



City of Rowlett

Meeting Agenda

City Council

4000 Main Street
Rowlett, TX 75088
www.rowlett.com

City of Rowlett City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at 972-412-6115 or write 4000 Main Street, Rowlett, Texas, 75088, at least 48 hours in advance of the meeting.

Tuesday, March 18, 2014

5:30 P.M.

Municipal Building – 4000 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

1. CALL TO ORDER

2. EXECUTIVE SESSION (5:30 P.M.)* Times listed are approximate

2A. The City Council shall convene into Executive Session pursuant to the Texas Government Code, §551.087 (Economic Development) and §551.071 (Consultation with Attorney) to receive legal advice from the City Attorney and to discuss and deliberate the offer of financial or other incentives to business prospects that the City may seek to have locate in or near Elgin B. Robertson Park. (15 minutes)

2B. The City Council shall convene into Executive Session pursuant to the Texas Government Code, §551.071 (Consultation with Attorney) to receive legal advice from the City Attorney regarding confidentiality of matters discussed in executive session and public relations between council members and citizens. (15 minutes)

3. WORK SESSION (6:00 P.M.)* Times listed are approximate

3A. Discuss Golf Advisory Board recommendations for projects at the Waterview Golf Course. (30 minutes)

3B. Discuss Refuse Fund surcharge related to the 2013 Ice Storm Cleanup Costs. (30 minutes)

3C. Discuss and receive feedback regarding an upcoming Major Warrant Request to increase the maximum allowable height from 2.5 stories to 4 stories to accommodate a proposed mixed residential development for property located at 10000 Beacon Harbor. (30 minutes)

4. DISCUSS CONSENT AGENDA ITEMS

CONVENE INTO THE COUNCIL CHAMBERS (7:30 P.M.)*

INVOCATION

PLEDGE OF ALLEGIANCE

TEXAS PLEDGE OF ALLEGIANCE

Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

5. PRESENTATIONS AND PROCLAMATIONS

- 5A.** Presentation of Proclamation to Anna Rigodanzo in recognition of obtaining the Girl Scout Gold Award.
- 5B.** Update from the City Council and Management: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest and Items of Community Interest.

6. CITIZENS' INPUT

At this time, three-minute comments will be taken from the audience on any topic. To address the Council, please submit a fully-completed request card to the City Secretary prior to the beginning of the Citizens' Input portion of the Council meeting. No action can be taken by the Council during Citizens' Input.

7. CONSENT AGENDA

The following may be acted upon in one motion. A City Councilmember or a citizen may request items be removed from the Consent Agenda for individual consideration.

- 7A.** Consider action to approve minutes from the February 11, 2014 City Council Work Session Meeting, the February 12, 2014 City Council Joint Meeting, and the March 4, 2014, City Council Meeting.
- 7B.** Consider action to approve a resolution for Task Authorization #141-NSC to the Agreement for Professional Services with Neel-Schaffer, Inc. in the amount of \$141,590 for the engineering design of the Big A Road 20-Inch Water Transmission Project and authorizing the Mayor to execute the necessary documents for said services.
- 7C.** Consider action to approve a resolution entering into an Interlocal Agreement with the Town of Addison allowing cooperative purchasing for goods and services under each other's competitively bid contracts.
- 7D.** Consider a resolution approving an Interlocal Agreement between the City of Rowlett and Rockwall County establishing Rowlett's subdivision plat approval authority over Rowlett's extra-territorial jurisdiction in Rockwall County.
- 7E.** Consider appointments to the various boards and commissions with mid-term vacancies.

8. ITEMS FOR INDIVIDUAL CONSIDERATION

If a Public Hearing is listed, the City Council will conduct such public hearing to receive comments concerning the specific items listed in the agenda. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker.

- 8A. Consider action to approve a resolution to enter into an Economic Development Program Agreement for property located at 3840 Main Street and to authorize the Mayor to execute the necessary documents.
- 8B. Conduct a public hearing and consider an ordinance approving Major Warrants for property located within the Urban Village Form Based District at 4510 and 4514 Lakeview Parkway to develop a drive-thru restaurant and to allow major warrants relating to drive aisle width, building frontage, building transparency, signage, shade and open space.
- 8C. Consider a resolution authorizing the City Manager to enter into an Economic Development Incentive Agreement with Realty Advisors Corp. (Terra Lago) for the development of a mixed residential project located at 7000 Scenic Drive in the Healthy Living Urban Village Form Based Code District.

TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS

9. ADJOURNMENT

Laura Hallmark

Laura Hallmark, City Secretary

I certify that the above notice of meeting was posted on the bulletin boards located inside and outside the doors of the Municipal Center, 4000 Main Street, Rowlett, Texas, as well as on the City's website (www.rowlett.com) on the 14th day of March 2014, by 5:00 p.m.



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 2A

TITLE

The City Council shall convene into Executive Session pursuant to the Texas Government Code, §551.087 (Economic Development) and §551.071 (Consultation with Attorney) to receive legal advice from the City Attorney and to discuss and deliberate the offer of financial or other incentives to business prospects that the City may seek to have locate in or near Elgin B. Robertson Park. (15 minutes)



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4000 Main Street
P.O. Box 99
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AGENDA DATE: 03/18/14

AGENDA ITEM: 2B

TITLE

The City Council shall convene into Executive Session pursuant to the Texas Government Code, §551.071 (Consultation with Attorney) to receive legal advice from the City Attorney regarding confidentiality of matters discussed in executive session and public relations between councilmembers and citizens. (15 minutes)



City of Rowlett
Staff Report

4000 Main Street
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AGENDA DATE: 03/18/14

AGENDA ITEM: 3A

TITLE

Discuss Golf Advisory Board recommendations for projects at the Waterview Golf Course. (30 minutes)

STAFF REPRESENTATIVE

Brian Funderburk, City Manager

SUMMARY

The Golf Advisory Board (GAB) has recommended a slate of projects for the consideration of the City Council for the Waterview Golf Course. The purpose of this item is to discuss the GAB recommendations and options identified by staff to evaluate funding strategies.

BACKGROUND INFORMATION

On March 16, 2010, the GAB met with the City Council and outlined their goals for the fiscal year ending September 30, 2010 ("FY2010"). Among those goals was to add circulation fountains for the ponds on Holes number 6 and 7. This project was awarded on August 3, 2010, and accepted as complete in January, 2011.

On February 11, 2011, the City Council approved an agreement with American Golf releasing each other from the 2006 Settlement Agreement after all required work was completed.

On April 9, 2011, the GAB provided several recommendations to the City Council regarding additional improvements to the golf course, including recirculating pumps and fountains on several ponds, developing a tee box on Hole #11, and planting additional trees for approximately \$125,000. These projects were all completed by the end of December 2011.

On July 5, 2011, the GAB provided recommendations to the City Council regarding additional improvements to the golf course, including the addition of two high powered fans on Hole #13 and the purchase of grooming equipment for the greens. The City Council agreed to proceed with the fans on Hole #13 only for approximately \$9,990. This project was completed by the end of December 2011.

On February 7, 2012, the GAB provided recommendations to the City Council regarding additional improvements to the golf course, including a fountain and recirculator on the pond at Holes #13 and #14, a bent grass nursery, a new lake on #2 Fairway, and two additional bunkers. During the discussion with Council, it was indicated that American Golf took issue with the lake; however, agreed in concept to the other projects provided that, with regard to the two

additional bunkers, two existing bunkers be removed. The Council provided consensus to move forward with those projects. These projects were completed by the end of December 2012.

On December 18, 2012, the GAB provided recommendations to the City Council regarding additional improvements to the golf course, including funds to enclose the clubhouse, add a lake on Hole #2, modify the tee boxes on Hole #18, add additional trees and repair settled sprinkler trenches throughout the course. The Council took issue with repairing the trenches agreeing with staff that it should be a contractual obligation of American Golf and provided consensus to move forward with the remaining four projects. The additional trees recommended and the work on tee box on Hole #18 was completed in 2013. The pavilion project and the lake at Hole #2 is now being proposed to Council on March 18, 2014.

DISCUSSION

As indicated above, on December 18, 2012, the GAB recommended funding for four projects totaling \$193,000 (see below), including enclosure of the pavilion area of the clubhouse. At that time, the GAB strongly believed that enclosure of the pavilion would enhance the viability of the golf course and the City Council agreed due to its potential as a community asset. The enclosure of the pavilion will enhance the ability of the golf course to provide better accommodations for golf tournaments, but also to add the ability to host wedding receptions and other events. Funds to pay for these projects come from rent payments from American Golf, above and beyond the required debt service payments.

Priority	Description	Projected Cost	Status
1	Enclose pavilion area of clubhouse	\$100,000	Design was completed in Feb 2014
2	Add lake on Hole #2	35,000	Proposal from Larson dated 1-29-14 will revise the cost of the project
3	Modify tee boxes on Hole #18	8,000	Complete
4	Add additional trees	50,000	Complete
	Total Project Budget	<u>\$193,000</u>	

FY2014 Proposed Projects:

On March 4, 2014, the GAB recommended 5 projects totaling \$820,672. This includes the recommendation for the Waterview Clubhouse and a revised project scope for the Lake on Hole #2 from the December 2012 list. It also includes three new projects to fix drainage, add new bunkers and replace the retaining wall on Hole #18 (in partnership with the Waterview HOA).

The complete list is itemized below:

Projects	Description	Projected Cost
1	Waterview Clubhouse Improvements	\$518,304
2	Add lake(s) on Hole #2	71,288
3	Drainage on Hole #10	45,399

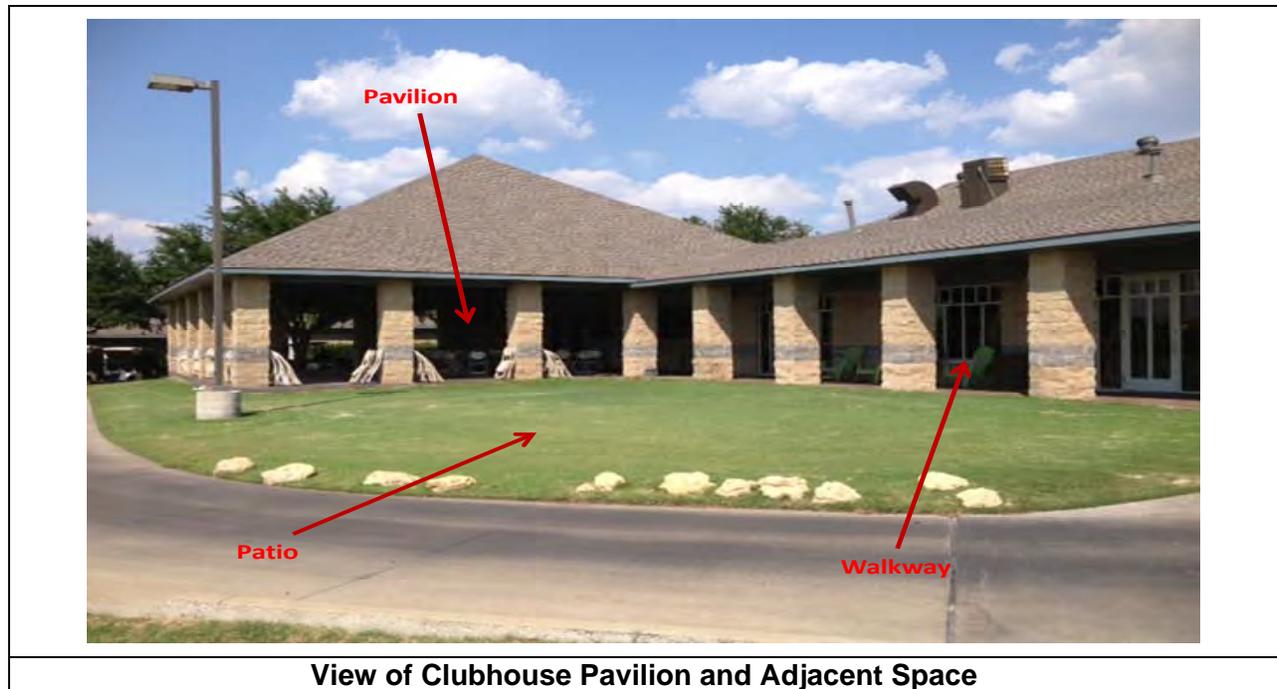
4	New Bunkers	34,880
5	Replace retaining wall on Hole #18 tee box	<u>150,801</u>
	Total recommended expenditures	\$820,672
	Contribution from Waterview HOA	<u>(31,000)</u>
	Net cost to City of Rowlett	\$789,672
	Available balance in Fund 180 for FY2014	<u>(340,092)</u>
	Net shortfall (funds will be needed from financing or phasing)	<u>\$449,580</u>

Project One: Waterview Clubhouse Improvements

Originally, the improvements to the clubhouse were to include only the enclosure of the pavilion; however, at the meeting with the City Council on December 18, 2012, the Council indicated a desire to have a patio considered as well. Also, once staff engaged American Golf in the discussions regarding the clubhouse, they requested consideration for adding the expansion of the dining room and bathrooms as alternate bids. The City's architect, Kelly McCarthy, completed those designs in December 2013, and the project was let for bid. By February, 2014, the bids were received. With all components, the total project budget increased from an estimate of \$100,000, which was not derived from any specific analysis or quotes to a hard bid of \$518,304 for the base bid and all alternates. In its entirety, the clubhouse improvements include the enclosure of the pavilion, addition of a patio with a fire pit, expansion and updating of the dining room and bathrooms. The emphasis of the project is to enhance the viability of the golf course as a community asset. The total cost is \$518,304 based on a bid from PCM and was recommended in its entirety by the GAB by a 3-2 vote.

The breakdown of the bids for the Waterview Clubhouse Improvements are as follows:

Item	PCM	Westcliffe	Grounds General Construction
Base Bid (Pavilion)	\$213,785	\$213,238	Disqualified. Did not meet requirements for bid.
Alternate #1 – Dining Expansion	\$147,056	\$152,657	
Alternate #2 – Patio	\$61,352	*\$72,011	
Alternate #3 – Fire Pit	\$6,411	\$11,583	
Alternate #4 – Restroom Addition	\$64,400	<u>\$82,244</u>	
Landscaping	\$25,300	*included above	
Total Project (Base + Alternates)	<u>\$518,304</u>	<u>\$531,733</u>	



View of Clubhouse Pavilion and Adjacent Space

Project Two: Add Lake(s) on Hole #2

In FY2013, at the GAB's recommendation, the City set aside \$35,000 to build a lake or couple of lakes adjacent to the green of Hole #2. Since that time, the GAB and staff, along with a design engineer, evaluated locating the lake on the left side, in the center (in front of the green) and on the right hand side. American Golf had significant concerns about locating the lake on the left side due to the concern that golfers who fear water hazards may intentionally hit the ball to the right hand side bringing the homes along that side in play. There are no homes on the left hand side. Location of the ponds in front of the green was also rejected due to the relative high cost associated with earth movement. However, the placement of the lake on the right hand side adds an attractive dynamic to play without increasing the risk to our residents. As a result, based on a proposal from Larson Golf Services, totaling \$71,288, the GAB voted 5-0 to recommend this project.

Project Three: Drainage on Hole #10

The drainage project on Hole #10 has been an issue for some time. Every time there is a rain event, the drainage pipe, which is undersized, backs up and into the back yards of residents who live along the golf course. This project will cost an estimated \$45,399 to increase the size of the pipeline from 10" to 15" and enhance the catch basins. This quote was prepared in March 2013 and, if approved by the City Council, would need to be rebid. The GAB voted 5-0 to recommend this project.

Project Four: New Bunkers

Features and hazards are an intriguing part of what makes this sport so interesting to golfers. Water hazards and sand traps help stimulate and challenge players of all ages. One of the proposals the GAB considered was to add additional bunkers to the golf course on Hole #4

fairway, Hole #9 fairway or greenside, Hole #10 fairway, and Hole #15 fairway. Based on a proposal from Larson Golf Services, totaling \$34,880, the GAB voted 5-0 to recommend this project.

Project Five: Replace Retaining Wall on Hole #18 Tee Box

For several years, the GAB has discussed the condition of the retaining wall on the Hole #18 Tee Box. This wood structure continues to fail and represents an unsightly blemish on the lake at the Northeast corner of Liberty Grove and Waterview Parkway. While American Golf is responsible for the maintenance of the retaining wall, piecemeal repair is not considered an attractive option. As a result, the Waterview HOA has discussed offering a \$31,000 contribution if this retaining wall is replaced with a high quality, durable material. Based on a proposal from Knight Erosion Control dated January 29, 2014, totaling \$150,801, the GAB voted 4-0, with one abstention, to recommend this project. If the Waterview HOA contributes \$31,000, the net cost would be \$119,801.



Funding Strategies:

While the City has adequate funds in the Golf Fund for several different combinations of these projects, there are not adequate funds for all five projects. However, there are some funding strategies the Council may choose. In addition, the City currently has \$340,092 from leftover funds from FY2013 and current funds from FY2014. The amount available from the current year and projected amounts for the next three fiscal years totals \$894,291 as shown below.

Description	Available Funds
Current (FY2014)	
Budget for Lake on Hole #2 (\$30,000 budget less \$7,500 committed for design)	\$ 22,500
Budget for Pavilion Enclosure (\$100,000 budget less \$25,750 committed for engineering and architectural design)	74,250
Add'l Available in FY2014 (previous balances and current year differential)	<u>243,342</u>
Total Available in FY2014*	<u>\$340,092</u>
Projected Future Funds (FY2015-FY2019)	

Description	Available Funds
2015	\$200,168
2016	182,481
2017	<u>171,550</u>
Total Projected Funds for Three Year Period	<u>\$554,199</u>
Total Funds thru FY2019	<u>\$894,291</u>
*Does not include debt service reserve of \$427,682	

The Council has several options it can consider or a combination of options. Staff has developed two options below, using a combination of existing cash and short-term financing. Please note that while some bids are current, some are older and would need to be rebid. In addition, all projects at the golf course are “taxable”, meaning that an allowance for sales taxes would need to be added where it is not included, as well as an appropriate contingency.

Option One: Fund All Five Projects with a 3-year tax note and current funds

Project	Estimated Cost
Gross Cost for Pavilion Base Bid, All Alternates; Lake(s) on Hole #2; Drainage on Hole #10; New Bunkers; and Replace Retaining Wall on Hole #18	\$820,672
Less estimated contribution from Waterview HOA	(31,000)
Less cash available for down payment	<u>(340,092)</u>
Net Amount to be Financed	<u>\$449,580</u>
Annual Amount of Three Year Tax Note @ 2%	\$156,000
Total Amount of Three Year Tax Note	<u>\$468,000</u>
Projected Net Available Funds for Three Year Period	<u>\$554,199</u>
Balance Available for Project Taxes, Contingencies and Other Projects	<u>\$ 86,199</u>

Option Two: Fund Only Improvements to Waterview Golf Clubhouse with a 3-year tax note and current funds – defer other projects as cash is available

Project	Estimated Cost
Gross Cost for Pavilion Base Bid and all Alternates	\$518,304
Less cash available for down payment	<u>(340,092)</u>
Net Amount to be Financed	<u>\$178,212</u>
Annual Amount of Three Year Tax Note @ 2%	\$ 62,000
Total Amount of Three Year Tax Note	<u>\$186,000</u>
Projected Net Available Funds for Three Year Period	<u>\$554,199</u>

Project	Estimated Cost
Balance Available for Project Taxes, Contingencies and Other Projects	<u>\$368,199</u>

If the City Council concurs with the Golf Advisory Board's recommendations, staff will work with American Golf to complete these projects and secure current bids for projects that don't have a current bid.

FINANCIAL/BUDGET IMPLICATIONS

The contract with American Golf has a fixed rental income schedule that grows over time. However, the debt service paid by the City for the 1997A bonds is based on a variable rate that resets each August 15th. With historically low interest rates, the difference between the rental income paid by American Golf and the debt service paid by the City has been at or above \$200,000 for several years now. As interest rates rise, that margin will shrink.

By policy, the City also sets aside the value of one year of debt service. For FY2014, that amount is \$427,682, slightly higher than FY2013, which was \$409,167. As a result, based on the fund balance at the end of FY2012 and the net difference between the rental income and the debt service payments, the Golf Fund has \$340,092 available for projects in excess of the debt service reserve policy.

RECOMMENDED ACTION

Provide direction on the recommendations from the Golf Advisory Board regarding the recommended projects.

- Is there consensus from Council for a preference of either Option One or Option Two above?
- If not, is there consensus from Council to provide a different combination of projects?
- Is there consensus from Council to use short-term financing for any combination of projects?



City of Rowlett

Staff Report

4000 Main Street
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AGENDA DATE: 03/18/14

AGENDA ITEM: 3B

TITLE

Discuss Refuse Fund surcharge related to the 2013 Ice Storm Cleanup Costs. (30 minutes)

STAFF REPRESENTATIVE

Alan Guard, Director of Financial Services and Information Technology

SUMMARY

The North Texas region experienced an extreme ice storm event the weekend of December 7-8. Damage from the ice storm was extensive across the City of Rowlett including downed power lines and trees. In the aftermath of the event, both City forces and Waste Management provided additional effort to collect the tree and brush debris from thoroughfares and residential neighborhoods.

City Manager Brian Funderburk contacted the City of Garland and received permission for the City of Rowlett to take the storm debris to the Garland landfill at a competitive rate, significantly reducing the turnaround time for the cleanup crews. Starting January 23, 2014, Waste Management engaged Michael T. Baldwin DBA Baldwin Tree and Disaster Relief Service (aka Storm Chasers), a company that specializes in cleaning up communities following events like the ice storm. City forces also continued their efforts to collect and dispose of brush and debris. By February 3, 2014, the cleanup efforts were declared complete.

The City has received invoices from Waste Management totaling \$285,637 for charges related to the cleanup including labor, the Storm Chasers and the Garland Landfill disposal charges. These charges were calculated in accordance with the Waste Management contract. The purpose of the work session item is to receive direction from City Council on how the City should address this unbudgeted expense.

BACKGROUND INFORMATION

The Refuse Fund accounts for revenues and expenses related to solid waste operations for the City of Rowlett. Waste Management, Inc. is the current contractor providing this service to the citizens of Rowlett. The City Council passes a rate structure each year that is calculated to cover the cost of the service and provide funds for street and alley repairs, through a transfer to the Cash CIP.

The expenditures related to the storm cleanup were not budgeted in either the Refuse Fund or the General Fund. It is not typical for a municipality to budget for 30-year storm events. The purpose of this discussion is to determine how the City Council wants to account for and fund these expenditures.

DISCUSSION

The North Texas region experienced an extreme ice storm the weekend of December 7-8. Damage from the ice storm was extensive across the City of Rowlett, including downed power lines and trees. In the aftermath of the event, both City forces and Waste Management provided additional effort to collect the tree and brush debris from thoroughfares and residential neighborhoods.

City Manager Brian Funderburk contacted the City of Garland and received permission for the City of Rowlett to take the storm debris to the Garland landfill at a competitive rate, significantly reducing the turnaround time for the cleanup crews. The City Council was briefed on the storm at the January 7, 2014, City Council meeting in a Work Session by Assistant City Manager Jim Proce. At that meeting, Assistant City Manager Proce explained the methods that Waste Management was employing to address the debris removal and disposal. In addition Waste Management representatives were on hand to discuss the process. City Council indicated at that time that citizens were making frequent inquiries as to when the debris would be picked up in the various neighborhoods.

At this same meeting, Police Chief Mike Brodnax discussed bringing in a company that specializes in cleanup following these types of events to address citizen concerns. The company, Storm Chasers, could mobilize quickly and could clean up the debris much faster due to their equipment and expertise. Council provided direction to staff at that meeting to research Storm Chasers as an option and also look at alternative sources for the cleanup, such as small local landscaping businesses.

Staff researched the Storm Chasers and engaged with them regarding availability and cost. Staff also discovered that based on the contract language, Storm Chasers would have to work as a contractor for Waste Management. These arrangements were made, and starting January 23, 2014, the Storm Chasers began collecting and disposing of the debris in Rowlett as an agent of Waste Management. City forces also continued their efforts to remove brush and debris. By February 3, 2014, the cleanup efforts were declared complete.

The City has received invoices from Waste Management totaling \$285,637 for charges related to the cleanup, including labor, the Storm Chasers and the Garland Landfill disposal charges. These charges were calculated in accordance with the Waste Management contract.

The Refuse Fund accounts for revenues and expenses related to solid waste operations for the City of Rowlett. Waste Management, Inc. is the current contractor providing this service to the citizens of Rowlett. The City Council passes a rate structure each year that is calculated to cover the cost of the service and provide funds for street and alley repairs, through a transfer to the Cash CIP.

The expenditures related to the storm cleanup were not budgeted in either the Refuse Fund or the General Fund. The purpose of this discussion is to determine how the City Council wants to account for these expenditures.

FINANCIAL/BUDGET IMPLICATIONS

The Refuse Fund currently has zero reserves and exists primarily to collect fees from customers and disburse funds to Waste Management; therefore, the Refuse Fund does not have the funds to cover the cost of his extraordinary event.

As a result, the Council has three alternatives to cover the costs associated with the ice storm event.

First, the expenditures can be charged to the Refuse Fund but paid through a transfer from the General Fund. This expense would impact the General Fund reserves and could possibly reduce reserves below the 13% policy requirement. The FY2014 budget has a planned reduction in reserve levels and this option would compound that reduction. If this alternative is chosen, staff will need to review the operating budget to see where temporary budget cuts may be made in the General Fund to keep reserves at or above the 13% policy requirement.

Second, the City Council could approve a surcharge on the refuse fee. If the Council chooses this option, it is recommended that a resolution adding the surcharge be adopted at the first Council meeting in April and that it start with the first bills that go out in May. Since the expenses occurred in FY2014, it is standard that the same amount should be collected in the fiscal year to offset the expense, if practical. The total amount paid to Waste management for debris removal and disposal related to the ice storm is \$285,637. Based on 18,909 customers, that equates to \$15.10 per customer. There would be five months remaining to bill the surcharge, or \$3.02 per month.

Third, In lieu of a surcharge, the City Council could consider a reduction of \$300,000 in the transfer to the Cash CIP used for alley improvements. The City typically transfers about \$750,000 per year to the Cash CIP and could reduce that amount for FY2014 to make the Fund whole.

For long-term purposes, the Council may also want to consider building an emergency reserve to protect the City from future storm cleanup. As described above, the City could consider a surcharge or a reduction in the Cash CIP to build that reserve to an appropriate level.

RECOMMENDED ACTION

Staff recommends that the City Council direct staff to prepare a resolution amending the Master Fee Schedule for the Solid Waste Collection Fees to include a surcharge to recover the costs related to the cleanup from the Ice Storm of 2013.



City of Rowlett

Staff Report

4000 Main Street
P.O. Box 99
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AGENDA DATE: 03/18/14

AGENDA ITEM: 3C

TITLE

Discuss and receive feedback regarding an upcoming Major Warrant Request. The applicant requests to increase the maximum allowable height from 2.5 stories to 4 stories to accommodate a proposed mixed residential development. The subject property is located at 10000 Beacon Harbor, being 2.61 +/- acres further described as Block 1, Lot 2 of the Homestead at Lakepointe Addition, Rowlett, Rockwall County, Texas. (30 minutes)

STAFF REPRESENTATIVE

Erin Jones, Director of Development Services

SUMMARY

The Planning and Zoning Commission unanimously recommended approval of this item at their February 25, 2014, meeting. It is scheduled to come before the Council for formal consideration on April 1, 2014. However, in light of some of the public concerns surrounding the proposal, Staff is bringing it forward for discussion with Council prior to formal action to attempt to address and fully understand any concerns Council may have.

The applicant is requesting a Major Warrant to allow a four story mixed residential project on the subject property (Attachment 1- Location Map). Currently there is a 2.5 story maximum height imposed on the property. Per the Form Based Code (FBC), Major Warrants are used for exceptions to the code that are not consistent with a provision or the intent of the code, but may or may not deter the overall implementation.

In this case, Staff and the Urban Design Officer (UDO) are supportive of the request for the reasons outlined in detail below. In summary, the overall proposal meets the intent of the code and the additional height has been appropriately mitigated to be compatible with the adjacent single family residential neighborhood.

BACKGROUND INFORMATION

Upon adoption of the Form Based Code and Healthy Living Regulating Plan on November 7, 2012, (Attachment 2- regulating plan) the subject property was zoned as a Form Based New Neighborhood District. Typically this district is limited to attached single-family residential building types (townhome, cottage home – zero lot line, and casita – zero lot line) and possibly multi-unit homes. However, the Council, upon recommendation of the Planning and Zoning Commission, approved an additional allowance for mixed residential and live/work units for the subject property not to exceed the New Neighborhood standard of 2.5 stories, creating a hybrid zone.

As a matter of background, the subject property was debated at length prior to adoption. Staff, the consultant team, and even members of the advisory committee, Planning and Zoning Commission and City Council expressed at the time that either the New Neighborhood or the Urban Village District could be appropriate for this property. However, in light of no strong opinions either way, Staff deferred to the New Neighborhood District based on community feedback. At the time of adoption, the City Council approved the addition of mixed residential and live-work product types to allow greater flexibility. Due to the last minute addition of these product types, the true implications of this allowance was not fully vetted. The requirements for mixed residential projects and the limited land area of the subject property make the 2.5 story limitation impractical without substantial incentives.

In May 2012, the applicant approached Staff with a mixed residential project for consideration. Over the course of the last nine months, Staff and the UDO have worked with the applicant to ensure he understands the intent of the FBC and the City's objectives for development along the lake, namely, ensuring that the shore line is publicly accessible and enhanced for pedestrian comfort. At this point, based on our conversations and the provided plans and renderings, Staff and the UDO have a good level of confidence that the applicant understands the intent and will produce a quality project for the City. As Staff and the UDO worked with the applicant, he brought it to our attention that the expense associated with the required amenities and standards could not be justified or captured with a 2.5 story building. In order to fully meet the intent of the FBC and not require substantial incentives, additional units will be needed. Due to the site constraints, additional height is the only way to add those additional units. To that end, the applicant has provided a building configuration that is sensitive to the adjacent single-family residential subdivision, but will allow for additional height on a portion of the property.

It is important to note that this Major Warrant request only pertains to the height of the building. The use itself is allowed by right. All renderings and plans provided herein are intended to show the applicant's intent as it relates to the placement of the building and height. However, detailed development plans will be subject to all FBC requirements and administrative approval.

DISCUSSION

As previously mentioned, the mixed residential product type is permitted by right on this property. However, it is currently subject to a 2.5 story height limitation. This limitation was imposed in part because that is the base standard for the New Neighborhood District, and it was not altered with the addition of the mixed residential product type. Secondly, this limitation was imposed to be sensitive to the adjacent single-family residential neighborhood.

As a matter of perspective, in the majority of the other Urban Village Districts where mixed residential product types are allowed by right, they are subject to a maximum height of five stories except within designated transition zones. The transition zone for the Urban Village District within the Healthy Living Regulating Plan is outlined as follows: *"a 100-foot wide transition zone with a height limitation of 2.5 stories and a minimum 50-foot setback where the*

Urban Village FB District immediately abuts existing single family residential subdivisions.” The proposed project will generally meet that standard (Attachment 3- dimensioned aerial).

