

**NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, DECEMBER 2, 2013

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, December 2, 2013 at 6:00 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1.0 Call to Order

2.0 Invocation

- Led by Senior Pastor Rick Brown, ChristBridge Fellowship

3.0 Pledges to U.S. and Texas Flags

- Led by Members of the Tomball High School Student Council

4.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in*

accordance with law.]

5.0 Presentations:

- Proclamation – **Tomball Memorial High School – TMHS *Roarin' Blue* Band - 2013 UIL Class 4A 17th Place High School Band Day**
- Presentation of **2014 Miss Tomball, Olivia Bliven**

6.0 Reports and Announcements

- December 13-15, 2013 – **2013 Tomball German Christmas Market** – 10:00 a.m.-8:00 p.m.
- December 14, 2013 – **“Christmas on Commerce” – a 2nd Saturday at the Depot Event**, from 10:00 a.m.-8:00 p.m.
- December 24-25, 2013 – **Christmas Holiday** – City Offices Closed
- January 1, 2014 – **New Year's Day Holiday** – City Offices Closed
- **Walk Tomball!** – Every Saturday at 9:00 a.m. at the Depot
- Reports by City staff and members of council about items of community interest on which no action will be taken

7.0 Approve the Minutes of the November 4, 2013 Regular City Council Meeting

8.0 Old Business:

- 8.1 Adopt, on Second Reading, Ordinance No. 2013-21, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance, by approving a Planned Development District (“PDD”) of approximately 8.55 acres of land, legally described as Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-904080; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris County Map Records, as recorded under Harris County Clerk's File No. 20070358349; within the City of Tomball, Harris County, Texas; amending the official Zoning Map of the City to reflect the PDD to be known as Planned Development District #5 (PDD-5); adopting a Concept Plan and regulations applicable to PDD-5; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.
- 8.2 Adopt on Second Reading, Ordinance No. 2013-22, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance by changing the zoning district classification of approximately 0.68 acres of land, legally described as Lot 2, Block 2, Brown-Hufsmith Commercial within the City of Tomball, Harris

County, Texas, from the Planned Development - 1 District to the Office District; said property being generally located southerly of Brown Road between State Highway 249 and Quinn Road; providing for the amendment of the official Zoning Map of the City; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

- 8.3 Adopt on Second Reading, Ordinance No. 2013-23, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance by amending Section 38.2 ("Use Charts") by allowing a "Residential Use" with a Conditional Use Permit in the Office District; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof; making findings of fact; and providing for other related matters.

9.0 New Business:

- 9.1 Approve Resolution No. 2013-34, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Annual Baseball Parade, to be held in Tomball on Saturday, March 20, 2014
- 9.2 Approve Resolution No. 2013-33, a Resolution of the City of Tomball, Texas, Authorizing the Purchase of Property from the Texas General Land Office and School Land Board; and Authorizing the City Manager to Execute All Documents Related Thereto.
- 9.3 Approve, on First Reading, Resolution No. 2013-35-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and Garth Lodging Corporation, to make direct incentives to, or expenditures for, assistance with infrastructure costs for the promotion of new or expanded business enterprise related to the construction of a Holiday Inn Express & Suites Hotel to be located at 14055 Park Drive, Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$56,000.00.
- 9.4 Approve First Amendment to Economic Development Agreement between the Tomball Economic Development Corporation and One Moore Holdings
- 9.5 Approve a Commercial Real Estate Listing Agreement between the Tomball Economic Development Corporation (TEDC) and Colliers International for the sale of TEDC-owned property in the Tomball Business & Technology Park.
- 9.6 Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose:

- Sec. 551.072 – Deliberations Regarding Real Property

10.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 27th day of November 2013 by 6:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer
Doris Speer
City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Regular City Council Agenda Item Data Sheet

Meeting Date: December 2, 2013

Topic:

- Led by Senior Pastor Rick Brown, ChristBridge Fellowship

Background:

Origination:

Recommendation:

Funding:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: December 2, 2013

Topic:

- Led by Members of the Tomball High School Student Council

Background:

Origination:

Recommendation:

Funding:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: December 2, 2013

Topic:

- Proclamation – Tomball Memorial High School – TMHS *Roarin' Blue* Band - 2013 UIL Class 4A 17th Place High School Band Day
- Presentation of 2014 Miss Tomball, Olivia Bliven

Background:

Origination:

Recommendation:

Funding:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Proclamation - TMHS Roarin Blue Band - 2013 UIL Class 4A 17th Place High School Band Day

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS,** there are 1,741 high school bands in the state of Texas and 2013 marks the first senior class for **Tomball Memorial High School**; and
- WHEREAS,** Tomball Memorial High School's "**Roarin' Blue Band**" became the first high school band from Tomball, Texas to advance to the final UIL state band competition; and
- WHEREAS,** the "**Roarin' Blue Band**" advanced past the first wave of opposing bands in the Greater Houston area, receiving a perfect score from the judges at Wood Forest Stadium in Conroe on October 22, achieving a first division superior rating during regional competition, and winning third place in Area F Marching Band Contest in Galena Park; and
- WHEREAS,** the "**Roarin' Blue Band**" was the only band from Region 9 to advance to the State Marching Band Competition on November 5, 2013 at the Alamo Dome in San Antonio, Texas; and
- WHEREAS,** the "**Roarin' Blue Band**" ultimately placed 17 out of 28 among the high school bands competing in the Class 4A UIL State Band Competition; and
- WHEREAS,** by placing 17th, the "**Roarin' Blue Band**" is among the top 1 percent in the state of Texas; and
- WHEREAS,** the **City of Tomball** and the **Tomball Independent School District** wish to congratulate the more than 200 band members and approximate 25 colorguard members of the "**Roarin' Blue Band**", along with Head Director Andy Easton, Assistant Directors Chris King and Dusty Brown, Colorguard Instructor Tim LeBlanc, the Band parents and supporters, and countless others who have worked together to make this the best-ever high school band in Tomball;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim Monday, November 18, 2013 as:

**"TOMBALL HIGH SCHOOL ROARIN' BLUE BAND,
2013 UIL CLASS 4A - 17TH PLACE HIGH SCHOOL BAND" DAY**



In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: _____

DATE: _____

[Signature]
[Signature]
November 13, 2013

Regular City Council Agenda Item Data Sheet

Meeting Date: December 2, 2013

Topic:

- December 13-15, 2013 – *2013 Tomball German Christmas Market* – 10:00 a.m.-8:00 p.m.
- December 14, 2013 – “**Christmas on Commerce**” – a **2nd Saturday at the Depot Event**, from 10:00 a.m.-8:00 p.m.
- December 24-25, 2013 – **Christmas Holiday** – City Offices Closed
- January 1, 2014 – **New Year’s Day Holiday** – City Offices Closed
- ***Walk Tomball!*** – Every Saturday at 9:00 a.m. at the Depot
- Reports by City staff and members of council about items of community interest on which no action will be taken

Background:

Origination:

Recommendation:

Funding:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council Agenda Item Data Sheet

Meeting Date: December 2, 2013

Topic:

Approve the Minutes of the November 4, 2013 Regular City Council Meeting

Background:**Origination:**

City Secretary

Recommendation:

N/A

Funding:**Party(ies) responsible for placing this item on agenda:**

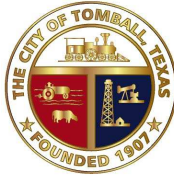
City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Draft Minutes - November 4, 2013 Regular Council Meeting

MINUTES OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**MONDAY, NOVEMBER 18, 2013
6:00 P.M.**

1.0 Call to Order

The Council meeting was called to order at 6:00 p.m. by Mayor Fagan. Other members present were:

Councilman Hudgens
Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson

Others present:

City Manager – George Shackelford
City Secretary – Doris Speer
City Attorney – Loren Smith
Fire Chief – Randy Parr
Community Development Director – Craig Meyers
Marketing Director – Mike Baxter
Finance Director – Glenn Windsor
Assistant City Engineer – Lori Lakatos
City Planner – Rebeca Guerra
Community Events Coordinator – Rosalie Dillon
Executive Director-TEDC – KellyViolette
Accountant – Christine Brookshire
Internal Operations Director-NWEMS – Terry Rogers

2.0 The invocation was led by Pastor James Clark, First Baptist Church

3.0 The pledges to the U. S. and Texas Flags were led by Madi and Haley Kaczynski, representing Tomball High School.

4.0 No Public Comments were received.

5.0 Reports and Announcements:

- November 19, 2013 – **25th Anniversary of Lone Star College-Tomball**
- November 21, 2013 – **Ribbon Cutting** at the Depot Restrooms – 11:30 a.m.
- November 23, 2013 – **48th Annual Tomball Holiday Parade** –10:00 a.m.
- November 28-29, 2013 – **Thanksgiving Holiday** – City Offices Closed
- December 13-15, 2013 – **2013 Tomball German Christmas Market** – 10:00 a.m.-8:00 p.m.
- December 14, 2013 – **“Christmas on Commerce” – a 2nd Saturday at the Depot Event**, from 10:00 a.m.-8:00 p.m.
- December 24-25, 2013 – **Christmas Holiday** – City Offices Closed
- January 1, 2014 – **New Year’s Day Holiday** – City Offices Closed
- **Walk Tomball!** – Every Saturday at 9:00 a.m. at the Depot
- Reports by City staff and members of council about items of community interest on which no action will be taken:
 - Glenn Windsor – Introduce Christine Brookshire, New Accountant

6.0 Motion was made by Councilman Dodson, second by Councilman Townsend, to approve the Minutes of the November 4, 2013 Regular City Council Meeting.

