

EASEMENTS

10.01 Right of Ingress and Egress. Declarant, its agents and employees, shall have a right of ingress and egress over and the right of access to the Common Area and Facilities to the extent necessary to use the Common Area and Facilities and the right to such other temporary uses of the Common Area and Facilities as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property.

10.02 Reserved Easements. All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said

easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

10.03 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approve in writing by the Architectural Committee.

10.04 Utility Easements. Declarant hereby reserves unto itself and Declarant's successors and assigns a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; and (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant. Declarant shall be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and improvements described in (i) through (iii) of this *Section 10.04*. The exercise of the easement reserved herein shall not extend to permitting entry into any residence, nor shall it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon. The Owner will be liable for any planting of shrubbery, trees, lawns, or flowers which are in easement areas for utility services.

10.05 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and shall be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

ARTICLE 11

DEVELOPMENT RIGHTS

11.01 Development by Declarant. It is contemplated that the Property will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant reserves the right, but shall not be obligated, to create and/or designate Lots, Common Area and Facilities and to subdivide with respect to any of the Property pursuant to the terms of this *Section 11.01*, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property. As each area is developed or dedicated, Declarant may record one or more supplemental declarations and designate the use, classification, modify or amend the restrictions and covenants set forth in this Declaration, and/or promulgate such additional covenants,

conditions and restrictions as Declarant may deem appropriate for that area. Any supplemental declaration may provide its own procedure for the amendment of any provisions. All lands, Improvements, and uses in each area so developed shall be subject to both this Declaration and the supplemental declaration, if any, for the affected area of the Property.

11.02 Special Declarant and Builder Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant and Builder shall have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of Improvements by Declarant and Builder shall not be considered a nuisance, and Declarant and Builder hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 11.02* until Declarant and Builder has relinquished such rights by written instrument recorded in the Official Public Records of Bell County, Texas.

11.03 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land, such land shall be considered part of the Property for purposes of this Declaration, and such added lands shall be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, as modified or amended by any supplemental declaration filed for the added land, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property, Declarant shall be required only to record in the Official Public Records of Bell County, Texas, a notice of addition of land containing the following provisions:

A reference to this Declaration, which reference shall state the volume and initial page number of the Official Public Records of Bell County, Texas wherein this Declaration is recorded;

(a) A statement that such land shall be considered Property for purposes of this Declaration, all of the terms, covenants, conditions, restrictions and obligations of this Declaration shall apply to the added land, as modified or amended by any supplemental declaration filed for the added land; and

(b) A legal description of the added land.

11.04 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association: (i) any portions of the Property which have not been included in a Plat; (ii) any portion of the Property included in a Plat if Declarant owns all Lots described in such Plat; and (iii) any portions of the Property included in a Plat even if Declarant does not own all Lot(s) described in such Plat, provided that Declarant obtains the written consent of all other Owners of Lot(s) described in such Plat. Upon any such withdrawal and renewal this Declaration and the covenants conditions, restrictions and obligations set forth herein shall no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Public Records of Bell County, Texas, a notice of withdrawal of land containing the following provisions:

(a) A reference to this Declaration, which reference shall state the volume and initial page number of the Official Public Records of Bell County wherein this Declaration is recorded;

(b) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and

- (c) A legal description of the withdrawn land.

ARTICLE 12

DISPUTE RESOLUTION

12.01 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all parties subject to this Declaration (collectively, the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in *Section 12.02* in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Restrictions; or
- (ii) the rights, obligations, and duties of any Bound Party under the Restrictions; or
- (iii) the design or construction of improvements within the Property, other than matters of aesthetic judgment under *Article 7*, which shall not be subject to review.

The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 12.02*:

- (i) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration; and
- (ii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Restrictions; and
- (iii) any suit in which any indispensable party is not a Bound Party; and

- (iv) any suit as to which any applicable statute of limitations would expire within one hundred and eighty (180) days of giving the Notice required by *Section 12.02 (a)*, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

12.02 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in *Section 12.02(a)* (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Bell County, Texas.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such

agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

12.03 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, excluding the votes held by the Declarant, except that no such approval shall be required for actions or proceedings:

- (a) initiated while Declarant or Builder owns any portion of the Property; or
- (b) initiated to enforce the provisions of the Restrictions, including collection of assessments and foreclosure of liens; or
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings except any such amendment shall also be approved by the Declarant for so long as Declarant owns any portion of the Property.

[CONTINUED ON FOLLOWING PAGE]

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Bell County, Texas.

DECLARANT:

W.B. DEVELOPMENT, LTD., Texas limited partnership

By: W.B. Development Company, a Texas corporation, its General Partner

By: _____
Bruce Whitis, President

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2006, by Bruce Whitis, President, W.B. Development, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

KILLEEN DAILY HERALD

Serving The Growing Central Texas Area

Notary Public, Bell, Texas

12/28/09

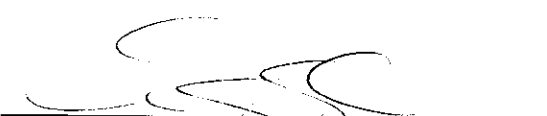
PUBLISHER'S AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF BELL

Personally appeared before the undersigned authority **Tracy Stoker** who being sworn says that the attached ad for: **City of Killeen, Acct # 9514, a word ad.**

was published in the Killeen Daily Herald on the following date, to-wit: **December 28, 2008.**

At the cost of: **\$214.30 (including internet)**



Advertising Representative

Subscribed and sworn before me on January 7, 2009.

127 Legal Notices



CITY OF KILLEEN
"The City Without Limits"

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing is scheduled to be held by the City Council, City of Killeen, at 6:00 p.m., on Tuesday, January 13, 2009, in Council Chambers at City Hall, 101 North College Street, to consider the following:

HOLD a public hearing and consider a request submitted by W&B Development (Case #Z08-55) to rezone approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-family Residential District), the property is located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

HOLD a public hearing and consider a request submitted by Glenn and Patricia Nellis (Case #Z08-53) to rezone approximately 0.459 acre, being part of the Robert Cunningham Survey, Abstract No. 199, from R-1 (Single-Family Residential District) to B-5 (Business District) with SUP (Special Use Permit) for dog grooming and

127 Legal Notices

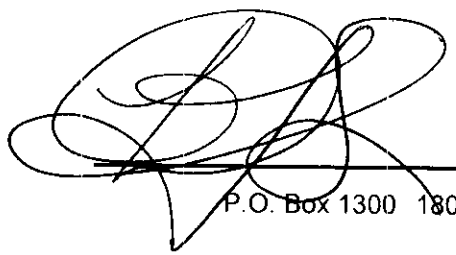
boarding for less than 20 dogs, the property is locally known as 4606 Cunningham Road, Killeen, Texas.

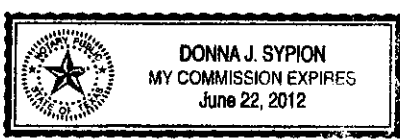
WITNESS MY HAND THIS 28th DAY OF DECEMBER 2008.

Paula A. Miller
City Secretary

By Tony McIlwain
City Planner

(Legal notice published in the Killeen Daily Herald on December 28, 2008)





P.O. Box 1300 1809 Florence Rd.