As previously noted, this Major Warrant request only pertains to the building height. Adequate buffer treatment will be solidified at the Development Plan phase. The proposed project will need to consider and come into substantial conformance with the transition standards in the FBC. The applicant has met with Staff to consider how this buffer may be designed. Staff and the UDO feel as though the adjacent residents are and will be adequately protected. In addition, due to the dramatic topography of the site, the four story portion of the building is significantly lower than the adjacent single-family homes, thus further reducing the visual impact.

Public Hearing Notices:

Notices for the public hearing of the Planning and Zoning Commission on February 25th, were mailed, posted, and published in accordance with State Law and the Rowlett Development Code. Ten (10) notices were mailed on February 7th, and as of Friday, February 21, 2014, Staff has received five (5) responses from within the notification area; one (1) in favor and four (4) in opposition. In addition, two (2) additional notices in opposition were received from outside of the notification area (Attachment 4). **Please note that the notices for the April 1, 2014, Council meeting were mailed on March 14th and any additional responses will be incorporated and addressed in the Council’s upcoming packet.** Staff has summarized a list of the respondent’s concerns to date below with commentary in italics beneath each concern:

1. The building is too tall and will be constructed too close to homes on the highest point of the site.

As previously mentioned, the applicant has set the building back from the property line approximately 50 ft., as well as implemented a “step up” approach to ensure that the portion of the building closest to the single family subdivision is 2.5 stories, gradually building to 3 and ultimately a maximum of 4 stories in the center of the property. In addition, due to the dramatic topography of the site, the 4 story portion of the building will be constructed at one of the lowest points of the site, which further reduces the visual impact on the adjacent property owners. A sight line exhibit illustrating this point from the perspective of the adjacent homeowner can be viewed as Attachment 5.

2. This project will generate too many cars, lights, and noise.

The only entrance into the complex will be from Beacon Harbor Street, which currently serves commercial uses. The adjacent residential subdivision will not experience an increase in traffic in their neighborhood, as no through traffic will be routed through their neighborhood. A full traffic impact analysis (TIA) will be required with the development plan and the applicant will be required to mitigate for any traffic related concerns should the study indicate that improvements are needed.

As currently proposed, the mixed residential development would house approximately 77 units (ten of which are on the 4th story). The parking requirements will be evaluated in

detail at the time of the development plan. The applicant is still determining if the complex will be deed restricted for senior housing or open to the general market. If the final decision is to deed restrict for seniors, then the parking counts could be further reduced to accommodate a parking ratio that is more in line with a senior community. Regardless, the parking lot will be screened with additional landscaping to soften the appearance of parking and reduce the glare of headlights.

The lighting requirements in the FBC are more stringent than under the conventional Rowlett Development Code, both from the perspective of exterior lighting on the building itself, parking lot lighting, and lighting of the pedestrian realm. While the pedestrian promenade along the lake may include lighting for pedestrian safety, it will be screened so as not to create unnecessary glare and bleed over.

As for the noise concern, Staff has no reason to believe that this project will create an undue burden as it pertains to noise. As previously mentioned, the use itself is allowed by right and will be subject to the base noise standards that are enforced throughout the City. Based on conversations with adjacent property owners, it is Staff's understanding that there have been complaints about the employees of the hospital and retirement home congregating in the parking lot and playing loud music before and after their shifts, as well as concerns about people fishing and congregating on the jetties in the lake. Staff does not anticipate the mixed residential development will generate the same issues. If anything, having additional residents in the area, eyes on the lake and an amenitized pedestrian promenade will likely reduce the instances of undesirable activities in the area.

3. The project will violate land covenants by blocking lake views both of homeowners and the adjacent retirement home/rehab center.

Staff is unaware of any true covenants that govern the subject property. However, the City's Take Area Ordinance does establish "view corridors" that restricts the location of structures to be built in the take area. While the applicant has contemplated placing items like a gazebo, benches, etc. in the take area in the future, no finalized plans have been submitted. When and if they are, the Take Area Ordinance will be enforced. The "view corridor" protection only pertains to the take area, not private property. The building itself is not subject to the take area "view corridor" restrictions. In addition, the Take Area Ordinance's "view corridor" provisions only pertain to the take area allocated to the lot immediately adjacent to a property owner's lease area, thus restricting a neighbor's ability to block another neighbor's view. In the case of the subject property, only one property owner would have a valid claim regarding the placement of structures in the take area based on the ordinance.

While the adjacent property owners may have perceived rights to lake views, in this particular situation, only the lots that directly back to the lake are eligible for take area leases. The other property owners in the area have enjoyed a lake view by way of

another private property owner's vacant land throughout the years. Whether this Major Warrant is approved or not, the subject property will eventually be developed and their current views compromised.

The applicant has provided a second sight line exhibit (Attachment 6) confirming that the Senior Rehab Center's views of the lake would be blocked at 2.5 stories. Thus the four story concept no more blocks their views than the 2.5 stories that could be built by right.

4. The project will lower property values.

As was discussed at the time of the Realize Rowlett 2020 adoption and all subsequent rezonings since that time, it is virtually impossible for Staff to comment on this concern. There are numerous factors that affect property values. However, we do know that the standards in the FBC are significantly higher than those in conventional zoning districts. As a result, the projects generated in the FBC areas are of a high quality and will retain or increase in value over time. Relevant case studies indicate that similar standards and the resulting projects typically have a positive effect on the property values of adjacent uses.

5. This area already attracts people who fish and congregate illegally on the jetties. This project will bring in more undesirable people and activities.

Part of the reason that it is difficult to monitor undesirable activities in this area is because it is secluded. This project will face onto the lake area instead of back to it, which automatically puts additional eyes on the area and creates a sense of "ownership" of the space. The enhanced pedestrian realm will include appropriate lighting that will help to deter the undesirable activities. If designed properly, the development of this property will help to mitigate this concern, not add to it.

6. There will be balconies and people will look into the adjacent backyards.

As seen in Attachment 7 there are no balconies proposed on the units that face the adjacent residential subdivision for this specific reason. The tallest point of the building is located on one of the lowest points of the site, thus the setbacks and topography will prevent occupants from looking into the adjacent property owners' backyards.

7. This project is an unattractive gateway into our City.

From Staff and the UDO's professional perspective, this project will be an attractive gateway into the City. The FBC is intended to generate high quality projects of lasting value and character. As a matter of perspective, the property north of Lakeview Parkway, adjacent to Scenic Point Park will be developed with a four story FBC mixed residential development as well. The additional height and attention to detail in the design of both these projects, as well as the emphasis on improving the shoreline and

pedestrian realm will only serve to enhance the gateway to the City on both sides of Lakeview Parkway.

FINANCIAL/BUDGET IMPLICATIONS

This project is estimated to bring approximately \$5 million in private investment into the City, which translates to \$37,350 in annual property tax.

RECOMMENDED ACTION

This is a discussion item only. The item is scheduled to come before the Council for formal consideration on April 1, 2014. However, in light of some of the public concerns surrounding the proposal, Staff deemed it necessary to provide Council with an overview and seek feedback prior to the formal consideration. Staff recommends that the Council discuss and provide Staff with additional questions or concerns that they would like Staff to address prior to the April 1, 2014, meeting.

ATTACHMENTS

Attachment 1 – Location Map

Attachment 2 – Regulating Plan

Attachment 3 – Dimensioned Aerial

Attachment 4 – Public Hearing Notices

Attachment 5 – Sight line exhibit from the perspective of adjacent homeowner

Attachment 6 – Sight line exhibit from the perspective of adjacent homeowner

Attachment 7 – Side view with no balconies

Attachment 8 – Renderings and supplemental materials

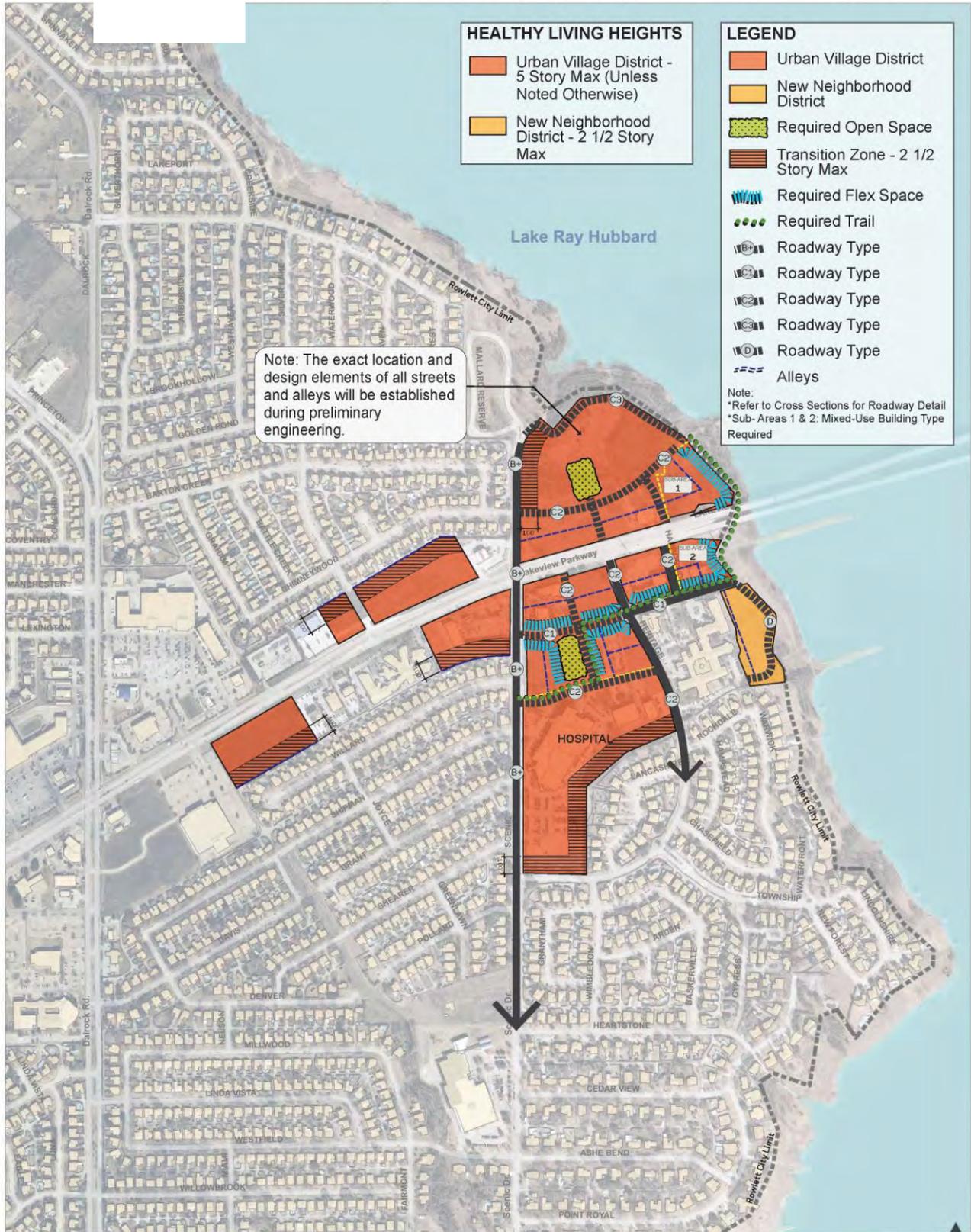


Beacon Harbor
10000 Beacon Harbor RD
Map Created: February 06, 2014

200 FT NOTIFICATION AREA

Adopted
06 November 2012

DRAFT - Healthy Living (D1) - Regulating Plan



HEALTHY LIVING HEIGHTS

- Urban Village District - 5 Story Max (Unless Noted Otherwise)
- New Neighborhood District - 2 1/2 Story Max

LEGEND

- Urban Village District
- New Neighborhood District
- Required Open Space
- Transition Zone - 2 1/2 Story Max
- Required Flex Space
- Required Trail
- Roadway Type
- Alleys

Note:
*Refer to Cross Sections for Roadway Detail
*Sub-Areas 1 & 2: Mixed-Use Building Type Required

Note: The exact location and design elements of all streets and alleys will be established during preliminary engineering.





	0.67 ac In Favor
	3.44 ac Against
	0.71 ac No Response
	5.72 ac ROW
<hr/>	
	10.54 ac Total Notification Area
	0.58 ac Against



Beacon Harbor
10000 Beacon Harbor DR
Map Created: February 21, 2014

200 FT NOTIFICATION AREA



Development Services
Department/Planning Division

NOTICE OF PUBLIC HEARING

TO: Property Owner
RE: Application for Major Warrant
LOCATION: The subject property is located at 10000 Beacon Harbor, being 2.61 +/- acres further described as Block 1, Lot 2 of the Homestead at Lakepointe Addition, Rowlett, Rockwall County, Texas. A location map depicting a 200-ft notification area is attached for reference. This notice and the notification area are required under Chapter 211.007 of the Texas Local Government Code.

EXPLANATION OF REQUEST: The subject property is located within the New Neighborhood Form Based District with the additional allowance for mixed residential and live/work units by right. The applicant requests a Major Warrant to increase the maximum allowable height from 2.5 stories to 4 stories to accommodate a proposed mixed residential development.

- I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS:

SIGNATURE:

ADDRESS:

9900 Lakeview Pkwy, Rowlett, TX 75088

Your written comments are being solicited in the above case. Additional information is available in the Department of Development Services/Planning Division at 3901 Main Street. The Planning and Zoning Commission of the City of Rowlett, Texas, will hold a public hearing at 7:00 p.m. on the 25th day of February, 2014. Meetings are typically held at the Municipal Center, 4000 Main Street, Rowlett, Texas.

Please legibly respond in ink. If the signature and/or address are missing, your comments will not be recorded. The protest must be received by the Planning Division by 5 pm on Wednesday, February 19th to be included in the Planning and Zoning Commission packet and February 26th to be included in the City Council packet. The protest shall object to the Major Warrant, contain a legal description of the property on behalf of which the protest is made, and be signed by the owner of the property. If protests in the form of opposition are received from property owners within 200 feet of the subject property, and the property owners own a combined minimum of 20 percent or more of the land area, approval by the City Council shall only occur with a concurring vote of at least three-fourths of the full membership of the City Council.

If you have any questions concerning this request, please contact the Planning Division
 Phone 972-463-3904
 FAX 972-412-6228
 dacevedo@rowlett.com

RETURN by Mail
 City of Rowlett Planning Dept.
 3901 Main Street
 Rowlett, TX 75088

RECEIVED
FEB 20 2014
PLANNING DEPT.



Development Services
Department/Planning Division

NOTICE OF PUBLIC HEARING

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- I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS: BUILDING TOO HIGH, BUILDER SAID HE WAS GOING TO BUILD STRACHER NEXT TO OUR

Lakefront homes, THAT IS THE HIGH-RISE IN THE AREA - VERY BAD. THERE WILL BE TOO MANY CARS, TOO MANY PARKING LOT LIGHTS, TOO MUCH NOISE, THIS WILL BLOCK OUR VIEW OF THE LAKE THAT WE PAID A PREMIUM \$ FOR. THIS WILL CAUSE TOO MUCH FOOT TRAFFIC. IT VIOLATES OUR LAND COVENANT. ROWLETT HAS A ORDINANCE NOT TO BLOCK LAKE VIEW! Please see attached letter.

SIGNATURE: Mark Tarsch cell 469-338-1141
ADDRESS: 6602 WARWICK DR. ROCKWALL TX 75087

Your written comments are being solicited in the above case. Additional information is available in the Department of Development Services/Planning Division at 3901 Main Street. The Planning and Zoning Commission of the City of Rowlett, Texas, will hold a public hearing at 7:00 p.m. on the 25th day of February, 2014. Meetings are typically held at the Municipal Center, 4000 Main Street, Rowlett, Texas.

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<p>3901</p> <p>If you have any questions concerning this request, please contact the Planning Division Phone 972-463-3904 FAX 972-412-6228 dacevedo@rowlett.com</p>	<p>RETURN by Mail City of Rowlett Planning Dept. 3901 Main Street Rowlett, TX 75088</p>
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Mark taschek

To: Mark taschek

From Mark Taschek, 6602 Warwick Dr. cell-469-338-1141

I'm 100% opposed to the zone change to 4 stories, I think 2.5 stories is too high. Allowing a very high building of any type in the Beacon Harbor area has a lot of draw back. I talked to 2 neighbors on 2-12-13 that live directly on the property line with Beacon Harbor. They were talking to the builder and the man told both neighbors that he was going to put the building right next to our property or the south west corner of Beacon Harbor, which is the highest point of land in that area. (The covenant of the land in my neighbor clearly states that NO house facing the water front can be over 1 story, so not to block the view of the other home owner across the street.) This seems like a clear violation of the current land use of home owner that have lived and paid taxes in this neighborhood for more than 20 years. Any building or structures higher than 1 story compared to current residential home is a slap in the face to ALL of these owners. Such structures will cause high people traffic, many many cars, large parking lots, many bright parking lot lights, that will take away from the beauty of our area.

You will also lower our home values and make it very hard to sell our home that many of us have worked hard on and invested large amounts of money to make beautiful, and were hoping to retire there. Also the city of Rowlett has a lake front ordinance that states that a 45' angle from the home owners back yard to the lake cannot be obstructed in any way. We are not allowed to have any kind of lighting in the lake area that we lease, this should not be allowed in the Harbor area either. I went to the zoning meetings last year, and told Rowlett then that mixed buildings were not a good idea for the area, but it was very obvious that Rowlett wanted this or that the consulting firm wanted this. NO home owner really wanted mixed residential, and we all stated that doing anything that blocked the retirement home view was WRONG. We all paid a high premium for this area and to be lake view and lake front, you are going to destroy this for us.



Development Services
Department/Planning Division

NOTICE OF PUBLIC HEARING

TO: Property Owner

RE: Application for Major Warrant

LOCATION: The subject property is located at 10000 Beacon Harbor, being 2.61 +/- acres further described as Block 1, Lot 2 of the Homestead at Lakepointe Addition, Rowlett, Rockwall County, Texas. A location map depicting a 200-ft notification area is attached for reference. This notice and the notification area are required under Chapter 211.007 of the Texas Local Government Code.

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I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:

I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS:

Four stories will block the view for residents who are already in the area. 4 stories are not acceptable.

SIGNATURE:

P. D. Whitfield

ADDRESS:

6606 Warwick Drive

Your written comments are being solicited in the above case. Additional information is available in the Department of Development Services/Planning Division at 3901 Main Street. The Planning and Zoning Commission of the City of Rowlett, Texas, will hold a public hearing at 7:00 p.m. on the 25th day of February, 2014. Meetings are typically held at the Municipal Center, 4000 Main Street, Rowlett, Texas.

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Phone 972-463-3904
FAX 972-412-6228
dacevedo@rowlett.com

RETURN by Mail
City of Rowlett Planning Dept.
3901 Main Street
Rowlett, TX 75088

The following are many reasons not to allow the zoning change!

1. The zoning change will damage the view of our area.
2. The change will decrease our home values by thousands.
3. The change will mean more building and street lighting, this will degrade the home value, and create a overly bright area.
4. The larger buildings will draw in more people, more cars, and car headlight on our house's.
5. With more people will come more people fishing and messing around on the south jetty, which is a big problem NOW.
6. Rowlett cant police the jetty now, how will it police it with all the new cars and people. (yes I know that Dallas jetty)
7. Rowlett city ordinance said we can't have lighting on the take area at a angle of 45^ each way, they will violate this !!
8. Our residential area was not allowed to have 2 story house, why should they get to have more height, I think 2.5 is too high.
9. You will block the view of the retirement home, they were there first, DO not block any of their view.
10. Rowlett had many meeting on the zoning of this area, you are wasting my time and the effort you put into this just a year ago.
11. I was not happy with the illegal building of the south jetty, now we would have more riffraff on it, throwing TRASH.
12. I don't want to see some big nasty building new to lake front property that I spent a LOT of money to buy and upgrade, and the high taxes that I pay on this property that goes to Rowlett.

*I agree with the above reasons
opposing this new building.*

*P. D. Whitfield
6606 Warwick Dr.*



Development Services
Department/Planning Division

NOTICE OF PUBLIC HEARING

Very upset
I want to move

TO: Property Owner
RE: Application for Major Warrant
LOCATION: The subject property is located at 10000 Beacon Harbor, being 2.61 +/- acres further described as Block 1, Lot 2 of the Homestead at Lakepointe Addition, Rowlett, Rockwall County, Texas. A location map depicting a 200-ft notification area is attached for reference. This notice and the notification area are required under Chapter 211.007 of the Texas Local Government Code.

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- I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

I especially do not want parking by my property, increase noise due to music engines + horns.

COMMENTS:

I am upset you are building a multilevel housing - that means more noise, traffic, animals, people hanging over balconies looking into my private backyard, decrease in property value. Why couldn't you build a park or something for everyone.
Candy Jacob
9717 Rochdale Dr., Rowlett, TX 75087

Your written comments are being solicited in the above case. Additional information is available in the Department of Development Services/Planning Division at 3901 Main Street. The Planning and Zoning Commission of the City of Rowlett, Texas, will hold a public hearing at 7:00 p.m. on the 25th day of February, 2014. Meetings are typically held at the Municipal Center, 4000 Main Street, Rowlett, Texas.

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Phone 972-463-3904
FAX 972-412-6228
dacevedo@rowlett.com

RETURN by Mail
City of Rowlett Planning Dept.
3901 Main Street
Rowlett, TX 75088

Daniel Acevedo

From: Daniel Acevedo
Sent: Tuesday, February 11, 2014 9:35 AM
To: 'Carolyn Jacob'
Cc: Erin Jones
Subject: RE: 100000 Beacon Harbor, Rowlett, TX 75087

Carolyn,

We greatly appreciate your input at this time. Your concerns are noted. When we receive the letter, we will be sure to incorporate those comments into the Planning and Zoning Commission, and City Council packet. Rest assured your opinions will be heard. Thanks again for all your valuable feedback.

Sincerely,

Daniel Acevedo



Daniel Acevedo | City of Rowlett Urban Designer
Department of Public Works and Development
 3901 Main Street | Rowlett, TX 75088
 o 972.463.3904 | f 972.412.6228 | dacevedo@ci.rowlett.tx.us

Visit our Citizen Action Center at www.rowlett.com for questions or requests.

*A unique community where
 families enjoy life and
 feel at home.*

OUR PURPOSE IS TO SERVE. IT'S THE ROWLETT WAY!

From: Carolyn Jacob [<mailto:carolyn.jacob@yahoo.com>]
Sent: Tuesday, February 11, 2014 9:08 AM
To: Daniel Acevedo
Subject: 100000 Beacon Harbor, Rowlett, TX 75087

To: Rowlett Development Services Department / Planning Division
dacevedo@rowlett.com

Re: Response to Application for Major Warrant

Location: 10000 Beacon Harbor, Rowlett, Rockwall County, Texas. Chapter 211.007 TX Local Government Code.

2/11/14

Additional Comments:

I live at 9717 Rochdale Dr., Rowlett, TX. I bought this home due to location, near the lake and the corner lot away from additional housing behind me. I also bought this home because it was at the end of the street and did not have an alley behind my property.

At the time did not realize that the employees that work at the "retirement center" would ruin the quite serene evenings after a long day's work with their car engines, music and loud talking. Even with this disappointment I have adjusted to their schedules and occasionally report them to the management.

I understand that you have already approved a 2.5 story residential development and requesting a 4 story building. I would hope that when building this building, regardless of height:

1. That you would NOT put the parking near the residential neighborhood.
2. That you would NOT put balconies overlooking our property.
3. That you would have all tenants understand that this is a quiet, peaceful neighborhood with mostly senior adults.
4. Keep the peace by building a separation wall that would block any vehicles, dumpsters, traffic, and extra noise. Example is the brick wall, separating our established neighborhood from the senior center. Please have it proportion in height with the building you are planning on building.

I have mailed my written response and will email this response to the above email.

Thank you for listening to my concerns and would greatly appreciate you showing that you listen by understanding and doing the items suggested.

Property owner,

Carolyn Jacob

9717 Rochdale, Dr. Rowlett, TX 75087

Carolyn Jacob

214-934-2143

Real Estate Referral Network

Daniel Acevedo

From: Michael Capone [mcapone@seniorcarecentersltc.com]
Sent: Wednesday, February 19, 2014 5:06 PM
To: Erin Jones
Cc: Daniel Acevedo
Subject: RE: Major Warrant located on the Lake at Beacon Harbor (Beacon Harbor Dr.)

Erin:

As discussed, here is a little more detail about the basis for protest to the Major Warrant that is proposed and, if granted, would increase the height of a structure from 2.5 stories to 4 stories.

My client, Senior Care at Lake Pointe ("Lake Pointe"), uses its view of the lake as one of the major attractions for its residents. From a business perspective, this would result in a significant revenue decline to my client and simultaneously depreciate the value of the land on which my client is located since its view of the lake is now non-existent. A four-story apartment complex on that parcel is significantly different than the surrounding structures and would serve to disadvantage several other landowners, including my client. Additionally, my client's residents would be harmed in that their idyllic view of the lake will now be replaced with a wall that impedes light, casts shade, and creates an eye sore for the community's elderly who have come to Lake Pointe to recuperate and obtain the highest quality of life possible for them. Finally, both my client and my client's residents would suffer from the increased traffic and noise that would inevitably result, impeding the ability of my client's residents to successfully recuperate in a quiet and peaceful environment, which was what they chose when they selected Lake Pointe as their facility. Moving forward, the increased traffic and noise will also preclude other potential residents from selecting Lake Pointe since its previously beautiful and peaceful view of the lake has been transformed into a view of a large wall, with increased traffic and noise.

On behalf of my client and my client's residents, I respectfully request that the City Council deny the proposed Major Warrant and limit the proposed structure to conform with the original plans which would allow all of the structure's neighbors to enjoy the peace and tranquility that emanate from the lake.

I invite you to contact me on behalf of my clients if there any further questions or concerns. I am available via email or telephone at 607-206-9841.

Best regards,

Mike

Michael R. Capone
General Counsel

2828 N. Harwood St., Suite 1100
Dallas, TX 75201
Office: (214) 252-7771
Facsimile: (214) 252-7772
www.seniorcarecentersltc.com



From: Erin Jones [mailto:ejones@ci.rowlett.tx.us]
Sent: Wednesday, February 19, 2014 3:24 PM
To: Michael Capone
Cc: Daniel Acevedo
Subject: RE: Major Warrant located on the Lake at Beacon Harbor (Beacon Harbor Dr.)

Michael,

I have received your email and will include it in the record of response. It would be helpful if you could elaborate on the perceived negative impact for the sake of the Council and Commission. In addition, depending on the objection I may be able to provide some additional information that may be helpful. Thank you.



Erin L. Jones | Director of Development Services
 City of Rowlett | 3901 Main Street | Rowlett, TX 75088
 o 972.412.6114 | f 972.412.6228 | ejones@rowlett.com

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*A unique community where
 families enjoy life and
 feel at home.*

OUR PURPOSE IS TO SERVE. IT'S THE ROWLETT WAY!

From: Michael Capone [mailto:mcapone@seniorcarecentersltc.com]
Sent: Wednesday, February 19, 2014 3:08 PM
To: Erin Jones
Subject: Major Warrant located on the Lake at Beacon Harbor (Beacon Harbor Dr.)

Erin:

I am writing to you in your capacity as the Planning Director for the City of Rowlett. I represent Senior Care at Lakepointe, an entity that will be negatively impacted by the proposed Major Warrant that would increase the maximum allowable height of a project in the New Neighborhood Form Based District (from 2.5 stories to 4 stories; the property is located on the lake and I believe the street is Beacon Harbor Dr.). As such, please allow this to serve as formal written notice of my client's protest against the proposed Major Warrant. I am happy to provide additional information pertaining to the basis for my client's protest at such a time and in such form as you may request after receipt of this communication.

As I understand it, written notice must be provided to the Director of Planning (i.e., you) on or before today, February 19, 2014 at 5:00 pm CST. Since this communication meets those requirements, I expect my client's objections to be included in the Planning and Zoning Commission packet, as well as the City Council packet responses.

Finally, my client and I would like to attend any public hearing on the proposed Major Warrant and I would request that you inform me when the meeting will be held to discuss this proposal.

If there are any questions or concerns, or if additional information is needed, I can be reached via email or else via my cellular phone at 607-206-9841.

Thank you,

Mike

Michael R. Capone

General Counsel

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NOT WITHIN
200 FT.



Development Services
Department/Planning Division

NOTICE OF PUBLIC HEARING

TO: Property Owner
RE: Application for Major Warrant
LOCATION: The subject property is located at 10000 Beacon Harbor, being 2.61 +/- acres further described as Block 1, Lot 2 of the Homestead at Lakepointe Addition, Rowlett, Rockwall County, Texas. A location map depicting a 200-ft notification area is attached for reference. This notice and the notification area are required under Chapter 211.007 of the Texas Local Government Code.

EXPLANATION OF REQUEST: The subject property is located within the New Neighborhood Form Based District with the additional allowance for mixed residential and live/work units by right. The applicant requests a Major Warrant to increase the maximum allowable height from 2.5 stories to 4 stories to accommodate a proposed mixed residential development.

- I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS: NOT AN APPROPRIATE LOCATION FOR A 4-STORY BUILDING GIVEN THE SCENIC NATURE OF THE SHORELINE AND THE FACT THAT BUILDINGS ALONG THE LAKE ARE 1 OR 2 STORY.

SIGNATURE: Famela J Johnson SEE ATTACHED COMMENTS.
ADDRESS: 6514 WARWICK DRIVE

Your written comments are being solicited in the above case. Additional information is available in the Department of Development Services/Planning Division at 3901 Main Street. The Planning and Zoning Commission of the City of Rowlett, Texas, will hold a public hearing at 7:00 p.m. on the 25th day of February, 2014. Meetings are typically held at the Municipal Center, 4000 Main Street, Rowlett, Texas.

Please legibly respond in ink. If the signature and/or address are missing, your comments will not be recorded. The protest must be received by the Planning Division by 5 pm on Wednesday, February 19th to be included in the Planning and Zoning Commission packet and February 26th to be included in the City Council packet. The protest shall object to the Major Warrant, contain a legal description of the property on behalf of which the protest is made, and be signed by the owner of the property. If protests in the form of opposition are received from property owners within 200 feet of the subject property, and the property owners own a combined minimum of 20 percent or more of the land area, approval by the City Council shall only occur with a concurring vote of at least three-fourths of the full membership of the City Council.

If you have any questions concerning this request, please contact the Planning Division
Phone 972-463-3904
FAX 972-412-6228
dacevedo@rowlett.com

RETURN by Mail
City of Rowlett Planning Dept.
3901 Main Street
Rowlett, TX 75088

Comments for proposed four-story building.

Not a good location for four stories unless Rowlett wants to be known for obtrusive and offensive structures. This is among the first Properties seen entering Rowlett from the east along Highway 66. A four-story building would stand out in comparison to the one story buildings seen along the shoreline as you approach along Highway 66.

It would be much easier to have a 2 1/2 story maximum blend into the shoreline on this property. As you look north and south along the shoreline all the other structures are two-story maximum. A four-story building certainly would not be conducive to preserving the natural beauty of the shoreline.

Rowlett has a low-key, residential feeling as you enter the city. Take a look at coming into Rowlett along the various roads.