Motion carried unanimously.

7.0 Old Business:

7.1 Motion was made by Councilman Dodson, second by Councilman Townsend, to adopt, on Second Reading, Ordinance No. 2013-20, an Ordinance Reducing the Prima Facie Speed Limit Established for Vehicles under the Provisions of §545.356, Texas Transportation Code, upon the Basis of an Engineering and Traffic Investigation, upon SH 249 Frontage Roads/Access Roads, from the Intersection of the SH 249 Frontage Roads/Access Roads and Holderrieth Road, to the North Intersection of the Tomball Bypass and Business 249, within the Corporate Limits of the City of Tomball as set out in This Ordinance; and Providing a Penalty of a Fine in an Amount not to Exceed Two Hundred Dollars (\$200.00) for the Violation of This Ordinance. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>

Motion carried unanimously.

8.0 New Business:

- 8.1 Mayor Fagan accepted, on behalf of City Council, the Resignation of Councilman Rick Brown, Position 3, effective as of Midnight, November 18, 2013. Mayor Fagan presented a set of bookends to Councilman Brown on behalf of the City Council.

No action taken.

- 8.2 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve Resolution No. 2013-31, a Resolution and Order of the City Council of the City of Tomball, Texas, Ordering a Special City Officer's Election, to be held in the City of Tomball on Saturday, January 18, 2014; Designating the Polling Places and Appointing Election Officials for such Election; Directing the Giving of Notice of Such Election; Designating the Date for a Runoff Election if Needed; and Providing Details Relating to the Holding of Such Election.

Motion carried unanimously.

- 8.3 Motion was made by Councilman Stoll, second by Councilman Hudgens, to appoint Councilman Townsend as the Council Representative to the NWEMS Board of Directors.

Motion carried unanimously.

- 8.4 Motion was made by Councilman Townsend, second by Councilman Brown, to appoint Brett Tynes as a Member to the Texas Legacy Fund, Inc. Board of Directors, Position 7.

Motion carried unanimously.

- 8.5 Consideration to approve **ZONING CASE P13-157**: Request by Jackie Moon, on behalf of Breaux Properties, LTD, to amend the City's Zoning Ordinance by rezoning approximately 8.55 acres of land, legally described as Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-90408O; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris

County Map Records, as recorded under Harris County Clerk's File No. 20070358349; within the City of Tomball, Harris County, Texas, generally located northerly and southerly of Hirschfield Road, between State Highway 249 and State Highway 249 Expressway, from the General Retail and Agricultural Districts to the Planned Development - 5 District to facilitate the expansion of Breaux Machine Works.

- Mayor Fagan opened the public hearing on **ZONING CASE P13-157** at 6:19 p.m. No public comments being received, Mayor Fagan closed the public hearing at 6:19 p.m.
- Motion was made by Councilman Townsend, second by Councilman Dodson, to read Ordinance No. 2013-21 by caption only on First Reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Dodson, to adopt on First Reading, Ordinance No. 2013-21, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance, by approving a Planned Development District ("PDD") of approximately 8.55 acres of land, legally described as Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-904080; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris County Map Records, as recorded under Harris County Clerk's File No. 20070358349; within the City of Tomball, Harris County, Texas; amending the official Zoning Map of the City to reflect the PDD to be known as Planned Development District #5 (PDD-5); adopting a Concept Plan and regulations applicable to PDD-5; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>

Motion carried unanimously.

- 8.6 Consideration to Approve **ZONING CASE P13-158**: Request by Stutts Cox Builders, Inc., on behalf of Ronald and Amy Haffner, to amend the City's Zoning Ordinance by rezoning approximately .68 acres of land, legally described as Lot 2, Block 2, Brown-Hufsmith Commercial within the City of Tomball, Harris County, Texas, generally located southerly of Brown-Hufsmith Road between State Highway 249 and Quinn Road, from the Planned Development - 1 District to the Office District.

- Mayor Fagan opened the public hearing on **ZONING CASE P13-158** at 6:26 p.m. No public comments being received, Mayor Fagan closed the public hearing at 6:26 p.m.
- Motion was made by Councilman Stoll, second by Councilman Townsend, to read Ordinance No. 2013-22 by caption only on First Reading.

Motion carried unanimously.

- Motion was made by Councilman Dodson, second by Councilman Stoll, to adopt, on First Reading, Ordinance No. 2013-22, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance by changing the zoning district classification of approximately 0.68 acres of land, legally described as Lot 2, Block 2, Brown-Hufsmith Commercial within the City of Tomball, Harris County, Texas, from the Planned Development - 1 District to the Office District; said property being generally located southerly of Brown Road between State Highway 249 and Quinn Road; providing for the amendment of the official Zoning Map of the City; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>

Motion carried unanimously.

- 8.7 Consideration to Approve **ZONING CASE P13-161**: Request by the City of Tomball to amend Section 38.2 ("Use Charts") of the City's Zoning Ordinance by allowing a "Residential Use" with a Conditional Use Permit in the Office District.

- Mayor Fagan opened the public hearing on **ZONING CASE P13-161** at 6:29 p.m. No public comments being received, Mayor Fagan closed the public hearing at 6:29 p.m.
- Motion was made by Councilman Townsend, second by Councilman Stoll, to read Ordinance No. 2013-23 by caption only on First Reading.

Motion carried unanimously.

- Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on First Reading, Ordinance No. 2013-23, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance by amending Section 38.2 ("Use Charts") by allowing a "Residential Use" with a Conditional Use Permit in the Office District; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof; making findings of fact; and providing for other related matters. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Nay</u>
Councilman Dodson	<u>Aye</u>

Motion carried, 4 votes Aye, 1 vote Nay.

- 8.8 Motion was made by Councilman Dodson, second by Councilman Brown, to approve **FINAL PLAT TUCKER MEADOWS**; A Subdivision of 4.6756-Acre Tract, being Comprised of 4.3285-Acre Tract and 0.5000-Acre Tract situated in Chauncey Goodrich Survey, Abstract 311, Harris County, Texas.

Motion carried unanimously.

- 8.9 Motion was made by Councilman Dodson, second by Councilman Stoll, to approve the preparation of a Request for Qualifications to prepare an Evaluation and Analysis of the City's Development Review Process.

Motion carried unanimously.

- 9.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to adjourn.
Vote was as follows:

Councilman Hudgens	<u>Abstain</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Nay</u>
Councilman Dodson	<u>Aye</u>

Motion carried, 4 votes Aye, 1 Abstention.

Meeting adjourned.

PASSED AND APPROVED this the 2nd day of December 2013.

Doris Speer, TRMC, CMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Meeting Date: December 2, 2013

Data Sheet

Topic:

Adopt, on Second Reading, Ordinance No. 2013-21, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance, by approving a Planned Development District ("PDD") of approximately 8.55 acres of land, legally described as Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-90408O; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris County Map Records, as recorded under Harris County Clerk's File No. 20070358349; within the City of Tomball, Harris County, Texas; amending the official Zoning Map of the City to reflect the PDD to be known as Planned Development District #5 (PDD-5); adopting a Concept Plan and regulations applicable to PDD-5; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

Background:

On May 17, 2013, City staff met with the property owner, Mr. Breaux, to discuss the expansion of his business, Breaux Machine Works, at the subject site. Mr. Breaux was informed that his property is zoned General Retail District which does not permit the expansion of a machine shop. He was informed that if he wished to expand his facility, he would be required to have the property rezoned to a district which not only permitted this particular land use, but was consistent and compatible with the Zoning districts and uses within the State Highway 249 corridor.

On October 1, 2013, the City received a Planned Development District (PDD) application from the applicant, Jackie Moon, for the subject site requesting the machine shop use be expanded. A Concept Plan was submitted with the PDD application which proposes numerous improvements including adding over 70,000 square feet of building area, providing on-site parking stalls to meet the demand of the increased building area, screening and buffering all outdoor storage areas, and bringing the entire site into conformance with the landscaping requirements of the City.