Killeen, TX 76540

(254) 634-2125

MINUTES
REGULAR MEETING
PLANNING AND ZONING COMMISSION
DECEMBER 22, 2008
CITY HALL, 101 N. COLLEGE STREET
MAIN CONFERENCE ROOM

ROLL CALL

PRESENT:

Commission: Johnny Frederick, Chair; Jr.; Miguel Diaz; Bobby Lee Hoover; Craig Langford, Vice Chair; Eugene Kim; Austin Pickett; Joel Steine; Terry Traina

Staff: Dr. Ray Shanaa, AICP, Executive Director of Planning and Development Services; Tony D. McIlwain, AICP, City Planner; Vicki Winken, Planning Assistant; Maria Lopez, Planning Clerk; John P. Nett, P.E., City Engineer; Scott Osborn, Assistant City Attorney; Kristina Ramirez, P.E., Drainage Engineer; Earl Abbott, CBO, Building Official

ABSENT: Robert Hicks

CALL TO ORDER – 6:00 P.M. – CITY HALL COUNCIL CHAMBERS

Chairman Frederick called the meeting of the Planning and Zoning Commission to order at 6:05 p.m.

APPROVAL OF AGENDA

Vice Chair Langford motioned to approve the agenda as published. Commissioner Steine seconded the motion. The motion carried 7-0.

CONSENT AGENDA

- CA-1** Consider minutes of the Regular Planning and Zoning Commission Meeting of **December 8, 2008**.
- CA-2** Consider a request submitted by Charles D. Cospers and Linda Cospers (**Case #08-085FMS: Braedon Creek Addition, Second Extension**) for a final minor plat of approximately 0.773 acres, being part of the Eugene LaSere Survey, Abstract No. 528, for property locally known as 4205 Onion Road, Killeen, Texas.
- CA-3** Consider a request submitted by Gerald W. Hodges and Huynh T. Hodges (**Case #08-063FMS: Hodges Addition**) for a final minor plat of approximately 1.0 acre, being part of the WH Cole Survey, Abstract No. 200 for property locally known as 10230 W. Trimmier Road, Killeen Texas.

Commissioner Traina motioned to approve the consent agenda. Commissioner Diaz seconded the

motion. The motion carried 7-0.

Chairman Frederick stated that the consent agenda is approved.

CITIZENS PETITIONS FOR INFORMATION

No one requested to speak.

PUBLIC HEARING

PH-1 HOLD a public hearing and consider a request submitted by W&B Development (**Case #08-079FMRRS: Horton Park Addition**) for a plat of approximately 1.312 acres, being a replat of Lots 50 and 51, Block 7 and a replat of a part of Lot 1, Block 10, Spanish Oaks Subdivision. The property is locally known as 7105 and 7107 Osbaldo Drive, Killeen, Texas.

Chairman Frederick requested staff comments.

City Planner McIlwain stated that this request is submitted by W & B Development for a minor plat of approximately 1.312 acres, being a replat of Lots 50 and 51, Block 7 and a replat of Lot 1, Block 10, of the Spanish Oaks Subdivision, Killeen, Texas. The property is currently zoned R-1 and the applicants are creating a new lot within the subdivision.

The Staff Review Committee met in a correction validation meeting on Monday, December 15, 2008, and determined that the plat submittal meets the City's development guidelines. Staff recommends that the Planning and Zoning Commission approve the plat.

Mr. Michael Kriegel, Mitchell and Associates, 102 N. College St, Killeen, Texas, represented this case.

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

Commissioner Diaz motioned to approve plat case #08-079FMRRS: Horton Park Addition. Vice Chair Langford seconded the motion. The motion carried 7-0.

Chairman Frederick stated this case is approved.

Mr. Bobby Lee Hoover stepped down from the dais for the following case.

PH-2 HOLD a public hearing and consider a request submitted by Bobby Lee Hoover and John D. Hoover, Jr. (**Case #08-066FMRRS: Coffield Subdivision, Section Three, Replat**) for a minor plat, being a replat of Lots 3 thru 6, Coffield Addition, for property locally known as 1014, 1102, 1104 and 1106 Coffield Street, Killeen, Texas.

Chairman Frederick requested Staff Comments.

City Planner McIlwain stated that this request is submitted by Mitchell and Associates on behalf of Bobby Lee Hoover and John D. Hoover for a minor plat of approximately 0.467 acre, being out of the John R. Smith Survey, Abstract No. 797. The property is locally known as 1014, 1102, 1104, and 1106 Coffield Street, Killeen, Texas. The property is currently zoned R-2 and the applicants are replatting to combine four lots into two lots.

The Staff Review Committee met in a correction validation meeting on Monday, December 1, 2008, and determined that the plat submittal meets the City's development guidelines. Staff recommends that the Planning and Zoning Commission approve the plat.

Mr. Mike Kriegel, Mitchell and Associates, 102 N. College, Killeen, Texas, represented this case.

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

Commissioner Steine motioned to approve plat case #03-07 FMRRS: Coffield Subdivision; Section Three Replat. Commissioner Traina seconded the motion. The motion carried 6-0.

Chairman Frederick stated this case is approved.

Commissioner Hoover returned to the dais.

PH-3 HOLD a public hearing and consider a request submitted by Daniel A. and Linda Sue Corbin (**Case #08-083FMRRS: Corbin Addition**) for a minor plat of approximately 0.913 acre, being a replat of Lot 2, Block 2, Stillforest Subdivision 2nd Extension Amended and Lot 18, Block 3, Stillforest Subdivision, for property locally known as 6009 Stillwood Circle and 1315 Dripping Springs Drive, Killeen, Texas.

Chairman Frederick requested staff comments.

City Planner McIlwain stated that this request is submitted by Killeen Engineering and Surveying, Ltd. on behalf of Daniel and Linda Corbin for a minor plat of approximately 0.913 acre, being a replat of Lot 2, Block 2, Stillforest Subdivision, 2nd Extension Amended and Lot 18, Block 3, Stillforest Subdivision. The property is locally known as 6009 Stillwood Circle and 1315 Dripping Springs Drive, Killeen, Texas. The property is currently zoned R-1 and the applicants are replatting to combine two lots into one lot.

The Staff Review Committee met in a correction validation meeting on Monday, December 15, 2008, and determined that the plat submittal meets the City's development guidelines. Staff recommends that the Planning and Zoning Commission approve the plat.

Ms. Michelle Lee, Killeen Engineering and Surveying, 2901 E. Stan Schlueter Loop, Killeen, Texas, represented this case.

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

Commissioner Diaz motioned to approve plat case #08-066FMRRS: Coffield Subdivision, Section Three Replat. Commissioner Steine seconded the motion. The motion carried 7-0.

Chairman Frederick stated this case is approved.

PH-4 HOLD a public hearing and consider a request submitted by Dodge Country, Ltd., (**Case #08-084FMR: Dodge Country No. 1 Addition**), for a minor plat, being a replat of Ace Addition and 0.293 acre tract, being part of the Alexander Thompson Survey, Abstract No. 813, for property locally known as 112 – 118 Wolf Street, Killeen, Texas.

Chairman Frederick requested staff comments.

City Planner Mollywan stated that this request was submitted by Dodge Country, Ltd. for a minor plat of approximately 0.54 acre, being a replat of Ace Addition and a .293 acre tract being part of the Alexander Thompson Survey, Abstract No. 813. The property is locally 112-118 Wolf Street, Killeen, Texas. The property is currently zoned B-5 and the applicant is replatting the property to receive building permits.

The Staff Review Committee met in a correction validation meeting on Monday, December 15, 2008, and determined that the plat submittal does not meet Section 26-93 (a) of the City of Killeen Code of Ordinances (Code), which states:

Water and sewer mains, force mains and lift stations, streets and drainageways shall be located in easements or rights-of-way secured and paid for by the applicant. Such easements shall be properly assigned to the city before service is extended to the subdivision.

The applicant subsequently provided staff with evidence of an existing sewer line. Staff recommended approval of the plat.

Chairman Frederick Opened the public hearing.

There was no representation for this case. Commissioner Kim motioned to suspend the rules and hear the case without representation. Commissioner Diaz seconded the motion. The motion carried 7-0.

Chairman Frederick opened the public hearing. Mr. Bill Sellers spoke in support of the requested plat case. With no one else requesting to speak, the public hearing was closed.