Exiting off of interstate 30 you enter on Rowlett Road or Dalrock Road. Both of which have stone entrances announcing arrival into Rowlett and the surroundings are residential. There are no four-story buildings. Even passing through the city along George Bush you don't see a myriad of four-story buildings. What you see is mostly residential property. A nice place to live is the feeling that it generates.

Entering Rowlett from the west along Highway 66, Lakeview Parkway, you don't see a four-story structure until you come to Dalrock Road which is in the heart of the business district.

Even coming from the north and entering Rowlett your arrival is not announced by anything other than low one and two-story structures most of which are residential in nature.

When the land-use plan was approved much thought was given to the character and the preservation of a place where people would want to live in Rowlett. I don't think the exception should be made to place a four-story building on the site which surely will block out the sunrise for our senior citizens living in the extended care facility behind it.

A two-story building can be nestled into the hillside which will blend in with the shoreline and maintain the overall character of Rowlett.

Pamela Johnson
6514 Warwick Drive



Development Services
Department/Planning Division

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- I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS: I am opposed for so many reasons. You can see some on the attachment.

SIGNATURE: [Signature]
ADDRESS: 6518 WARWICK Drive Rockwall TX 75087

Your written comments are being solicited in the above case. Additional information is available in the Department of Development Services/Planning Division at 3901 Main Street. The Planning and Zoning Commission of the City of Rowlett, Texas, will hold a public hearing at 7:00 p.m. on the 25th day of February, 2014. Meetings are typically held at the Municipal Center, 4000 Main Street, Rowlett, Texas.

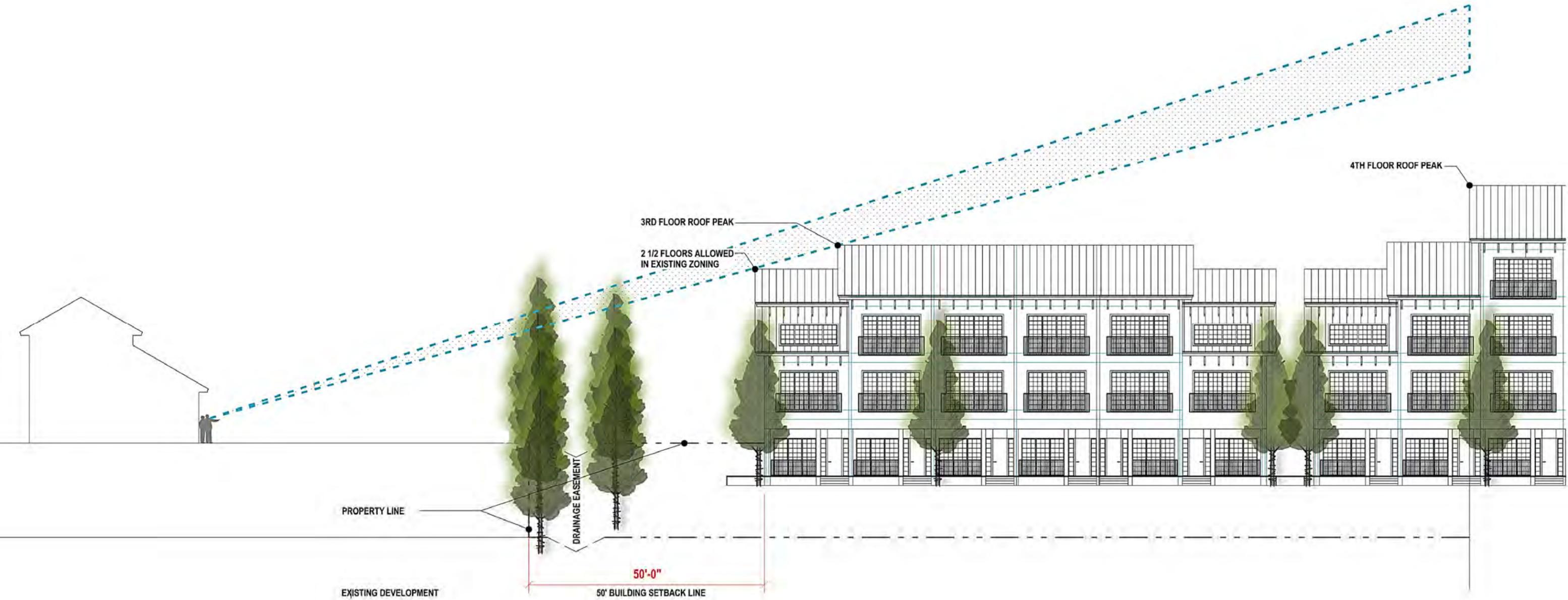
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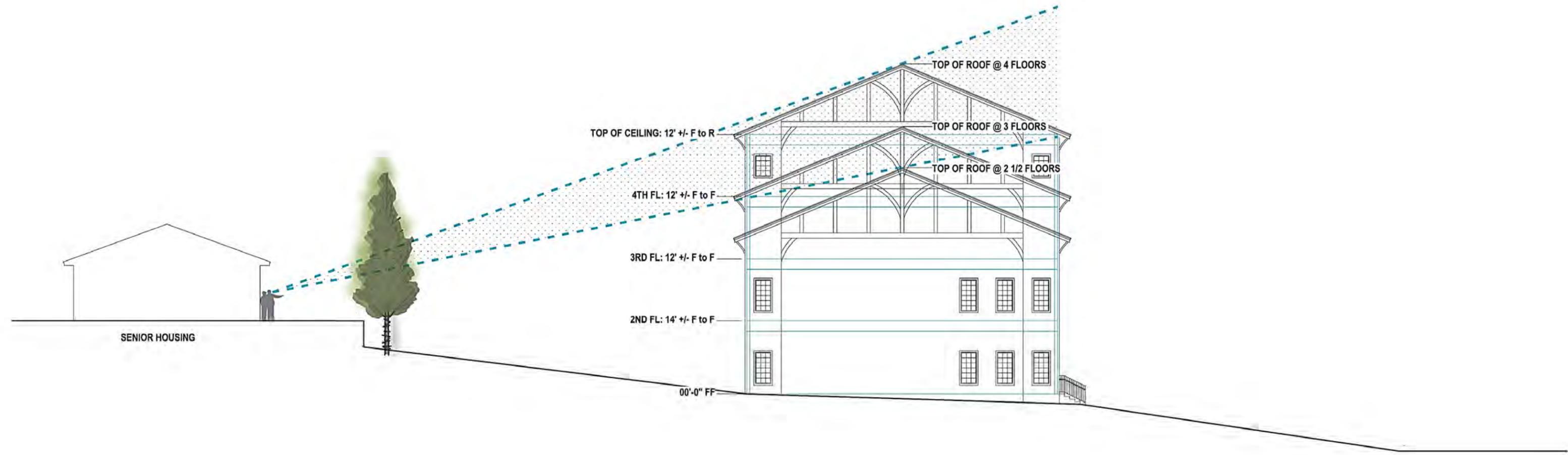
RETURN by Mail
City of Rowlett Planning Dept.
3901 Main Street
Rowlett, TX 75088

The following are many reasons not to allow the zoning change!

- ✓1. The zoning change will damage the view of our area.
- ✓2. The change will decrease our home values by thousands.
- ✓3. The change will mean more building and street lighting, this will degrade the home value, and create a overly bright area.
- ✓4. The larger buildings will draw in more people, more cars, and car headlight on our house's.
5. With more people will come more people fishing and messing around on the south jetty, which is a big problem NOW.
6. Rowlett cant police the jetty now, how will it police it with all the new cars and people. (yes I know that Dallas jetty)
7. Rowlett city ordinance said we can't have lighting on the take area at a angle of 45^ each way, they will violate this !!
- ✓8. Our residential area was not allowed to have 2 story house, why should they get to have more height, I think 2.5 is too high.
9. You will block the view of the retirement home, they were there first, DO not block any of their view.
10. Rowlett had many meeting on the zoning of this area, you are wasting my time and the effort you put into this just a year ago.
11. I was not happy with the illegal building of the south jetty, now we would have more riffraff on it, throwing TRASH.
- ✓12. I don't want to see some big nasty building new to lake front property that I spent a LOT of money to buy and upgrade, and the high taxes that I pay on this property that goes to Rowlett.



PARTIAL EAST ELEVATION SITE LINE ACROSS SOUTH PROPERTY LINE



PARTIAL WEST TO EAST SECTION - SITE LINE ACROSS MULTI-FAMILY SITE





STOOPS WALK UP TO EACH UNIT



17' PEDESTRIAN PATHWAY WITH PERIMETER LANDSCAPE BEDS, BENCHES, AND LIGHT POLES



PEDESTRIAN SCALE LIGHTING, SEATING, SHADE TREES, PAVEMENT CHANGES

LAKE RAY HUBBARD

TREES ALONG PEDESTRIAN WALKWAY

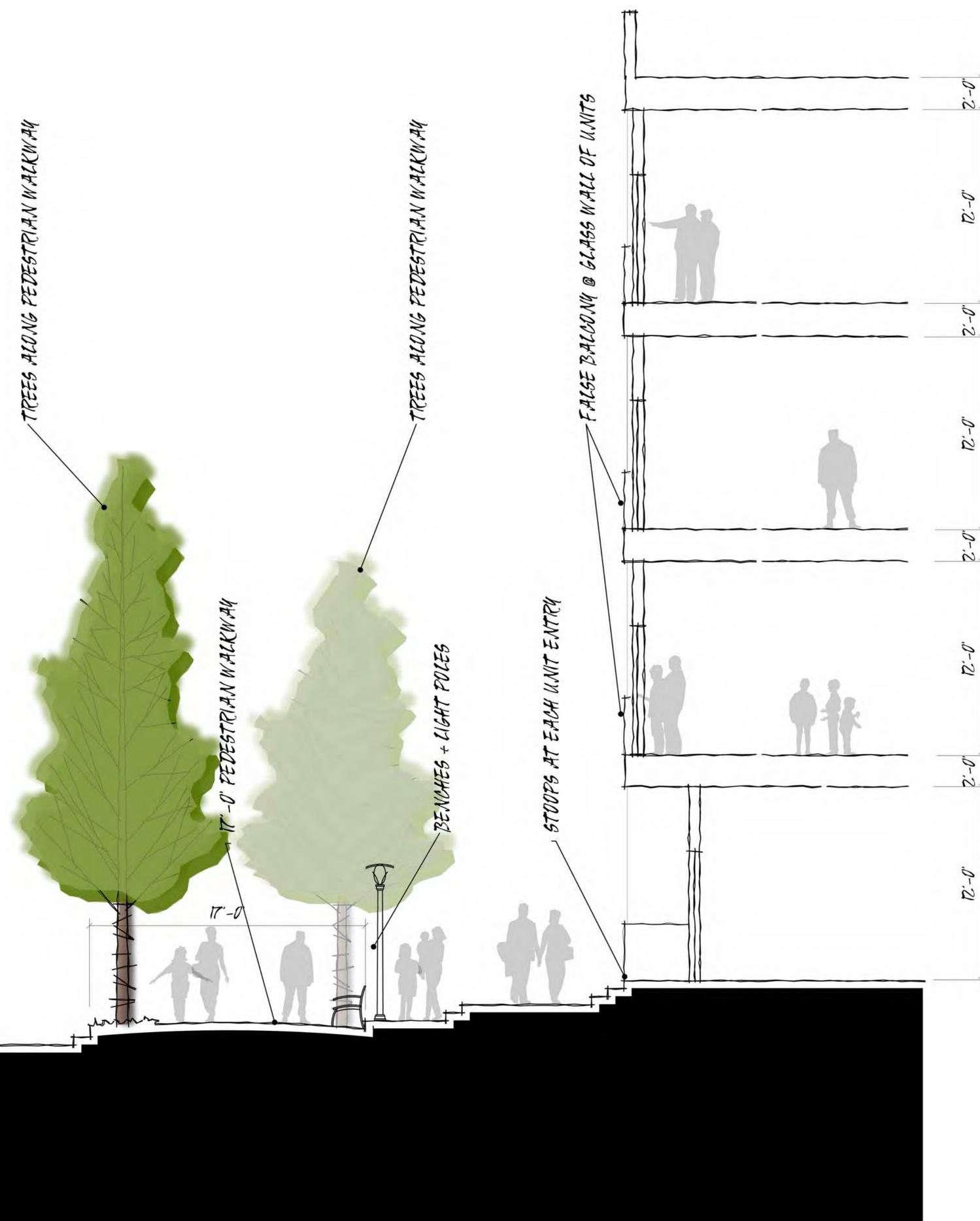
TREES ALONG PEDESTRIAN WALKWAY

FALSE BALCONY @ GLASS WALL OF UNITS

17'-0" PEDESTRIAN WALKWAY

BENCHES + LIGHT POLES

STOOPS AT EACH UNIT ENTRY



SECTION FROM LAKE TO LOFT ENTRIES



EAST ELEVATION

BEACON HARBOR LOFTS

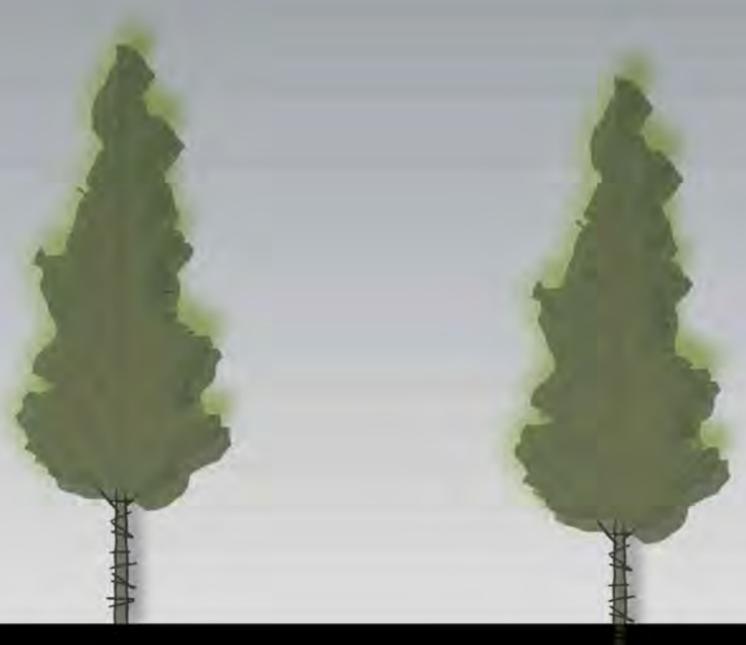


COMPOSITION ROOF

FACE BRICK COLOR 2, 3, & 4

FALSE BALCONIES (TYP.)

FACE BRICK COLOR 1



NORTH ELEVATION

BEACON HARBOR LOFTS

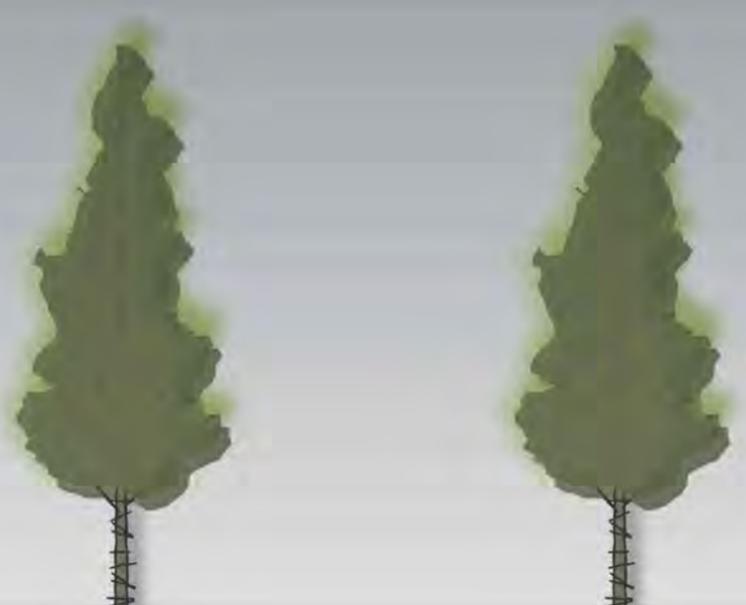


COMPOSITION ROOF

FACE BRICK COLOR 2, 3, & 4

FALSE BALCONIES (TYP.)

FACE BRICK COLOR 1



SOUTH ELEVATION

BEACON HARBOR LOFTS



COMPOSITION ROOF

FACE BRICK COLOR 2, 3, & 4

FALSE BALCONIES (TYP.)

FACE BRICK COLOR 1

WEST ELEVATION

BEACON HARBOR LOFTS



IMAGES OF SIMILAR INTERIOR LIVING AREAS LOOKING OUT OF A WALL OF GLASS WITH VIEWS ONTO A LAKE



Lake Ray Hubbard

CITY OF DALLAS
LAKE RAY HUBBARD



UNITS
 1st Level: 23 Units
 2nd Level: 24 Units
 3rd Level: 20 Units
 4th Level: 10 Units
 Total 77 Units

PARKING
 15 car per unit
 114 Cars Required
 114 Cars Provided

PROPOSED LANDSCAPE MATERIALS:
 1.) "Red Oak" Tree
 2.) "Sky Rocket" Juniper
 3.) "Crape Myrtle" Tree
 4.) "Pond" Cypress
 5.) "Feather Reed" Ornamental Grass
 (final materials based on availability and
 Landscape Architect's design)

650' Frontage / 25 = 26 trees along Pedestrian path

REQUESTING CITY TO APPROVE:
 1.) Two Stories (full building length),
 with Third Floor (stepped in one unit from each end from Second Floor),
 with Fourth Floor on middle building only.
 2.) Parking Requirement @ 15 cars per unit

BEACON HARBOR LOFTS

BM 46115
 BASIS MONUMENT AND
 CITY OF FORTWORTH
 TOP OF CORNER

S 83A4727" W 177.17'
 HERITAGE ON THE LAKE PHASE I
 CABINET C, SLIDE 104
 P.P.R.C.T.

BLOCK B

LOT 24

LOT 23

BEACON HARBOR STREET
 N 77A211'
 N 21A47'01" W 246.07'

FIRE TRUCK + 300

BLOCK 1

BLOCK B

A = 34.03'
 R = 500.00'

PROP 20'
 DRAINAGE
 RES MT. (PLAT)

LOT 24

























City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75030-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 5A

TITLE

Presentation of Proclamation to Anna Rigodanzo in recognition of obtaining the Girl Scout Gold Award.

STAFF REPRESENTATIVE

Laura Hallmark, City Secretary

ATTACHMENT

Proclamation

GIRL SCOUT GOLD AWARD: ANNA RIGODANZO

WHEREAS, established in 1919, the Girl Scout Gold Award is the highest award a Girl Scout can earn and recognizes the work of Girl Scout Seniors and Ambassadors who demonstrate leadership culminating in 80 hours or more dedicated towards leadership that has lasting effects in their community. Each girl chooses and thoroughly researches an issue she cares about, designs her action plan, builds community collaboration, and takes the lead in implementing her Gold Award project; and

WHEREAS, Anna began her Girl Scout career in 2001 with Troop 1262 and has spent countless hours hosting and participating in events for younger girls, community service projects, career exploration and leadership events. Through this journey, many accomplishments and goals have been attained and have led to the reception of her Girl Scout Gold Award. Leadership and organizational skills and a sense of community and commitment that come from “going for the Gold” set the foundation for a lifetime of active citizenship; and

WHEREAS, certain prerequisites were required for Anna to earn her Girl Scout Gold Award, including earning the Bronze and Silver Awards, and completing three Interest Projects, and one Focus Book. Anna has a passion for animals and the outdoors, so she chose to do a community project to identify the wildlife surrounding Lake Ray Hubbard by providing wildlife literature to kayakers. Anna hopes her project will increase the public’s knowledge of nature in an urban environment and will instill a sense of responsibility for taking care of local wildlife and water resources.

NOW, THEREFORE, I, Todd W. Gottel, Mayor of the City of Rowlett, Texas, and on behalf of the City Council, do hereby give special recognition to

ANNA RIGODANZO

in the City of Rowlett, Texas, and encourage all citizens of this community to join me with sincere congratulations to Anna in accomplishing this great achievement.



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 5B

TITLE

Update from the City Council and Management: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest and Items of Community Interest.

STAFF REPRESENTATIVE

Brian Funderburk, City Manager



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 7A

TITLE

Consider action to approve minutes from the February 11, 2014 City Council Work Session Meeting, the February 12, 2014 City Council Joint Meeting, and the March 4, 2014, City Council Meeting.

STAFF REPRESENTATIVE

Laura Hallmark, City Secretary

SUMMARY

Section 551.021 of the Government Code provides as follows:

- (a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.
- (b) The minutes must:
 - (1) state the subject of each deliberation; and
 - (2) indicate each vote, order, decisions or other action taken.

BACKGROUND INFORMATION

N/A

DISCUSSION

N/A

FINANCIAL/BUDGET IMPLICATIONS

N/A

RECOMMENDED ACTION

Move to approve, amend or correct the minutes from the February 11, 2014 City Council Work Session Meeting, the February 12, 2014 City Council Joint Meeting, and the March 4, 2014, City Council Meeting.

ATTACHMENTS

- 02-11-14 City Council Work Session minutes
- 02-12-14 City Council Joint Meeting minutes
- 03-04-14 City Council Meeting minutes



City of Rowlett

Special Meeting Minutes

City Council

4000 Main Street
Rowlett, TX 75088
www.rowlett.com

City of Rowlett City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at 972-412-6115 or write 4000 Main Street, Rowlett, Texas, 75088, at least 48 hours in advance of the meeting.

Tuesday, February 11, 2014

6:00 P.M.

Annex Building – 4004 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

Present: Mayor Gottel, Mayor Pro Tem Kilgore, Deputy Mayor Pro Tem Gallops, Councilmember Phillips, Councilmember Dana-Bashian, Councilmember Pankratz and Councilmember Bobbitt

1. CALL TO ORDER

Mayor Gottel called the meeting to order at 6:00 p.m. and welcomed members of the Parks Advisory Board and Keep Rowlett Beautiful.

2. AGENDA ITEMS

2A. Discuss and consider options for Kids Kingdom, including timeline, playground options, costs, and fundraising efforts. (45 minutes)

Jermel Stevenson, Director of Parks and Recreation, along with Keith Flournoy, Parks Division Manager, reviewed the steps taken so far by Council and the Parks Advisory Board – tours of other communities and the parks they have in place and what would be wanted in Rowlett. They included a timeline for the Kids Kingdom project, building material options, and possible locations within Herfurth Park.

Lengthy discussion regarding deciding locations within Herfurth Park, size and cost of playground, and the lack of a completed Master Plan. It was the consensus of Council to delay any decisions regarding location and content until there is a Master Plan for Herfurth Park presented to the Park Advisory Board and to the City Council. There is a tentative Design Day to receive community input scheduled for April 6th.

2B. Discuss and seek direction from City Council on the Community Development Block

Grant (CDBG) Grant Resource Allocation. (30 minutes)

Jim Proce, Assistant City Manager, provided a summary of steps already taken, a review of the total grant amount and the restrictions relating to its allocation, and a reminder that parks (public facilities) are eligible for funds. It was the consensus of Council to make improvements to Isaac Scruggs Parks and remaining funds be used for public services.

2C. Discuss Enterprise Resource Planning (ERP) Software Acquisition. (60 minutes)

Alan Guard, Director of Financial and Information Services, provided background on the IT updates thus far. Staff members, Theresa Heath, Wendy Badgett, Allyson Wilson, and Marvin Gibbs provided detailed explanations of the processes currently in place and the efficiency savings that would be provided to their respective departments with this new technology. John Murray, Director of Human Resources and Risk Management, stated that the efficiency savings did not necessarily translate to position reduction. Brian Funderburk, City Manager, explained that the efficiency savings would allow for capacity.

David Carll with Tyler Technologies, was able to provide an explanation for the higher cost of a hosted solution and provided statistics relating to that service.

3. ADJOURN

There being no further business, the meeting was adjourned at 9:17 p.m.

Todd W. Gottel, Mayor

Laura Hallmark, City Secretary

Date Approved: March 18, 2014



City of Rowlett
Meeting Minutes
City Council
Planning and Zoning Commission

4000 Main Street
Rowlett, TX 75088
www.rowlett.com

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Wednesday, February 12, 2014

6:30 P.M.

Council Conference Room – 4000 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

Council Present: Mayor Gottel, Mayor Pro Tem Kilgore, Councilmember Dana-Bashian, Councilmember Bobbitt, Deputy Mayor Pro Tem Gallops, and Councilmember Pankratz

Commission Present: Chairman Sheffield, Commissioner Lucas, Commissioner Peebles, Commissioner Farrow, Alternate Commissioner Borcoman, and Commissioner Crawley

1. CALL TO ORDER

1A. City Council

Mayor Gottel called the meeting to order at 6:30 p.m.

1B. Planning and Zoning Commission

Chairman Sheffield called the meeting to order at 6:31 p.m.

2. WORK SESSION ITEM

2A. Staff and the consultant team led by Jacobs will provide the City Council and Planning and Zoning Commission with an update regarding the Realize Rowlett 2020 – North Shore Master Plan Process.

Bill Cunningham, with Ricker/Cunningham, reviewed the Market Analysis and discussed opportunity, trends, and challenges for office development, industrial development, retail development, and residential development.

Arti Harcheker, Urban Design Consultant, and Mark Bowers, with Jacobs, reviewed the Site Analysis and the current ownership and zoning, the natural conditions and the amenities of the area. They discussed transitions between uses and the building types for the proposed districts: Commercial Center, Urban Village, Urban Neighborhood, New Neighborhood, and Rural Neighborhood. They also reviewed the property owners' comments and suggestions.

A short break was taken at 9:01 p.m. and the meeting reconvened at 9:09 p.m.

Discussion regarding property owners' input, concern over the amount of proposed residential, a possible discussion with the City of Sachse to share vision of the area, a concern for connecting streets and the ability to support businesses without Turnpike access. Further discussion regarding water pressure concerns, varied street types and imposing our will on the market.

Staff reviewed the next steps in the process:

1. The consultant team will refine the Framework Plan to continue aligning with the market study, and based upon comments received this evening.
2. The consultant team will prepare a draft Illustrative Master Plan and Design Standards for the North Shore area.
3. The revised Framework Plan, Illustrative Master Plan and Design Standards will be presented to the North Shore Advisory Committee on March 10th for review and comment.
4. Draft Plans and Standards will be presented in a Joint P&Z / City Council work session for final review and comment on March 27, 2014.

3. ADJOURNMENT

3A. City Council

Mayor Gottel adjourned the meeting at 9:37 p.m.

3B. Planning and Zoning Commission

Chairman Sheffield adjourned the meeting at 9:37 p.m.



City of Rowlett

Meeting Minutes

City Council

4000 Main Street
Rowlett, TX 75088
www.rowlett.com

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Tuesday, March 4, 2014

5:45 P.M.

Municipal Building – 4000 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

1. CALL TO ORDER

Mayor Gottel called the meeting to order at 5:45 p.m.

2. EXECUTIVE SESSION

- 2A.** The City Council shall convene into Executive Session pursuant to Texas Government Code, §551.087 (Economic Development) and §551.071 (Consultation with Attorney) to receive legal advice from the City Attorney and to discuss and deliberate the request of financial or other incentives pertaining to an Economic Development Program Agreement with the Rowlett Chamber Foundation for property located at 3840 Main Street. (15 minutes)

Convened into Executive Session at 5:45 p.m. Out 6:03 p.m.

- 2B.** The City Council shall convene into executive session pursuant to the Texas Government Code, §551.071 (Consultation with Attorney) and section §551.087 (Economic Development) to seek legal advice and to discuss and deliberate the offer of financial or other incentives pertaining to a potential Economic Development Incentive Agreement for property located at 7000 Scenic Drive. (30 minutes)

Convened into Executive Session at 6:03 p.m. Out 6:26 p.m.

- 2C.** The City Council shall convene into Executive Session pursuant to the Texas Government Code, §551.087 (Economic Development) and §551.071 (Consultation with Attorney) to receive legal advice from the City Attorney and to discuss and deliberate the offer of financial or other incentives, and to consider a letter of intent to fund the acquisition and/or for the development of the Elgin B. Robertson Park property. (10 minutes)

Convened into Executive Session at 6:26 p.m. Out 6:45 p.m.

A motion was made by Mayor Pro Tem Kilgore, seconded by Councilmember Phillips, to approve a resolution authorizing the City Manager to enter into a Letter of Intent with the Donahue Development Corporation. The motion carried with a unanimous vote of those members present.

3. WORK SESSION (6:40 P.M.)*Times listed are approximate

3A. Update on Stage 3 Water Restrictions from the North Texas Municipal Water District (NTMWD). (20 minutes)

Jim Proce, Assistant City Manager, provided background on the restrictions. An update from NTMWD was scheduled for last week, but canceled due to inclement weather. Stage 3 restrictions are scheduled to be in place as planned through the end of March. NTMWD has stated that the restrictions will continue afterward on a month-to-month basis until notified otherwise. Council will be kept informed as information is received.

3B. Discuss the alignment and Task Authorization #141-NS for the Agreement for Professional Services with Neel-Schaffer Incorporated in the amount of \$141,590 for the engineering design of the Big A Road 20-Inch Water Transmission Project. (20 minutes)

Tim Rogers, Director of Infrastructure Services, and Robbin Webber, Assistant Director of Infrastructure Services, provided background information regarding the decision to use Big A Road instead of Lakeview Parkway.

4. DISCUSS CONSENT AGENDA ITEMS

Deputy Mayor Pro Tem Gallops and Councilmember Pankratz left the meeting prior to the start of the regular session.

CONVENE INTO THE COUNCIL CHAMBERS (7:30 P.M.)*

INVOCATION

The invocation was led by Mayor Gottel.

PLEDGE OF ALLEGIANCE

TEXAS PLEDGE OF ALLEGIANCE – Led by the City Council

5. PRESENTATIONS AND PROCLAMATIONS

5A. Presentation of the Rowlett Police Department's, Lifesaving Award to Officers Edgar Borusqueta and Ryan Doherty.

Chief Brodnax presented each officer with the Police Departments Lifesaving Award for their courageous actions while on duty.

5B. Present the monthly Financial Report for the period ending January 31, 2014.

Alan Guard, Director of Financial and Information Services, provided the report. Council stated if we do not receive rain, a discussion may be necessary to consider raising fees.

5C. Update from the City Council and Management: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest and Items of Community Interest.

Mayor Gottel announced the following: the City Council upcoming meetings include a Work Session on Tuesday, March 11th and a regular meeting on Tuesday, March 18th; the Planning and Zoning Commission's next meetings are scheduled for Tuesday, March 11th and 25th; a Special Joint City Council and Planning and Zoning Meeting is scheduled for Thursday, March 27th; the last day to register to vote for the May 10th Joint Election is Thursday, April 10th; the official candidates for the May 10th Election are: Place 1 – Robbert van Bloemendaal, Place 3 – Carl Pankratz, and Place 5 – Rick Sheffield and Pamela Bell; during the month of April, the City will be seeking citizen input about future City Services as the City is no longer sustainable at the current tax rate; the meeting dates will be Thursday, April 3rd, Monday, April 7th, Thursday, April 10th, Thursday, April 17th, Monday, April 21st, and Thursday, April 24th. Please check the website for times and meeting locations; the City is still under Stage 3 Water Restrictions; the Animal Shelter will offer low cost vaccine clinics on Saturday, March 15th and 29th; the March Clean Up Campaign is underway and will last the entire month of March; the Rowlett Police Department will participate in the Great Texas Warrant Roundup; Connect Rowlett is the new City to Citizen Notification Service, sign up on the City's website to control the information you receive; the Parks and Recreation Department will host spring break activities, the Annual Easter Egg Hunt is scheduled for Saturday, April 12th, and the Easter Pup-A-Palooza is scheduled for Sunday, April 13th; the Rowlett Library has been awarded the 2013 Achievement of Library Excellence Award for the 9th year, upcoming events at the Library include Saturday Crafts @ the Library scheduled for Saturday, March 8th, Spring Break activities, and the Arts and Humanities Commission will host the 13th Annual Young Artists Contest and Exhibit. Please submit all entries on Wednesday, April 2nd.