The Planning and Zoning Commission voted to recommend approval of Zoning Case P13-157 on November 11, 2013, with a 5-0 unanimous vote. On November 18, 2013, Council adopted Ordinance No. 2013-21 on first reading.

Origination:

Jackie Moon, on behalf of Breaux Properties, LTD

Recommendation:

Adopt Ordinance No. 2013-21 on Second Reading

Funding:

Party(ies) responsible for placing this item on agenda:

Doris Speer, City Secretary

ACTION TAKEN		
APPROVAL ☐ YES ☐ NO	READINGS PASSED ☐ 1 ST ☐ 2 ND	OTHER

ATTACHMENTS:

Ordinance No. 2013-21

Notice of Public Hearing

Property Owner Notification Letter

P13-157 Staff Report

ORDINANCE NO. 2013-21

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS ZONING ORDINANCE, BY APPROVING A PLANNED DEVELOPMENT DISTRICT (“PDD”) OF APPROXIMATELY 8.55 ACRES OF LAND, LEGALLY DESCRIBED AS LOT 1, BLOCK 3, HIRSCHFIELD FARMS (UNRECORDED); LOT 2, BLOCK 3, HIRSCHFIELD FARMS (UNRECORDED); LOT 3, BLOCK 3, HIRSCHFIELD FARMS (UNRECORDED); 0.1246 ACRES BEING A RESIDUE OF A CALLED 2.8805 ACRE TRACT AS DESCRIBED IN HARRIS COUNTY CLERK'S FILE NUMBER J-904080; 1.5918 ACRES BEING A RESIDUE OF A CALLED 3.5864 ACRE TRACT AS DESCRIBED IN FILM CODE NUMBER 119-48-0065, HARRIS COUNTY CLERK'S FILE; LOT 1, BLOCK 1, HIRSCHFIELD FARMS (UNRECORDED); LOT 5, BLOCK 1, FINAL PLAT OF PARKWAY OASIS; AND BEING A PORTION OF LOT 1, BLOCK 1, FINAL PLAT OF PARKWAY OASIS REPLAT NO. 1, ACCORDING TO THE MAP OR PLAT RECORDED IN FILM CODE NO. 635087 OF THE HARRIS COUNTY MAP RECORDS, AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NO. 20070358349, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY TO REFLECT THE PDD TO BE KNOWN AS PLANNED DEVELOPMENT DISTRICT #5 (PDD-5); ADOPTING A CONCEPT PLAN AND REGULATIONS APPLICABLE TO PDD-5; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

Whereas, the owner of approximately 8.55 acres of land, legally described as Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-904080; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris County Map Records, as recorded under Harris County Clerk's File No. 20070358349; generally located northerly and southerly of Hirschfield Road, between State Highway 249 and State Highway 249 Expressway, in the City of Tomball, Harris County, Texas, (the "Property"), has requested that the Property be rezoned; and

Whereas, the owner has presented an application to the City for a PDD to allow the expansion of Breau Machine Works; and

Whereas, the PDD application consists of an application for PDD (Exhibit “A”); two request letters (Exhibits “B” and “C”); and concept plan (Exhibit “D”) attached to and made a part of this Ordinance; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days written notice of that hearing to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public

hearing on the proposal to change the zoning for the Property from the General Retail and Agricultural Districts to PDD-5; and

Whereas, the public hearing was held at least forty (40) calendar days after the City's receipt of the request for rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council grant such proposed change in the zoning district classification of the Property; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing on the proposal to change the zoning district classification for the Property from the General Retail and Agricultural Districts to PDD-5, the City Council held the public hearing on the proposal to change the zoning for the Property and the City Council considered the final report of the Planning & Zoning Commission regarding the change of zoning district classification; and

Whereas, the City Council deems it appropriate to grant such proposed change in the zoning district classification of the Property.

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

Section 1. The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

Section 2. The zoning classification of the Property is hereby changed from the General Retail and Agricultural Districts to PDD-5 subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball shall be revised and amended to show the designation of the Property as PDD-5, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification of the Property, to PDD-5 as described above.

Section 5. PDD-5 shall be subject to the following additional limitations, restrictions and covenants:

- A. Compliance with Application and Site Plans. The granting of the PDD shall be conditioned upon the proposed improvements and land uses being located, constructed, and conducted upon the Property in substantial compliance with the application for PDD (Exhibit "A"); two request letters (Exhibits "B" and "C"); concept plan (Exhibit "D") made a part hereof for all purposes.

B. Height Regulations:

a. Maximum Height:

- i. Main Building/House: 50'
- ii. Accessory Building(s): One story

C. Area Regulations:

a. Size of Lots:

i. Minimum Lot Area:

1. Breaux Machine Works North: 4.3 acres
2. Breaux Machine Works South: 0.8 acres

ii. Minimum Lot Width:

1. Breaux Machine Works North: 425 feet
2. Breaux Machine Works South: 200 feet

iii. Minimum Lot Depth:

1. Breaux Machine Works North: 445 feet
2. Breaux Machine Works South: 135 feet

b. Size of Yards:

- i. Minimum Front Yard: 25 feet; 35 feet when adjacent to arterial
- ii. Minimum Side Yard: 15 feet
- iii. Minimum Rear Yard: 15 feet

c. Maximum Lot Coverage: 50%

d. Maximum Impervious Coverage: 80%

D. PDD-5 shall be limited to only the following land uses:

- a. Machine Shop
- b. Professional and General Business Office

E. PDD-5 shall adhere to Articles I, II, IV, V, and VI of the Zoning Ordinance.

F. Other Requirements

- a. No outside displays shall be permitted.
- b. No outside sales shall be permitted.
- c. All businesses operations shall be conducted indoors with the exception of outdoor storage.
- d. Outside storage shall be limited to a maximum of ten percent (10%) of the total PDD-5 land area and shall be screened in accordance with Section 42 of the Zoning Ordinance.

Section 6. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 7. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 8. City Council finds and determines that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Tex.Gov't. Code ch. 551.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF NOVEMBER 2013.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF DECEMBER 2013.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

Exhibit "A"

PDD Application



Application for Planned Development Engineering & Planning Department

Revised 1/20/09



The PD, Planned Development, district is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., single-family, multi-family, Duplex (Two Family), etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A Planned Development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts.

No planned development shall be established and no building permit shall be issued for any use designated as a Planned Development within any zoning district until a Planned Development Permit is approved and issued in accordance with the provisions of the Zoning Ordinance and Concept Plan.

The minimum acreage for a planned development request shall be four (4) acres.

APPLICATION SUBMITTAL: Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant

Name: P Jackie Moon Title: Representative
 Mailing Address: 22511 Walden Way City: Tomball State: TX
 Zip: 77375
 Phone: (281) 516-9149 Fax: () Email: jamoarc@gmail.com

Owner

Name: Breaux Properties, LTD Title:
 Mailing Address: 13842 Hirschfield Rd City: Tomball State: TX
 Zip: 77377
 Phone: (281) 351-4042 Fax: (281) 351-2640 Email:

Engineer/Surveyor (if applicable)

Name: David Broussard, PE Title: Owner
 Mailing Address: 17527 Hawkins Lane City: Tomball State: TX
 Zip: 77377
 Phone: (281) 732-0464 Fax: () Email: David_broussard1950@yahoo.com

Description of Proposed Project: Machine Works Complex

Physical Location of Property: 13842 Hirschfield Rd and surrounding 8.9954 acres Breaux Machine Works P.D.
 [General Location – approximate distance to nearest existing street corner]

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405

www.ci.tomball.tx.us

Legal Description of Property: see attached 'STEWART TITLE & Nesvadba Letter'
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: see attached map Acreage: 8.9954

Current Use of Property: Machine Works Shop

Proposed Use of Property: same, plus Shipping and Receiving

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

☒ Jackie Moor 9-30-13
Signature of Applicant Date

☒ N. Z. Bryant 9-30-13
Signature of Owner Date

Exhibit "B"
PDD Request Letter #1

BREAUX MACHINE WORKS

September 27, 2013

City of Tomball Planning and Zoning
501 James Street
Tomball, TX 77375

Reference: The Rezoning of the Breaux Machine Works and properties, Comprehensive Plan, Amendment Request Letter, in Tomball, Texas

City of Tomball Staff,

Breaux Machine Works and Properties request that the City of Tomball consider rezoning the 8.9954 acres (Composite of 3 individual tracts) known as Breaux Machine Works and properties from its current 'Non-Conforming use of the business to a Planned Development District. Breaux Machine works has been at its current site since 1976 and has purchased surrounding acreage in order to grow their business. Our submittal includes the current buildings and the non-developed surrounding lands owned by Mr. Tommy Breaux and Breaux Machine Works. The plats for these properties were prepared and recorded in (see attached). This project has followed by all rules and guidelines set forth and we believe it is a great asset to the community. These projects when complete will not only provide a well planned business park but jobs and economic impact to the City of Tomball. By allowing rezoning we know that our business will grow and continue to add to the growth and prosperity of our city. This project will not have negative effects on traffic or the adjacent properties in the area. The rezoning only looks to encourage growth in a manner which reflects the growing needs of the City in a manner which is consistent with the City's rules and regulations. Thank you for your consideration.