Commissioner Kim motioned to approve plat case #08-084FMR: Dodge Country No. 1, Addition. Commissioner Pickett seconded the motion. The motion carried 7-0.

Chairman Frederick stated this case is approved.

PH-5 HOLD a public hearing and consider a request submitted by Glenn and Patricia Nellis (Case #Z08-53) to rezone approximately 0.459 acre, being part of the Robert Cunningham Survey, Abstract No. 199, from R-1 (Single-Family Residential District) to B-5 (Business District) with SUP (Special Use Permit) for dog grooming and boarding for less than 20 dogs, the property is locally known as 4606 Cunningham Road, Killeen, Texas.

Chairman Frederick requested staff comments.

City Planner Mellwain stated that this request is submitted by Glenn and Patricia Nellis to rezone .459 acre, being part of the Robert Cunningham Survey, Abstract No.149, Killeen, Texas, from R-1 (Single- Family Residential) to B-5 (Business District) with a SUP (Special Use Permit). The property is located along the eastern right-of-way of Cunningham Road, approximately 886 feet south of E. Stan Schlueter Loop (FM 3470) and is locally known as 4606 Cunningham Road, Killeen, Texas. The applicant is seeking to rezone this parcel to allow for a pet grooming shop and boarding of 20 dogs or less.

The subject site consists of an unplatted tract of land, and currently there is a tower on a portion of this property. Cunningham Road is of a substandard composition and its improvement is subject to the future capital improvement program. There is adequate water supply; however sewer facilities are not immediately accessible to the subject property. The properties located to the north, east and south of this tract are zoned R-1. The property located west of the subject tract (across Cunningham Road) is the Christian House of Prayer, a large church, which is also, zoned R-1.

The Code of Ordinances allows for a grooming shop under the B-3 (Local Business) zoning district. Commercial or private kennels are not allowable uses "by right" in any zoning district. The special use permit provisions of Section 31-456 (10) of the Code of Ordinances state that a commercial or private kennel can be located in an "A" (Agricultural) zoning district upon approval of the permit, however, the "A" district requires at least 3 acres and the special use permit would not allow for the additional business aspect the applicant is intending such as grooming. However, Section 31-456 (11) of the Code provides for:

"Any commercial use not included in any district that has the potential to be noxious or offensive because of odors, dust, noise, fumes or vibrations shall be permitted in district B-5 only with a special use permit granted under the provisions of this section."

A commercial kennel is not a use "by right" in any zoning district. However this aforementioned provision seems to allow for commercial uses not specifically articulated in the Code.

It's reasonable to assume that a kennel operation will have instances of noise (e.g. barking dogs) and possibly odor. It's also reasonable to assume that this type of use is best integrated in an area when it is appropriately buffered from residentially zoned properties, where it might present as a nuisance to neighbors. Section 31-156 (a) allows the city council, by an affirmative three-fourths vote, to grant a special use permit for certain uses in any district, and may impose appropriate conditions and safeguards, including a specified period of time for the permit, to protect the comprehensive plan and to conserve and protect property and property values in the

The occurrence of B-5 zoning in this area could be viewed as spot zoning, as the use being proposed by the applicant is not allowed in the surrounding R-1 zoned properties. Additionally, the element of the existing tower in conjunction with the request would result in a cumulative effect of uses that are inconsistent with the surrounding properties. However, the special use permits limits the activity of the use for the property. The specific nature of those limitations can include any conditions that are deemed necessary to protect property and property values in the surrounding neighborhood. It is therefore possible for the City Council to regulate many aspects of the business operation. However, strong consideration should be given to the existing and future land uses of the community. The surrounding property is largely undeveloped; however, the existence of an animal grooming/boarding operation may result in negative externalities if the surrounding residential zoned properties are developed. If approved, staff recommends certain safeguards be considered such as hours of operation, screening and buffering of the site, and a one-year approval of the special use permit.

A letter of notification was mailed to five (5) surrounding property owners in the 2008 notification area. Staff received has received one letter of opposition from Milton Mize, owner of 4702 Cunningham Road.

Ms. Patricia Nellis, 4601 Cunningham Road, Killeen, Austin, Texas, represented this case.

Chairman Frederick opened the public hearing.

Mr. Leroy Nellis, 6418 Zaddock Woods, Austin, Texas spoke in support of the B-5 zoning and stated that most of the surrounding property is owned by his mother and she is in favor of the dog grooming and kennel business. With no one else requesting to speak, the public hearing was closed. Ms. Patricia Nellis stated that she had no objection to amending her request to B-3 zoning.

Commissioner Kim motioned to recommend approval of B-3 (Local Business District) zoning for case #Z08-53. Commissioner Diaz seconded the motion. The motion carried 7-0.

Chairman Frederick stated this will be forwarded to City Council on January 13, 2009 with a recommendation to approve B-3 (Local Business District) zoning.

PH-6 A. HOLD a public hearing and consider a request submitted by W&B Development (**Case #Z08-55**) to rezone approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-family Residential District), the property is located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

Chairman Frederick requested staff comments.

City Planner McIlwain stated that this is a request submitted by W&B Development to rezone approximately 87.12 acres, being part of the Simeon D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) consisting of 381

lots and 5 blocks for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road, Killeen, Texas.

The applicant proposes to rezone the property to allow for a residential development consisting of single-family homes and an open space/ amenity area. The proposed development will include seven common areas tracts totaling 15.5 acres. The PUD zoning would allow the applicant to develop single-family homes on lots greater than and less than 6,000 square feet. Some of the PUD develop standards are listed below in Table 1.

Table 1. Development Standards for Yowell Ranch PUD

Total Lots	381
Set backs	20' setback required for front and rear yards; 15' setback required for side yards that abut a street and 5' setback for interior side yards
Minimum floor area	1,000 square feet
Masonry requirements	One-story - 60% requirement of native stone, brick, or cementitious siding product which collectively comprise a masonry veneer. Two-story -75% requirement of combination of native stone, brick or cementitious siding product comprising a 75% masonry veneer for front exterior wall; 60% requirement of native stone, brick, or cementitious siding product which collectively comprise a masonry veneer for side exterior walls of first floor.
Landscaping requirements	Front-yard- fully-sodded with 1 tree, and 5 bushes

Legal staff has reviewed the bylaws, Articles of Incorporation and Declaration for the Yowell Ranch PUD zoning request and determined that the documents provided by the applicant meets the requirements of Section 31-805 of the Code of Ordinances. Also, letters of notification were mailed to eleven (11) property owners in the 200-foot notification area. Staff received one response in support for the rezone request from Mr. Bruce Whitis.

If this rezone application is recommended for approval by the Commission, the Planning staff recommends the following five conditions:

- Provide a 42' wide street paving section for a minimum length of 100' as measured from all subdivision entrances.
- Increase the minimum floor area (enclosed living area) from 1,000 to 1,200 square feet.
- 90 % requirement of native stone, brick or other masonry product for an entire home.
- No repeat or duplicate elevation within a group of five homes.
- Provide information in the PUD document that details the proposed recreational uses within Tract 1.

Mr. Bruce Whitis, W&B Development, 3000 Illinois Avenue, Ste 100, Killeen, Texas, represented this case.

Chairman Frederick opened the public hearing.

Mr. Bill King spoke to the Commissioners with concerns that he has with the proposed zoning.

He stated that he is in favor of the projected green space with the amenities that are proposed, but he is in opposition to the density of housing even though he is aware that requiring 1-3 acre lots is not feasible. With no one else requesting to speak, the public hearing was closed.

- Vice Chair Langford motioned to recommend approval of zoning case #Z08-55 with the following recommendation: Provide a 42' wide street paving section for a minimum length of 100' as measured from all subdivision entrances.
- Increase the minimum floor area (enclosed living area) from 1,000 to 1,200 square feet.
- 90 % requirement of native stone, brick or other masonry product for an entire home.
- No repeat or duplicate elevation within a group of five homes.
- Provide information in the PUD document that details the proposed recreational uses within Tract 1 to include a playground, pool, hike and bike trail, and at least one pond.