6. CITIZENS' INPUT

No one spoke during Citizens' Input.

7. CONSENT AGENDA

No items were removed from the Consent Agenda to be considered individually.

The City Secretary read the items into the record.

7A. Consider action to approve minutes from the February 18, 2014, City Council Meeting.

This item was approved on the Consent Agenda.

7B. Consider action to approve a resolution awarding the bid for the purchase of a Voice over IP (VoIP) telephony system including a five year maintenance agreement to Mitel/Co-Nexus in the amount of \$102,500 through the Interlocal Cooperative Purchasing Agreement with the National Joint Powers Alliance (NJPA) and authorizing the City Manager, after City Attorney approval, to execute the necessary documents for said purchase.

This item was approved as RES-017-14 on the Consent Agenda.

- 7C.** Consider action to approve a resolution accepting the bid of and awarding a contract to Landmark Structures I, L.P. in the amount of \$3,370,000 for the base bid and up to \$14,400 for an early completion bonus, resulting in a total bid of \$3,384,400 for the Main Street 1.25 Million Gallon Elevated Water Storage Tank. (WS 2/18/14)

This item was approved as RES-018-14 on the Consent Agenda.

- 7D.** Consider approving a Joint Election Contract with Dallas County Elections Department for the May 10, 2014, General Election and the possible June 21, 2014, Run-Off Election.

This item was approved on the Consent Agenda.

- 7E.** Consider action to approve the renewal of the existing contract for prosecutorial services to Attorney Felicita Amy Thomas for the Rowlett Municipal Court of Record No. 1, and authorizing the Mayor to execute said agreement.

This item was approved on the Consent Agenda.

- 7F.** Consider action to approve a resolution to enter into a Facilities Agreement with Benbrook Winchester, LP for the North Shore Sanitary Sewer Main Construction Project for property located at 3100 Merritt Rd. and to authorize the Mayor to execute the necessary documents. (WS 02/18/14)

This item was approved as RES-019-14 on the Consent Agenda.

- 7G.** Consider action to approve a resolution to approve the application of a Texas Criminal Justice Division Grant to purchase 16 P25 portable radios.

This item was approved as RES-020-14 on the Consent Agenda.

- 7H.** Consider an ordinance amending the Fiscal Year 2013-14 Adopted Operating and Capital Improvements Program Budget.

This item was approved as ORD-004-14 on the Consent Agenda.

Passed The Consent Agenda

A motion was made by Mayor Pro Tem Kilgore, seconded by Councilmember Phillips, including all the preceding items marked as having been approved on the Consent Agenda. The motion carried with a unanimous vote of those members present.

8. ITEMS FOR INDIVIDUAL CONSIDERATION

- 8A.** Conduct a public hearing and consider an ordinance approving Major Warrants for property located at 8701 Liberty Grove Road, within the Urban Village Form Based District, for building orientation, block dimension, and building transparency, in order to develop a church.

Mayor Gottel read the item into the record.

Erin Jones, Director of Development Services, gave a brief presentation of the history of this item. Spoke regarding the major warrant requests and requirements.

A member of Council questioned staff regarding the one unfavorable notice staff received regarding this issue.

Mayor Gottel opened and closed the public hearing with no one speaking.

A motion was made by Councilmember Phillips, seconded by Councilmember Dana-Bashian, to approve the item as presented. The motion carried with a unanimous vote of those members present. This item was approved as ORD-005-14.

- 8B.** Conduct a public hearing and consider an ordinance approving a Special Use Permit to allow the expansion of a mini-warehouse in the Industrial Overlay District and General Manufacturing (M-2) zoning district for property located at 2416 Lakeview Parkway. (SUP14-697)

Mayor Gottel read the item into the record.

Garrett Langford, Principal Planner, gave a brief presentation on this item.

Mayor Gottel opened and closed the public hearing with no one speaking.

A motion was made by Mayor Pro Tem Kilgore, seconded by Councilmember Phillips, to approve the item as presented. The motion carried with a unanimous vote of those members present. This item was approved as ORD-006-14.

TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS

Please see Item 2C for the action that was taken.

9. ADJOURNMENT

Mayor Gottel adjourned the meeting at 8:11 p.m.



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 7B

TITLE

Consider action to approve a resolution for Task Authorization #141-NSC to the Agreement for Professional Services with Neel-Schaffer, Inc. in the amount of \$141,590 for the engineering design of the Big A Road 20-Inch Water Transmission Project and authorizing the Mayor to execute the necessary documents for said services.

STAFF REPRESENTATIVE

Tim Rogers, Director of Infrastructure Services
Robbin Webber, Assistant Director of Infrastructure Services

SUMMARY

This project, formerly known as the “20-Inch Water Line along State Highway (SH) 66 (Lakeview Parkway)”, consists of the installation of approximately 4,700 linear feet of 20-inch diameter waterline from President George Bush Turnpike (PGBT) along Big A Road to Rowlett Road south to SH66 (see Attachment 1).

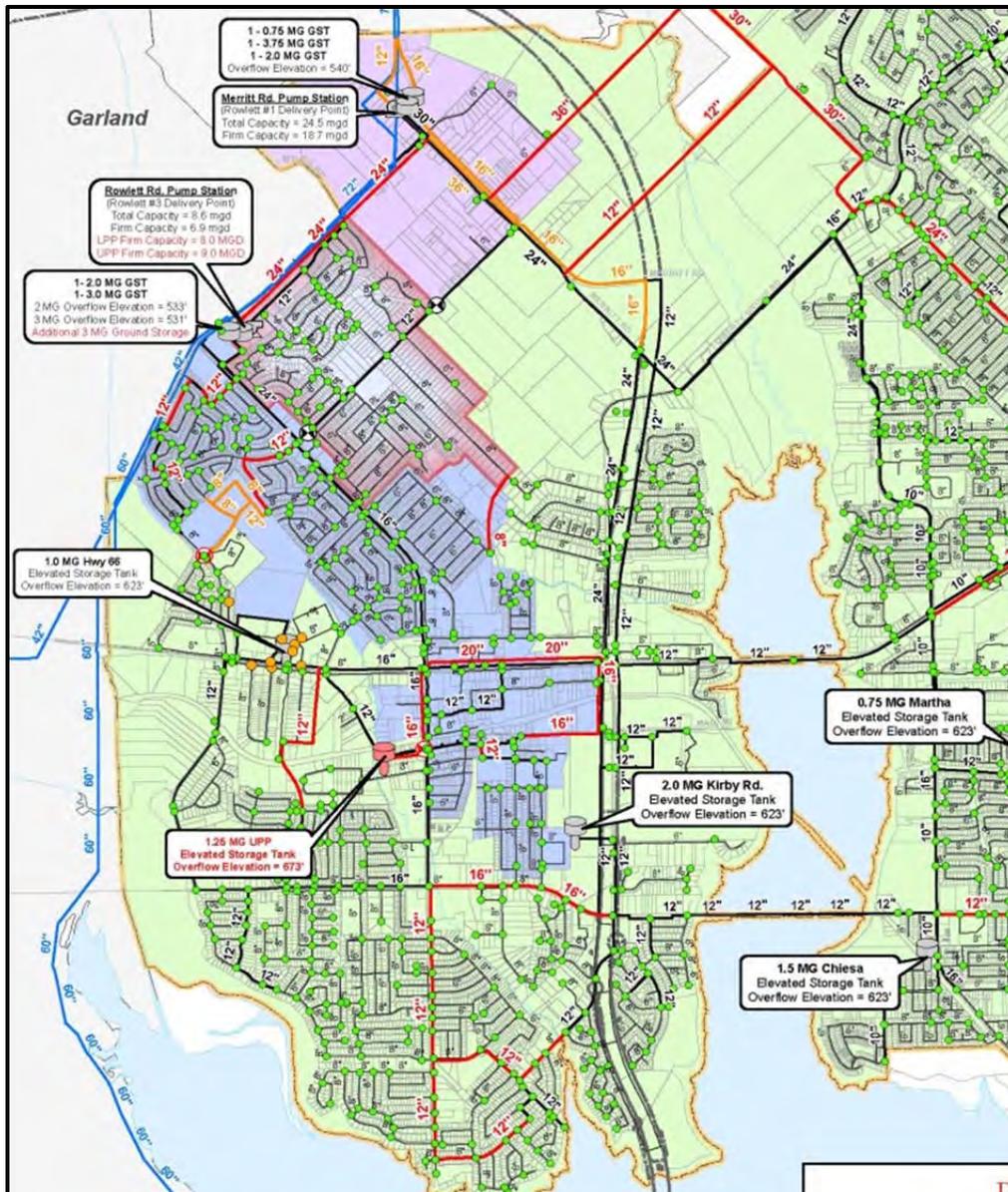
BACKGROUND INFORMATION

An update to the City’s Water Master Plan was performed in 2008 by Freese & Nichols, Inc. (FNI). The update addressed the future water demand projections and developed an associated capital improvement plan to accommodate the future demand. The primary purpose was to provide a solution that would further enhance the City water pressure throughout the system.

Staff has been working with our two consultants, Freese & Nichols Inc. and Neel-Schaffer Inc. to identify the exact and final limits of the upper pressure plane as well as the future water tank placement. Once completed, the limits of the pressure plane and infrastructure necessary to provide quality water service and reliable pressure to the upper pressure plane were established.

The purpose of the new pressure plane will be to serve the western and northwestern areas of the City with higher and more reliable pressures than can be served with the existing infrastructure.

The separation of the pressure planes are depicted as follows:



The revision/realignment of the site selection for the 20-Inch Water Main from SH66 to Big A Road was determined by technical need with regard to pressure connectivity to existing network and acquisition costs. The proposed alignment on SH66 is very intrusive, affecting local businesses, requiring in-depth acquisition due to physical limitations within the existing right-of-way.

DISCUSSION

Task Authorization #141-NSC & Scope of Services (see Exhibit A) provided by Neel-Schaffer, Inc. is presented in the amount of \$141,590 to provide plans and specifications for the construction of a 20-inch water transmission line on Big A Road.

On January 2, 2013, the City was provided design plans for the Rowlett Road Pump Station and Upper Pressure Plane Improvements, Phase 2 Project, which references the need for this transmission line. Staff and Neel-Schaffer, Inc. have identified the realignment (see Attachment 1) of the 20-inch water transmission line (see Exhibit 1). In an effort to close loops in the water system and increase water pressure, this project is of significance and importance to the completion of the Upper Pressure Plane.

The proposed design phase is 150 days. The bid and construction phase is 180 days. The total proposed time from design to final construction is 11 months with a total estimated construction cost of \$1.2 Million.

FINANCIAL/BUDGET IMPLICATIONS

The amount of Task Authorization #141-NSC is \$141,590. Funding is available in Project Number WA1108, Miscellaneous Water Line Repair and Replacement after the budget amendment was approved by Council on March 4, 2014. The funds (\$160,000) are being reallocated from WA1108, Miscellaneous Water Line Repair & Replacement to WA2110, Big A Road 20-Inch Water Transmission, Account Number 598-8201-530-8002.

FROM	WA1108	Misc. Water Line Repair & Replacement	(\$160,000)
TO	WA2110	Big A Water Line Improvement	\$160,000

RECOMMENDED ACTION

Staff recommends the Rowlett City Council adopt a resolution approving Task Authorization #141-NS to the approved professional services agreement with Neel-Schaffer, Inc. in the amount \$141,590 for the engineering design to provide construction plans and specifications for the Big A Road 20-Inch Water Transmission Project and authorizing the Mayor to execute the necessary documents for said services.

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING TASK AUTHORIZATION #141-NSC TO THE APPROVED PROFESSIONAL SERVICES AGREEMENT WITH NEEL-SCHAFFER INCORPORATED + CHEATHAM AND ASSOCIATES, IN THE AMOUNT OF \$141,590.00 TO PROVIDE CONSTRUCTION PLANS AND SPECIFICATION FOR THE BIG A ROAD WATER TRANSMISSION PROJECT; AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS FOR SAID SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has approved a Professional Services Agreement by and between the City of Rowlett and Neel-Schaffer Incorporated + Cheatham and Associates for engineering services, and

WHEREAS, the City Council of the City of Rowlett, Texas has been presented a proposed Task Authorization #141-NSC to the approved professional engineering agreement for plans and specifications for the Big A Road 20-Inch Water Transmission Project in the amount of \$141,590.00, and

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the Mayor should be authorized to execute Task Authorization #141-NSC on behalf of the City of Rowlett, Texas.

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

Section 1: That Task Authorization #141-NSC attached hereto as Exhibit A, having been reviewed by the City Council of the City of Rowlett, Texas is hereby approved in the amount of \$141,590.00.

Section 2: This resolution shall become effective immediately upon its passage.

ATTACHMENTS

Exhibit A – Task Authorization #141-NSC & Scope of Services

Attachment 1 – Location Map

TASK AUTHORIZATION # 141-N5C

Client: City of Rowlett 4000 Main Street Rowlett, TX 75088 Attn: Sherrelle Diggs, P.E.	City Project No.:																																
	Consultant Project No.:																																
	Date:																																
Project Description: Big A Road 20" Water Transmission																																	
Description of Services: See Attachment A – Scope of Services Deliverables: See Attachment A – Scope of Services																																	
Compensation shall be as follows: <table border="0"> <tr> <td>Basic Services (Fixed Fee Basis)</td> <td>\$ <u>109,500.00</u></td> </tr> <tr> <td>Design Survey</td> <td>\$ 15,600.00</td> </tr> <tr> <td>Design Phase</td> <td>\$ 75,000.00</td> </tr> <tr> <td>Bid Phase</td> <td>\$ 17,500.00</td> </tr> <tr> <td>Expenses</td> <td>\$ 1,400.00</td> </tr> <tr> <td>Special Services (Reimbursable Basis - Not-to-Exceed)</td> <td>\$ <u>32,090.00</u></td> </tr> <tr> <td>Permanent Easements</td> <td>\$1,500.00 Each (4 Anticipated) \$ 6,000.00</td> </tr> <tr> <td>Construction Easements</td> <td>\$ 500.00 Each (6 Anticipated) \$ 3,000.00</td> </tr> <tr> <td>NTTA Permit</td> <td>\$1,250.00 Each (1 Anticipated) \$ 1,250.00</td> </tr> <tr> <td>TxDOT Permit</td> <td>\$1,250.00 Each (1 Anticipated) \$ 1,250.00</td> </tr> <tr> <td>Subsurface Utility Engineering (SUE)</td> <td></td> </tr> <tr> <td>- QL A \$1675/Test Hole (6 Test Holes Anticipated)</td> <td>\$10,050.00</td> </tr> <tr> <td>- Survey of QL A</td> <td>\$ 1,000.00</td> </tr> <tr> <td>- QL B \$ 1.45/LF of utility (4700 LF Anticipated)</td> <td>\$ 6,815.00</td> </tr> <tr> <td>- Survey of QL B</td> <td>\$ 1,000.00</td> </tr> <tr> <td>- Traffic Control \$1725/Day (1 Day Anticipated)</td> <td>\$ 1,725.00</td> </tr> </table>		Basic Services (Fixed Fee Basis)	\$ <u>109,500.00</u>	Design Survey	\$ 15,600.00	Design Phase	\$ 75,000.00	Bid Phase	\$ 17,500.00	Expenses	\$ 1,400.00	Special Services (Reimbursable Basis - Not-to-Exceed)	\$ <u>32,090.00</u>	Permanent Easements	\$1,500.00 Each (4 Anticipated) \$ 6,000.00	Construction Easements	\$ 500.00 Each (6 Anticipated) \$ 3,000.00	NTTA Permit	\$1,250.00 Each (1 Anticipated) \$ 1,250.00	TxDOT Permit	\$1,250.00 Each (1 Anticipated) \$ 1,250.00	Subsurface Utility Engineering (SUE)		- QL A \$1675/Test Hole (6 Test Holes Anticipated)	\$10,050.00	- Survey of QL A	\$ 1,000.00	- QL B \$ 1.45/LF of utility (4700 LF Anticipated)	\$ 6,815.00	- Survey of QL B	\$ 1,000.00	- Traffic Control \$1725/Day (1 Day Anticipated)	\$ 1,725.00
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Schedule shall be as follows: See Attachment B - Schedule																																	

The above described services shall proceed upon return of this Task Authorization. Services will be billed monthly as they are done. All other provisions, terms, and conditions of the agreement for services which are not expressly amended shall remain in full force and effect.

This Task Authorization will serve as the notice to proceed.

CONSULTANT: NEEL-SCHAFFER, INC.

CITY OF ROWLETT:

BY: 

BY: _____

TITLE: VICE PRESIDENT

TITLE: _____

DATE: 1/22/2014

DATE: _____

SCOPE OF SERVICES

ARTICLE I

The parameters for the design of the proposed improvements shall include the following:

Provide bid documents and specifications for the **Big A Road 20" Water Transmission** (formerly known as "20-inch line along Highway 66 (Lakeview Pkwy)" as referenced in the Rowlett Rd. PS & Upper Pressure Plane Improvements – Phase 2, dated January 2, 2013), which includes the installation of 20" diameter waterline along Big "A" Road. Beginning at the connection to the existing 24" diameter transmission line adjacent to PGBT service road, west side, proceeding westerly in southern most travel lane for approximately 930 LF through an existing retail shopping center (Target) to west edge of said retail shopping center, at which point, it is proposed to installed 20" waterline on and along northern shoulder within the rights-of-way (ROW) for approximately 2740 LF, crossing Big "A" Road via a cased bore installation, proceeding westerly and southerly on and along southern ROW of Big "A" Road to the east shoulder of Rowlett Road, crossing Rowlett Road via a cased, bore installation, continuing southerly on and along west shoulder of Rowlett Road to the intersection of Lakeview Parkway, ending at the connection to the existing 16" diameter waterline to provide water supply to State Highway 66 Elevated Water tank.

Additional parameters for design of the improvements shall include the following:

- Project control to be based on local control monumentation and provided by the CITY. Field surveys are included for the entire length and width of the project.
- Scale of the plans to be: 1"=40' Horizontal; 1"=4' Vertical
- A construction sequencing plan shall be considered for each area of construction.
- Submittals to the CITY of work in progress shall be made at 30%, 60%, 90%, and 100% stages of completion. For each review, four (4) sets of drawings will be furnished to the CITY.

The ENGINEER will be required to submit a project status report every two weeks on the City's CIP Management website. All correspondence, meeting agendas and minutes, and other tracking tools for this project will be tracked and managed by the CIP management website; the ENGINEER will be required to utilize this tool throughout the project.

The ENGINEER will coordinate and communicate all design and construction activities with the Engineering Staff.

BASIC SERVICES - Section 1 (Fixed Fee Basis)

A. Field Surveying

Survey and prepare a design/topographic survey map for an area limits of rights-of-way (50) feet wide and 4700 feet in length along Big A Road, beginning at PGBT and ending at intersection of Rowlett Road and Lakeview Parkway. The design/topographic survey will indicate all surface features, spot elevations, one-foot contours, existing right-of-way lines, visible utilities, utilities located and marked by Dig Tess (notification of Dig Tess is responsibility of ENGINEER) and any other features required for design.

B. Conceptual Design

1. Attend a kick-off meeting with the CITY to discuss the various aspects of the project including planning and design criteria, work program and schedule, procedures of communication, assignments of personnel and expectations of the CITY.

2. Obtain from the CITY all available property plats, easements, record drawings, planning reports, traffic counts, zoning ordinances, and other data that may be pertinent in considering the development of the conceptual plans and the final design of the proposed improvements.
3. Determine from a field reconnaissance of the project area the general lay of the land for the improvements. This general layout will address the following:
 - Locations of existing utilities
 - Existing driveways
 - Availability of ROW
 - Access and convenience for construction operations
 - Crossing of drainage and structures
 - Landscaped areas
 - Private property improvements such as fences, mailboxes, sidewalks, drives, etc.
4. Evaluate the proposed layout of the new facilities taking the following design criteria into consideration:
 - Access for fire, police and other emergency vehicles
 - Maintenance for service during construction
 - Access for property owners to their respective driveways and adjacent streets
5. Prepare and submit 4 sets of conceptual engineering (30%) plans including layouts, preliminary right-of-way needs and cost estimates.
6. Meet with the CITY to review the submittal.

C. Preliminary Design – Upon approval of Conceptual Engineering Plans, the ENGINEER will prepare preliminary construction plans as follows:

1. Preliminary project plan and profile sheets for proposed water utilities.
2. Existing franchise utilities, based on utilities identified from Dig Tess, and utility easements will be shown on the plan and profile sheets. The ENGINEER will coordinate with utility companies and the CITY to ascertain what utility improvements need to be incorporated into the plans. Prepare an overall ROW strip map at 1"=50' scale for use in discussing easements with franchise utility companies.
3. Horizontal and vertical control plan that locates all proposed and existing facilities. Legal descriptions (Lot Nos., Block Nos., and Addition Names) along with property ownership shall be provided on the plan view.
4. Attend Public Meetings with City Staff and stakeholders in the area that could be impacted by the proposed improvements. The CITY will provide notification to the stakeholders and will conduct the meeting. The meeting will be used to present the plans to the stakeholders to gather comments and determine if modifications need to be made prior to the development of final plans.
5. Submit 5 copies of the plans to the utility companies for review and comment.

6. Prepare project contract documents including and additional technical specifications required.
7. Meet with TxDOT or NTTA to verify requirements or permits that relate to the project.
8. Investigate potential 404 permitting requirements.
9. Field-check preliminary drawings and specifications.
10. Prepare a preliminary estimate of probable construction cost and submit with four (4) sets of full-size plans (60%).
11. ENGINEER shall meet with the CITY during this phase to discuss the preliminary design.

D. Final Design -- Following CITY approval of the preliminary plans, ENGINEER shall prepare final plans with the following additional tasks. The package will be released for bidding based on the schedule provided by the ENGINEER.

1. Final project plan and profile sheets for proposed water utilities.
2. Prepare a horizontal control sheet with any required easements or right-of-way shown. Prepare a ROW strip map at 1"=50' scale for use in discussions with franchise utility companies and the CITY.
3. Prepare a construction sequencing plan in accordance with CITY requirements.
4. Prepare the Project Specifications using NCTCOG Standard Specifications for Public Works Construction, 3rd Edition. Utilize the CITY's standard front-end documents and prepare bid proposal forms (project quantities) of the improvements to be constructed. ENGINEER will modify sections as needed for this specific project.
5. Prepare a final estimate of probable construction cost.
6. Furnish CITY four (4) sets of drawings (90%), specifications, and bid proposals marked "Pre-Final" for approval by CITY. Upon final approval by CITY and correction of any outstanding issues, ENGINEER will provide four (4) sets of plans (100%) and specifications stamped "Final".
7. Attend review meetings with the CITY. The review meetings will be conducted to address review comments and to take action on items to produce the final construction documents.
8. ENGINEER will submit the project plans to the state for the TAS/ADA review. ENGINEER will prepare the application and make the submittal. The CITY will provide a check for the fee based on the construction cost per the submittal requirements. ENGINEER will address comments from the review and revise plans if necessary.
9. Attend a utility coordination meeting to start relocation process with affected franchise utilities.

ANTICIPATED SHEET LIST

1. **COVER SHEET**
2. **PROJECT GENERAL NOTES**
3. **OVERALL WATER MAIN LAYOUT AND DIMENSIONAL CONTROL**
4. **ROW / EASEMENT STRIP MAPS**
5. **WATER TRANSMISSION PLAN / PROFILE SHEETS**
6. **SPECIAL DETAILS**
7. **CITY STANDARD DETAILS**

E. Bidding Phase – ENGINEER will assist the CITY during the bid phase for the project. The following scope of services will be completed for each package.

1. Assist CITY in securing bids. Issue a Notice to Bidders to prospective contractors and vendors listed in CITY's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to bidders for CITY to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by CITY.
2. Print Bid Documents and distribute to selected plan rooms, and to prospective bidders that respond to the Notice to Bidders. Twenty (20) sets of plans and contract documents will be provided. Additional sets of plans, specifications, and bid documents as are necessary in the receipt of bids for construction and as are required in the execution of the construction contracts, shall be furnished by ENGINEER and shall be paid for by the CITY at actual cost of reproduction.
3. Attend a pre-bid meeting in conjunction with CITY staff to respond to bidder questions and walk the project.
4. Assist CITY by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders, if necessary.
5. ENGINEER will assist CITY staff in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by CITY.
6. Furnish CITY or Contractor fifteen (15) sets of the drawings and specifications for construction.

SPECIAL SERVICES - Section 2 (Reimbursable Basis - Not-to-Exceed)**A. Construction Phase**

1. Attend public meeting to discuss the project schedule for construction.
2. The ENGINEER will be expected to provide corrections to design issues that may arise during construction.
3. Attend a pre-construction conference with the CITY, franchise utility companies, and Contractor.

4. Review and comment on all construction submittals (Change orders, RFI's, PCM's, etc.) from the contractor. All construction submittals will be reviewed, commented on and tracked on the CITY's CIP management website.
 5. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of Contractor claims and make recommendations to the CITY on the merit and value of the claim on the basis of information submitted by the Contractor or available in project documentation.
 6. Conduct, in the company of the ENGINEER and CITY, a substantial completion review of the project for conformance with the design concept of the project and general compliance with the construction contract documents.
 7. Recommend final acceptance of work when acceptable.
 8. Revise the construction drawings in accordance with the information furnished by Contractor reflecting changes in the project made during construction. Two (2) sets of prints and electronic versions of "Record Drawings" shall be provided by ENGINEER to the CITY. The electronic files will include plans provided in a ".dwg" format and specifications provided in Microsoft Word format.
- B. Easement/ROW Documents (provided during Final Engineering Phase) - Prepare legal metes and bounds description and exhibit for parcels as directed by the CITY and as required for the project.
- C. Permitting Application Forms for Utility Installation with NTTA and/or TxDOT (provided during Final Engineering Phase) - Prepare applications necessary for the installation of proposed utilities within the ROW of said entities.
- D. Subsurface Utility Engineering (SUE)

The ENGINEER will provide the SUE work required for this project in general accordance with the recommended practices and procedures described in ASCE Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data). As described in the mentioned ASCE publication, four levels have been established to describe the quality of utility location and attribute information used on plans. The four quality levels are as follows:

- Quality Level D (QL"D") - Information derived from existing records;
- Quality Level C (QL"C") - QL"D" information supplemented with information obtained by surveying visible above-ground utility features such as valves, hydrants, meters, manhole covers, etc.
- Quality Level B (QL"B") - Two-dimensional (x,y) information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as "designating" this quality level provides the approximate horizontal position of subsurface utilities within approximately one foot.
- Quality Level A (QL"A") - Also known as "locating", this quality level provides precise three dimensional (x,y,z) information at critical locations by exposing specific utilities. Non-destructive vacuum excavation equipment is used to expose the utilities at specific points which are then tied down by survey.

It is the responsibility of the SUE provider to perform due-diligence with regard to records research (QL "D") and acquisition of available utility records. The due-diligence provided for this project will consist of reviewing the "As-Built" documents previously compiled by others. Utilities that are not identified through these efforts will be herein referred to as "unknown" utilities. SUE provider personnel will scan the defined work area using electronic prospecting equipment to search for "unknown" utilities. However, neither ENGINEER nor SUE provider is responsible for designating and locating these "unknown" utilities.

The scope of this Additional Service includes Quality Levels "A" and "B" SUE on and along approximately 950 LF of Big A as it approaches and intersects the PGBT west service road adjacent to Target; and approximately 700 LF on and along Big A Road and Rowlett Road to the intersection of State Highway 66 (Lakeview Pkwy). SUE provider will designate utilities, including service lines, located within the existing ROW of designated area. Test holes will then be excavated at critical locations where conflicts may exist between existing and proposed utilities. For the purpose of this proposal, SUE provider has assumed that 5-6 test holes will be required.

**Neel-Schaffer, Inc. +
Cheatham and Associates**
Task Order No. **141-NSC**

SCHEDULE

Big A Road 20" Water Transmission

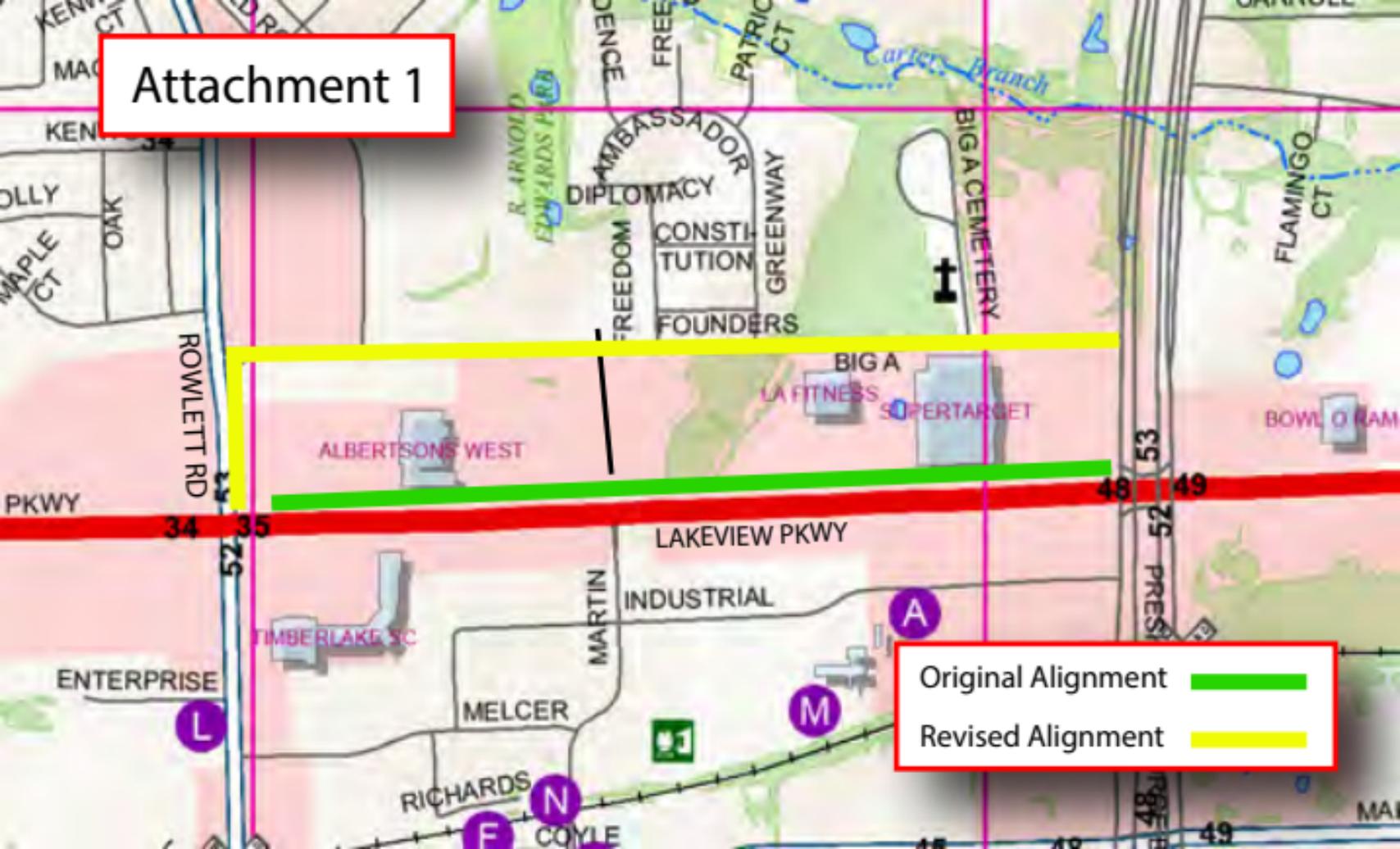
SCHEDULES (APPROXIMATE)

Field Survey complete by	<u>March 21, 2014</u>
Conceptual Design complete by	<u>April 25, 2014</u>
Preliminary Design complete by	<u>June 20, 2014</u>
Final Design complete by	<u>August 22, 2014</u>
Begin Construction Phase	<u>October 8, 2014</u>

Note:

This schedule is subject to change based on the CITY review process.