Respectfully,

Tommy Breaux
Breux Machine Works
13842 Hirschfield Rd.
Tomball, TX 77375



Exhibit "C"
PDD Request Letter #2

BREAUX MACHINE WORKS

September 27, 2013

City of Tomball Planning and Zoning
501 James Street
Tomball, TX 77375

Reference: The Rezoning of the Breaux Machine Works and properties Planned Development, in Tomball, Texas

City of Tomball Staff,

Breaux Machine Works and Properties request that the City of Tomball consider rezoning the 8.5594 Acres (Composite of three individual tracts) known as Breaux Machine Works and properties from its current 'Non-Conforming' issue of the business to a Planned Development District. Breaux Machine works has been at its current site since 1976 and has purchased surrounding acreage in order to grow their business. This project has followed by all rules and guidelines set forth and we believe it is a great asset to the community. This project, when complete will not only provide a well-planned business park for our company but jobs and positive economic impact to the City of Tomball.

We are using this Planned Development to have more flexibility for our future growth and expansion while adhering to the City of Tomball's Comprehensive Plan for growth and development. We are requesting that we be allowed to expand our business per this Planned Development submission which will, in turn, help us and the City of Tomball.

This proposed Plan Development will accommodate the need usage of our property so that our business can continue to grow and it will benefit the City of Tomball as we employ more people as we grow. This Planned Development will allow for the adjustment of our changing needs as our business grows and the City of Tomball by (1) providing for a well planned expansion of our business. (2) All new buildings will meet and/or exceed the requirements of the city with the required green space and landscaping and (3) will meet and exceed the standards of this Ordinance.

Breaux Machine Works
September 27, 2013
Page 1

Proposed Use for Breaux Machine Works Planned Development

Machine Works

These uses are allowed on the existing properties of Breaux Machine Works and we are requesting his additional land included in this Planned Development be allowed to continue the current uses the afforded the company presently. By approving this Planned Development of Breaux Machine Works you will be benefiting the City of Tomball as well as the company in that the company can continue to grow and bring in more employees and the City can benefit from their growth in new revenues for the City. We are presenting this Planned Development to be consistent with the City's rules and regulations. Thank you for your consideration.

Respectfully,

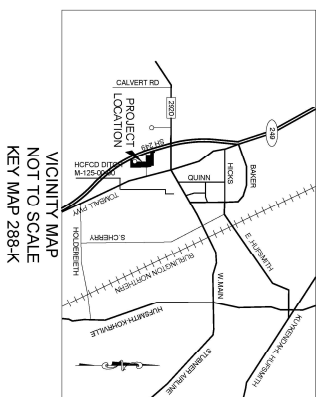


Tommy Breaux
Breaux Machine Works

Page 2

PLANNED DEVELOPMENT (BMW NORTH & BMW SOUTH)
13842 HIRSCHFIELD ROAD, TOMBALL, TEXAS 77377
CONTACT: MR. N.T. BREAU, PRES. 281.351.4042

**HOURS OF OPERATION: 7:00 AM TO 6:00 PM
MONDAY THROUGH FRIDAY**



DRAWING INDEX

C-1 COVER SHEET

C-2 OVERALL BREAUX MACHINE WORKS P.D.

C-3 BREAUX MACHINE WORKS NORTH

C-4 BREAUX MACHINE WORKS SOUTH

[illegible][illegible]

SERIAL MARK
1 C FLOODPLAIN REFERENCE MARKS
1 S.A.P. IN NW CORNER OF
ARCHITECTURAL BOARD ABOVE AND
4 C.C. GROUND N.W. 1/25-06-98
ELEV. 185.1
FAXED 1998, 2001 A.J.L.

T.S.M.
3X WALL IN CENTERS OF CONCRETE
CUL-DE-SAC OFF HIGH WINDOWN ROAD
ELEV. 180.06

*LOCAL PLAN STATEMENT
SUBJECT TRACT DOES NOT LIE
WITHIN THE 100-YEAR FLOODPLAIN
AS PER F.I.R.M. COMMUNITY
MAP# NO. 8803-C-02194.

BREUX MACHINE WORKS
PLANNED DEVELOPMENT (BMW NORTH & BMW SOUTH)
13842 HIRSCHFIELD ROAD, TOMBALL, TEXAS 77377
CONTACT: MR. N.T. BREUX, PRES. 281.351.4042



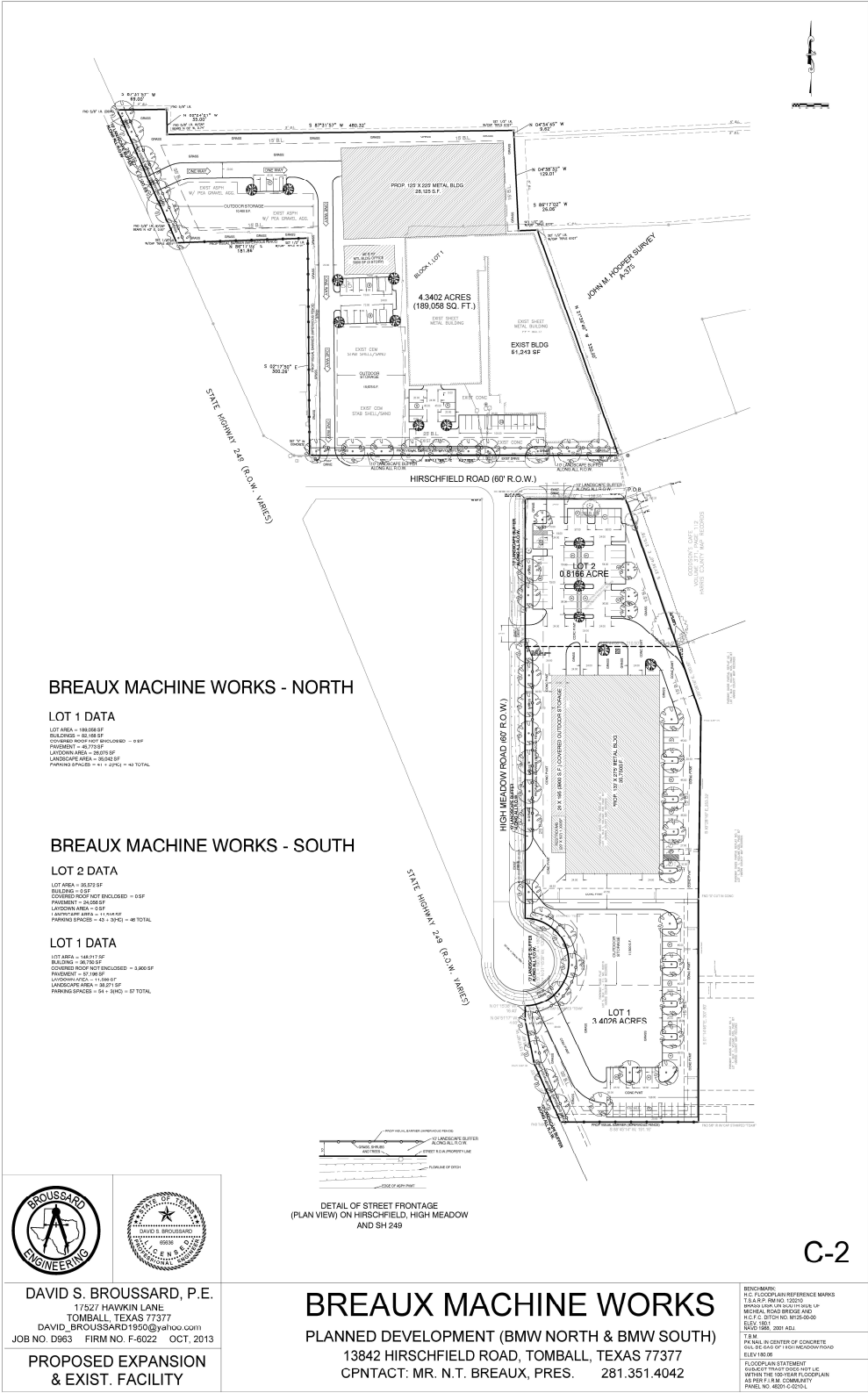
DAVID S. B.