Commissioner Steine seconded the motion. The motion carried 5-2 with Commissioners Traina and Kim in opposition.

Chairman Frederick stated this will be forwarded to City Council on January 13, 2009 with a recommendation to approve.

B. Consider a request submitted by W&B Development, Ltd (Case #08-069FS: Yowell Ranch Phase One (PUD)) for a plat of approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

Chairman Frederick requested staff comments.

City Planner McIlwain stated that this request is submitted by W & B Development, Ltd., Inc. for a final plat of approximately 87.19 acres, being part of the Simeon D. Carothers Survey, Abstract No. 177. The property is located on the east right-of-way of Featherline Road approximately 1000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas. The property is currently zoned R-1 (Single-Family Residential) and the applicant is platting the property in conjunction with a PUD rezone request.

The Staff Review Committee met in a correction validation meeting on Monday, December 15, 2008, and determined that the applicant has made corrective changes to the plat as requested. Section 31-800 of the City of Killeen Code of Ordinances states the following:

A planned unit development (PUD) is a land use design incorporating the concepts of density and common open space. The PUD designation serves as an "overlay zoning and development classification." In this capacity, the designation permits specific negotiated development regulations to be applied to the base land use zoning district(s) in which the property is located. When a parcel of land receives a PUD designation, the entire parcel must be assigned one or more standard zoning district classifications. However, the added PUD overlay classification enables the developer of the site to request that specific land use development regulations be applied to his development site. Such specific land use and development regulations shall not take effect until they are

reviewed, public hearings held and approved by both the planning and zoning commission and the city council.

The applicant has concurrently submitted this plat case with a PUD rezone request. The plat does not conform to the current zoning R-1 district for the property. Therefore, staff recommends to the Commission that approval of the plat case be contingent upon the Commission's recommendation of approval of the applicant's rezoning request.

Mr. Bruce Whitis, W&B Development, 3000 Illinois Avenue, Ste 100, Killeen, Texas, represented this case.

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

Commissioner Diaz motioned to approve plat case #08-069FS: Yowell Ranch Phase One (PUD). Vice Chair Langford seconded the motion. The motion carried 5-2 with Commissioners Traina and Kim in opposition.

Chairman Frederick stated this will be heard by City Council on January 13, 2009.

OTHER ITEM

- OI-1** Consider a request submitted by W&B Development, Ltd (**Case #08-082FS: Yowell Ranch (Preliminary Plat)**) for a plat of approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

Mr. Bruce Whitis withdrew the above plat case.

COMMISSION & STAFF ITEMS

- I. Attendance chart (for your information)
- II. Discuss and consider adoption of the Planning and Zoning Commission Calendar for 2009.

Vice Chair Langford motioned to approve the 2009 Planning and Zoning Commission Calendar. Commissioner Diaz seconded the motion. The motion carried 6-1 with Commissioner Traina in opposition, her opposition to the calendar is the P&Z meeting scheduled for December 21, 2009.


- III. Discuss and consider revisions to the Planning and Zoning Commission's Rules and Procedures.

Vice Chair Langford motioned to place this item on the workshop agenda for further discussion.. Commissioner Hoover seconded the motion. The motion carried 7-0.


Chairman Frederick stated that Item III will be placed on the workshop agenda for January 12, 2009 of the Planning and Zoning Commission.

ADJOURNMENT

Chairman Frederick adjourned the Planning and Zoning Meeting at 7:21 p.m. The next regularly scheduled meeting for the Planning and Zoning Commission is **January 12, 2009** at 6:00 p.m., in the Council Chambers at 101 North College Street, Killeen, Texas.



Vicki Wanken
Planning Assistant



Johnny Frederick
Chairman, Planning & Zoning Commission



CITY OF KILLEEN

PLANNING DIVISION

P.O. Box 1329 Killeen, TX 76540-1329

Telephone: 254.501.7630

Fax: 254.501.7628

January 21, 2009

W&B Development, Ltd
3000 Illinois Avenue, Ste 100
Killeen, Texas 76543

RE: Zoning Case #Z08-55: R-1 to PUD with R-1

Dear Property Owner:

On Tuesday, January 13, 2009 the City Council of the City of Killeen granted your request for rezoning, from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-Family Residential District) for approximately 87.12 acres, being part of the Simeon D. Carothers Survey, Abstract No. 177. The property is located on the east right-of-way of Featherline Road and north of the Police Headquarters Addition, Killeen, Texas.

Please feel free to contact our office if you should have any questions.

Sincerely,

Vicki Wanken
Planning Assistant

Enclosure
Ord. #09-002



"The City Without Limits"

January 8, 2009

Planning and Zoning Commission
City of Killeen
PO Box 1329
Killeen, Texas 76540-1329

To Whom It May Concern;

My friends and neighbors have informed me of the magnitude of Case #Z08-55 a request submitted by W & B Development to rezone approximately 87.15 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-Family Residential District) for property located on the east right-of-way of Featherline Road approximately 1000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

I am shocked and appalled of what this developer is trying to do right here in my neighborhood. It is exactly what I feared would happen if we were annexed into the City of Killeen. I had no idea of the density of this housing area, 381 lots on 87 acres, and the limited access on two streets opening onto Stagecoach Road, just 80 yards from a sharp curve, and onto Featherline Road. Traffic on these country roads is already at a dangerous level. Only one lane in each direction, without passing or turn lanes. There are no curbs or gutters, and no sidewalks. Bicycles and pedestrians must use the road until a vehicle comes along and then they must get off into the bar ditch to avoid being hit. These old country roads must be upgraded before any more residential districts are developed in this area.

The proposed development is not consistent with the residential properties adjacent to them. This is an open environment with fresh air and mother natures fields and wildlife. I understand that Mr Bill Yowell has terminated his ranching business and that those ranch lands will be converted to homesteads. I can live with that as long as the City of Killeen will:

1. Place a moratorium on any future residential developments until such time as our roads can safely accept more traffic and there are sidewalks that I and my children can use to visit nearby friends and recreational areas without being run over.
2. All future residential developments will be in keeping with the surrounding neighborhood. No slums. Nice homes should be built with brick or native stone on at least half acre lots and landscaped to include shrubs and trees. Lots of trees. Our zoning ordinances should be upgraded to require this standard

I hereby register my opposition to the proposed Case # Z08-55 and pray that the City Council will disapprove the request to rezone the property from R-1 to PUD.

JEANNINE TUCKER 310 LIEWELLYN Killeen

(printed name & address)

Jeannie Tucker

(Signature)

RECEIVED

JAN 13 2009

PLANNING

PH-2 A. **HOLD** a public hearing and consider a request by W&B Development (**Case #Z08-55**) to rezone approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-family Residential District), the property is located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

B. Consider a request by W&B Development, Ltd (**Case #08-069FS: Yowell Ranch Phase One (PUD)**) for a plat of approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

Ordinances / Resolutions

OR-1 Consider a memorandum/resolution approving the appointment of members to the Airport Expansion Committee (AEC).

OR-2 Consider an ordinance to amend the police department civil service pay plan to authorize clothing assignment pay for police officers.

Citizens Petitions and Information

Comments should be limited to three minutes.

CP-1 John Pimenpel (708 W. Ave D)-Not Enough Help for People with Disabilities

CP-2 Julius Shaw (605 N. Gray)-What was the Justice Department Recommendation for the Killeen Police Department?