Attachment 1





City of Rowlett

Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 7C

TITLE

Consider action to approve a resolution entering into an Interlocal Agreement with the Town of Addison, which will allow both cities to cooperatively purchase goods and services under each other's competitively bid contracts.

STAFF REPRESENTATIVE

Alan Guard, Director of Financial and Information Services
Allyson Wilson, Purchasing Agent

SUMMARY

This item is to establish an Interlocal Agreement between the City of Rowlett and the Town of Addison for cooperative purchasing of goods and services. Recently, Caitlan Smelley, who is the Management Analyst in Procurement & Risk Management with the Town of Addison requested that the Town of Addison Parks Department be allowed to cooperatively purchase from the City of Rowlett's Annual Contract for Screening Wall Services with Ratliff Hardscape; therefore, City staff is requesting an Interlocal Agreement be established for this purpose.

BACKGROUND INFORMATION

Texas Local Government Code provides the opportunity for governmental entities to participate in Cooperative Purchasing Programs with each other as stated below. The City of Rowlett currently has thirty-one (31) Interlocal Agreements established with other governmental entities.

DISCUSSION

Section 271.102, Texas Local Government Code, authorizes a local government to participate in a Cooperative Purchasing Program with another local government or a local cooperative organization, and such process satisfies the state law competitive bid requirements. Chapter 791 of the Texas Government Code also authorizes respective governing bodies and officials in accordance with the "Interlocal Cooperation Act" to participate in a Cooperative Purchasing Program with another government entity, and such process satisfies the state law competitive bid requirements.

The adoption of the above stated resolution will allow both parties, the City of Rowlett and the Town of Addison, to purchase goods and services under each other's competitively bid contracts pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code and Chapter 791 of the Texas Government Code. There is no fee involved for the Interlocal Agreement.

The City Manager or designee for each party is authorized to act on behalf of the respective party in all matters relating to this cooperative purchasing program. Each party shall make payments to the other party or directly to the vendor under the contract made pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code and Chapter 791 of the Texas Government Code. Each party shall be responsible for the respective vendor's compliance with provisions relating to the quality of items and terms of delivery.

The City Attorney, David Berman, has reviewed and approved the Interlocal Agreement attached hereto and incorporated herein by reference as Exhibit A.

FINANCIAL/BUDGET IMPLICATIONS

Not applicable as there is no fee involved to establish the Interlocal Agreement with the Town of Addison.

RECOMMENDED ACTION

City staff recommends the City Council approve a resolution entering into an Interlocal Agreement with the Town of Addison, which will allow both cities to cooperatively purchase goods and services under each other's competitively bid contracts.

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING AN INTERLOCAL AGREEMENT WITH THE TOWN OF ADDISON FOR COOPERATIVE BIDDING AND PURCHASING OF GOODS AND SERVICES UNDER COMPETITIVELY BID CONTRACTS PURSUANT TO SUBCHAPTER F, CHAPTER 271, OF THE TEXAS LOCAL GOVERNMENT CODE AND CHAPTER 791 OF THE TEXAS GOVERNMENT CODE FOR THE CITY OF ROWLETT, TEXAS; AUTHORIZING THE CITY MANAGER AS THE COORDINATOR FOR THE COOPERATIVE ENTITY UNDER SUCH AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Rowlett, Texas finds that the Texas Local Government Code Section 271.102, and Chapter 791 of the Texas Government Code allows local governments to participate in a Cooperative Purchasing Program with another local government or a local cooperative organization and allows both parties to purchase goods and services under each other's competitively bid contracts, and such process satisfies the State law competitive bid requirements; and

WHEREAS, the City of Rowlett desires to participate in an Interlocal Cooperation Agreement with the Town of Addison to cooperatively purchase goods and services for each governmental entity.

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

Section 1: The City of Rowlett does hereby approve an Interlocal Cooperation Agreement with the Town of Addison providing for cooperative bidding and purchasing of goods and services; a copy of said agreement being attached hereto and labeled "Exhibit A".

Section 2: The City Manager is hereby designated as the coordinator for the City of Rowlett under said agreement, and is hereby authorized to execute the agreement with the Town of Addison and such other documents as may be necessary or appropriate pursuant thereto.

Section 3: This resolution shall become effective immediately upon its passage.

ATTACHMENT

Exhibit A – Interlocal Cooperation Agreement

Under this cooperative purchasing program, one party (the “Secondary City”) may purchase goods and/or services from a vendor (“vendor”) of the other party (the “Originating City”), which vendor has been selected by the Originating City in accordance with law. *For example*, the Originating City, pursuant to and in accordance with competitive bid laws, enters into an agreement with a vendor under which the Originating City will purchase particular goods. Following the Originating City’s selection of and execution of a contract with that vendor, the Secondary City may, pursuant to this Agreement, purchase the same goods from the same vendor in accordance with specifications and contract terms and pricing established by the Originating City.

ARTICLE II TERM

The term of this Agreement shall be for a period of one (1) year commencing on the last date of execution hereof (“Effective Date”). Thereafter this Agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless sooner terminated as provided herein.

ARTICLE III TERMINATION

Either party may terminate this Agreement by providing thirty (30) days prior written notice to the other party.

ARTICLE IV PURCHASING

The City Manager or other designee for each party is authorized to act on behalf of the respective party in all matters relating to this cooperative purchasing program. Each party shall make payments to the other party (if agreed to in writing by the other party) or directly to the vendor under the contract made by the Originating City (as described in Article I above) pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV’T CODE. Each party that enters into a contract with a vendor shall be responsible for the vendor’s compliance with provisions relating to the quality of items and terms of delivery (e.g., if the Secondary City enters into an agreement with a vendor selected by the Originating City, the Secondary City, and not the Originating City, shall be responsible for the vendor’s compliance with provisions relating to the quality of items and terms of delivery).

Each of the parties shall make their respective payments to a vendor from current revenues available to the paying party.

ARTICLE V MISCELLANEOUS

EXECUTED this ____ day of _____, 2014.

CITY OF ROWLETT, TEXAS

By: _____
Brian Funderburk, City Manager
4000 Main Street
Rowlett, Texas 75088

ATTEST:

By: _____
Laura Hallmark, City Secretary

APPROVED AS TO FORM

David Berman, City Attorney



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 7D

TITLE

Consider a resolution approving an Interlocal Agreement between the City of Rowlett and Rockwall County establishing Rowlett's subdivision plat approval authority over Rowlett's extra-territorial jurisdiction in Rockwall County.

STAFF REPRESENTATIVE

Erin Jones, Director of Development Services

SUMMARY

This item recurs on a yearly basis in order to renew an Interlocal Agreement (ILA) with Rockwall County allocating regulatory authority over subdivision development in the City's extraterritorial jurisdiction (ETJ).

BACKGROUND INFORMATION

On May 16, 2006, City Council adopted Resolution Number RES-076-06 approving a five-year Interlocal Agreement (ILA), which expired on December 31, 2010. The City Council approved Resolution Number RES-048-11 on April 5, 2011, approving the Interlocal Agreement for the duration of one year. On April 17, 2012, the Council approved Resolution Number RES-043-12 and the ILA was renewed with an expiration date of December 31, 2012. On February 5, 2013, the City Council Approved Resolution Number RES-003-13 with an expiration date of December 31, 2013. The time has come to review and extend the agreement again.

DISCUSSION

Chapter 242 of the Texas Local Government Code requires cities and counties to enter into interlocal agreements to allocate regulatory authority over subdivision development in the cities' extraterritorial jurisdiction (ETJ). The attached resolution and proposed agreement provides for the City of Rowlett to act as the sole regulatory authority over subdivision development in our ETJ. It also establishes that the City shall collect all fees, including those imposed by the County, and forward any fees to the County. The resolution also calls for the most restrictive regulations to apply to all development.

FINANCIAL/BUDGET IMPLICATIONS

The land area in our Rockwall County ETJ is very limited. Any development in this ETJ will be subject to City of Rowlett regulations and review and, as such, only minor effort will be expended by City staff in recording and collecting fees for the County. The developer will benefit through the efficiency of dealing with a single agency in the process.

RECOMMENDED ACTION

Staff recommends that the City Council consider approving a renewal to the ILA between the City of Rowlett and Rockwall County establishing Rowlett's subdivision development approval authority over Rowlett's ETJ in Rockwall County.

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, RENEWING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN ROCKWALL COUNTY AND THE CITY OF ROWLETT, TEXAS FOR SUBDIVISION PLAT APPROVAL AUTHORITY; AUTHORIZING ITS EXECUTION BY THE MAYOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Rowlett, Texas has been presented a proposed Agreement by and between Rockwall County and the City of Rowlett to allocate regulatory authority over subdivision development in the City's extraterritorial jurisdiction in Rockwall County, a copy of which is attached hereto and incorporated herein by reference as Exhibit A (hereinafter called the Agreement).

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the Mayor should be authorized to execute the Agreement on behalf of the City of Rowlett, Texas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS;

Section 1: That the Agreement attached hereto having been reviewed by the City Council of the City of Rowlett, Texas, and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved, and the Mayor is hereby authorized to execute the Agreement on behalf of the City of Rowlett, Texas.

Section 2: This resolution shall become effective immediately upon its passage.

ATTACHMENT

Exhibit A – Renewal Agreement

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
ROCKWALL COUNTY AND THE CITY OF ROWLETT FOR
SUBDIVISION REGULATION WITHIN THE EXTRATERRITORIAL
JURISDICTION OF THE CITY OF ROWLETT**

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") executed by and between Rockwall County, Texas, a political subdivision of the State of Texas (hereinafter referred to as "County"), and the City of Rowlett, a municipal corporation of the State of Texas (hereinafter referred to as "City"), dated Nov. 12, 2013, is made pursuant to Tex. Loc. Gov't Code Ch. 242.

WHEREAS, the Agreement is in accordance with the requirements of Tex. Loc. Gov't Code Chapter 242, which requires that the City and the County enter into a written agreement pertaining to regulation of subdivision plats in the Extraterritorial Jurisdiction ("ETJ") of the City; and

WHEREAS, the City and the County believe it is in the best interest of both entities to combine their respective procedures into one seamless operation with each retaining certain responsibilities as hereinafter provided in this Agreement; and

NOW, THEREFORE, in order to carry out the intent of the Parties as expressed above, and for and in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, the County and the City agree as follows:

Article I. PURPOSE

- 1.01** The purpose of this Agreement is to establish and clarify each Party's obligations, costs, and the manner and method of approving subdivision plats for real property located within both the County and the ETJ of the City.
- 1.02** The ETJ of the City may fluctuate from time to time during the term of this Agreement as a result of City Council action. The City agrees to notify the County in writing within 10 days of any and all City Council action that changes the ETJ during the term of this Agreement thereby affecting subdivision platting for real property within the boundaries of the County.

Article II. TERM OF AGREEMENT

- 2.01** This Agreement shall be effective on January 1, 2014 and shall have an initial termination date of December 31, 2014. Thereafter, the Parties shall renew the Agreement on an annual basis. The annual renewal shall be automatic upon the expiration of the preceding one (1) year term unless one of the Parties gives the other Party written notice of its desire not to renew

the Agreement at least ninety (90) days prior to the expiration of the then current term.

- 2.02** Any notice of intent to terminate must be delivered by deposit in the United States mail, certified, return mail receipt requested, to the other Party at the addresses set out herein. Upon termination of this Agreement, neither party will have any obligations to the other party under this Agreement, except with respect to payment for services already rendered under this Agreement, but not yet paid.

Article III. COUNTY RESPONSIBILITIES

- 3.01** The County assigns and delegates to the City the County's authority to approve subdivision plats and to issue related permits under Tex. Loc. Gov't Code Chapters 212 and 232 within the ETJ of the City, pursuant to Tex. Loc. Gov't Code Section 242.001(d), so that, except as otherwise provided in this Agreement, the City has exclusive jurisdiction to regulate subdivision plats and approve related permits in the City's ETJ utilizing the City's subdivision procedures.
- 3.02** The County will continue to administer and enforce County on-site sewage facility regulations in proposed and platted subdivisions in the City's ETJ; provided, however, that the County will reject as incomplete any application for an on-site sewage facility which is not accompanied by a plat application accepted by the City or a statement that the application is not associated with any development activity requiring approval of a subdivision or development plat.
- 3.03** This Agreement does not affect flood plain enforcement outside of the City Limits. The County will continue to be responsible for floodplain enforcement within the ETJ according to the County's Subdivision Rules and Regulations.
- 3.04** The County will continue to be responsible for accepting all public improvements that are located in the ETJ and are to be maintained by the County. The dedication and acceptance of the public improvements by the County must adhere to the County's Road Acceptance Procedures set forth in the County's Subdivision Rules and Regulations.
- 3.05** The County agrees that it will not accept for filing any applications for plat approval for land within the City's ETJ following the effective date of this Agreement.

Article IV. CITY RESPONSIBILITIES

- 4.01.** The City will enforce its subdivision regulations within the ETJ.

- 4.02.** The City agrees to require developers to dedicate public right-of-way pursuant to the Rockwall County Transportation Plan ("County Plan"), as currently adopted or as may be amended in the future, subject to applicable constitutional and statutory limitations for subdivisions. When it appears to the City that a requirement for dedication of right-of-way pursuant to the County Plan may exceed an applicable constitutional or statutory limitation, or if there is a conflict between the County Plan and the City of Rowlett Thoroughfare Plan, the City will notify the County, and the parties will cooperate to determine the extent of right-of-way dedication to be requested, or an alternative method of securing the needed right-of-way.
- 4.03.** Where a dedication or construction requirement is to be imposed, the City, in consultation with the County, will make an initial determination of proportionality. If the applicant appeals the proportionality determination in accordance with procedures set out in the City's subdivision regulations, the City will make the final determination, again, in consultation with the County.
- 4.04.** The City will notify the County upon the filing of all applications for approval of final plats. A copy of the final plat and any engineering plans will be sent to the County within ten (10) days of filing with the City for the County's review and comment. The City will make every reasonable effort to notify the County of the final action taken by the City on the application, whether approved or denied, within three (3) working days, but no later than fifteen (15) days of the City's action.
- 4.05.** If an applicant requests an exception from any standard in the City's subdivision regulations, the City will bring the request before the County for review. Any variance from the City's subdivision regulations to be enforced in the ETJ must receive approval by the Commissioners Court prior to the City taking action on the plat application. Plat approval also shall be conditioned on: 1) formation of property owners associations for maintenance of any facilities not normally maintained by the County; and 2) upon provision of security instruments assigned to the County in the event that the applicant seeks final plat approval before construction and acceptance of capital improvements.
- 4.06.** The City will deliver two copies of all recorded plats for subdivisions within the City's ETJ to the County within ten (10) working days of the recording of the subdivision plat. For all subdivisions containing more than five (5) lots, the City will also provide to the County a digital file of the subdivision plat including at least two (2) ground control GPS points in a format approved by the County.
- 4.07.** The City will confer with the Rockwall County 911 addressing Division in determining street names prior to final plat approval.

- 4.08.** The City and County inspectors will have access to construction sites of subdivisions within the ETJ and the City will timely submit copies of all road design materials and road construction test results to the County during road construction. City inspectors will have inspection and approval authority over the road construction, storm water drainage construction, and on non on-site wastewater facility construction within the right-of-way and easements. The County may request that the City issue a stop-work notice if the applicable construction standards are not being met. The City will take all reasonable actions, including a stop-work order, to ensure that applicable construction standards are met, as deemed necessary by the City. The City will notify the County when construction of public improvements is completed for final acceptance by the County.
- 4.09.** The City will collect all fees and charges involved with the approval of subdivision plats, including but not limited to engineering reviews, inspections of public improvements, but not including costs associated with applications for variances or exceptions to on-site sewer facilities to be reviewed and permitted by the County, under this Agreement.
- 4.10.** As an attachment to this Agreement, the City will provide a current map defining the legal boundaries of its corporate limits and areas of ETJ. The City will notify the County of any changes to the City's ETJ within ten (10) days of the effective date of the change, and the area covered by this Agreement will be amended accordingly. A change in the area covered by the Agreement will not, however, affect any rights accrued under Tex. Loc. Gov't Code Chapter 245 prior to the effective date of the change.
- 4.11.** The plats which will be subject to this Agreement are those that will be filed after the effective date of this Agreement. If the ETJ is expanded or reduced, plats must be filed with the party who has jurisdiction as defined by this Agreement.

Article V. GENERAL PROVISIONS

- 5.01. General Administration:** The County and the City will designate their respective representatives for the general administration of this Agreement.
- 5.02. Alteration, Amendment or Modification:** This Agreement may not be altered, amended, or modified, except in writing and signed by all parties to this Agreement.
- 5.03. Notice:** All notices sent pursuant to this Agreement will be in writing and must be sent by registered or certified mail, postage prepaid, return-receipt requested.

Notices sent pursuant to this Agreement will be sent to the Rockwall County Judge's Office at the following address:

*County Judge
Rockwall County Judge's Office
101 Rusk Street, Room 202
Rockwall, Texas 75087*

Notices sent pursuant to this Agreement may be delivered or sent to the City at the following address:

*City Manager
City of Rowlett
4000 Main Street
Rowlett, Texas 75088*

When notices sent pursuant to this Agreement are mailed by registered or certified mail, notices will be deemed effective three (3) days after deposit in a U.S. mail box or at a U.S. post office.

- 5.04. Severability:** If any provision of this Agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect the remaining provisions of this Agreement.
- 5.05. Breach:** The failure of either party to comply with the terms and conditions of this Agreement will constitute a breach of this Agreement. Either party will be entitled to any and all rights and remedies allowed under Texas law for any breach of this Agreement by the other party.
- 5.06. Non-Waiver:** The waiver by either party of a breach of this Agreement will not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision. Nothing in this Agreement is intended by either party to constitute a waiver of any immunity from suit or liability to which it is entitled under applicable law.
- 5.07. Entire Agreement:** This Interlocal Cooperative Agreement constitutes the entire Agreement between the County and the City. No other agreement, statement, or promise relating to the subject matter of this Agreement and which is not contained in this Agreement or incorporated by reference in this Agreement will be valid or binding.
- 5.08. Terms used in Document:** As used in this Agreement, the terms "Interlocal Cooperation Agreement", "Interlocal Agreement", "Agreement", and "Contract" are synonymous.

5.09. Non-Defined Terms: If not specifically defined in this Agreement, words and phrases used in this Agreement will have their ordinary meaning as defined by common usage.

EXECUTED THIS 12 day of November 2013.

Rockwall County

By: *Jerry Hogan*
Honorable Jerry Hogan
Rockwall County Judge

Attest:

Felicia Morris
Felicia Morris, Court Administrator

Date: 11/12/13

EXECUTED THIS _____ day of _____ 2013.

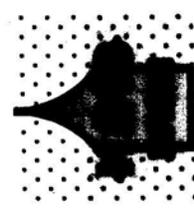
City of Rowlett

By: _____
Todd Gottel, Mayor

Attest:

Laura Hallmark, City Secretary

Date: _____





City of Rowlett

Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 7E

TITLE

Consider appointments to the various boards and commissions with mid-term vacancies.

STAFF REPRESENTATIVE

Laura Hallmark, City Secretary

SUMMARY

City Council makes appointments to Boards and Commissions annually in the Fall for terms to begin on October 1st. However, in some instances of several vacancies, Council has made mid-term appointments. This item is to address such a situation.

BACKGROUND / HISTORY

The Board of Adjustment (BOA), one of the 11 various Boards and Commissions for the City of Rowlett, is comprised of five Regular members and five Alternate members. There are currently two Regular vacancies and three Alternate vacancies. This has created an issue for establishing a quorum. While the BOA does not meet on a regular basis, there is a pending application, which needs to be addressed and has been placed on hold until these positions can be filled.

Council determined that they would fill these vacancies at this time and, while going through that process, determined that the vacancies on five other boards would be filled as well. On March 13th, Council conducted interviews to fill the vacant positions on the various boards. These appointees will fulfill the remainder of unexpired terms through 9/30/2014.

POLICY EXPLANATION

The Boards and Commissions vacancies to be considered for appointment at this meeting are as follows:

- Animal Shelter Advisory Board – 1 Alternate
- Arts and Humanities Commission – 2 Alternates
- Board of Adjustment – 2 Regulars and 3 Alternates
- Parks and Recreation Advisory Board – 1 Alternate
- Senior Advisory Board – 1 Alternate
- Traffic and Safety Advisory Commission – 1 Regular

It was the consensus of Council to submit the following names for appointment as listed below:

<p>Animal Shelter Advisory Board No appointment at this time.</p>
<p>Arts & Humanities Commission Cynthia Baxter – Alternate Jeff Hendrickson – Alternate</p>

Board of Adjustment Wanda Hoff – Regular (currently Alternate) James Vessels – Regular (currently Alternate) Miranda Morgan – Alternate Chris Kizziar – Alternate
Parks and Recreation Advisory Board Linda Fugitt – Alternate
Senior Advisory Board No appointment at this time.
Traffic & Safety Advisory Commission Mark Fant – Regular (currently Alternate) Alejandro Coss – Alternate

FISCAL IMPACT

N/A

STAFF RECOMMENDATION

To approve the recommended slate of Board and Commission appointees for the remainder of the FY 2013-2014 term.



City of Rowlett

Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 8A

TITLE

Consider action to approve a resolution to enter into an Economic Development Program Agreement for property located at 3840 Main Street and authorize the Mayor to execute the necessary documents.

STAFF REPRESENTATIVE

Jim Grabenhorst, Director of Economic Development

SUMMARY

The Economic Development Program Agreement (Exhibit A) between the Rowlett Chamber Foundation and 3840 Main LLC for this City owned property in Downtown will allow for the renovation and repurposing of this vacant building to become a new restaurant concept, which as part of the City's Strategic Downtown Plan, will help catalyze Main Street while providing additional unique dining opportunities for Rowlett residents and the surrounding areas.

BACKGROUND INFORMATION

Downtown Rowlett has been a focus of City development efforts as a way to create a vibrant community core while leveraging the City's commitment nearly 30 years ago to bring public transportation (DART) to Rowlett. Several City facilities (City Hall campus, Library, Development Services, Public Works & Utilities and the Animal Shelter) all reside within the current Downtown boundaries. In addition to the commitment of public transit (DART), the community has invested in several infrastructure improvement projects over the last ten years to prepare Downtown for future development.

In 2010, the City embarked on Realize Rowlett 2020. Realize Rowlett 2020 is the City's Comprehensive Plan that guides decisions on all development. Phase I served to update the comprehensive plan and was adopted by City Council on September 11, 2011. Phase II was about implementing the vision and led to the adoption of new zoning regulations in four key areas on November 6, 2012, to ensure the vision was realized for these areas. Downtown was one of the initial key areas and in addition to the new zoning regulations, a formal Strategic Downtown Plan was also adopted at that time.

DISCUSSION

A key component and action item from the Downtown Strategic Plan and incorporated in the overall Economic Development Strategic Plan is the use of key City-owned properties to catalyze development within Downtown.

Since the adoption of the Strategic Downtown Plan and new zoning regulations, the City has actively marketed Downtown Rowlett opportunities and has received interest from several development entities interested in pursuing catalyst projects on City-owned properties. To that end, the City has worked with restaurateur Kevin Lefere, owner of Zanata's and developer Don Cass, who have focused on renovating and repurposing existing properties throughout Dallas in areas like Deep Ellum, to transform the 3840 Main Street property (Attachment 1) from a vacant City-owned property to a unique dining and entertainment venue. The property was originally home to Rowlett's Fire Station and then later was used as the Meter Services building by the Utility division. It has remained vacant and primarily used as storage over the past several years.

Through the Economic Development Program Agreement, the City, in partnership with the Rowlett Chamber Foundation, will transfer ownership of the property to 3840 Main LLC who will renovate and bring life to this property. Their restaurant concept will be an Austin-style venue with outdoor seating, roll-up garage doors and an outdoor music venue.

The Economic Development Program Agreement provides for the City to receive fair market value for the property as determined by an appraisal in the amount of \$50,000 and 3840 Main LLC will be required to renovate and open their restaurant concept within 12 months of taking title to the property. Through the Economic Development Program Agreement, the City will provide a 380 grant in the amount of \$50,000 to 3840 Main LLC upon their private investment of \$200,000 in renovations of the property, creation of 20 full and part-time jobs, and the continuous operation of the restaurant for one year after completion of construction.

FINANCIAL/BUDGET IMPLICATIONS

Based upon the above terms of the Economic Development Program Agreement, the budget impact is zero (\$0) should 3840 Main, LLC meet the performance criteria and qualify for the 380 grant. In regards to fiscal impact, the project will create 20 new jobs and generate additional tax revenue to the City in excess of \$10,000 annually through property and sales tax revenue. As stated earlier, this project will create and build on the catalytic efforts to utilize City-owned property that currently doesn't generate sales or property tax revenue within our Downtown district.

The initial sales price of \$50,000 will be segregated into escrow (a/c#104-0000-230.04-28) so that when 3840 Main LLC meets the contractual performance criteria, the funds will be available to distribute the incentive payment.

RECOMMENDED ACTION

Staff recommends Council approve a resolution to enter into an Economic Development Program Agreement for property located at 3840 Main Street and authorize the Mayor to execute the necessary documents.

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT FOR CITY OWNED PROPERTY LOCATED AT 3840 MAIN STREET AND AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has adopted a vision for the redevelopment and economic revitalization of its central downtown area (the “District”) and has established and implemented a broad program to achieve this goal, which includes a revision of its comprehensive plan, the adoption of form-based codes to encourage development in accordance with New Urbanism principles, the opening of a light rail station by Dallas Area Rapid Transit (DART), the use of state grant funding for infrastructure and public amenity improvements, and the legislative creation of a municipal management district; and

WHEREAS, the City Council of the City of Rowlett, Texas has been presented a proposed Economic Development Program Agreement with the Rowlett Chamber Foundation and 3840 Main LLC for City-owned property located at 3840 Main Street, and

WHEREAS, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the Mayor should be authorized to execute said Economic Development Program Agreement on behalf of the City of Rowlett, Texas.

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

Section 1: That the Economic Development Program Agreement attached hereto as Exhibit A, having been reviewed by the City Council of the City of Rowlett, Texas is hereby approved.

Section 2: That the Mayor be and is hereby authorized to execute the necessary documents conforming to this resolution.

Section 3: That this resolution shall become effective immediately upon its passage.

ATTACHMENTS

Exhibit A – Economic Development Program Agreement
Attachment 1 – 3840 Main Street Property Plat

STATE OF TEXAS §
 §
 COUNTY OF DALLAS §

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement (this “Agreement”) is entered into on the Effective Date between the City of Rowlett, Texas (the “City”), the Rowlett Chamber Foundation, (the “Foundation”), and 3840 Main, LLC, (the “Developer”), each acting by and through its duly authorized representatives.

RECITALS

WHEREAS, the City has adopted a vision for the redevelopment and economic revitalization of its central downtown area (the “District”) and has established and implemented a broad program to achieve this goal, which includes a revision of its comprehensive plan, the adoption of form-based codes to encourage development in accordance with New Urbanism principles, the opening of a light rail station by Dallas Area Rapid Transit (DART), the use of state grant funding for infrastructure and public amenity improvements, and the legislative creation of a municipal management district; and

WHEREAS, the Foundation is an independent non-profit foundation that seeks to encourage local economic development and the attraction and the expansion of existing and new businesses, which will benefit local entrepreneurs and businesses and will promote the general welfare and prosperity of the City; and

WHEREAS, the Developer desires to acquire a site in the City’s downtown district to establish, build and operate a restaurant facility; and

WHEREAS, the City owns land generally situated at 3840 Main Street (the “Property”), and which is more specifically described in Exhibit “A,” attached hereto and by this reference incorporated herein, that the Developer seeks to acquire in order to develop and renovate the land and existing structures into a restaurant facility consisting of approximately 2,240 square feet for the on-site sale and consumption of food and beverages (the “Project”); and

WHEREAS, the City, by this Agreement, intends to sell and convey the Property to the Foundation at the Property’s fair market value as established by an appraisal, and the Foundation, in turn, intends to convey the Property to Developer at an equivalent price; and

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate and promote local economic development and business and commercial activity in the City, and desires to make a grant to Developer to stimulate economic development; and

WHEREAS, the attraction of new and the expansion of existing business in the City will promote economic development, stimulate commercial activity, provide additional jobs and employment opportunities for the citizens of the City, generate additional tax revenue, and enhance the tax base and economic vitality of the City, which will promote the City's and Foundation's goals; and

WHEREAS, the City has determined that making economic development grants in accordance with this Agreement will further the objectives of the City, the Foundation and Developer, will benefit the City's inhabitants, and will promote local economic development and stimulate employment, business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

ARTICLE 1 Certain Definitions

"Completion of Construction" shall mean the date upon which a final certificate of occupancy is issued for the Project.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of a party's existence as an on-going business, insolvency, appointment of receiver for any part of a party's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party and in the event such proceeding is not voluntarily commenced by the party, such proceeding is not dismissed within ninety (90) business days after the filing thereof.

"Force Majeure" shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental approvals, laws, regulations, or restrictions, or other cause beyond the control of the party.

"Grant" shall mean the Grant as defined in Section 2.1 below.

"Project" means the design, installation, and construction of a proposed restaurant facility of approximately 2,240 square feet, to be situated on the Property.

ARTICLE 2 Terms and Conditions of Sale of Property

2.1 The Closing Date for the conveyance of the Property shall be the ninetieth (90th) day of and from the Effective Date. If the 90th day falls on a weekend or holiday, the Closing Date shall be the next ensuing day that is not a weekend or holiday.

The Title Company shall be:

American Title Company of East Texas
4702 Rowlett Road, Suite 100
Rowlett, Texas 75088
ATTN: Terry Shabler
(972) 475-0508
(972) 475-2983 (Facsimile)

The Purchase Price of the Property (as between the City and the Foundation, and as between the Foundation and Developer) is Fifty Thousand and No/100 Dollars (\$50,000.00).