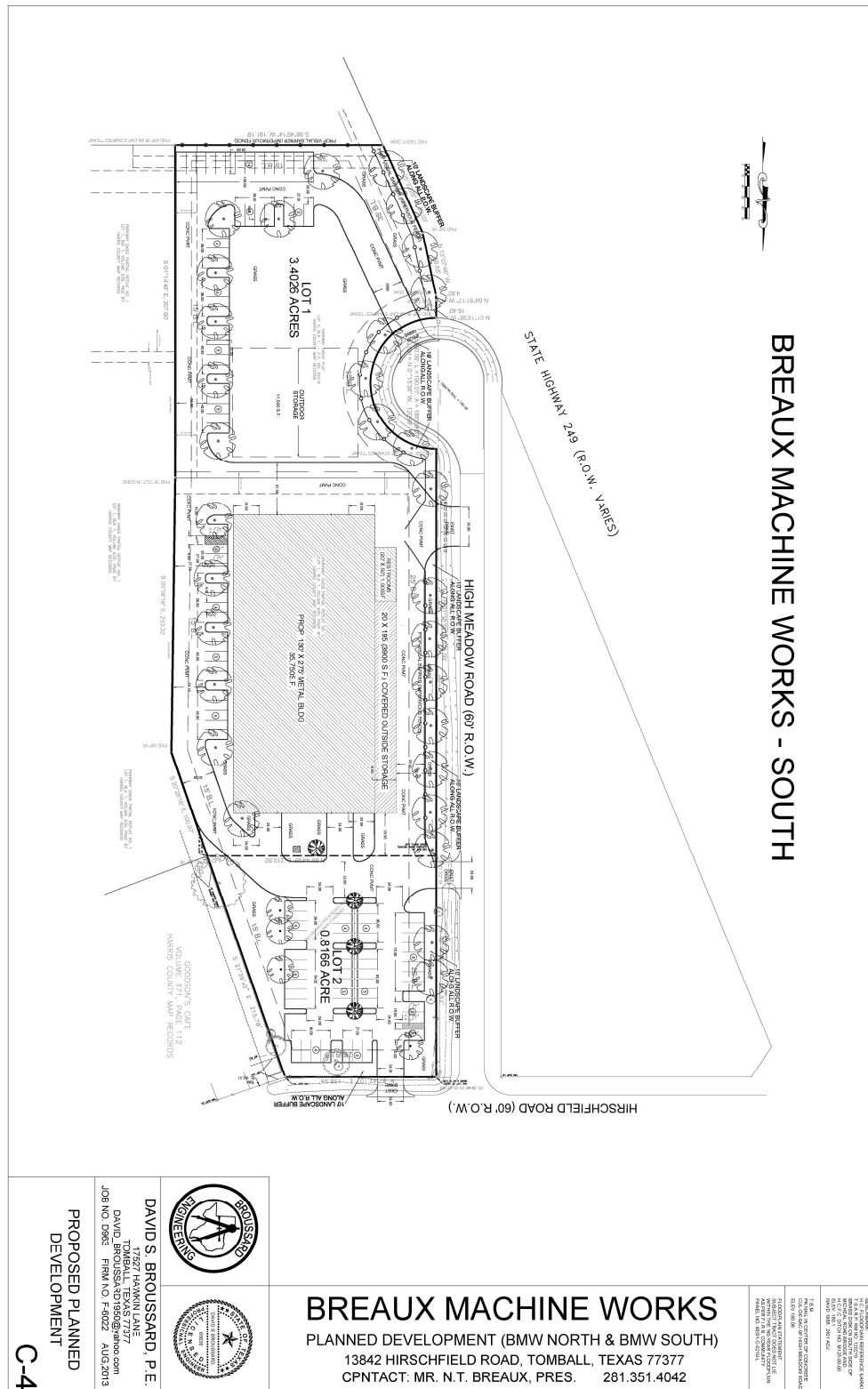
DAVID S. BROUSSARD, P.E.
17527 HAWKIN LANE
TOMBALL, TEXAS 77377
DAVID_BROSSARD1950@yahoo.com
JOB NO. D963 FIRM NO. F-6022 AUG.2013