Adjournment

CLOSED MEETINGS

The public is hereby informed that notices for City of Killeen meetings will no longer distinguish between matters to be discussed in open or closed session of a meeting. This practice is in accordance with rulings by the Texas Attorney General that, under the Texas Open Meetings Act, the City Council may convene a closed session to discuss any matter listed on the agenda, without prior or further notice, if the matter is one that the Open Meetings Act allows to be discussed in a closed session.

AMERICANS WITH DISABILITIES ACT

This meeting is being conducted in accordance with the Texas Open Meetings Law [V.T.C.A., Government Code, § 551.001 et seq.]. This meeting is being conducted in accordance with the Americans with Disabilities Act [42 USC 12101 (1991)]. The facility is wheelchair accessible and handicap parking is available. Requests for sign interpretive services are available upon requests received at least 48 hours prior to the meeting. To make arrangements for those services, please call 254-501-7700, City Manager's Office, or TDD 1-800-734-2989.



MEMORANDUM

TO: PLANNING AND ZONING COMMISSION

FROM: TONY D. MCILWAIN, AICP
CITY PLANNER

DATE: DECEMBER 18, 2008

SUBJECT: ZONING CASE #Z08-55
R-1 (SINGLE-FAMILY RESIDENTIAL) TO PUD (PLANNED UNIT DEVELOPMENT) FOR A SINGLE FAMILY RESIDENTIAL DEVELOPMENT

This is a request submitted by W&B Development to rezone approximately 87.12 acres, being part of the Simeon D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) consisting of 381 lots and 5 blocks for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road, Killeen, Texas.

- The applicant proposes to rezone the property to allow for a residential development consisting of single-family homes and an open space/ amenity area. The proposed development will include seven common areas tracts totaling 15.5 acres. The PUD zoning would allow the applicant to develop single-family homes on lots greater than and less than 6,000 square feet. Some of the PUD develop standards are listed below in Table 1.

Table 1. Development Standards for Yowell Ranch PUD

Total Lots	381
Set backs	20' setback required for front and rear yards; 15' setback required for side yards that abut a street and 5' setback for interior side yards
Minimum floor area	1,000 square feet
Masonry requirements	One-story- 60% requirement of native stone, brick, or cementitious siding product which collectively comprise a masonry veneer. Two-story- 75% requirement of combination of native stone, brick or cementitious siding product comprising a 75% masonry veneer for front

	exterior wall; 60% requirement of native stone, brick, or cementitious siding product which collectively comprise a masonry veneer for side exterior walls of first floor.
Landscaping requirements	Front-yard- fully-sodded with 1 tree, and 5 bushes

Legal staff has reviewed the bylaws, Articles of Incorporation and Declaration for the Yowell Ranch PUD zoning request and determined that the documents provided by the applicant meets the requirements of Section 31-805 of the Code of Ordinances. Also, letters of notification were mailed to eleven (11) property owners in the 200-foot notification area. Staff received one response in support for the rezone request from Mr. Bruce Whitis.

If this rezone application is recommended for approval by the Commission, the Planning staff recommends the following five conditions:

- Provide a 42' wide street paving section for a minimum length of 100' as measured from all subdivision entrances.
- Increase the minimum floor area (enclosed living area) from 1,000 to 1,200 square feet.
- 90 % requirement of native stone, brick or other masonry product for an entire home.
- No repeat or duplicate elevation within a group of five homes.
- Provide information in the PUD document that details the proposed recreational uses within Tract 1.

YOUR NAME:	Bruce Whitis
CURRENT ADDRESS:	
ADDRESS OF PROPERTY OWNED:	
COMMENTS:	Support R-1 to PUD w/R-1
SIGNATURE:	<i>[Signature]</i> SPO #Z08-55/ 9

RECEIVED

DEC 15 2003

PLANNING

"The City Witho





**AGENDA
REGULAR MEETING
PLANNING AND ZONING COMMISSION
DECEMBER 22, 2008
CITY HALL
101 N. COLLEGE STREET
COUNCIL CHAMBERS**

WORKSHOP – 5:15 P.M. – MAIN CONFERENCE ROOM

- I. Receive and discuss a presentation on the proposed Historic District.
- II. Discuss agenda items for the **December 22, 2008** regular Planning and Zoning Commission meeting.
- III. Discuss City of Killeen's current practice of issuing specific or special use permits to allow on-premises sale and consumption of alcohol.

CALL TO ORDER – 6:00 P.M. – CITY HALL COUNCIL CHAMBERS

ROLL CALL

COMMISSION	STAFF
<input type="checkbox"/> Johnny Frederick, Chairman	<input type="checkbox"/> Dr. Ray Shanaa, AICP, Director of Planning and Development Services
<input type="checkbox"/> Craig Langford, Vice Chairman	<input type="checkbox"/> Tony D. McIlwain, AICP, City Planner
<input type="checkbox"/> Miguel Diaz, Jr.	<input type="checkbox"/> John Nett, P.E., City Engineer
<input type="checkbox"/> Eugene Kim	<input type="checkbox"/> Scott Osburn, Assistant City Attorney
<input type="checkbox"/> Robert Hicks, Sr.	<input type="checkbox"/> Vicki Wanken, Planning Assistant
<input type="checkbox"/> Bobby Lee Hoover	
<input type="checkbox"/> Austin Pickett	
<input type="checkbox"/> Joel Steine	
<input type="checkbox"/> Terry Traina	

APPROVAL OF AGENDA

Consider approval of the agenda for the regular meeting of the Planning and Zoning Commission for **December 22, 2008**.

CONSENT AGENDA

CA-1 Consider minutes of the regular Planning and Zoning Commission Meeting of **December 8, 2008**.

- CA-2** Consider a request submitted by Charles D. Cospers and Linda Cospers (**Case #08-085FMS: Braedon Creek Addition, Second Extension**) for a final minor plat of approximately 0.773 acres, being part of the Eugene LaSere Survey, Abstract No. 528, for property locally known as 4205 Onion Road, Killeen, Texas.
- CA-3** Consider a request submitted by Gerald W. Hodges and Huynh T. Hodges (**Case #08-063FMS: Hodges Addition**) for a final minor plat of approximately 1.0 acre, being part of the WH Cole Survey, Abstract No. 200 for property locally known as 10230 W. Trimmier Road, Killeen Texas.

CITIZENS PETITIONS FOR INFORMATION

PUBLIC HEARING

- PH-1** **HOLD** a public hearing and consider a request submitted by V&B Development (**Case #08-079FMRRS: Horton Park Addition**) for a plat of approximately 1.312 acres, being a replat of Lots 50 and 51, Block 7 and a replat of a part of Lot 1, Block 10, Spanish Oaks Subdivision. The property is locally known as 7105 and 7107 Osbaldo Drive, Killeen, Texas.
- PH-2** **HOLD** a public hearing and consider a request submitted by Bobby Lee Hoover and John D. Hoover, Jr. (**Case #08-066FMRRS: Coffield Subdivision, Section Three, Replat**) for a minor plat, being a replat of Lots 3 thru 6, Coffield Addition, for property locally known as 1014, 1102, 1104 and 1106 Coffield Street, Killeen, Texas.
- PH-3** **HOLD** a public hearing and consider a request submitted by Daniel A. and Linda Sue Corbin (**Case #08-083FMRRS: Corbin Addition**) for a minor plat of approximately 0.913 acre, being a replat of Lot 2, Block 2, Stillforest Subdivision 2nd Extension Amended and Lot 18, Block 3, Stillforest Subdivision, for property locally known as 6009 Stillwood Circle and 1315 Dripping Springs Drive, Killeen, Texas.
- PH-4** **HOLD** a public hearing and consider a request submitted by Dodge Country, Ltd., (**Case #08-084FMR: Dodge Country No. 1 Addition**), for a minor plat, being a replat of Ace Addition and 0.293 acre tract, being part of the Alexander Thompson Survey, Abstract No. 813, for property locally known as 112 – 118 Wolf Street, Killeen, Texas.
- PH-5** **HOLD** a public hearing and consider a request submitted by Glenn and Patricia Nellis (**Case #Z08-53**) to rezone approximately 0.459 acre, being part of the Robert Cunningham Survey, Abstract No. 199, from R-1 (Single-Family Residential District) to B-5 (Business District) with SUP (Special Use Permit) for dog grooming and boarding for less than 20 dogs, the property is locally known as 4606 Cunningham Road, Killeen, Texas.
(This case is scheduled to be heard by City Council on January 13, 2009.)
- PH-6 A.** **HOLD** a public hearing and consider a request submitted by W&B Development (**Case #Z08-55**) to rezone approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-family Residential District), the property is located on the east

right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

(This case is scheduled to be heard by City Council on January 13, 2009.)