2.2 The Property. The Property shall be sold and conveyed by the City to the Foundation on the Closing Date set forth hereinafter for the Purchase Price, which shall be paid at closing and which all parties stipulate to be the Property's fair market value based on an appraisal prepared and disclosed by the City to all parties. The Foundation shall sell and convey the Property to Developer at closing for an equivalent purchase price, which shall be paid at closing. The Property is generally described as 3840 Main Street, and is more specifically described in Exhibit "A," attached hereto and incorporated herein. The legal description may be substituted by actual survey when completed, as called for herein or by the subdivided lot description. The Property, and the conveyance thereof to the Foundation and to the Developer, shall consist of all of the City's rights to the Property, and shall include all buildings, structures, fixtures or other improvements located on the Property, save and except any right, title and interest of the City and the public in and to all utility, drainage and public easements and any rights or interest in or to streets, roads, alleys, and rights-of-way. No additional restrictions, limitations, easements, liens or conditions shall be added by the Foundation in its transfer of the Property to Developer other than those that are contained in the City's conveyance to the Foundation, and the Deed of Trust conditions described hereinafter.

2.3 Inspection Period.

a) The Developer shall have sixty (60) days of and from the Effective Date to inspect the Property and to conduct such title inspections, investigation or research that it may deem suitable. Among the factors to be considered by Developer are the availability of utilities, the necessity for subdividing or obtaining site plan approvals for the Property, access to and from the Property, soil and subsoil conditions, drainage, environmental conditions and the economic feasibility of development of the Property. The Developer and its agents shall have the right of access to the Property prior to the Closing Date for the purpose of conducting such investigations and inspections. The City agrees to cooperate in connection with the investigation and inspection of the Property, and agrees to furnish Developer, on Developer's request, copies of any and all surveys, environmental and engineering studies, and other documents in the City's possession or control relating to the Property on or before the fifteenth (15th) day after the Effective Date. The City and the Developer may mutually agree to such extensions of the inspection period set forth herein as may be necessary or appropriate to enable the Developer to conduct and complete its due diligence, but such extensions shall not exceed the Closing Date set forth herein.

b) If Developer determines, in Developer's sole judgment and discretion, that the Property is not suitable for its intended use, the Developer shall give the City, the Foundation and the Title Company written notice thereof on or before 5:00 p.m. on the last day of the Inspection Period. Upon receipt of such written notice, all parties shall be released from all further obligations under this Agreement and this Agreement shall automatically terminate without further action or notice. If Developer does not send such written notice to the City, the Foundation and the Title Company, then it shall be assumed that the Property is suitable for Developer's intended use.

2.4 Title Commitment and Survey.

a) Title Commitment. Within twenty (20) days after the Effective Date, the Title Company shall deliver to Developer a commitment for an owner's policy of title insurance ("Title Commitment") in the amount of the purchase price. The Title Commitment shall set forth the status of the title of the Property and show all liens, claims, encumbrances, easements, proposed rights-of-way, rights-of-way, encroachments, reservations, restrictions and any other matters of existing record affecting the Property. The Foundation shall cause the Title Company to deliver to Developer at the Developer's sole cost and expense (i) a true, complete and legible copy of all documents referred to in the Title Commitment, including, but not limited to, deeds, lien instruments, plats, reservations, restrictions and easements ("Title Documents"); and (ii) the results of UCC financing statement searches of the records of Dallas County, Texas, and the Texas Secretary of State (or other similar entity) (the "UCC Searches"). The City shall reimburse, and shall indemnify and hold harmless the Foundation from and against any and all costs and expenses incurred by the Foundation in procuring the Title Commitment and performing its obligations under this section.

b) Survey. Within twenty (20) days after the Effective Date, the Developer may cause to be completed an updated land title survey ("Survey") of the Property prepared by a registered public land surveyor acceptable to Developer, the City. The Survey shall include: (i) the actual boundaries and dimensions of, and area within, the Property; (ii) a metes-and-bounds field note legal description of the Property; (iii) the location of any easements, set-back lines, encroachments, overlaps, roadways including the proposed rights-of-way, paving, and waterways, including volume and page references, if applicable; (iv) the outside boundaries and dimensions of all improvements; and (v) information sufficient to cause the Title Company to delete the printed exception for "discrepancies, conflicts or shortages in area or boundary lines, or encroachments, or any overlapping of improvements" in the Owner's Title Policy. For purposes of the property description to be included in the Special Warranty Deed to be delivered to Developer, any field notes prepared by the surveyor shall control any conflicts or inconsistencies with the description contained or referred to in this subsection, and such field notes shall be incorporated into this Agreement upon their completion and approval by Developer and Title Company. The Developer may waive the survey required under this subsection if an existing survey of the Property exists that is satisfactory to the parties.

c) Review of Title Survey. Developer shall have ten (10) days from Developer's receipt of the last of the Title Commitment, Title Documents, UCC Searches and Survey in which to examine those documents and to specify to the City and Foundation those items

reflected thereon which Developer will accept as permitted exceptions to title (“Permitted Exceptions”), and those items which Developer finds objectionable (“Title Objections”). Notwithstanding, current zoning, liens for current taxes, the severance and retention of the mineral estate, and the environmental condition of the Property shall be deemed to be Permitted Exceptions. Within ten (10) days after Developer’s written notice of Title Objections, the City shall correct or remove the Title Objections, and the Foundation deliver an amended Title Commitment reflecting the correction or deletion of such matters. The Title Commitment shall be updated from time to time and shall reveal no other exceptions to title than the Permitted Exceptions. The City and Foundation covenant and agree not to cause or permit any documents to be filed of record affecting title to the Property after the Effective Date without Developer’s prior written consent, save and except the Deed of Trust described hereinafter.

d) Uncorrected Title Objections. If the Title Objections are not corrected or deleted to Developer’s satisfaction within ten (10) days after Developer’s written notice of Title Objections, then Developer may either:

- (1) Terminate this Contract by written notice to the City, the Foundation and the Title Company, in which event all parties shall be released from all further obligations under this Agreement (save and except the City’s obligation to reimburse the Foundation for its costs and expense); or
- (2) Waive all or any of the Title Objections and close the transaction with no reduction in the Purchase Price.

e) As Is, Where Is. Developer represents that as of the Closing Date, Developer will have fully inspected the Property, will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to: the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, the existence or absence of hazardous materials, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Property. In addition, Developer acknowledges and agrees that the Property is being purchased and will be conveyed “AS IS” and “WHERE IS” with all faults and defects, whether patent or latent, as of the Closing. There have been no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Developer by the City or the Foundation or any employee or agent of either, except as specifically set forth in this Agreement.

2.5 Closing.

a) Closing. The Closing of the sale of the Property by the City to the Foundation and by the Foundation to the Developer shall occur on the Closing Date unless changed by mutual agreement of the parties. The Closing shall occur in the offices of the Title Company or at such other location as is reasonably acceptable to the parties.

b) Seller's Obligations at Closing. At the Closing, the City, acting as the Seller to the Foundation, and the Foundation, acting as Seller to Developer, at the City's sole cost and expense, shall deliver, or cause to be delivered, to the Purchaser the following:

- (1) Special Warranty Deed. The party acting as Seller shall execute and deliver to the Title Company for recording a Special Warranty Deed in the form attached hereto as Exhibit "B," fully executed and acknowledged by the party acting as Seller, conveying and transferring all rights, title and interest held by the Seller and fee simple title to the Land, appurtenances and improvements, subject to the Reservations from and Exceptions to Conveyance and Warranty described in Exhibit "B," to the party acting as Purchaser, subject to the Permitted Exceptions.
- (2) Owner's Title Policy. The Foundation shall cause the Title Company to issue and deliver to the Developer an owner's policy of title insurance ("Owner's Title Policy") in the amount of the Purchase Price and insuring that Developer is owner of the Property, subject only to any Permitted Exceptions, and the standard printed exceptions included in a Texas Standard Form Owner's Policy of Title Insurance; provided, however, at the Developer's sole cost and expense, the exceptions for rights of parties in possession, rights of tenants in possession, and visible and apparent easements shall be deleted; and the standard exception relating to discrepancies, conflicts or shortages in area shall be deleted.
- (3) Other Instruments. The party acting as Seller shall execute and deliver such other documents as are customarily executed in the city, county and state in which the Property is located in connection with the conveyance of real property, including all required closing statements, releases, affidavits, evidences of authority to execute the documents and any other instruments that may reasonably be required by the Title Company.
- (4) Possession. The party acting as Seller shall deliver possession of the Property to the party acting as Purchaser, free and clear of all persons or tenants in possession.
- (5) Foreign Investment in Real Property Tax Act Requirements. The parties agree to comply with all requirements of the Foreign Investment In Real Property Tax Act, as amended, and applicable IRS Regulations ("FIRPTA"). This requirement includes the delivery of a Certificate at Closing verifying that the party acting as Seller is not a foreign person. If the party acting as Seller is a foreign person or if the party acting as Seller fails to deliver the required Certificate, the party acting as Seller acknowledges that a portion of the Purchase Price that would otherwise be paid to the party acting as Seller at the Closing must be withheld in order to comply with the FIRPTA requirements. The amount required to be withheld shall be paid to a mutually acceptable third party escrow agent for delivery to the Internal Revenue Service, along with the appropriate FIRPTA reporting forms, copies of which shall be provided to the party acting as Seller and the party acting as Purchaser.

- c) Purchaser's Obligations at Closing.
- (1) Conditions for Closing. The Developer shall not be obligated to close this transaction until all of the requirements and conditions for the Closing set forth in this Agreement have been performed. In the event that the Developer fails to close this transaction for any reason, including but not limited to the reasons set forth in this section, the sale and conveyance of the Property by the City to the Foundation, and all requirements incident to the conveyance of the Property to the Foundation, save and except the City's obligation for cost reimbursement, shall automatically terminate and the no right, title or interest in or to the Property shall transfer to the Foundation.
 - (2) Payment of Purchase Price. At the Closing, the Developer shall pay to the Foundation the Purchase Price in cash, and the Foundation shall pay the City the Purchase Price in cash, subject to any adjustments for prorations and other credits provided for in this Agreement.
 - (3) The Developer shall execute and shall cause to be executed, delivered and recorded a Deed of Trust in the form attached hereto as Exhibit "C," which shall secure the City in the Developer's fulfillment of this Agreement and compliance with the performance criteria set forth hereinafter.
 - (4) Other Instruments. The party acting as Purchaser shall execute and deliver such other documents as are customarily executed in the city, county, and state in which the Property is located in connection with the purchase of real property, including all required closing statements, affidavits, evidences of authority to execute the documents and any other instruments that may be reasonably required by the Title Company.
- d) Prorations. All ad valorem taxes relating to the Property for the year of the Closing shall be prorated as of the date of Closing. Likewise, any other amounts normally prorated between sellers and purchasers, such as rents and utility bills, if any, shall be prorated between the parties as of the date of Closing. The City is a tax exempt entity; the Developer shall be responsible for any and all prorated taxes associated with the Property commencing of and from the Closing Date. The Developer shall indemnify, defend and hold harmless the City and the Foundation of and from any and all ad valorem taxes, penalties, interests fees and charges that may arise or accrue of and from the date of Closing.
- e) Closing Costs. The parties each agree to pay the following costs at the Closing:
- (1) Paid By City. The City agrees to pay the cost of preparing the Special Warranty Deeds, and any costs or expenses incurred by the Foundation.
 - (2) Paid By Developer. The Developer agrees to pay the recording fees for the Deeds; the premium for the Owner's Title Policy and the additional

premium charged for the “survey deletion;” the cost of the UCC searches; the cost of the commissions; the cost of preparing and recording any releases and other documents necessary to convey the Property in accordance with this Agreement; and any other similar closing costs customarily paid by a purchaser of real property, including those that may be incurred by the Foundation.

- f) Representations of Parties. The parties warrant and represent as follows:
- (1) Seller’s Authority. The person signing this Agreement on behalf of the party acting as Seller has the full right, power, and authority to enter into this Agreement as Seller, and to carry out its obligations, including the conveyance of the Property to the party acting as Purchaser as provided in this Agreement, without the joinder of any other person.
 - (2) Title. The City has good and indefeasible fee simple title to the Property, free and clear of any liens, encumbrances or adverse claims.
 - (3) Parties In Possession. There are no parties in possession of the Property. There are no leases (written or oral) or agreements relating to the use or possession of the Property.
 - (4) Compliance With Regulations. The City has not received any written notice that the Property violates any restrictive covenant, or any city, county, state or federal regulation, ordinance or statute.
 - (5) Access. The Property has access to and from a publicly dedicated street or road, and to the best of the City’s current actual knowledge there is no pending or threatened action that would result in the termination or impairment of such access.
 - (6) Mechanic’s Liens. There are no and will not be at Closing any unpaid bills for labor or materials furnished to any Seller in connection with the Property that could cause a mechanic’s or materialmen’s lien to be filed against the Property.
 - (7) Development Approvals. Neither the City nor the Foundation warrant or represent that current development regulations are appropriate for the Developer’s intended use. Neither the City nor the Foundation warrant or represent that any development application will be approved absent full compliance with all applicable ordinances, codes and regulations. The Developer acknowledges and represents that no official, agent, employee or representative of the City or the Foundation has made any representations of any kind to the Developer or its broker or any of its agents, employees or representatives regarding any matter in any way relating to zoning, platting, subdivisions, site plan review, building and/or construction codes, or any other ordinance, code or regulation of the City pertaining to property development or use.

The warranties and representations in this section shall also be deemed made as of the Closing, and shall survive the Closing and not be merged therein.

g) Hazardous Materials. The City represents and warrants that it has received no written notice, and has no actual knowledge, of the existence of any Hazardous Materials in, on, under, or around the Property, nor of any violation of Environmental Law. The Developer shall be solely responsible for compliance with Environmental Laws and for remediation of any Hazardous Materials in accordance with Environmental Laws and other applicable laws. **DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD THE CITY AND THE FOUNDATION HARMLESS FROM AND AGAINST ALL LOSS, LIABILITIES, DAMAGES, CLAIMS, COSTS AND EXPENSES (INCLUDING REASONABLE COSTS OF DEFENSE) ARISING OUT OF OR ASSOCIATED, IN ANY WAY, WITH NON-COMPLIANCE WITH ENVIRONMENTAL LAWS, OR THE EXISTENCE OF HAZARDOUS MATERIALS IN, ON, OR ABOUT THE PROPERTY, OR A BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS SECTION, WHETHER BASED IN CONTRACT, TORT, IMPLIED OR EXPRESS WARRANTY, STRICT LIABILITY, CRIMINAL OR CIVIL STATUTE OR COMMON LAW, INCLUDING THOSE ARISING FROM THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE CITY OR THE FOUNDATION; HOWEVER, THE DEVELOPER SHALL NOT BE LIABLE UNDER SUCH INDEMNIFICATION TO THE EXTENT SUCH LOSS, LIABILITY, DAMAGE, CLAIM, COST OR EXPENSE RESULTS SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR THE FOUNDATION.** Environmental Laws mean all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any governmental authority, in each case relating to environmental, health, safety and land use matters. This indemnity shall survive the conveyance of the Property to the Developer.

2.6 City's Indemnification of Foundation. It is the expectation and agreement of the City and the Foundation that the City shall be responsible for and shall pay all costs and expenses that might otherwise be incurred or paid by the Foundation. The City shall reimburse the Foundation, and shall hold harmless and indemnify the Foundation, from and against all costs, expenses, claims, liabilities and losses arising from the Foundation's participation in this Agreement, save and except any costs, expenses, claims, liabilities and losses arising from the Foundation's gross negligence or willful misconduct. Any rights, claims, demands or causes of action that may be asserted by the Foundation to or against the Developer shall be and are hereby subrogated in favor of and assigned to the City, and the City may assert any or all such claims against the Developer at the City's sole discretion.

2.7 Developer's Default. In the event that the Developer fails to close the transaction for any reason, or in any event in which the Developer fails to or is unable to assume ownership of the Property, any right, title or interest in or to the Property that may be held or otherwise acquired by the Foundation shall automatically terminate and revert back to the City. On and after Closing, the Foundation shall not interfere with nor take any action that might in any way

impair or adversely affect any exercise by the City of any of its rights arising under the Deed of Trust or under this Agreement.

ARTICLE 3

Economic Development Grant

3.1. Grant. Subject to the terms, covenants and conditions of this Agreement, the City will make economic development grants to Developer from lawfully available funds in an amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00), to defray a portion of the costs of the necessary costs of design, construction, renovation and installation of infrastructure, buildings and facilities for the Project. The Grant shall be paid by the City one (1) year after Completion of Construction payable from any source of funds lawfully available to the City.

3.2 Notwithstanding the characterization of the grant as a waiver of fees, the nonpayment of such fees shall in all events and for all purposes be deemed to be a grant in accordance with the provisions of Chapter 380 of the Texas Local Government Code payable from any source of funds lawfully available to the City.

3.3 Grant Limitations. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Developer or an approved assignee. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

ARTICLE 4

Performance Obligations

4.1 Performance Criteria. The obligation of the City to make Grant payments in accordance with the foregoing, and the obligations assumed by Developer as conditions precedent and subsequent to the receipt of said Grant funds (or entitlements to fee waivers, are subject to the following:

a) Developer shall diligently pursue the development of the Project and shall achieve Completion of Construction within one year from the Closing Date set forth in Article 2 of this Agreement, subject to events of Force Majeure. Developer shall apply for all permits required by applicable laws promptly following (i) execution of this Agreement and (ii) final approval of the Project and any required site, landscape and façade plans, and shall commence construction, renovation and improvement of new and existing structures, facilities and equipment diligently after plat and site plan approval.

b) Developer shall have expended not less than \$200,000.00 for the design, installation, construction and renovation of site infrastructure and buildings.

c) During the term of this Agreement following the Effective Date and continuing thereafter for a period of one (1) years after Completion of Construction, or earlier termination,

Developer or its approved successors or assigns shall continuously own and occupy the Property (subject to approved assignments), shall continuously operate the Project, and shall employ not less than 20 employees on a full and parttime basis.

d) The Project shall not be used for any other purpose other than a retail establishment for the sale and on-site consumption of food and beverages, and shall operate as such continuously.

e) For a period of one (1) years following Completion of Construction, Developer shall not assign, sell or transfer ownership of the Project to any person without the prior written consent of the City, which consent shall not be unreasonably withheld.

ARTICLE 5

Events of Default; Events of Termination; Recapture

5.1 Termination. This Agreement terminates upon any one of the following:

- a) by mutual written agreement of the City and Developer;
- b) by the City or Developer, respectively, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-breaching party;
- c) by the City if any taxes, fees or charges owed to the City, the County of Dallas, or the State of Texas by Developer or an approved assignee shall have become delinquent (provided, however, Developer retains the right to timely and properly protest and contest such taxes or fees);
- d) by the City if Developer or an approved assignee suffers an Event of Bankruptcy or Insolvency;
- e) by the City or by Developer, respectively, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid or illegal; or
- f) by the City if insufficient funding is available in any future fiscal year to provide the Grant contemplated herein; provided, however, that termination under this subsection shall not affect the validity or extent of the conveyance of the Property to the Developer. In such event, the City shall give Developer not less than thirty (30) days notice of its intent to terminate.

5.2 Recapture. In the event that this Agreement is terminated as to any party prior to payment of the Grant, the obligation of the City to fund said Grant (or any remaining portion thereof) shall cease immediately. In the event that this Agreement is terminated by the City based upon Developer's or an approved assignee's failure to meet the Performance Obligations of this Article, the City shall have no obligation to fund the Grant; if all or any portion of the

Grant has been paid to Developer (or fees have been waived), then Developer or its assignee shall, immediately upon notice, refund all amounts previously paid.

5.3 Option to Purchase on Default:

(a) The sale and transfer of the Property, and the Developer's ownership, occupancy and use of the Property, is subject to the Performance Criteria set forth in Article 4. In the event that the Performance Criteria, or any one of them, is not met, the City shall give the Developer written notice thereof. The Developer shall have thirty (30) days to correct such default or, if correction is not possible within 30 days, to commence correction within 30 days and diligently pursue correction to completion. In the event of Developer's failure to cure default, the City shall have the option to purchase and reacquire ownership the Property upon payment to Developer of the costs incurred by Developer in making improvements to the Property. Such costs shall consist solely of direct expenditures for permanent improvements installed or constructed on the Property and shall not include costs associated with furniture, removable items, planning, design or legal expenses.

(b) Upon notice to Developer of the City's intent to exercise the option, Developer shall, within thirty days thereafter, provide the City with sufficient documentation to establish Developer's expenditure of allowable costs. The City shall, within thirty (30) days after its approval of the costs, submit that amount to Developer and Developer shall immediately execute such deeds and instruments as may be required by the City to convey fee simple title to the City, free and clear of liens and encumbrances. The City may, at its option, withhold a portion of the payment to Developer in an amount sufficient to satisfy any or all liens or encumbrances on the Property. If the amount of the payment to Developer is insufficient to discharge all liens and encumbrances, Developer shall remit the difference directly to the lienholder or to the City, at the City's option.

ARTICLE 6
Covenants, Representations, and Warranties

6.1 Separated Contracts. In developing and constructing the Project, Developer will use reasonable efforts to encourage all contractors and vendors to use "separated contracts" (as that term is defined in Sec. 3.291 of the Texas Administrative Code), in order to maximize sales tax revenues.

6.2 Existence; Authority.

a) Developer represents and warrants that it has sufficient legal authority to conduct business in the State of Texas; that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement; and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

b) The City and Foundation represent and warrant that each has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this

Agreement; and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

6.3 Limitation of Liability. Except for the City's obligations to pay the Grant proceeds as set forth in this Agreement, the City and the Foundation, and their past, present and future officers, employees and agents assume no responsibilities or liabilities to Developer, or any third parties in connection with the development and improvement of the Property and the Project, and Developer hereby holds harmless and waives any and all claims against the City and the Foundation for any losses, injury to persons or damage to property. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. Developer acknowledges and agrees that there shall be no personal recourse to the directors, officers, employees or agents of the City or the Foundation, who shall incur or assume no liability in respect of any claims based upon or relating to this Agreement.

ARTICLE 7

Miscellaneous

7.1 Recitals. The recitals in the preamble to this Agreement are hereby incorporated herein as part of this Agreement.

7.2 No Third Party Rights. By entering into this Agreement, the parties do not create any obligations express or implied other than those set forth herein; the terms of this Agreement are solely for the benefit of the City, the Foundation and the Developer; and this Agreement shall not create any rights in any parties other than the City, the Foundation and the Developer.

7.3 No Waiver of Immunity. By entering into this Agreement, the City shall not be deemed or construed to waive any of its sovereign, governmental, official, legislative or other immunities, said immunities being hereby retained.

7.4 Binding Agreement; Assignment. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement shall not be assigned by Developer without the written consent of the City and the Foundation, which consent shall not be unreasonably withheld.

7.5 Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall lie exclusively in the state courts of appropriate jurisdiction in Dallas County, Texas.

7.6 Amendment. This Agreement may be amended only by the mutual written agreement of the parties hereto.

7.7 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions hereof, and the

Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

7.8 Notices. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand, telecopier or other electronic transmission; or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (e.g. U.S. Express Mail or Federal Express) for one-day delivery, addressed to the party to whom notice is intended to be given at the following addresses:

If intended for City, to:

City of Rowlett, Texas
Attn: City Manager
4000 Main Street
P.O. Box 99
Rowlett, Texas 75088

With a copy to:

David M. Berman
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

If intended for the Foundation, to:

Rowlett Chamber Foundation
c/o Rowlett Chamber of Commerce
3910 Main Street
Rowlett, Texas 75088
ATTN: Diane Lemmons

If intended for Developer, to:

3840 MAIN, LLC

7.9 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

7.10 Waiver of Rights. The failure of any party to exercise any of the rights set forth in this Agreement shall not be deemed a waiver that prevents that party from any future exercise of that or any other right set forth in this Agreement. The failure of a party to insist on the performance of any obligation by any other party shall not be deemed a waiver by that party of the right to insist or compel performance of that or any other obligation.

7.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

7.12 Effective Date. This Agreement is effective, and the Effective Date hereof, is the last date affixed to the signatures of the parties.

EXECUTED in single or multiple originals.

CITY OF ROWLETT, TEXAS

A Texas municipality

By: _____
Todd W. Gottel, Mayor

Date: _____

ATTEST:

By: _____
Laura Hallmark, City Secretary

ROWLETT CHAMBER FOUNDATION, a Texas non-profit corporation and independent foundation

By: _____
Greg Mitchell, Chairman, Board of Directors

Date: _____

3840 MAIN, LLC,
A Texas Limited Liability Corporation

By _____
_____, Its _____

Date: _____

ACKNOWLEDGEMENTS

STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 20____, by Todd W. Gottel, Mayor of the City of Rowlett, Texas, on behalf of and as the act and deed of the City of Rowlett, Texas.

My Commission Expires: _____ Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 20____, by Greg Mitchell, Chairman of the Board of Directors, Rowlett Chamber Foundation, on behalf of and as the act and deed of the Rowlett Chamber Foundation.

My Commission Expires: _____ Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 20____, by _____, the _____ of 3840 Main, LLC, on behalf of and as the act and deed of 3840 Main, LLC.

My Commission Expires: _____ Notary Public, State of Texas

EXHIBIT A
Property Description

All of Lot 3R-3, Block A Municipal Complex Addition

Being a replat of Lot 3, Block A, Municipal Complex Addition & Lots 42 & 43, Original Town of Rowlett.

**EXHIBIT B
Special Warranty Deed Form**

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.

**STATE OF TEXAS §
 § SPECIAL WARRANTY DEED
COUNTY OF DALLAS §**

Date: _____

Grantor: _____

Grantor's Mailing Address: _____

Grantee: _____

Grantee's Mailing Address: _____

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

Property (including any improvements): Being
All of Lot 3R-3, Block A Municipal Complex Addition

Reservations from and Exceptions to Conveyance and Warranty:

1. Rights of the public to any portion of the above described property lying within the boundaries of dedicated or existing roadways or which may be used for road or street purposes.
2. Visible and apparent easements and all recorded easements over or across subject property.
3. Any and all licenses, easements, restrictions, covenants, conditions and reservations of record, if any, applicable to the herein conveyed property or any part thereof.
4. Rights, title or interest in or to the Reverter Clause contained in the Economic Development Program Agreement between the City of Rowlett, Texas, the Rowlett Chamber Foundation, and 3840 Main, LLC, the Developer referred to in section 5.3 of said Agreement.

5. The Deed of Trust by 3840 Main, LLC, the Developer and Grantor therein, to the City of Rowlett, Texas, of even date hereof.

6. All of the mineral estate, including but not limited to the oil, gas, minerals, lignite and water rights in, under and that may be produced from the subject property, together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring the lands for oil, gas and other minerals and removing the same from the lands.

7. The Performance Criteria as Covenants Running with the Land:

The sale and transfer of the Property is subject to the following Performance Criteria as deed restrictions. In the event that the Performance Criteria, or any one of them, is not met, the City shall give the Developer written notice thereof. The Developer shall have thirty (30) days to correct such default or, if correction is not possible within 30 days, to commence and diligently pursue correction. In the event of Developer's failure to cure default, ownership of the Property shall revert back to the City upon the City's written notice thereof and payment to Developer of the costs expended for permanent improvements. This provision shall be a covenant running with the land.

Performance Criteria:

- a) Developer shall diligently pursue the development of the Project and shall achieve Completion of Construction within one (1) year from the Closing Date set forth in Article 2 of this Agreement, subject to events of Force Majeure. Developer shall apply for all permits required by applicable laws promptly following (i) execution of this Agreement and (ii) final approval of the Project and any required site, landscape and façade plans, and shall commence construction, renovation and improvement of new and existing structures, facilities and equipment diligently after plat and site plan approval.
- b) Developer shall have expended not less than \$200,000.00 for the design, installation, construction and renovation of site infrastructure and buildings.
- c) During the term of this Agreement following the Effective Date and continuing thereafter for a period of one (1) year after Completion of Construction, or earlier termination, Developer or its approved successors or assigns shall continuously own and occupy the Property (subject to approved assignments) and shall continuously operate the Project.
- d) The Project shall not be used for any other purpose other than a retail establishment for the sale and on-site consumption of food and beverages, and shall operate as such continuously.
- e) For a period of one (1) years following Completion of Construction, Developer shall not assign, sell or transfer ownership of the Project to any person without the

prior written consent of the City, which consent shall not be unreasonably withheld.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, has GRANTED, SOLD, and CONVEYED and by these presents does GRANT, SELL, and CONVEY to Grantee the Property, together with all and singular and rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, 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 thereof, by, through or under Grantor, but not otherwise, except as to the reservations from and exceptions to conveyance and warranty.

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

GRANTOR:

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on _____, 20____, by _____, Grantor, for the purposes and consideration therein expressed.

Notary Public, State of Texas

My Commission Expires:

AFTER RECORDING RETURN TO:

EXHIBIT C
Deed of Trust Form

DEED OF TRUST

Date: _____

Grantor: 3840 MAIN, LLC.

Grantor's Mailing Address (including county):

Trustee: David M. Berman; Nichols, Jackson, Dillard, Hager & Smith, LLP

Trustee's Mailing Address (including county):

Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

Beneficiary: City of Rowlett, Texas

Beneficiary's Mailing Address:

City of Rowlett, Texas
4000 Main Street
P.O. Box 99
Rowlett, Texas 75088
Attn: City Manager

Note (the Economic Development Program Agreement, also referred to in this instrument as the "Agreement"):

Date: _____

Maker/Obligor: 3840 MAIN, LLC (also the Grantor herein)

Payee/Obligee: The City of Rowlett, Texas (also the Beneficiary herein)

Final Maturity Date: N/A

Property (including any improvements):

All of Lot 3R-3, Block A Municipal Complex Addition

Prior Lien(s): None

Other Exceptions to Conveyance and Warranty:

For value received and to secure performance of that certain Economic Development Program Agreement (hereinafter referred to as the "Agreement"), Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and performs its obligations under the Agreement according to its terms, this deed of trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

Grantor's Obligations

Grantor agrees to:

1. timely and properly substantially comply with the terms and provisions of the Economic Development Program Agreement (the "Agreement") by and between the City of Rowlett, Texas, the Rowlett Chamber Foundation, and the Developer, a true and correct copy of which is attached hereto and, by this reference, incorporated herein as if set forth fully;
2. pay all taxes and assessments on the property when due; and
3. preserve the lien's priority as it is established in this deed of trust.

Beneficiary's Rights

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. Beneficiary may apply any proceeds received under an insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
3. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed for all associated costs by Grantor on demand at the place where the Agreement is performable for any sum so paid, including attorney's fees, plus interest at the lawful rate on those sums from the dates of payment. The sum to be reimbursed shall be secured by this deed of trust.
4. If Grantor defaults in its performance of the Agreement or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default

continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:

- a. declare the previously paid Grant funds immediately due;
- b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
- c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

Trustee's Duties

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure, including reasonable attorney's fees;
 - b. to Beneficiary the full amount due to Beneficiary in accordance with the Economic Development Program Agreement, interest, attorney's fees, and other charges due and unpaid; and
 - c. any amounts required by law to be paid before payment to Grantor.

General Provisions

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.