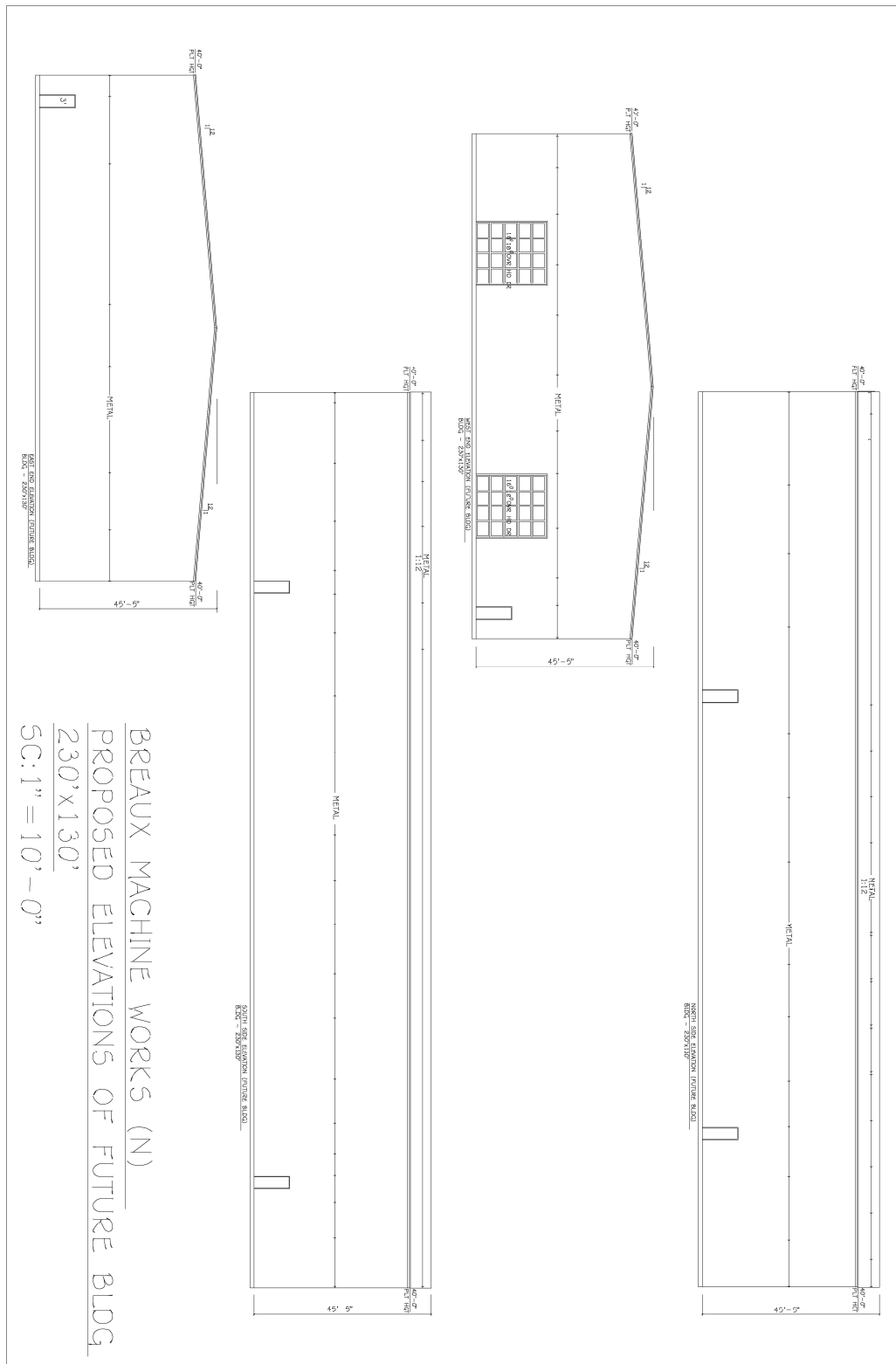
PROPOSED PLANNED
DEVELOPMENT

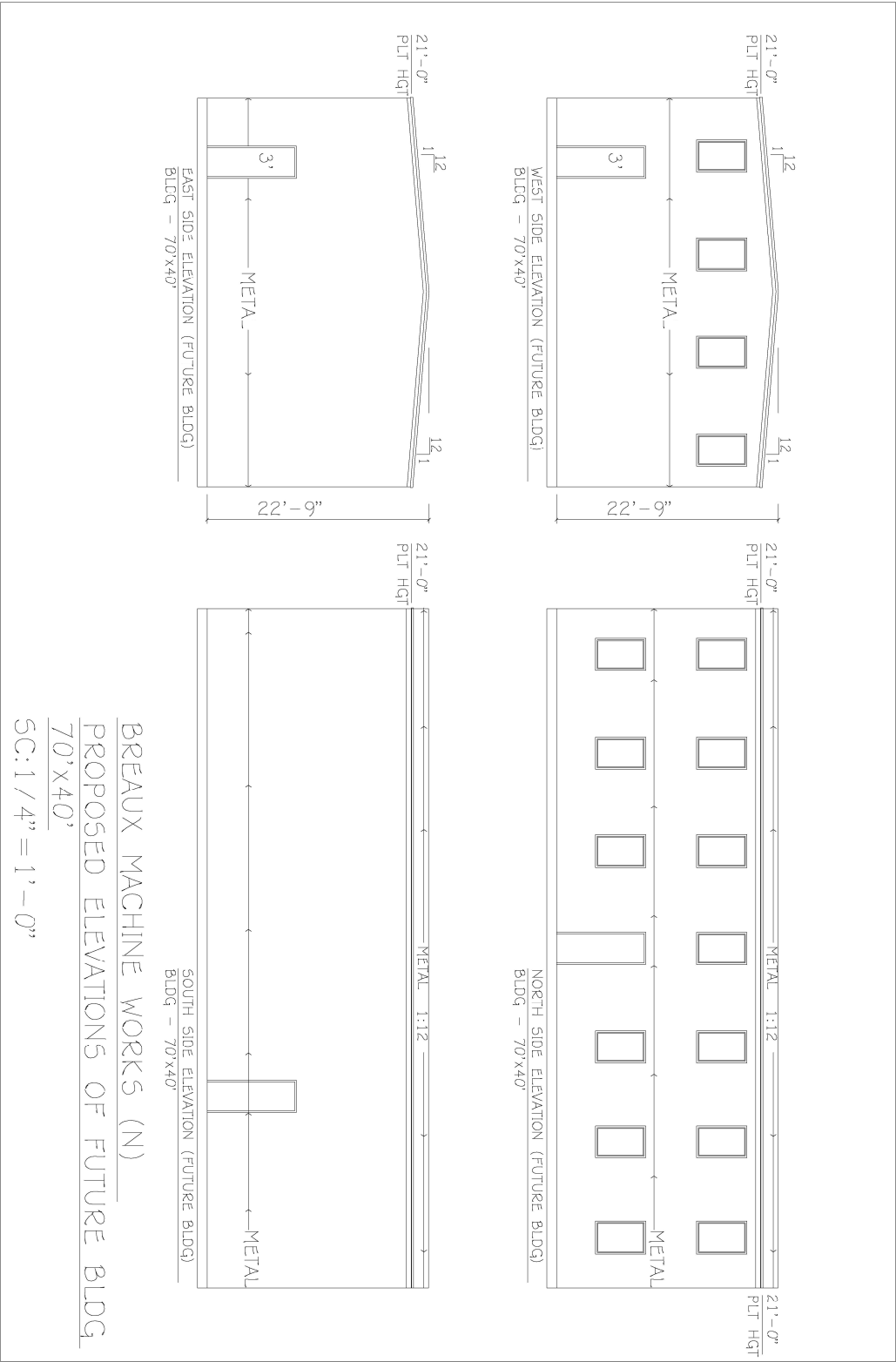
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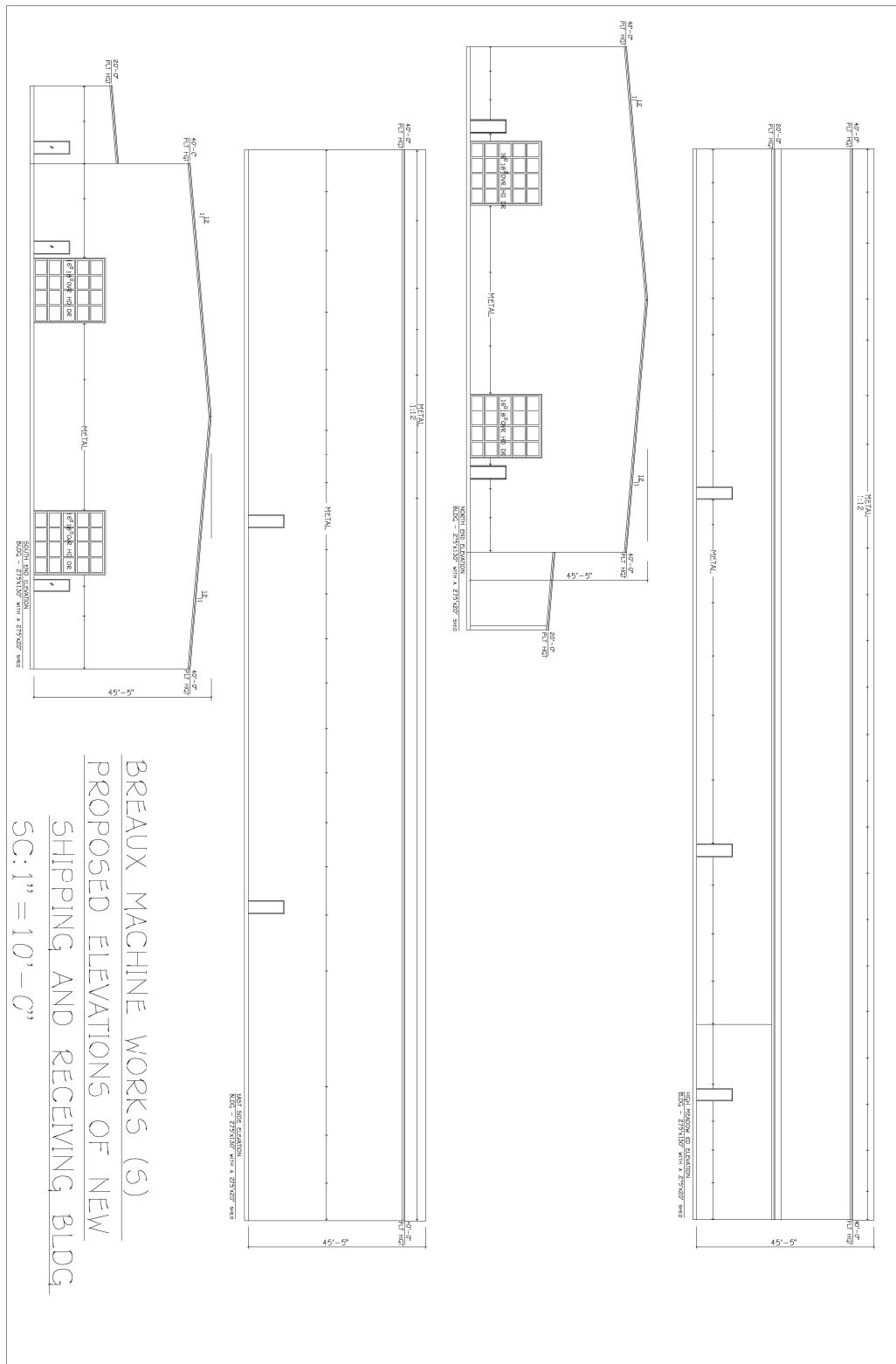












**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
NOVEMBER 11, 2013
&
CITY COUNCIL
NOVEMBER 18, 2013**



Notice is Hereby Given that a Public Hearing will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, November 11, 2013, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, November 18, 2013, at 6:00 P.M.** at Regular Meetings, in the City Council Chambers of the City of Tomball at City Hall, 401 Market Street, Tomball, Texas. On such dates, the Planning & Zoning Commission and City Council will consider the following:

ZONING CASE P13-157: Request by Jackie Moon, on behalf of Breaux Properties, LTD, to amend the City's Zoning Ordinance by rezoning approximately 8.55 acres of land, legally described as Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-904080; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris County Map Records, as recorded under Harris County Clerk's File No. 20070358349; within the City of Tomball, Harris County, Texas, generally located northerly and southerly of Hirschfield Road, between State Highway 249 and State Highway 249 Expressway, from the General Retail and Agricultural Districts to the Planned Development - 5 District to facilitate the expansion of Breaux Machine Works.

ZONING CASE P13-158: Request by Stutts Cox Builders, Inc., on behalf of Ronald and Amy Haffner, to amend the City's Zoning Ordinance by rezoning approximately .68 acres of land, legally described as Lot 2, Block 2, Brown-Hufsmith Commercial within the City of Tomball, Harris County, Texas, generally located southerly of Brown-Hufsmith Road between State Highway 249 and Quinn Road, from the Planned Development - 1 District to the Office District.