B. Consider a request submitted by W&B Development, Ltd (**Case #08-069FS: Yowell Ranch Phase One (PUD)**) for a plat of approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

(This case is scheduled to be heard by City Council on January 13, 2009.)

OTHER ITEM

OI-1 Consider a request submitted by W&B Development, Ltd (**Case #08-082FS: Yowell Ranch (Preliminary Plat)**) for a plat of approximately 87.19 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 for property located on the east right-of-way of Featherline Road approximately 1,000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

(This case is scheduled to be heard by City Council on January 13, 2009.)

COMMISSION & STAFF ITEMS

- I. Attendance chart (for your information).
- II. Discuss and consider adoption of the Planning and Zoning Commission Calendar for 2009.
- III. Discuss and consider revisions to the Planning and Zoning Commission's Rules and Procedures.

ADJOURNMENT


The next regularly scheduled meeting for the Planning and Zoning Commission is **January 12, 2009** at 6:00 p.m., in the Council Chambers at 101 North College Street, Killeen, Texas.

The public is hereby informed that notices for City of Killeen meetings will no longer distinguish between matters to be discussed in open or closed session of a meeting. This practice is in accordance with rulings by the Texas Attorney General that, under the Texas Open Meetings Act, the City Council may convene a closed session to discuss any matter listed on the agenda, without prior or further notice, if the matter is one that the Open Meetings Act allows to be discussed in a closed session.

AMERICANS WITH DISABILITIES ACT

This meeting is being conducted in accordance with the Texas Open Meetings Law [V.T.C.A., Government Code, § 551.001 et seq.]. This meeting is being conducted in accordance with the Americans with Disabilities Act [42 USC 12101 (1991)]. The facility is wheelchair accessible and handicap parking is available. Requests for sign interpretive services are available upon requests received at least 48 hours prior to the meeting. To make arrangements for those services, please call 254-501-7700, City Manager's Office, or TDD 1-800-734-2989.

I certify that the above notice of meeting was posted on the bulletin boards at City Hall and the Police Department and on the website of the City of Killeen, Texas, before 5:00 p.m. **on or before December 19, 2008.**



Vicki Wanken, Planning Assistant

cc: Earl Abbott
Kristina Ramirez
Beverly Zendt
Maria Lopez



CITY OF KILLEEN

PLANNING DIVISION

P.O. Box 1329 Killeen, TX 76540-1329

Telephone: 254.501.7630

Fax: 254.501.7628

December 10, 2008

RE: CASE #Z08-55: Request is submitted by W&B Development to rezone approximately 87.15 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 from R-1 (Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-Family Residential District) for property located on the east right-of-way of Featherline Road approximately 1000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

Dear Property Owner:

The Planning and Zoning Commission of the City of Killeen has scheduled a public hearing on your request for rezoning the property referenced above, on **December 22, 2008, 6:00 p.m.**, in the Council Chambers, City Hall, 101 North College Street, Killeen, Texas.

As required under the provision of State Law, all property owners within two hundred (200) feet of this location have received written notification of this request. You or your authorized agent must attend this hearing to present any facts which you feel the Planning and Zoning Commission should consider in evaluating your request. In preparing your remarks you may want to address the factors identified on Enclosure "1".

If for any reason you or your authorized agent cannot attend this hearing, please call us at (254) 501-7631, so a new hearing date can be set.

Following this public hearing, the Planning and Zoning Commission will forward a recommendation on your request to the City Council for final action.

The City Council meeting to hear this request is scheduled for **January 13, 2009, at 6:00 p.m.**, in the Council Chambers, City Hall, 101 North College Street, Killeen, Texas.

Sincerely,

Vicki Wanken
Planning Assistant

Enclosure



ENCLOSURE "1"

The City of Killeen Zoning Ordinance provides authority to the City Council to pass ordinances changing the boundaries of zoning districts. It requires that a public hearing be held by both the Planning and Zoning Commission and the City Council prior to decision.

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

A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

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

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

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

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

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

Whether there have been substantially changed conditions in the neighborhood.

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

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

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

B. Specific/Special Use Permit

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



CITY OF KILLEEN

PLANNING DIVISION

P.O. Box 1329 Killeen, TX 76540-1329

Telephone: 254.501.7630

Fax: 254.501.7628

December 10, 2008

RE: CASE #Z08-55: Request is submitted by W&B Development to rezone approximately 87.15 acres, being part of the Samuel D. Carothers Survey, Abstract No. 177 from R-1(Single-Family Residential District) to PUD (Planned Unit Development) with R-1 (Single-Family Residential District) for property located on the east right-of-way of Featherline Road approximately 1000 feet south of Stagecoach Road and north of Police Headquarters Addition, Killeen, Texas.

Dear Property Owner:

W&B Development, Ltd., owner of the above mentioned property, have requested rezoning of this property. The City of Killeen is required by state law to notify all property owners within a 200-foot radius of the request. The enclosed maps show the property to be rezoned. This property is marked by diagonal lines, and the circular line indicates those properties within the 200-foot radius.

The City of Killeen Planning and Zoning Commission has scheduled a public hearing for this request on **December 22, 2008 at 6:00 p.m.**, in the City Council Chambers, City Hall, 101 North College Street. You are invited to attend this hearing to present any facts, which you feel the Planning and Zoning Commission should consider in evaluating this request.

In addition to attending this meeting, you may indicate your support or opposition to this request, by filling out the bottom portion of this letter and sending it to: *Planning and Zoning Commission, City of Killeen, PO Box 1329, Killeen, Texas 76540-1329.* To be considered a protest under provisions of the State Local Government Code, the protest must be written and signed by the property owner of a property located within the 200-foot notification area (you may use the slip on the bottom of this page). Any petition, whether in support or opposition to this request must be received by the Planning Department no later than **5:00 p.m., December 22, 2008.**

After the Planning and Zoning meeting, this matter will be forwarded to the City Council on **January 13, 2009 at 6:00 p.m.**, where you may also appear and speak.

If you desire additional information relative to this matter, please call (254) 501-7630.

Sincerely,

Vicki Wanken
Planning Assistant
Attachments

YOUR NAME:	
CURRENT ADDRESS:	
ADDRESS OF PROPERTY OWNED:	
COMMENTS:	R-1 to PUD w/R-1
SIGNATURE:	SPO #Z08-55/



A
AGRICULTURAL DISTRICT

A building or premises in a district "A" Agricultural District shall be used only for the following purposes:
Stables, commercial or private Agricultural uses to include animal production, crop production, horticulture, and support housing.
Home occupations as permitted in district "R-1" single-family residential.
Agricultural single-family residential in accordance with division 3 of this article
Accessory buildings customarily incidental to the uses in this section

A-R1
R/CULTURAL SINGLE-FAMILY RESIDENTIAL DISTRICT

Single-family residential Home occupation as permitted in "R-1" single-family residential
Accessory buildings customarily incidental to the uses in this section

RM-1
RESIDENTIAL MODULAR HOME SINGLE-FAMILY

All uses permitted in R-1
One-family dwellings of modular construction and affixed to a permanent foundation standards for one- and two-family housing units.
Residential units of modular construction may not be placed in any other district.