5. If any portion of the Agreement payable by Developer to City cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property, if not required to be first paid to prior lienholders. After deducting any expense incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect and retain all rent and other income and receipts as long as Grantor is not in default under the Economic Development Program Agreement or this deed of trust. If Grantor defaults in the performance of the Agreement or this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts, collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the Agreement and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.
8. Interest on the debt secured by this deed of trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.
9. When the context requires, singular nouns and pronouns include the plural.
10. The term "Agreement" includes all sums secured by this deed of trust.
11. This deed of trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 8B

TITLE

Conduct a public hearing and consider an ordinance approving Major Warrants. The subject property is located within the Urban Village Form Based District. The applicant requests Major Warrants related to the following Form Based Code standards in order to develop a drive-thru restaurant: drive aisle width, building frontage, building transparency, signage, shade and open space. The subject property is located at 4510 and 4514 Lakeview Parkway, further described as Lots 2 and 3, Block A of the Applebee's Rowlett Addition, being a total of 1.76 +/- acres.

STAFF REPRESENTATIVE

Daniel Acevedo, Urban Designer
Erin Jones, Director of Development Services

SUMMARY

The applicant is requesting a series of Major Warrants to allow for a Dairy Queen drive-thru restaurant (Attachment 1 – Location Map). Per the Form Based Code (FBC), Major Warrants are used for exceptions to the code that are not consistent with a provision or the intent of the code, but may or may not deter the overall implementation of the district. Warrants are granted on a case by case basis. As such, Major Warrants should only be considered under unique circumstances, and not be seen as setting precedent.

The Planning and Zoning Commission recommended approval of this item with the following stipulations with a 5/0 vote at their March 11, 2014, regular meeting:

- **That the westernmost drive aisle be a maximum of 24 feet.**

The discussion can be viewed as item C.1 at the following link:
<http://rowlettx.swagit.com/play/03112014-840>.

BACKGROUND / HISTORY

Upon adoption of the FBC and Downtown Regulating Plan on November 6, 2012, (Attachment 2- Regulating Plan) the subject property was zoned as a Form Based Urban Village District (FB UV). The subject property is situated along Lakeview Parkway (also referred to as HW 66), which is a heavily auto-oriented six-lane arterial. At the time of adoption, there were discussions regarding the Lakeview Parkway corridor and whether it should be included in the Downtown Regulating Plan or not. Ultimately, the decision was made to include the corridor, as a transition from the auto-oriented condition to a pedestrian-oriented condition was needed. Lakeview Parkway was the logical starting point. The primary way this transition will occur is through a browsing lane, as it creates a secondary circulation network off Lakeview Parkway for both

vehicles and pedestrians. Over time, the addition of the browsing lane and other FBC requirements will help to form the desired urban edge of the Downtown as it adjoins Lakeview Parkway. All of this was with the understanding that provisions would need to be made in light of the auto-oriented nature of Lakeview Parkway. To that end, certain requirements were lessened along Lakeview Parkway and additional auto-oriented uses were added, such as drive-thrus, with the final zoning adoption in 2012.

Over the past year, the City has received various proposals for development along Lakeview Parkway. Given the auto-oriented nature and the existing suburban development context of Lakeview Parkway, several of these development proposals have been for fast-food restaurants with drive-thru service. More specifically, Dairy Queen is interested in developing a fast-food restaurant with drive-thru service at 4510 Lakeview Parkway, adjacent to the Applebee's restaurant. 4514 Lakeview Parkway is also included in this request in order to evaluate the site holistically.

As previously mentioned, the Downtown FBC standards acknowledged some accommodation of auto-oriented site elements through the use of a browsing lane and other modified standards. However, in order to more directly address the specific needs of Dairy Queen, additional adjustments to development standards through the major warrant process are being requested by the applicant. Over the past few months, Staff and the Urban Design Officer (UDO) have worked with the applicant to ensure the design will meet the most critical elements of the FBC (i.e. the pedestrian realm) and the City's objectives for development along Lakeview Parkway. To their credit, Dairy Queen has undertaken the task of adapting their conventional suburban model in an effort to be in further conformance with the FBC. Some of the more notable items include the incorporation of the browsing lane, reservation of future building sites along Industrial Street, and a shared parking agreement between Applebee's and adjacent parcels to limit parking. At this point, Staff and the UDO are generally supportive of the request with the exception of the westernmost drive aisle width as detailed below. With that said, Major Warrants should be evaluated on a case-by-case basis and should not be seen as setting precedence.

It is important to note that this Major Warrant request only pertains to the specific elements outlined in detail below. The use itself is allowed by right. All renderings and plans provided herein (Exhibits A and B) are intended to show the applicant's intent as it pertains to the specific Major Warrant requests. However, detailed development plans will be subject to all other FBC requirements and administrative approval.

DISCUSSION

As previously mentioned, over the past six months, Staff and the UDO have worked with Dairy Queen's representatives to ensure that the critical elements of the pedestrian realm are established within this proposal. In order to accommodate Dairy Queen's specific requirements, the applicant is requesting the following Major Warrants to the UV Standards and the Downtown Regulating Plan requirements. While the majority of these warrants only apply to Dairy Queen,

three of them will apply to the adjacent lot as well as noted below. Staff has included commentary in italics below each request:

1. Exemption from the fee in lieu requirement for public Open Space (Both Lots);

This warrant is a global concern that does not pertain only to Dairy Queen or this specific request. At the time of adoption of the FBC, Staff and the UDO knew there was a need to establish an open space fund in order for the City to generate funds to purchase and enhance centralized open space in the FB Districts. It was deemed impractical to require every small lot to provide 10% open space, as that would not help achieve the goal of highly amenitized centralized public open space. To that end, the fund requirement was established for properties that were too small to effectively dedicate open space on their individual site. However, in practicality, the requirement as written is cost prohibitive. It is estimated in the case of Dairy Queen that the requirement could add another \$50,000 in fees to their development costs. While Staff and the UDO still believe a fund is necessary, the City needs to reevaluate how fees can be exacted in a way that is less cost prohibitive. Staff plans to bring possible amendments forward for the Commission and Council's consideration in the near future.

2. Building frontage standard of 32 percent along the front building line of Lakeview Parkway and 44 percent along the (future) front building line of Industrial Street;

Part of the need for this warrant arises from the narrowness of the lot and existing placement of the drive entrance, which, per TxDOT, cannot be changed. The other part of the request is due to Dairy Queen's desired layout of their building and parking. It was suggested that Dairy Queen front the street with its long façade on Lakeview Parkway in order to come into further compliance. However, Dairy Queen has indicated that the conventional configuration is the only working model that they can accommodate.

3. A reduction of transparency from the minimum 60 percent required, to 16 percent along the left (east) façade and 15 percent along the right (west) façade, and reduction from 60 percent minimum to 16 percent along the front façade (north).

Due to the type of user, a reduction should be considered; however, 16 percent along the front façade is quite low. Staff and the UDO have suggested that additional transparency should be introduced along the front façade. However, Dairy Queen has indicated that the current design includes corporate features that cannot be changed.

4. Allowing a wall sign larger than 6 sq. ft.; and (Both Lots)

Larger wall signs are typically not permitted in the UV District, as they are typically seen as more vehicular in nature than pedestrian oriented. However, the fact that Lakeview

Parkway is currently an auto-oriented roadway makes it appropriate to consider this warrant.

5. Allowing a monument sign along Highway 66/Lakeview Parkway; (Both Lots)

Monument signs are not permitted in the FB UV District, as they are typically seen as more vehicular in nature than pedestrian oriented. However, the fact that Lakeview Parkway is currently an auto-oriented roadway makes it appropriate to consider a monument sign in this area.

The applicant has requested a "site specific sign" similar to the adjacent Applebee's sign. This is a conventional sign and likely not appropriate for the Urban Village District. Staff and the UDO have worked towards monument sign standards that will be incorporated in the FBC for auto-oriented areas in the future and would recommend the following stipulations to ensure the Dairy Queen sign is in line with future signs along Lakeview Parkway:

- a. Monument Signs are only allowed in the Downtown District along Lakeview Drive.*
- b. Monument signs shall be limited to a maximum height of six (6'). The maximum size for the sign area is thirty-five (35) square feet per sign face. Every monument sign shall be required to have a minimum one (1') foot masonry base, measured from grade level to the bottom of the sign area.*
- c. All building materials and colors utilized for construction of monument bases and sign frames shall be constructed of the same materials found on the main building on the lot, unless otherwise approved by Minor Waiver*
- d. Signs shall be located so as not to block visibility for vehicles entering or leaving a site.*
- e. A maximum of one monument sign shall be allowed per lot.*

6. Reduction in the length of canopy along the sidewalk of the front elevation from 75 percent to a lesser percentage (to be determined by the applicant based on the proposed elevations).

This warrant is appropriate for this building type and supports a pedestrian environment based on the patio placement. This reduction is supplemented with canopy trees along the browsing lane.

7. Western Drive Aisle Width of 27.8 ft.

This is the one major warrant request that Staff and the UDO cannot support. The applicant has indicated that they need this width to accommodate their anticipated drive-thru traffic in the most convenient way possible. In order to help address this concern,

Staff supported the extension of the drive-thru lane in order to accommodate additional stacking spaces for vehicles. In addition, Staff supported converting the westernmost drive aisle to a one-way configuration to mitigate the applicant's concern regarding possible congestion. While Staff understands that the applicant is trying to mitigate for their highest volume scenario by providing a wider drive aisle, Staff believes this is likely excessive based on average usage.

As a matter of perspective, the typical two-way drive aisle width in the FB UV District is 20-ft in order to create a pedestrian friendly environment. This standard has been vetted and accepted by the Fire Department as an appropriate fire lane width in the FB Districts as well. The proposed drive aisle width is just shy of a Local Street roadbed width of 28-ft under the Downtown Regulating Plan. As noted in the Rowlett Development Code (RDC), for 90 degree angled parking 24- ft is the conventional suburban standard for two-way traffic and 22-ft for one-way traffic. For 45 degree angled parking, the RDC allows a 12-ft drive aisle for one-way traffic and a 24-ft drive aisle for two-way traffic. Staff is willing to support a 24-ft drive aisle with one-way traffic to help mitigate the applicant's concerns, but to go beyond that does not meet the intent of the FBC.

In reviewing recently constructed drive-thru restaurants, Staff looked to Whataburger at Dalrock Road and Lakeview Parkway. In that case, the business has a 24-ft drive aisle feeding into their drive-thru lane that accommodates two-way traffic. This business has been operational for approximately two years, and seems to be functioning efficiently. To that end, Staff does not find a reasonable rationale for this request, and thus cannot support it.

Public Hearing Notices:

Notice of this public hearing was mailed, posted, and published in accordance with State Law and the Rowlett Development Code. 17 notices were mailed on February 21, 2014, and as of Wednesday March 12, 2014, Staff has received zero (0) responses.

FINANCIAL/BUDGET IMPLICATIONS

Potential Sales Tax Revenue at build-out is estimated at \$20,000 annually with Property Tax Revenue at \$11,200 annually for a total annual revenue benefit of \$31,200. In addition, 40 new jobs will be created. There is no incentive requested; therefore, Rowlett has no expenses associated with this project.

RECOMMENDED ACTION

Based on the abovementioned analysis, and in an effort to balance the current market demand for auto-oriented commercial uses along Lakeview Parkway and the applicant's willingness to address several key goals of the FBC and Downtown Regulating Plan, Staff and the UDO are generally supportive of this proposal with the exception of the western drive aisle width as detailed above and recommended by the Planning and Zoning Commission. Staff also recommends that the Council consider requiring the applicant to adhere to the monument sign standards as outlined above. The formal UDO recommendation can be viewed as Attachment 3.

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, GRANTING MAJOR WARRANTS TO AMERICAN DAIRY QUEEN AS OUTLINED IN DETAIL BELOW, SAID PROPERTY BEING LOCATED AT 4510 AND 4514 LAKEVIEW PARKWAY, FURTHER DESCRIBED AS LOTS 2 AND 3, BLOCK A OF THE APPLEBEE'S ROWLETT ADDITION, BEING A TOTAL OF 1.76 +/- ACRES; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Rowlett and the governing body of the City of Rowlett, in compliance with the laws of the State of Texas and the ordinances of the City, have given requisite notice by publication and otherwise, and after holding due public hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and in the exercise of its legislative discretion have concluded that these Major Warrants should be approved.

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

Section 1: That the City Council of the City of Rowlett, Texas does hereby grant the following major warrants, further illustrated in Exhibits A and B, to American Dairy Queen as outlined in detail below, said property being located at 4510 and 4514 Lakeview Parkway, further described as Lots 2 and 3, Block A of the Applebee's Rowlett Addition, City of Rowlett, Dallas County, Texas, being a total of 1.76 +/- acres ("Property"):

1. Exemption from the fee in lieu requirement for public Open Space;
2. Building frontage standard of 32% along the front building line of Lakeview Parkway and 44% along the (future) front building line of Industrial Street;
3. A reduction of transparency from the minimum 60% required, to 16% along the left (east) façade and 15% along the right (west) façade, and reduction from 60% minimum to 16% along the front façade (north).
4. Allowing a wall sign larger than 6 square feet;
5. Allowing a monument sign along Highway 66/Lakeview Parkway;
6. Reduction in the length of canopy along the sidewalk of the front elevation from 75% to a lesser percentage (to be determined by the applicant based on the proposed elevations).
7. Allowing a 27.8 feet width for the western drive aisle.

Section 2: All development and use regulations and requirements imposed on property in the Form Based Code – Urban Village zoning district shall apply to the development and use of the Property unless in conflict with this ordinance, in which case the provisions of this ordinance shall prevail.

Section 3: That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

Section 4: That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal, or unconstitutional.

Section 5: That this ordinance shall take effect immediately from and after its passage and the publication of the caption of said ordinance as the law in such case provides.

ATTACHMENTS

Exhibit A – Concept Plan

Exhibit B – Renderings

Attachment 1 – Location Map

Attachment 2 – Downtown Regulating Plan

Attachment 3 – UDO Recommendation



Use of Drawings

PROHIBITION ON REUSE:
INFORMATION CONTAINED IN THESE DRAWINGS AND SPECIFICATIONS WAS PREPARED FOR USE ON THE SPECIFIC SITE INDICATED. USE OF THIS INFORMATION ON ANOTHER PROJECT IS PROHIBITED AND CONTRARY TO LAW UNLESS EXPRESSLY AUTHORIZED IN WRITING BY THE ARCHITECT.
THESE DRAWINGS AND SPECIFICATIONS ARE AND SHALL REMAIN THE PROPERTY OF KEVIN CRAIG ARCHITECT. DISPLAY, REPRODUCTION, OR USE FOR ANY BUT THE SPECIFICALLY AGREED-UPON PURPOSES, WITHOUT THE WRITTEN AUTHORIZATION OF KEVIN CRAIG ARCHITECT IS STRICTLY PROHIBITED.

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Registration



03/04/2014

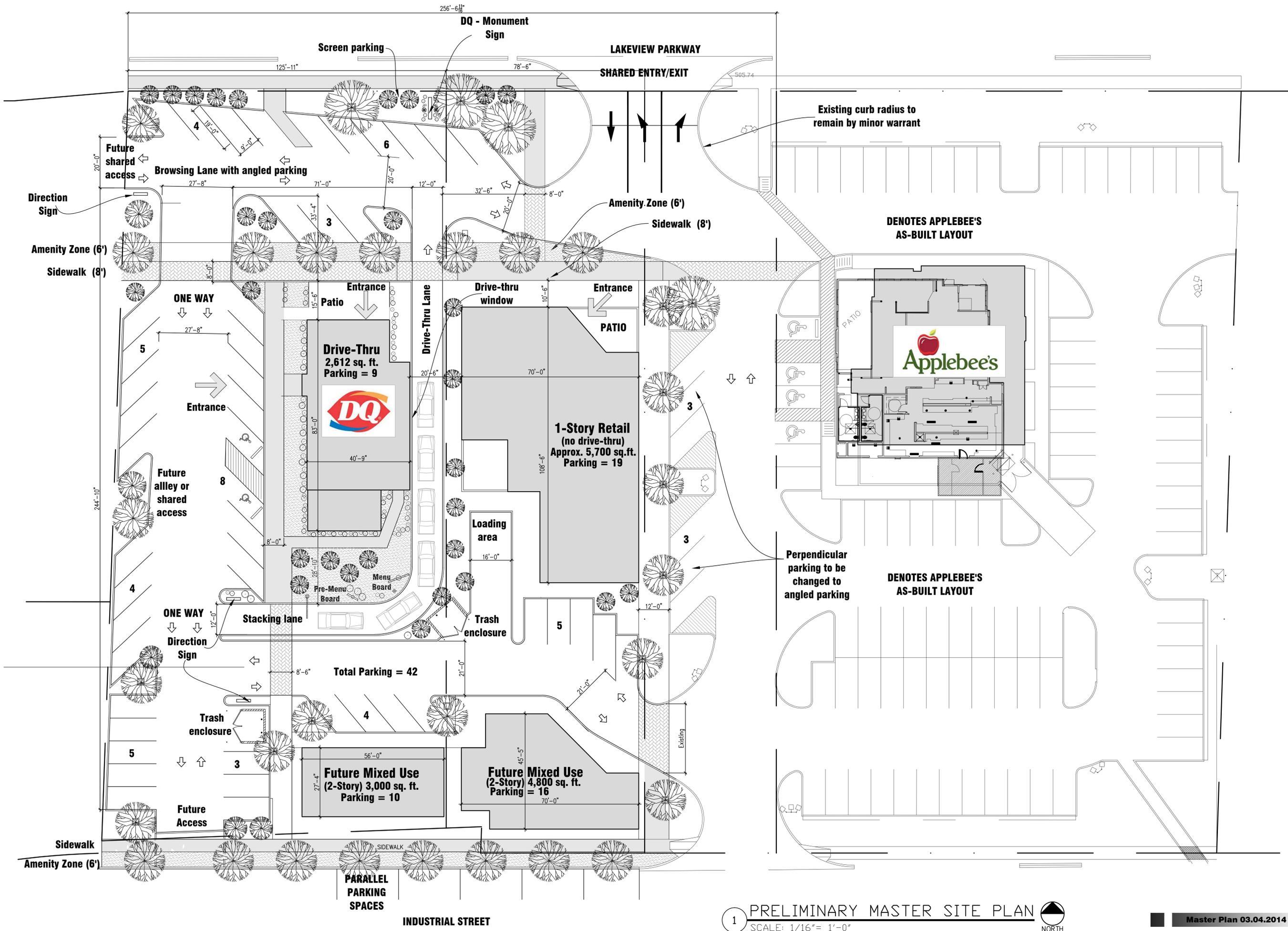
Project Team



Project Information



Sheet Number

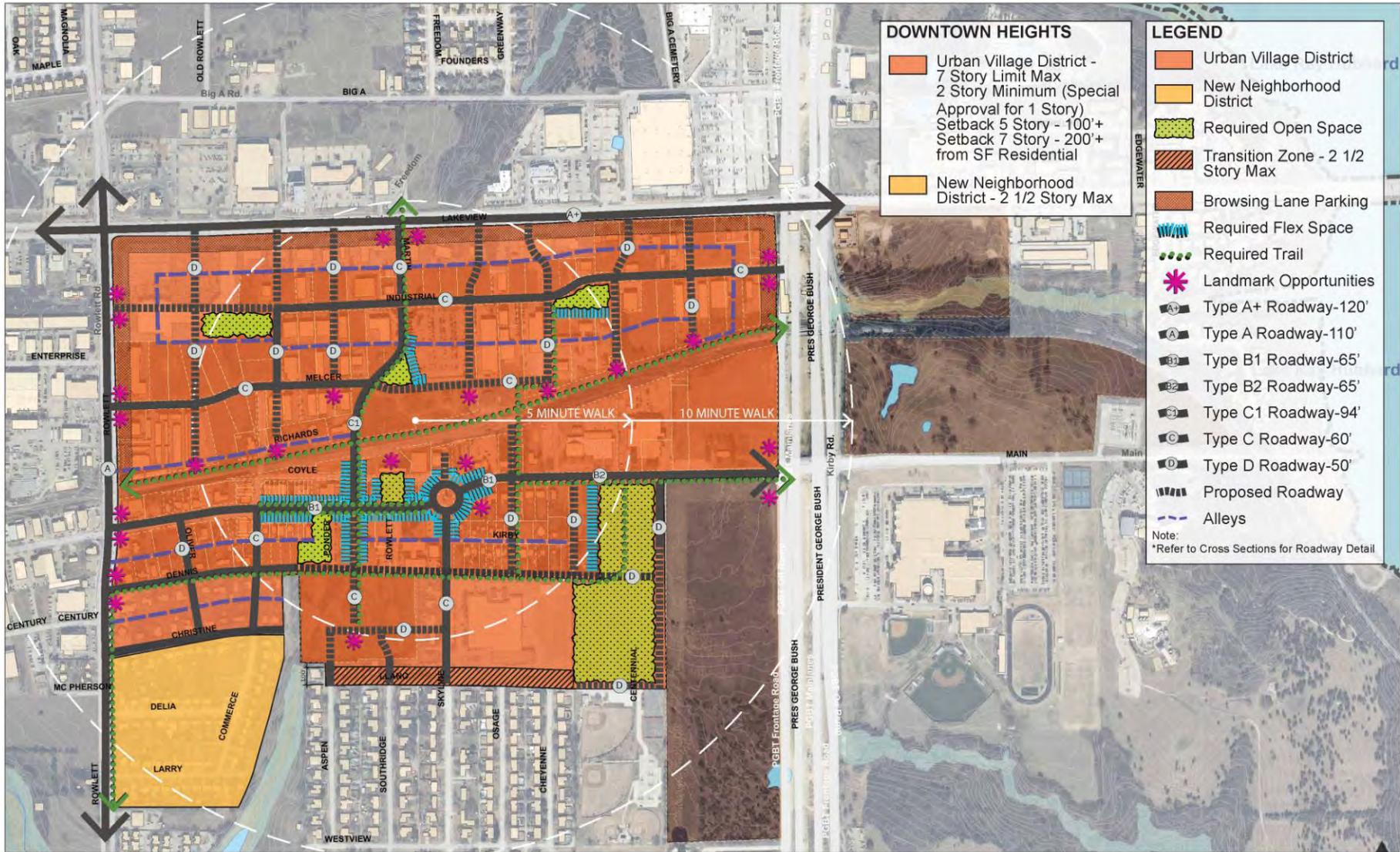




Location Map



Downtown (E4) - Regulating Plan



DOWNTOWN HEIGHTS

- Urban Village District - 7 Story Limit Max
2 Story Minimum (Special Approval for 1 Story)
Setback 5 Story - 100'+
Setback 7 Story - 200'+ from SF Residential
- New Neighborhood District - 2 1/2 Story Max

LEGEND

- Urban Village District
- New Neighborhood District
- Required Open Space
- Transition Zone - 2 1/2 Story Max
- Browsing Lane Parking
- Required Flex Space
- Required Trail
- Landmark Opportunities
- Type A+ Roadway-120'
- Type A Roadway-110'
- Type B1 Roadway-65'
- Type B2 Roadway-65'
- Type C1 Roadway-94'
- Type C Roadway-60'
- Type D Roadway-50'
- Proposed Roadway
- Alleys

Note:
*Refer to Cross Sections for Roadway Detail

TOWNSCAPE, Inc.
Town Planning and Urban Design

Memo

3839 MCKINNEY AVE
SUITE 314
DALLAS, TX 75204

Townscape.com

To: Erin Jones, Director of Community Development
From: Arti Harchekar, CNU-A
Date: 6 March 2013
Re: Urban Design Officer Review of Dairy Queen
Major Warrant Package – Highway 66/Lakeview Parkway UV-FB

Urban Design Officer Review

Per your request, I have reviewed the proposed Major Warrant package.

I find the proposal to be in technical conflict with the Form Based Code's intent and standards, but there are unique and mitigating circumstances with this property:

- It is fronting an auto-oriented thoroughfare (Highway 66/Lakeview Parkway);
- The lot where the drive-thru has been placed is restricted in size due to the way the lots were platted when Applebee's was developed; and
- It faces directly onto Highway 66/Lakeview Parkway, but impacts the image and development pattern in the Downtown FBC area.

The following Major Warrants should be looked upon favorably:

- Exemption from the fee in lieu requirement for public Open Space;
- Building frontage standard of 32% along the front building line of Highway 66/Lakeview Parkway and 44% along the (future) front building line of Industrial Street;
- A reduction of transparency from the minimum 60% required, to 16% along the left (east) façade and 15% along the right (west) façade which is indicated on the current plans. Due to the tri-partite articulation of the building, which has been done quite well, a reduction from the standard could be considered appropriate. Additionally, the interior programming and auto-oriented nature of this user, further justifies a reduction.
- Allowing a wall sign larger than 6 sq. ft. on the right elevation; and
- Allowing a monument sign along Highway 66/Lakeview Parkway.

- Reduction in the length of canopy along the sidewalk of the front elevation from 75% to a lesser percentage (to be determined by the applicant based on the proposed elevations) which would be appropriate for this building and in support of pedestrianization based on the patio placement.

Approval of these Major Warrants will allow this user to occupy the site as a drive-thru entity. Drive-thru users will continue to pursue sites along Highway 66/Lakeview Parkway until the market in Downtown supports redevelopment in conformity with the Urban Village uses and standards. However, there are some important issues which should be addressed further by the applicant to meet the intent of the Form Based Code and the critical elements of the Downtown Regulating Plan.

- **Reduction in the amount of transparency** along the front façade from 60% minimum to 16% - While I find that due to the type of user, a reduction should be considered, 16% along the front façade is quite low. Additional transparency should be introduced within the man-made masonry portion of the façade. This area of the façade has no permeability. Permeability generates a walkable environment and engages the pedestrian. It also keeps an eye on pedestrian safety along the sidewalk (“eyes on the street”).
- **The western drive isle width of 27.8 ft.** – The intent of the Urban Village FB District is to create a pedestrian oriented environment. One way to achieve this outcome is to reduce the speed of vehicles by narrowing streets, drive isles, and turning radii. In addition, the reduction in width limits the distance a pedestrian has to traverse to cross the street, thus making it a safer environment. To that end, the typical drive width in the FB Districts is 20 ft. This standard has been vetted and accepted by the Fire Department as an appropriate fire lane width. And further, 20’ is the standard width in the International Fire Code. Lastly, the proposed drive isle width is just shy of a Local Street roadbed width of 28’ under the Downtown Regulating Plan.

As a matter of perspective, 24 ft. is the conventional standard for two-way traffic and 22 ft. for one-way traffic as noted in the Rowlett Development Code. In light of the type of user, a 24 ft. isle could be considered to help mitigate the applicant’s concerns, but to do beyond that does not meet the intent of the FBC, and thus cannot be supported.

We have had good discussions with the applicant and believe that they generally understand City’s objectives for Urban Village Development along Highway 66/Lakeview Parkway. I thereby support their Major Warrant package subject to meeting development standards and addressing the issues identified above in the appropriate manner. The applicant is installing important infrastructure on the site that is essential to the circulation within the Downtown area; namely, the adopted browsing lane configuration which has been vetted by the Fire Department, traffic specialist, Planning and Zoning Commission and City Council. The applicant is also providing the ability for future building sites along Industrial Street

which keeps the character of Industrial Street pedestrian oriented. Such things as the screening of parking, lighting, HVAC placement, etc. will be determined as part of the Development Plan process.

A handwritten signature in black ink that reads "ARTI HARCHEKAR". The letters are cursive and somewhat stylized, with the first name "ARTI" being more prominent than the last name "HARCHEKAR".

Arti Harchekar, CNU-A
Associate
TOWNSCAPE, Inc.



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/18/14

AGENDA ITEM: 8C

TITLE

Consider a resolution authorizing the City Manager to enter into an Economic Development Incentive Agreement with Realty Advisors Corp. (Terra Lago) for the development of a mixed residential project located at 7000 Scenic Drive in the Healthy Living Urban Village FB District.

STAFF REPRESENTATIVE

Jim Grabenhorst, Director of Economic Development
Erin Jones, Director of Development Services

SUMMARY

This Economic Development Incentive Agreement (Exhibit A) with Realty Advisors Corp. for the Terra Lago project will provide the first catalyst project within the Healthy Living area utilizing the Urban Village FB District zoning classification under the Form Base Code (FBC). Terra Lago is a single phase development of approximately 447 mixed residential units in two buildings of four and five stories with structured parking that has taken the tools offered in the FBC and applied them in a manner that will exemplify the high quality standards adopted in the City's FBC.

Terra Lago has been mindful of the adjacency to the future Scenic Point Park and adjoining neighborhoods and has worked to incorporate significant design elements to further enhance the public experience and interaction with Scenic Point Park.

BACKGROUND INFORMATION

The subject property is generally located north of Lakeview Parkway, east of Scenic Drive and west of Lake Ray Hubbard, It is approximately 8.9 +/- acres located within the Healthy Living Urban Village FB District that was rezoned on November 6, 2012, as part of the Realize Rowlett 2020 Phase II Initiative and is governed by the City's FBC. A location map can be viewed below:



As a matter of perspective, the journey towards this incentive and others like it started in September 2010, when the City set out to update the Comprehensive Plan. From that point forward, the Realize Rowlett 2020 process was driven by the Community's vision and the goal to provide long-term fiscal sustainability for the City. Four of the City's main guiding principles that will be met by the subject project are as follows: "*value existing neighborhoods*", "*maximize the benefits of major public infrastructure investments (existing and planned)*", "*make Rowlett a Community that is attractive to people at all stages of their life*", and "*invest in places of lasting value and distinctive character*".

It was acknowledged throughout the Realize Rowlett 2020 Phase II process that while the FBC provides applicants with a more streamlined process by allowing for administrative approvals; this is paired with much higher design standards than conventional zoning, which in turn will produce projects that will retain long-term value for the City. However, it also requires a more substantial investment from the development community up front than conventional zoning. Thus, incentives may be required, especially in the first few catalyst projects for each development type, in order to prove up the market and remove barriers to development.

The Terra Lago project was the first "Urban Village" project to be formally submitted to the City since the adoption of the FBC in November 2012. It meets the full intent of the FBC, and is aligned with the original vision for the "Healthy Living" subarea as noted in the Comprehensive Plan; more specifically in how it relates and provides access to Scenic Point Park. Thus, incentivizing the request is in line with the statements outlined in the Comprehensive Plan regarding the need to "remove barriers to investment" and the importance of looking at all individual projects as contributing to the City's overall success.

Both the project itself and the related incentive request have been thoroughly vetted, not only by City Staff, but by the third party Urban Design Officer and the City's third party real estate

economists in order to ensure that it meets the expectations for the Form Based Urban Village District both by way of design and fiscal sustainability. As previously mentioned, the up-front costs of the FBC increase the initial cost to the developer and, unlike conventional development, they will not start to recoup those costs for several years. For the Terra Lago project, some of the most substantial design costs include 11 percent of improved open space; the incorporation of the public amenity zone (street trees, lighting, furniture, etc.) and sidewalk requirements; 86 percent of the ground floor units will have direct access off of the sidewalk, which helps to enhance the amenity zone by having “eyes on the street”; providing lined parking structures to screen parking from public view and eliminate dead zones, which enforces pedestrian comfort and safety; well designed architecture that will retain value over time; and most notably, providing access and parking for Scenic Point Park, as well as ensuring that the units that face the Park are well incorporated to add value to both the residents that live in them and the Park as a whole. All the above listed design decisions will contribute to the long-term fiscal sustainability of the project.