ZONING CASE P13-161: Request by the City of Tomball to amend Section 38.2 (“Use Charts”) of the City’s Zoning Ordinance by allowing a “Residential Use” with a Conditional Use Permit in the Office District.

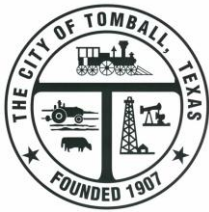
Persons interested in this case will be given an opportunity to be heard. Action by the Planning & Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Should the Planning & Zoning Commission vote to table a decision/recommendation on this case, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a decision/recommendation is forwarded to the City Council by the Planning & Zoning Commission. The application is available for public inspection Monday through Friday, holidays excepted, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the Assistant City Planner, Rodney Schmidt, at (281) 290-1410, rschmidt@tomballtx.gov.

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the 7th day of **November 2013** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Brandy Pate
Brandy Pate
Senior Administrative Assistant
P&Z Commission Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary’s office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.



Notice of Public Hearing

YOU ARE INVITED TO ATTEND Public Hearings before the **PLANNING & ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P13-157

APPLICANT: Jackie Moon, on behalf of Breaux Properties, LTD

LOCATION: Northerly and southerly of Hirschfield Road, between State Highway 249 and State Highway 249 Expressway

PROPOSAL: Request to amend the City's Zoning Ordinance by rezoning approximately 8.55 acres of land, legally described as Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-904080; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris County Map Records, as recorded under Harris County Clerk's File No. 20070358349; within the City of Tomball, Harris County, Texas, from the General Retail and Agricultural Districts to the Planned Development - 5 District to facilitate the expansion of Breaux Machine Works.

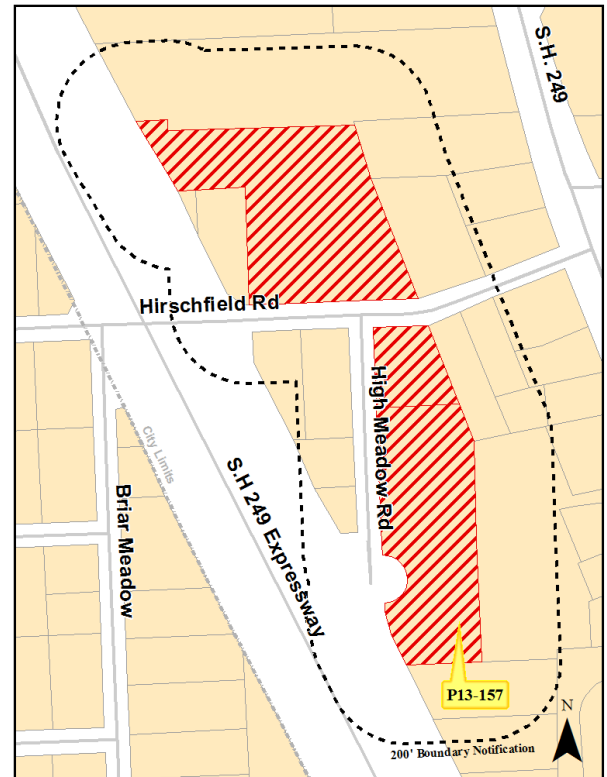
CONTACT: Rodney Schmidt

PHONE: (281) 290-1410

E-MAIL: rschmidt@tomballtx.gov

Interested parties may contact the City of Tomball between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The application is available for public inspection Monday through Friday, holidays excepted, between the hours of 8:00 a.m. and 5:00 p.m. in the Community Development Department office, located at 501 James Street, Tomball, TX 77375. The staff report will be available no later than 4:00 p.m. on the Friday preceding the meeting.

This notice is being mailed to all owners of real property within 200 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll. Interested parties may appear and speak on the project or the staff recommendation at the meeting. Written comments may also be submitted for consideration.

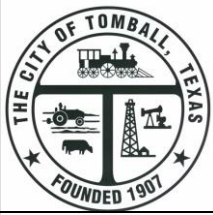


**Planning & Zoning Commission
Public Hearing:
Monday, November 11, 2013, 6:00 PM**

**City Council Public Hearing:
*Monday, November 18, 2013, 6:00 PM**

**The Public Hearings will be held in the
City Council Chambers, City Hall
401 Market Street, Tomball, Texas**

*Should the Planning & Zoning Commission vote to table the recommendation on the case, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a recommendation is forwarded to the City Council by the Planning & Zoning Commission.



Rezoning Staff Report

Planning & Zoning Commission Public Hearing Date: November 11, 2013

Rezoning Case: P13-157

Property Owner(s): Breaux Properties, LTD

Applicant: Jackie Moon

Legal Description: Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-90408O; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris County Map Records, as recorded under Harris County Clerk's File No. 20070358349

Location: Northerly and southerly of Hirschfield Road, between State Highway 249 and State Highway 249 Expressway (Exhibit "A")

Area: 8.55 acres

Present Zoning and Use: General Retail and Agricultural Districts (Exhibit "B") / Machine Shop

Comp Plan Designation: Commercial (Exhibit "C")

Proposed Zoning and Use: Planned Development District #5 / Machine Shop

Adjacent Zoning & Land Uses:

North: General Retail District / Building materials sales

South: Agricultural District / Vacant

- West:** Agricultural District, General Retail District, and Conditional Use Permit #8 / State Highway 249 Expressway, High Meadow Road, vacant, single-family residence, office/warehouse, and feed and grain store
- East:** General Retail District / Minor auto repair, furniture and appliance store, auto parts sale, eating establishment, medical office, office/warehouse, convenience store, multi-use strip center, and drinking establishment

BACKGROUND

On May 17, 2013, City staff met with the property owner, Mr. Breaux, to discuss the expansion of his business, Breaux Machine Works, at the subject site. Mr. Breaux was informed that his property is zoned General Retail District which does not permit the expansion of a machine shop. He was informed that if he wished to expand his facility, he would be required to have the property rezoned to a district which not only permitted this particular land use, but was consistent and compatible with the Zoning districts and uses within the State Highway 249 corridor. On October 1, 2013, the City received a Planned Development District (PDD) application from the applicant, Jackie Moon, for the subject site requesting the machine shop use be expanded (Exhibit “D”). A Concept Plan was submitted with the PDD application which proposes numerous improvements including adding over 70,000 square feet of building area, providing on-site parking stalls to meet the demand of the increased building area, screening and buffering all outdoor storage areas, and bringing the entire site into conformance with the landscaping requirements of the City (Exhibit “E”).

ANALYSIS

There are several existing land uses in the area. To the north of the subject site is a building materials sales facility; to the south is vacant land; to the west is State Highway 249 Expressway, High Meadow Road, vacant land, a single-family residence, office/warehouses, and a feed and grain store; and to the east is a minor auto repair facility, furniture and appliance store, auto parts store, eating establishment, office/warehouse, medical office, convenience store, multi-use strip center, and drinking establishment (Exhibit “F”). The Rezoning to PDD appears to be compatible with the existing land uses in the area except for the single-family residence across High Meadow Road to the west. However, the 25-foot front building setback and 10-foot landscape buffer along High Meadow Road proposed on the Concept Plan appears to sufficiently buffer the machine shop use from the single-family residence.

There are a number of Zoning districts in the area. To the north of the subject site is the General Retail District; to the south is the Agricultural District; to the west are the Agricultural District, General Retail District, and Conditional Use Permit #8 permitting a feed and grain store; and to the east is the General Retail District. The proposed PDD appears to be compatible with the existing Zoning districts in the area given the provisions shown on the Concept Plan.

The Comprehensive Plan's Future Land Use (FLU) map identifies the site as Commercial. The Comprehensive Plan (CP) states, "Commercial is where retail sales and service activities should occur. These uses include but are not limited to shopping centers, convenience stores, auto dealers, department stores, grocery and drug stores, entertainment facilities, food and beverage purveyors, salons, and small repair shops." The proposed rezoning does not appear to be consistent with the CP land use designation of Commercial. However, the CP states, "At times, the City will likely encounter development proposals that do not directly reflect the purpose and intent of the CP. The Planning & Zoning Commission and City Council may find that a request for a zoning amendment is not consistent with the FLU but should be approved due to changed circumstances or additional, relevant information affecting the appropriate use of the parcel. Review of such development proposals should include the following considerations (City staff responses in red):

- Will the proposed development enhance the City economically?

The expansion of the facility would appear to generate higher property taxes for the City than if the property were to remain in its current configuration. Additionally, the expanded facility may generate more employees which will likely equate to more sales tax revenue from those employees eating and shopping in the City and possibly more property tax revenue from new home construction.

- Will the proposed development enhance the City aesthetically?

The Concept Plan provides numerous site improvements including new buildings and landscaping area which appear to enhance the City aesthetically.