R-1
SINGLE-FAMILY RESIDENTIAL DISTRICT

Single-family dwellings
Churches or other places of worship
Colleges, universities or other institutions of higher learning
Country clubs or golf courses, but not including miniature golf courses, driving ranges or similar forms of commercial amusement
Farms, nurseries or truck yards, limited to the proportion and cultivation of plants provided no retail or wholesale business is conducted on the premises, and provided further that no poultry or livestock other than normal household pets shall be housed within one hundred (100) feet of any property line.
Parks, playgrounds, community buildings and other public recreational facilities

Public buildings, including libraries, museums, police and fire stations
Real estate sales offices during the development of residential subdivisions but not to exceed 2 years
Display residential houses with sales offices, provided that if such display houses are not moved within a period of one (1) year, specific permission must be obtained from the city council for such display houses to remain on their locations.
Schools, public elementary or high schools, private with curriculum equivalent to that of a public elementary or high school.
Temporary buildings for uses incidental to construction work on the premises
Water supply reservoirs, pumping plants and towers.
Accessory buildings and uses, incidental to the uses in this section and located on the same lot therewith, not involving the conduct of a retail building.
Cemetery

R1-A
SINGLE-FAMILY GARDEN HOME RESIDENTIAL

Single-family dwellings meeting the criteria of the garden home district.
All uses allowed in section 31-186, including those defined as home occupation uses.

RT-1
RESIDENTIAL TOWNHOUSE SINGLE-FAMILY DISTRICT

All buildings located in the district RT-1 residential townhouse single-family district shall be limited to townhouse development and accessory buildings and uses as described in section 31-186

R-2
TWO-FAMILY RESIDENTIAL DISTRICT

Any use permitted in district "R-1"
Two-family dwellings

R-3
MULTI-FAMILY RESIDENTIAL

Any use permitted in district "R-2"
Multifamily dwellings
Boarding and lodging houses
Dormitories for students
Fraternity or sorority houses
Institutions of a religious, educational, charitable or philanthropic nature, but not a penal or mental institution

Accessory buildings and uses, customarily incidental to the above uses and located on the same lot therewith, not involving the conduct of a retail business

R-MP
MOBILE HOME DISTRICT

Mobile home, conforming to the current ordinance regulating same, either:
As a part of a mobile home park; or
Provided, however, that mobile trailer parks in existence on the date of the ordinance from which this section is derived with proper zoning and current mobile trailer park permits shall hereinafter be designated "R-MP"
mobile home district. All other mobile trailer parks shall be considered nonconforming.
Accessory buildings and structures incidental to the above uses, including community center, swimming pools, etc.
Installations owned and operated by the city, the county, the state or public utility companies, which installations are necessary for the public safety, governmental services, or the furnishing of utility services to or through the "R-MP" district.
Provided, however, that mobile trailer parks in existence on the date of the ordinance from which this section is derived with proper zoning and current mobile trailer park permits shall hereinafter be designated as "R-MP" mobile home district.
All other mobile trailer parks shall be considered nonconforming.

R-MS
MANUFACTURED HOUSING DISTRICT

Manufactured housing, as defined herein, as part of a manufactured home subdivision, for occupancy as a single family home, shown on a subdivision plat approved by the commission and city council and filed for record, designed specifically for and restricted to a manufactured home development

PUD
PLANNED UNIT DEVELOPMENT

A PUD is a land use design incorporating the concepts of density and common open space. The PUD designation serves as an "overlay zoning and development classification" When a parcel of land receives a PUD designation, the entire parcel must be assigned one or more standard zoning district classifications. However, the added PUD overlay classification enables the developer of the site to request that specific land use development regulations be applied to his development site

COD
CEMETERY OVERLAY DISTRICT

Offices of practitioners of the recognized professions, such as: doctors, dentists, lawyers, architects, certified public accountants, registered engineers and related professions.
Uses customarily incidental to the primary use, subject to the special conditions contained in section 31-276(3).
Buildings may be used for one or more of the uses prescribed in section (2) only under the following conditions:
Public access to such incidental uses shall be from the interior of the building.
No parking space shall occupy any part of the required front yard, except as provided in section 31-287 (a)(1)(b).
Sign standards for this district shall apply to both primary and incidental uses.

UOD
UNIVERSITY OVERLAY DISTRICT

Offices of practitioners of recognized professions, of recognized primary use, as hereinafter provided, subject to the special conditions contained in section 31-276(3).
Buildings may be used for one or more of the uses prescribed in section (2) only under the following conditions:
The total area of a professional building devoted to any single incidental use shall not exceed fifteen (15) percent of the gross floor area of the building.
The total area of a professional building devoted to incidental uses in the aggregate shall not exceed twenty-five (25) percent of the gross floor area of the building.
No outside storage shall be permitted in this district.
Offices general business.
An on-premises residential use or living quarters may be included in one structure in a commercial land use district when the main use of the structure is commercial, provided both uses are in compliance with appropriate building codes and the proprietor or an employee of the commercial activity is a resident in the living quarters.
Business day care
Bakery shop (retail sales only).
Barbershop, beauty shop to include permanent cosmetics (licensed per Texas Health and Safety Code, Chapter 146 amended).
Construction field office and yard: on the job site; for duration of construction only.
Mortuary or funeral chapel.
Drugstore or pharmacy.
Florist (retail) retail sales of flowers and small plants.
No flowers or plant raising or outside display or storage.

All structures within this district shall be constructed with 80% stone, brick or stucco veneer having a limestone front facade. No metal siding shall be visible from curbs.
No off-premises signs shall be permitted in this district. On-premises signs are restricted to one sign per lot. The permitted sign shall be set back 10 feet from the property line, shall not exceed 10 feet in height and the face shall not exceed 100 square feet and the sign shall be constructed of limestone masonry material to match the building facade.

HOME OCCUPATIONS

Business day care.
Bakery shop (retail sales only).
Barbershop, beauty shop to include permanent cosmetics (licensed per Texas Health and Safety Code, Chapter 146 amended).
Construction field office and yard: on the job site; for duration of construction only.
Cleaning or laundry (pick-up only).
Drugstore or pharmacy.
Florist (retail) retail sales of flowers and small plants. No flower or plant raising or outside display or storage.
Restaurant, coffee shop, or cafe (no dine-in/dine thru service).
Bank, savings and loan or other financial institution.
All structures within this district shall be constructed with 80% stone, brick or stucco veneer having a limestone front facade. No metal siding shall be visible from curbs.
No off-premises signs shall be permitted in this district. On-premises signs are restricted to one sign per lot. The permitted sign shall be set back 10 feet from the property line, shall not exceed 10 feet in height and the face shall not exceed 100 square feet and the sign shall be constructed of limestone masonry material to match the building facade.