Based on that and for all the reasons presented above City Staff is supportive of the applicant’s request for economic development incentives.

DISCUSSION

The City of Rowlett has adopted by resolution a Policy Statement for Economic Development Incentives. Said policy statement indicates that the City of Rowlett is committed to the promotion of high quality development in all parts of the City and to an ongoing improvement in the quality of life for its citizens. Insofar as these objectives are generally served by the enhancement and expansion of the local economy, the City of Rowlett will, on a case-by-case basis, give consideration to providing incentives as stimulation for economic development in Rowlett.

Realty Advisors Corp. has completed the required application per the above policy and has requested a rebate of a percentage of City ad valorem property taxes for a period of ten (10) years upon completion of construction, anticipated no later than December, 2017. In lieu of paying roadway impact fees, Realty Advisors Corp. has agreed to make certain public improvements. These include: 1) the construction of portions of the road network per the Healthy Living Regulating Plan, 2) all public realm improvements, 3) access and public parking for Scenic Point Park, and 4) the “Grand Staircase” entrance to Scenic Point Park, which will tie in to the currently funded Phase One improvements beginning construction this spring.

City Staff, Ricker Cunningham and Townscape, our consultant team, reviewed said request and began a lengthy negotiation process with briefings to City Council in Executive Sessions to arrive at the Economic Development Incentive Agreement terms being requested per Exhibit A.

The following is a summary of the key provisions within the Economic Development Incentive Agreement:

Realty Advisors Corp. (Terra Lago):

- Commencement of Construction – No later than December 31, 2014

- Completion of Construction – No later than December 31, 2017
- Minimum Private Investment of not less than \$40 million for improvements as per the approved Schematic Site & Development plans
- Construction and funding \$500,000 of improvements for the “Grand Staircase” entrance to Scenic Point Park
- Construction and funding of portions of the road network per the regulating plan, all public realm improvements, access and public parking for Scenic Point Park estimated to cost \$1,250,000
- Pay all other normal City fees, including water and wastewater impact fees, building permit and inspection fees, etc.

City of Rowlett:

- Waiver of Roadway Impact fees not to exceed \$902,493 in exchange for public infrastructure improvements estimated at \$1,250,000.
- Annual 380 grants equal to fifty-seven percent (57%) of City ad valorem property taxes paid by Realty Advisors for the Property for a period of ten (10) years with the total grant payments not to exceed \$2,129,450.
- Recapture provision; should Realty Advisors Corp. breach or fail to meet any one or more of the performance obligations then they will refund all amounts previously paid or waived.

In addition to the above, Staff provides the following information as it relates to the incentive request:

- Incentive structure is performance driven. Realty Advisors must make private investment, complete construction and annually pay 100% of City ad valorem property taxes before receiving annual 380 grant in the form of 57% rebate over 10 year period.
- \$2.129 million public “investment” over 10 year period nets \$50 million in private investment by 2017, which equates to 23:1 private sector leverage ratio (5:1 is desired).
- Incentive request (\$2.129 million) represents 4.2% “gap” on \$50 million project – at **very** low end of the range for catalyst projects.
- \$900,000 public “investment” of roadway impact fees generates \$1.750 million in public improvements within Healthy Living District of public street network and access/parking to Scenic Point Park.
- Property today (vacant) generates \$4,855 annually in property tax revenue for the City.
- Property developed as Terra Lago will generate approximately \$160,642 annually in property tax revenue for the City for the 10 year period in which the incentive agreement is in effect, then \$373,587 annually thereafter.

FINANCIAL/BUDGET IMPLICATIONS

Since the Economic Development Incentive Agreement is performance driven, the project will provide an immediate positive financial impact to the City as summarized above and in the chart below.

The Terra Lago project will be a \$50 million dollar single-phase private investment generating nearly \$375,000 thousand dollars annually in property tax revenue to the City upon completion, creating a significant number of indirect construction jobs and providing a diversification of housing options for the citizens of Rowlett. The chart below provides additional information on the direct economic impact of this project:

Terra Lago Project	Approximate
Amount of Private Investment	\$50,000,000
Temporary Construction Jobs Value of Payroll	150 \$5,500,000
Permanent Jobs Annual Payroll	4-5 \$270,000
Annual Property Tax Revenue (based on \$50,000,000)	\$373,587
Sales Tax Revenue	N/A
Impact Fee Revenue (W&S)	\$136,200
Other City Permit Fees Revenue	\$142,000
FFE Expenditures	\$500,000

In addition, the following chart summarizes some of the items outlined in the Discussion section of the staff report above:

Terra Lago Project	Approximate
Value of Private Investment	\$50,000,000
Value of Public Improvements	\$1,750,000
Exchange of Roadway Impact Fee	\$902,493
Annual City Property Tax Revenue	\$373,587
Annual City 380 Grant Rebate (57%)	\$212,945
Annual City Revenue (43%)	\$160,642
CITY'S Return on Investment	\$23.50 to \$1

RECOMMENDED ACTION

Staff recommends Council approve a resolution authorizing an Economic Development Incentive Agreement with Realty Advisors Corp.

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH REALTY ADVISORS CORP., PERTAINING TO THE TERRA LAGO PROJECT; AUTHORIZING THE CITY MANAGER TO ENTER INTO THE AGREEMENT ON THE CITY'S BEHALF; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Rowlett, Texas, has negotiated an Economic Development Incentive Agreement with Realty Advisors Corp., for the development of the Terra Lago project, which, when completed, will involve the development and construction of facilities and utility infrastructure to serve a new community of approximately 447 mixed residential units; and

WHEREAS, the Agreement provides for economic development incentives through waivers of impact fees up to a specified amount and the rebate of a percentage of ad valorem property taxes for a period of 10 years of the development; and

WHEREAS, the project is designed and will be constructed according to the City's recently-enacted Form Base Codes, and the successful development of the project, which would not occur in the absence of the fee waivers and rebate of ad valorem property taxes, is in the best interest of the citizens of the City.

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

Section 1: That the City Council of the City of Rowlett does hereby accept and approve the Economic Development Incentive Agreement attached hereto and incorporated herein, and does hereby further authorize the City Manager of the City of Rowlett, Texas, to execute the Agreement on the City's behalf.

Section 2: This resolution shall take effect immediately upon its passage.

ATTACHMENTS

Exhibit A – Economic Development Incentive Agreement
Attachment 1 – Terra Lago Schematic Site Plan

STATE OF TEXAS §
 §
 §
 §
 §
COUNTY OF DALLAS §

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

BY AND BETWEEN

THE CITY OF ROWLETT, TEXAS

AND

REALTY ADVISORS, INC.

This Economic Development Incentive Agreement (this “Agreement”) is entered into as of the Effective Date described herein between the City of Rowlett, Texas, a Texas municipal corporation, (the “City”), and Realty Advisors Corp., a Nevada corporation, (“Realty Advisors”), each acting by and through its duly authorized representatives.

RECITALS

WHEREAS, Realty Advisors owns certain land generally situated along the northern side of Lakeview Parkway to the east of Scenic Dr. and adjacent to Scenic Point park consisting of 8.993 +/- acres described as Terra Lago within the City of Rowlett, Texas, described on Exhibit “A” hereto (the “Property”), that intends to be improved by the construction of a residential community within the Healthy Living Urban Village Form Based District of approximately 447 residential units (the “Project”); and

WHEREAS, the attraction of private investment and the diversification of residential product types in the City will promote economic development, stimulate commercial activity, provide additional jobs and residential opportunities for the citizens of the City, generate additional tax revenue, and enhance the tax base and economic vitality of the City; and

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate private investment in the City; and

WHEREAS, the City has determined that making economic development grants in accordance with this Agreement will further the objectives of the City and will benefit the City

and its inhabitants and will promote local economic development and stimulate employment, business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

ARTICLE 1

Certain Definitions

“Commencement of Construction” shall mean that (i) plans have been prepared and submitted to applicable governmental authorities; and (ii) all necessary permits for the construction on the Property pursuant to the respective plans have been issued by all applicable governmental authorities.

“Completion of Construction” shall mean December 31, 2017, subject to Force Majeure events, or the date upon which the City issues a final certificate of occupancy for the last major structure built on the Property, which shall include the City’s acceptance of all Infrastructure following its installation, construction, inspection, testing and final completion, whichever occurs earlier. As used herein, “major structure” shall not include accessory buildings, pavement, artistic elements, recreational or scenic facilities, or parking facilities.

“Effective Date” shall mean the last date of execution of this Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of a party’s existence as an on-going business, insolvency, appointment of receiver for any part of a party’s property and such appointment is not terminated within one hundred twenty (120) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party and in the event such proceeding is not voluntarily commenced by the party, such proceeding is not dismissed within one hundred twenty (120) business days after the filing thereof.

“Force Majeure” shall mean any delays due to strikes, riots, acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), terrorist activities, blockage, embargo, labor dispute, labor strike, or labor-related lockout or interruption, not within the control of the party asserting Force Majeure. If a party asserts Force Majeure as an excuse for failure to timely perform the party’s obligation, then that party must establish that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in this definition.

“Grant” shall mean the Grant as defined in Article 2 below, and is inclusive of all grants and amounts described in Article 2.

“**Infrastructure**” means infrastructure necessary to develop the Project including streets and roads, site improvements, water and sewer facilities (other than services and lines on individual lots to mains), and drainage and related improvements, including but not limited to: (1) the design, engineering and construction of streets, roads, bridges, on or off site of the Project (and related type of improvements) necessary for the Project or for access or improved access to the Property; (2) the design, engineering, construction and installation of water, sewer and drainage utilities on or off site of the Property necessary for the development of the Project, and any portion of the underlying facilities necessary to extend, enlarge, support or provide such utility systems to the Property; and (3) the design, engineering, construction and installation of drainage and related improvements on or off site of the Property (e.g. storm sewers, detention ponds, retention ponds, drainage pipes, culverts, over sizing of facilities) necessary for the Project.

ARTICLE 2 Economic Development Grant

2.1. Grant. Subject to the terms, covenants and conditions of this Agreement, the City will make economic development grants (referred to as Impact Fee Waivers and, additionally, Annual 380 Grants) to Realty Advisors, from lawfully available funds and provided there is no default hereunder, in the amounts and at the times set forth hereinafter.

- a) Impact Fee Waivers. The City shall waive roadway impact fees when and as due in an amount not to exceed the aggregate sum of \$902,493.00; provided, however, that (i) roadway impact fee waivers shall not be given following the date of Completion of Construction, and (ii) no roadway impact fee waivers shall be granted once the fee waivers reach the total sum of \$902,493.00. Notwithstanding the characterization of this grant as a waiver of fees, the nonpayment of such fees shall in all events and for all purposes be deemed to be a grant in accordance with the provisions of Chapter 380 of the Texas Local Government Code payable from any source of funds lawfully available to the City. The City agrees not to increase impact fees payable by Realty Advisors over the fees described on Exhibit “B” hereto.

- b) Annual 380 Grants. The City shall give Realty Advisors an annual grant equal to fifty-seven percent (57%) of City ad valorem property taxes paid by Realty Advisors for the Property under the following terms and conditions:
 - 1) Annual grants shall be given for a period of ten (10) years, in ten (10) annual payments;
 - 2) The first year in which an annual grant is given shall be the first year in which Realty Advisors has spent the Minimum Cost Amount, as hereinafter defined;
 - 3) Grant payments shall be equal to 57% of real property ad valorem taxes assessed and collected by the City, exclusive of ad valorem taxes paid to the County, the Independent School District, or other taxing entities;

- 4) Grant payments shall be for ad valorem taxes paid for real property, exclusive of personal property tax assessments or payments, provided that the total of all annual 380 grant payments made by the City shall not exceed \$2,129,450.00;
- 5) Realty Advisors shall provide to the City, as a precondition to each grant payment to be made hereunder, written verification to the City that Realty Advisors or its successors and assigns, has paid the real property ad valorem taxes on which the grant amount is based; and,
- 6) The City shall make the Annual 380 Grant payment to Realty Advisors within sixty (60) days after receipt by the City of verification of payment of the ad valorem taxes or the City's receipt of the tax payment, whichever occurs later.

ARTICLE 3

Performance Obligations

The obligation of the City to make Grant payments in accordance with the foregoing, and the obligations assumed by Realty Advisors as conditions precedent and subsequent to the receipt of said Grant funds, are subject to the following:

3.1. Performance Criteria.

- a) Realty Advisors shall diligently pursue the development of the Project, subject to events of Force Majeure. Realty Advisors shall apply for all permits required by applicable laws promptly following (i) completion of plans and specifications, and (ii) the Project must be constructed in substantial compliance with the Schematic Site Plan and Development Plan attached hereto and incorporated herein as Exhibit "C" hereto. Certification by the architect retained by Realty Advisors for design of the Project ("Project Architect") that the Project is complete and in compliance with the approved plans and specifications, with the concurrence of the City, shall constitute satisfaction of this condition. In the event the Project Architect and the City are unable to reach agreement as to completion of the Project, the City and Project Architect shall jointly appoint a mediator who shall attempt to assist the parties in reaching agreement, the cost of which mediation shall be shared equally by the City and Realty Advisors.
- b) Realty Advisors shall use good faith efforts to obtain City approval of plans and specifications in accordance with the Schematic Site Plan and Development Plan.
- c) Commencement of Construction shall occur on or before December 31, 2014.
- d) Realty Advisors will achieve Completion of Construction, subject to events of force majeure, no later than December 31, 2017.

- e) Realty Advisors shall construct the Grand Stair contemplated by Exhibit “D” in accordance with the design created by the architect, firm or person selected by the City, up to a cost of \$500,000.00, including all design costs which shall not exceed \$50,000.00. Realty Advisors shall pay for all work, labor, materials and service, payment of all invoices of the design firm selected by the City, up to the maximum amount of \$50,000.00, which shall be included in the \$500,000.00 cost described above. Payment for the Grand Stair design work shall be made by the City to the selected design firm from a fund established by the City. Realty Advisors shall remit to the City for deposit into said fund the sum of \$12,500.00 within fifteen days from the Effective Date of this Agreement and the remaining balance of \$37,500.00 no later than 180 days from the Effective Date of this Agreement. If the actual cost of design is less than the sum of the deposit, then the City shall remit the excess balance to Realty Advisors within thirty (30) days of notice thereof from Realty Advisors.
- f) Realty Advisors agrees to incur costs for the Project of at least Forty Million and No/100 Dollars (\$40,000,000.00) (“Minimum Cost Amount”). Once Realty Advisors, or its affiliates, have spent at least the Minimum Cost Amount, the obligation of the City to initiate the 380 Grant Project payments shall commence, if Realty Advisors has satisfied all other Performance Obligations under this Article.

ARTICLE 4

Grant Limitations

4.1 Grant Limitations. Under no circumstances shall the City’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

ARTICLE 5

Events of Default; Events of Termination; Recapture

- 5.1** This Agreement terminates upon any one of the following:
- a) by mutual written agreement of the parties;
 - b) by the City or Realty Advisors if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice thereof by the non-breaching party; provided, however, if the default is not capable of being cured within sixty (60) days but the defaulting party is diligently pursuing cure, the cure period shall be extended to such time as reasonable required to cure. The extension provision described in the preceding sentence shall not apply to the payment of any sums due hereunder.
 - c) by the City if Realty Advisors or an assignee or successor in interest fails to meet any one or more of the Performance Obligations identified in Article 3 above, subject to the cure provisions described in Section 5.1(b) above.

- d) by the City if any taxes, fees or charges owed to the City, other than those specifically identified and waived herein, the County of Dallas, or the State of Texas by Realty Advisors shall have become delinquent and such default is not cured within sixty (60) days after written notice thereof from the City (provided, however, Realty Advisors retains the right to timely and properly protest and contest appraised values for ad valorem tax purposes);
- e) by the City if Realty Advisors suffers an Event of Bankruptcy or Insolvency; or
- f) by the City or by Realty Advisors, respectively, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid or illegal; provided, however, if only a portion of the Agreement is rendered invalid or illegal, the balance of this Agreement shall remain in full force and effect.

5.2 Recapture. In the event that this Agreement is terminated as to any party prior to payment of the Annual 380 Grant or the waiver of the roadway impact fees, the obligation of the City to waive said fees or fund said Grant (or any remaining portion thereof) shall cease immediately after the expiration of the notice and cure period provided herein. In the event that this Agreement is terminated by the City based upon Realty Advisors breach or failure to meet any one or more of the Performance Obligations of Article 3 hereof after the notice and cure period provided herein, the City shall have no obligation to fund the Grant (or waive the fees); if all or any portion of the Grant has been paid to Realty Advisors, or if any fees have been waived, then Realty Advisors shall, within thirty (30) days of such notice, refund all amounts previously paid or waived.

ARTICLE 6

Covenants, Representations, and Warranties

6.1 Separated Contracts. In developing and constructing the Project, Realty Advisors will use reasonable efforts to encourage all contractors and vendors to use “separated contracts” (as that term is defined in Sec. 3.291 of the Texas Administrative Code), in order to maximize sales tax revenues to the City.

6.2 Existence; Authority.

- a) Realty Advisors represents and warrants that it has sufficient legal authority to conduct business in the State of Texas; that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement; and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.
- b) The City represents and warrants that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement;

and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

6.3 Limitation of Liability of City. Except for the City's obligations to pay the Grant proceeds as set forth in this Agreement, the City and its past, present and future officials, officers, employees and agents make no warranties and assume no responsibilities or liabilities to Realty Advisors or any third party in connection with the development and improvement of the Property or the Project, and Realty Advisors hereby holds harmless and waives any and all claims against the City and its officials, officers, employees, agents and representatives for any claims, losses, injury, or damage to persons or property; provided, however, nothing contained herein shall apply to any property dedicated to the City. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties and neither party shall in any way be deemed an agent of the other. Realty Advisors acknowledges and agrees that there shall be no personal recourse to the officials, officers, employees or agents of the City, who shall incur or assume no liability in respect of any claims based upon or relating to this Agreement. By entering into this Agreement, the City does not and shall not be deemed to waive any defenses or immunities, whether governmental, sovereign, official, qualified or otherwise, all such defenses and immunities being hereby expressly retained. Nothing in this Agreement is intended, and nothing herein shall in any way be deemed, to confer or create any rights in any person not a party to this Agreement.

ARTICLE 7

Miscellaneous

7.1 Recitals. The recitals in the preamble to this Agreement are hereby incorporated herein as part of this Agreement.

7.2 Binding Agreement; Assignment. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Realty Advisors shall have the authority to assign, sell or transfer ownership of the Project to any person, in which event the benefits and burdens of this Agreement shall be transferred to such purchaser and Realty Advisors shall thereafter be released from all obligations hereunder. Realty Advisors shall notify the City as to any such transfer. Realty Advisors may, subject to the consent of the City, not to be unreasonably withheld, sell the Project, but retain the rights under this Agreement. However, no consent shall be required from the City for an assignment or transfer to an affiliate, parent or subsidiary of Realty Advisors, but notice of such assignment or transfer shall be given.

7.3 Governing Law. The validity of this Agreement and all of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall lie exclusively in the state courts of appropriate jurisdiction in Dallas County, Texas.

7.4 Amendment. This Agreement may be amended only by the mutual written

agreement of the parties hereto.

7.5 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions hereof, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

7.6 Notices. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand, telecopier or other electronic transmission; or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (e.g. U.S. Express Mail or Federal Express) for one-day delivery, addressed to the party to whom notice is intended to be given at the following addresses:

If intended for CITY, to:

City of Rowlett
4000 Main Street
Rowlett, Texas _____
Attn: City Manager
Fax: _____
Email: _____

With a copy to:

David M. Berman, City Attorney
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201
Fax: _____
Email: _____

If intended for Realty Advisors, to:

Realty Advisors, Inc.
1603 LBJ Freeway, Suite 800
Dallas, Texas 75234
Attn: Steven Shelly
Fax: 469-522-4320
Email: steven.shelley@pillarincome.com

With a copy to:

Bennett, Weston, LaJone & Turner, P.C.
1603 LBJ Freeway, Suite 280
Dallas, Texas 75234
Attn: Jay LaJone
Fax: 214-393-4025
Email: jlajone@bennettweston.com

7.7 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

7.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

EXECUTED in single or multiple originals on the date(s) set forth below.

CITY OF ROWLETT, TEXAS

Brian Funderburk, City Manager

Date: _____

ATTEST:

Laura Hallmark, City Secretary

REALTY ADVISORS CORP.

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT "A"**Legal Description****DESCRIPTION OF PROPERTY SURVEYED**

DESCRIPTION of an 8.970 acre tract of land situated in the Elijah R. Foster Survey, Abstract No. 81, Rockwall County, Texas; said tract being all of that tract of land described in Warranty Deed to Three SR, LP in Volume 6850, Page 269, all of that tract of land described in Tax Resale Deed to Pillar Income Asset Management, Inc. recorded in Instrument No. 20130000499995, all of the Deed Records of Rockwall County, Texas; said 8.890 acre tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron rod with a plastic cap stamped "GM RPLS 4395" found in the east right-of-way line of Scenic Drive (a variable width right-of-way, 60 feet wide at this point), said point being in the north line of a tract of land described in Warranty Deed to Debra Pruitt & Stevie Pruitt recorded in Volume 1170, Page 272 of said Deed Records and being the southwest corner of said Three SR, LP tract;

THENCE, North 00 degrees, 03 minutes, 54 seconds West, along the said east line of Scenic Drive, a distance of 106.05 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap found at the beginning of a tangent curve to the right;

THENCE, in a northwesterly direction, continuing along the said east line of Scenic Drive and along said curve to the right, having a central angle of 35 degrees, 51 minutes, 13 seconds, a radius of 290.00 feet, a chord bearing and distance of North 17 degrees, 51 minutes, 43 seconds East, 178.53 feet, at an arc distance of 121.01 feet passing the south corner of Entry Landscape Area 2, Block B, Mallard Reserve, an addition to the City of Rowlett, Texas according to the plat recorded in Cabinet G, Slide 271 of the Plat Records of Rockwall County, Texas, continuing along the southeast line of said Landscape Area 2 in all a total arc distance of 181.47 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap found at the end of said curve;

THENCE, North 35 degrees, 47 minutes, 19 seconds East, continuing along the said southeast line of Landscape Area 2, at a distance of 87.38 feet passing the easternmost corner of said Landscape Area 2 and the southeast corner of Lot 9, Block B of said Mallard Reserve, continuing along the southeast line of said Lot 9 in all a total distance of 181.38 feet to a point for corner in the southwest line of a tract of land described in Warranty Deed to the City of Dallas, Texas recorded in Volume 67, Page 253 of said Deed Records (said line being the "Take Line" of the property acquired by the City of Dallas for Lake Ray Hubbard and shown on the City of Dallas "Take Line" map for Lake Ray Hubbard, File 612D-1, Sheets 153 and 154 on file in the City of Dallas Survey Records Vault); said point being the easternmost corner of said Lot 9; from said point a 1/2-inch iron rod with "ROOME" cap found bears North 77 degrees, 27 minutes East, a distance of 0.4 feet;

THENCE, in an easterly direction along the said City of Dallas "Take Line", the following five (5) calls:

South 54 degrees, 12 minutes, 59 seconds East, a distance of 30.84 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap found for corner;

North 51 degrees, 08 minutes, 13 seconds East, a distance of 244.01 feet to a City of Dallas concrete monument with aluminum disk stamped "Z20-4" found for corner;

North 84 degrees, 27 minutes, 39 seconds East, a distance of 212.10 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap found for corner;

South 54 degrees, 10 minutes, 10 seconds East, a distance of 405.45 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap found for an angle point;

South 37 degrees, 31 minutes, 02 seconds East, a distance of 89.28 feet to a City of Dallas concrete monument with aluminum disk stamped "Z20-1" found for corner; said point being the northernmost corner of a tract of land described in Special Warranty Deed to Debra Pruitt & Stevie Pruitt as recorded in Volume 1171, Page 115 of the said Deed Records and the easternmost corner of said Pillar Income Asset Management, Inc. tract;

THENCE, in a southwesterly direction along the said northwest line of the second referenced Pruitt Tract, the following three (3) calls:

Along said curve to the left, having a central angle of 15 degrees, 19 minutes, 34 seconds, a radius of 639.62 feet, a chord bearing and distance of South 49 degrees, 58 minutes, 45 seconds West, 170.58 feet, at an arc distance of 132.38 feet passing a 1/2-inch iron rod found for the southwest corner of said Pillar Income Asset Management, Inc. tract, continuing in all a total arc distance of 171.09 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap found at the end of said curve;

South 42 degrees, 29 minutes, 43 seconds West, a distance of 60.00 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap found for corner being the beginning of a non-tangent curve to the right;

Along said curve to the right, having a central angle of 07 degrees, 32 minutes, 19 seconds, a radius of 1073.96 feet, a chord bearing and distance of South 46 degrees, 48 minutes, 46 seconds West, 141.20 feet, an arc distance of 141.31 feet to a 1/2-inch iron rod found at the end of said curve; said point being the northeast corner of the first referenced Pruitt tract;

THENCE, South 88 degrees, 21 minutes, 39 seconds West, departing the said north line of the second referenced Pruitt tract and along the north line of the first referenced Pruitt tract, a distance of 696.08 feet to the POINT OF BEGINNING;

CONTAINING, 390,734 square feet or 8.970 acres of land, more or less.

3286-13.268TerraLago.doc cjb

EXHIBIT "B"

Roadway Impact Fees

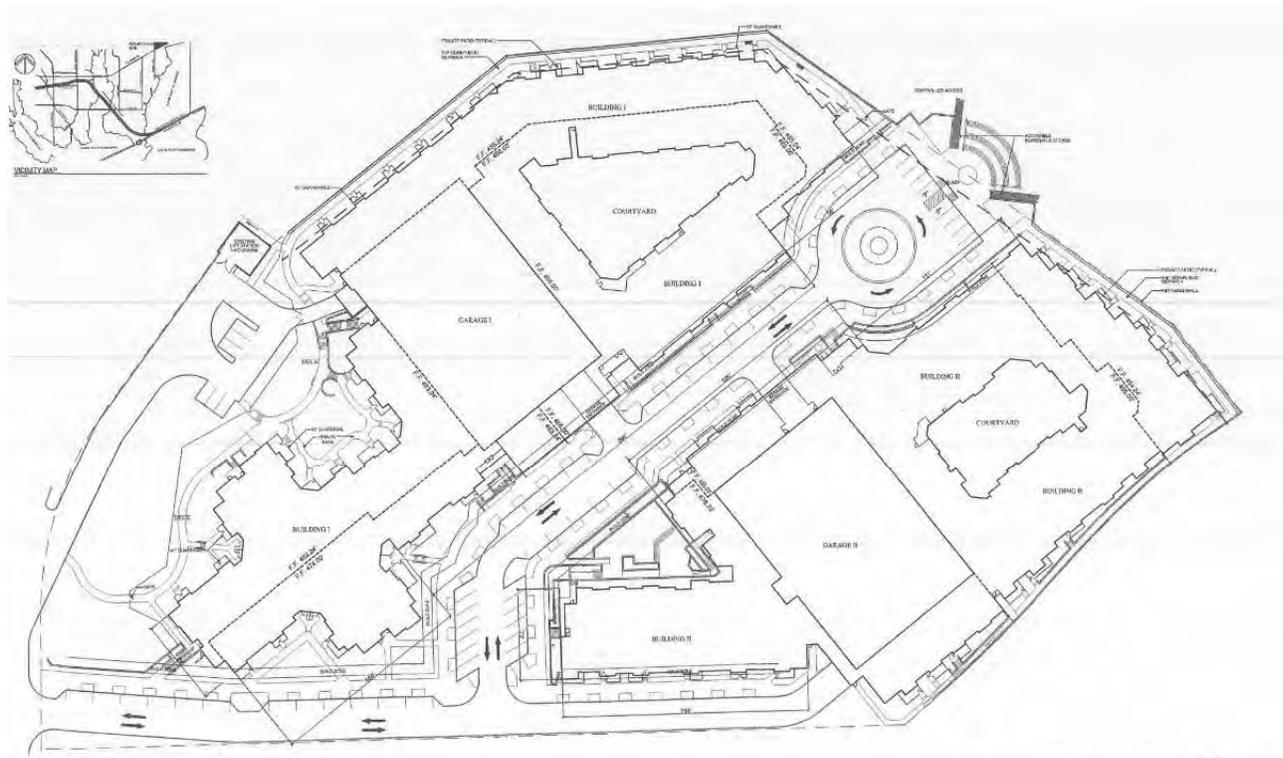
Building 1 – Based on 247 units - \$498,693

Building 2 – Based on 200 units - \$403,800

EXHIBIT "C"

Schematic Site Plan and Development Plan





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

<p>BGO architects</p> <p>40012 Shelburne Drive Austin, TX 78721 512.336.6274 bgo@bgoarch.com</p>	<p>DEVELOPMENT SUBMITTAL #1</p> <p>JANUARY 31, 2014</p>	<p>PROVISIONS</p>	<p>TERRA LAGO</p> <p>located in</p> <p>Rowlett, Texas</p>	<p>01-31-2014</p>	<p>DATE</p> <p>01-31-2014</p>	<p>SHEET NUMBER</p> <p>A1-01</p>
					<p>PROJECT</p> <p>12165</p>	

EXHIBIT "D"

Grand Stair Description

May 9, 2013

Grand Stair into Scenic Point Park
 City of Rowlett - Parks and Recreation
 Rowlett, Texas



Basic Concept	Quantity	Unit	Per Each	
Demo / Site Prep / Mobilization				
Mobilization / Permitting (+/-5% Total)	1	LS	\$ 20,000.00	\$ 20,000.00
Clear and Grub Existing Vegetation and Site Debris	1	LS	\$ 10,000.00	\$ 10,000.00
Tree Protection	1	LS	\$ 4,000.00	\$ 4,000.00
Sub-Total Demo / Site Prep / Mobilization				\$ 34,000.00
Site Work				
Grading	1	LS	\$ 23,000.00	\$ 23,000.00
Drainage/ Stormwater Management	1	LS	\$ 5,000.00	\$ 5,000.00
Structural Fill	340	CY	\$ 60.00	\$ 20,400.00
Planting Medium	2000	CY	\$ 25.00	\$ 50,000.00
Concrete Stairs	748	LF	\$ 15.00	\$ 11,220.00
Concrete Paving	2550	SF	\$ 6.00	\$ 15,300.00
Low Curved Retaining Wall	927	LF	\$ 100.00	\$ 92,700.00
Wall at Grand Stair	127	LF	\$ 200.00	\$ 25,400.00
Landscape	17703	SF	\$ 3.00	\$ 53,109.00
Wooden Boardwalk	2	LS	\$ 30,000.00	\$ 60,000.00
Sub-Total Site Work				\$ 356,129.00
			Sub Total	\$ 390,129.00
			Contingency 15%	\$ 58,519.35
			Magnitude of Cost for Grand Stair	\$ 448,648.35

*la terra studio, inc. reserves the right to revise this estimate at any time.





SCENIC DRIVE

Terra Lago Schematic Site Plan

Rowlett, TX



DATE: October 21st 2013
PROJECT # 009-01