HOME OCCUPATIONS

Author, Artist, Sculptor, dressmaker, seamstress or tailor.
Music/Dance Teacher (one pupil at a time).
Individual tutoring
Minister, rabbi or priest
Home crafts such as rug weaving.
Model making
Office faculty of Archited, attorney, engineer, insurance agent, accountant, real estate broker, or similar profession, sales or manufacturing representative, service provider.
Millinery, repair shop for small electrical appliances and food preparation establishments

**THE CITY OF KILLEEN
REQUEST FOR ZONING CHANGE OR SPECIFIC/SPECIAL USE PERMIT**

CASE NUMBER: Z08-55

DATE: 10/31/08

1. APPLICANT:

Name: W&B Development
 Received: \$ 200.00
 Present Zoning: R-1
 Proposed Zoning/Permit: PUD with R-1
 Requested Time Period: N/A
 Proposed Use: Single-Family Residential
 Address/General Location: 1,000 feet south of Stagecoach on the east ROW of Featherline Rd
 Legal Description of Property: (Yowell Ranch Phase One) approximately 87 acres part of the S. D Carothers Survey A-177

2. BACKGROUND:

A. Site Characteristics:

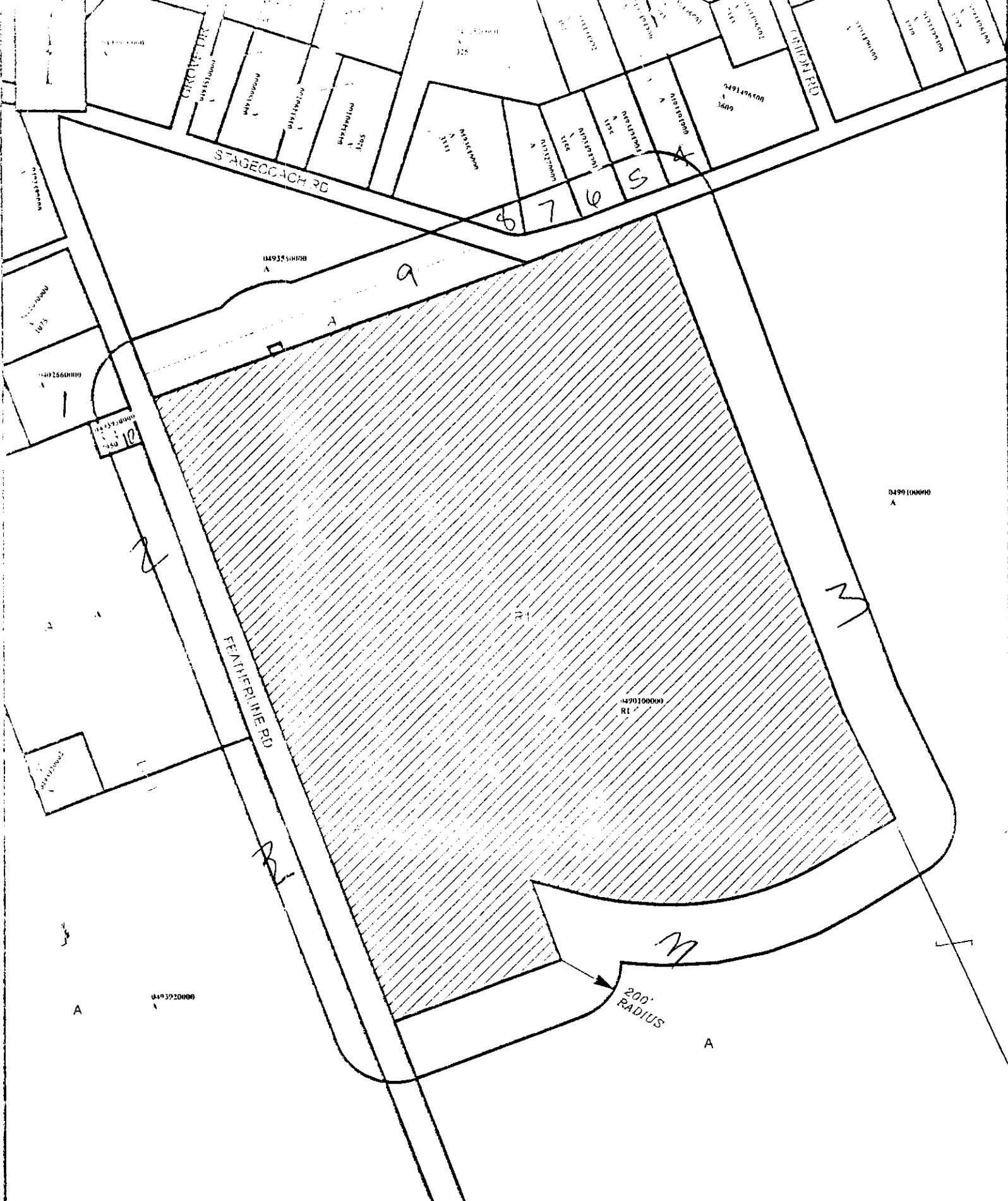
- (1) Size (Sq. Ft. or Acres): _____ (2) Approximate Dimensions (feet): _____
 (3) Existing Use/Improvements: _____
 (4) Special Characteristics (floodplain, historic or environmental significance, etc.): _____

B. Neighborhood Characteristics:

- (1) Predominant Land Use(s):
 a. Single Family _____ d. Office/Prof. _____ g. Institutional _____
 b. Multi-Family _____ e. Commercial/Retail _____ h. Vacant/Agricultural _____
 c. Mobile Home _____ f. Industrial _____ i. Residential Modular Home _____
- (2) Building Conditions:
 a. Sound _____ b. Deteriorating _____ c. Mixed _____
- (3) Predominant Zoning Type(s) of Area: _____
- (4) Compatibility of Predominantly Existing Land use with Existing Zoning of the Area:
 a. Consistent _____ b. Inconsistent _____
- (5) Special Characteristics (floodplain, historic or environmental significance, etc.) _____

C. Community Infrastructure

- (1) Paving of street giving principal access to subject property:
 a. Meets City standards for composition and width _____
 b. Substandard composition _____
 c. Inadequate capacity for anticipated traffic _____
 d. Not paved _____
- (2) Adequacy of water supply for anticipated development:
 a. Available with adequate size and pressure _____
 b. Inadequate water main size _____
 c. Inadequate water pressure _____
 d. Not immediately accessible to subject property _____
- (3) Adequacy of sewer facilities for anticipated development:
 a. Available with adequate capacity _____
 b. Available with inadequate capacity _____
 c. Not immediately accessible to subject property _____
- (4) Community facilities and services:
- | | <u>Adequate</u> | <u>Proposed</u> | <u>Inadequate</u> |
|----------------------|-----------------|-----------------|-------------------|
| a. Parks/open space | _____ | _____ | _____ |
| b. Police protection | _____ | _____ | _____ |
| c. Fire protection | _____ | _____ | _____ |
| d. Other _____ | _____ | _____ | _____ |



Date: 12/08/08

87.15 ACRES

ZONING CASE #Z08-55

From R-1 To PUD w/R-1



CITY OF KILLEEN
 PLANNING/MAPPING
 P.O. BOX 1329
 KILLEEN, TEXAS, 76540-1329

Z08-55/1
CAVINESS, JAMES R ETUX GWENDOLYN
1075 LLEWELLYN LN
KILLEEN YX 76542

Z08-55/4
ESPOSITO, RONALD
129 N 2ND ST
KILLEEN TX 76541

Z08-55/10
GALLAWAY, TREY A ETUX JULIE R
PO BOX 1775
BELTON TX 76513

Z08-55/5
DEERKOP, LOREN A ETUX VIRGINIA
3495 E STAGECOACH RD
KILLEEN TX 76542

Z08-55/6
MAYO, ALFRED G JR
3455 E STAGECOACH
KILLEEN TX 76542

Z08-55/7
MAYO, ALFRED G ETUX SONG JA
1502 DALLAS ST
KILLEEN TX 76542

Z08-55/8
MAYO, ALFRED G ETUX PATRICIA
1502 DALLAS ST
KILLEEN TX 76542

Z08-55/9
WBW LAND INVESTMENT LP ETAL
3000 ILLINOIS AVE STE 100
KILLEEN TX 76543

08-55/2
HUNSUNG, FRED MRS
8390 FEATHERLINE RD
KILLEEN TX 76542

Z08-55/AGENT
W&B DEVELOPMENT LTD
3000 ILLINOIS AVE STE 100
KILLEEN TX 76543

Z08-55/AGENT
W&B DEVELOPMENT LTD
3000 ILLINOIS AVE STE 100
KILLEEN TX 76543