- Is the proposed development consistent with the City's Goals, Objectives, and Actions?

The request is consistent with Goal LUD 7 which attempts to "Maintain a sustainable jobs-to-population ratio and a mix of locally available jobs." The expansion of the facility will likely generate more employees which would appear improve the jobs-to-population ratio and provide locally available jobs.

- Is the proposed development a better use of land/property, both for the owner/developer and the City, than that recommended by the Plan?

The expansion of the machine shop use will likely better utilize land currently being used as such and expand the facility into undeveloped land.

- Will the proposed development impact adjacent residential areas in a positive or negative manner?

The visual buffering and landscaping proposed for this site appear to mitigate negative impacts on the single-family residence in the area.

- Will the proposed development have adequate access; have considerations been made for roadway capacity, ingress and egress, traffic impact?

The proposed development will have adequate access and will adhere to all governmental regulations for ingress/egress. Additionally, the new shipping and receiving facility proposed on the Concept Plan is anticipated to allow the heavy trucks that currently load/unload their materials on Hirschfield Road to load/unload on private property thereby improving traffic flow.

- Are uses adjacent to the proposed development similar in nature in terms of appearance, hours of operation, and other general aspects of compatibility?

The uses adjacent to the existing and proposed machine shop appear to be similar in nature. Additionally, the machine shop has been at its current location for several years without any known filed complaints from its neighbors siting incompatibility concerns.

- Does the proposed development present a significant benefit to the public health, safety and welfare of the community?"

The proposed development appears to positively impact the community's health, safety, or welfare by removing the loading/unloading of heavy trucks from Hirschfield Road onto private property.

Although the proposed Rezoning does not appear to be consistent with the FLU designation of Commercial, the CP does "allow City Staff the flexibility to respond to conditions and constraints inherent to specific sites and areas in Tomball." Staff recognizes the existing use of a machine shop which was created prior to the inception of Zoning in the City. A Rezoning to PDD would allow Staff to require that this development "provide proper transitions, buffers, or architectural reliefs to minimize negative impacts" as mandated in the CP. To this end, as part of the associated Concept Plan, the applicant is proposing numerous improvements to the site that are anticipated to improve the property visually and allow the existing business to function in a more efficient and safe manner.

Finally, the future development of this site will require the applicant to comply with the City's platting requirements as well as the use and area regulations outlined in the Zoning Ordinance and PDD ordinance. A Site Plan application, which requires civil drawings, including all proposed grading, paving, drainage, and utility plans, building elevations, and landscape plans are required to be submitted and approved by the City of Tomball prior to building permit application submittal.

ZONING CONSIDERATIONS

In making its recommendation regarding a proposed zoning change, the Planning & Zoning Commission shall consider the following factors:

- A. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the City as a whole.**

The proposed machine shop expansion appears to be compatible with the existing land uses in the area except for the single-family residence across High Meadow Road to the west. However, the 25-foot front building setback and 10-foot landscape buffer along High Meadow Road proposed on the Concept Plan appears to sufficiently buffer the machine shop use from the single-family residence.

B. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area.

The proposed rezoning is not anticipated to negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.

C. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.

There are no other tracts, vacant or occupied, in the vicinity or elsewhere in the City zoned PDD intended for the same purpose as proposed by the applicant.

D. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.

There has been no development City-wide or within the vicinity in a PDD intended for the same purpose as proposed by the applicant.

E. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved.

If the proposed Zoning change were approved, there should be few if any affects on other areas designated for similar developments.

F. Any other factors that will substantially affect the public health, safety, morals, or general welfare.

The proposed Zoning change is not anticipated to negatively affect the public health, safety, morals, or general welfare.

G. Whether the request is consistent with the Comprehensive Plan.

Although the proposed Rezoning does not appear to be consistent with the Comprehensive Plan Future Land Use designation of Commercial, it does appear to provide a better use of land that will benefit both the property owner and the City.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on October 31, 2013; no public comments have been received as of November 6, 2013.

CONCLUSION

Staff recommends **APPROVAL** of Zoning Case P13-157 based on the following:

- a. The proposed rezoning appears to be generally compatible with the surrounding land uses given the provisions shown on the concept plan;
- b. The proposed rezoning appears to be generally compatible with the surrounding zoning districts given the provisions shown on the concept plan;
- c. The proposed rezoning does not appear to be consistent with the Comprehensive Plan land use designation of Commercial but appears to provide a better use of land than what is defined in the Comprehensive Plan;
- d. The proposed rezoning is not anticipated to negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area; and
- e. The proposed rezoning is not anticipated to negatively affect the public health, safety, morals, or general welfare.

RECOMMENDATION

APPROVAL of Zoning Case P13-157.

EXHIBITS

- A. Aerial Photo
- B. Zoning Map
- C. Comprehensive Plan Future Land Use Map
- D. Rezoning Application
- E. Concept Plan
- F. Site Photos

Exhibit "A"
Aerial Photo

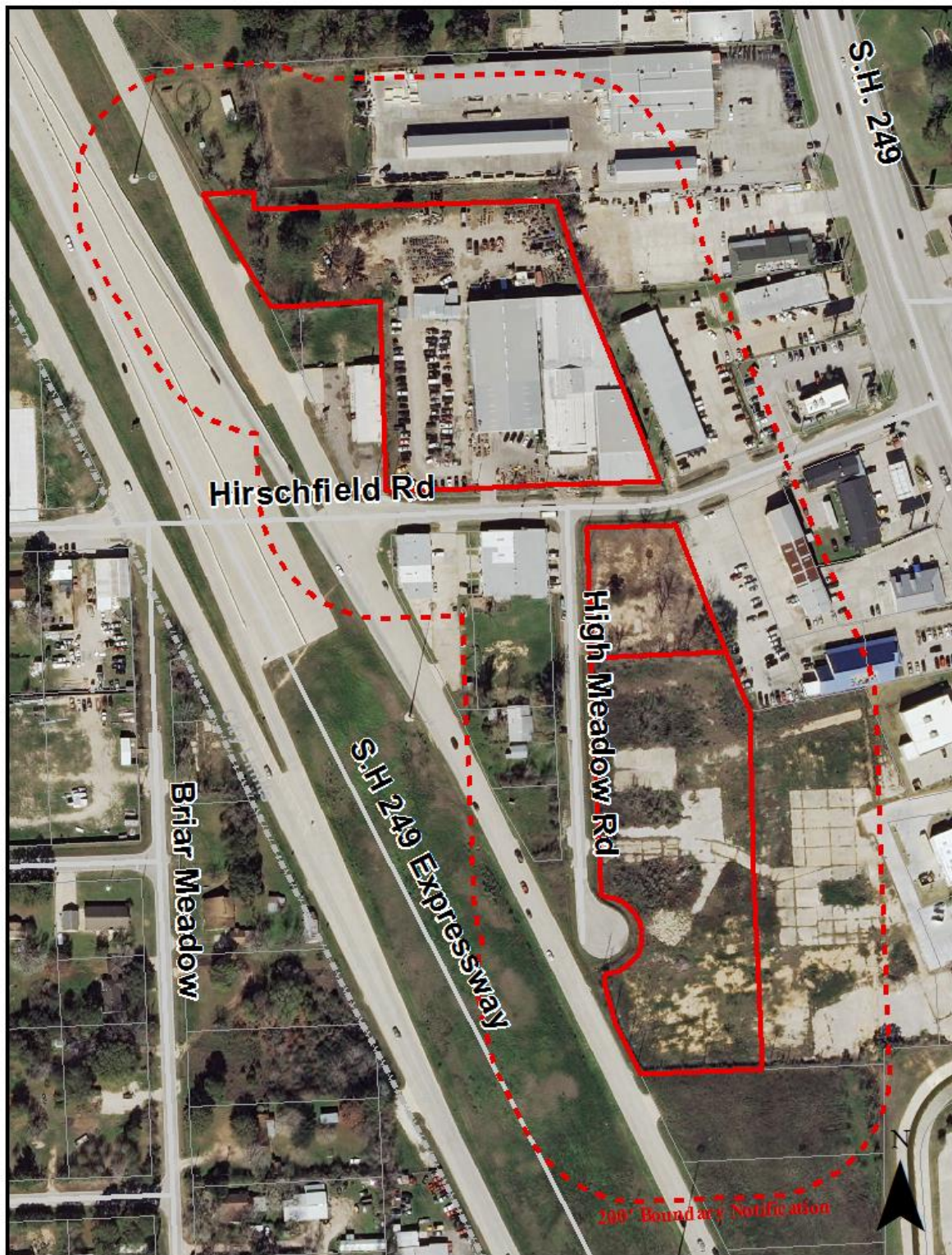


Exhibit "B"
Zoning Map

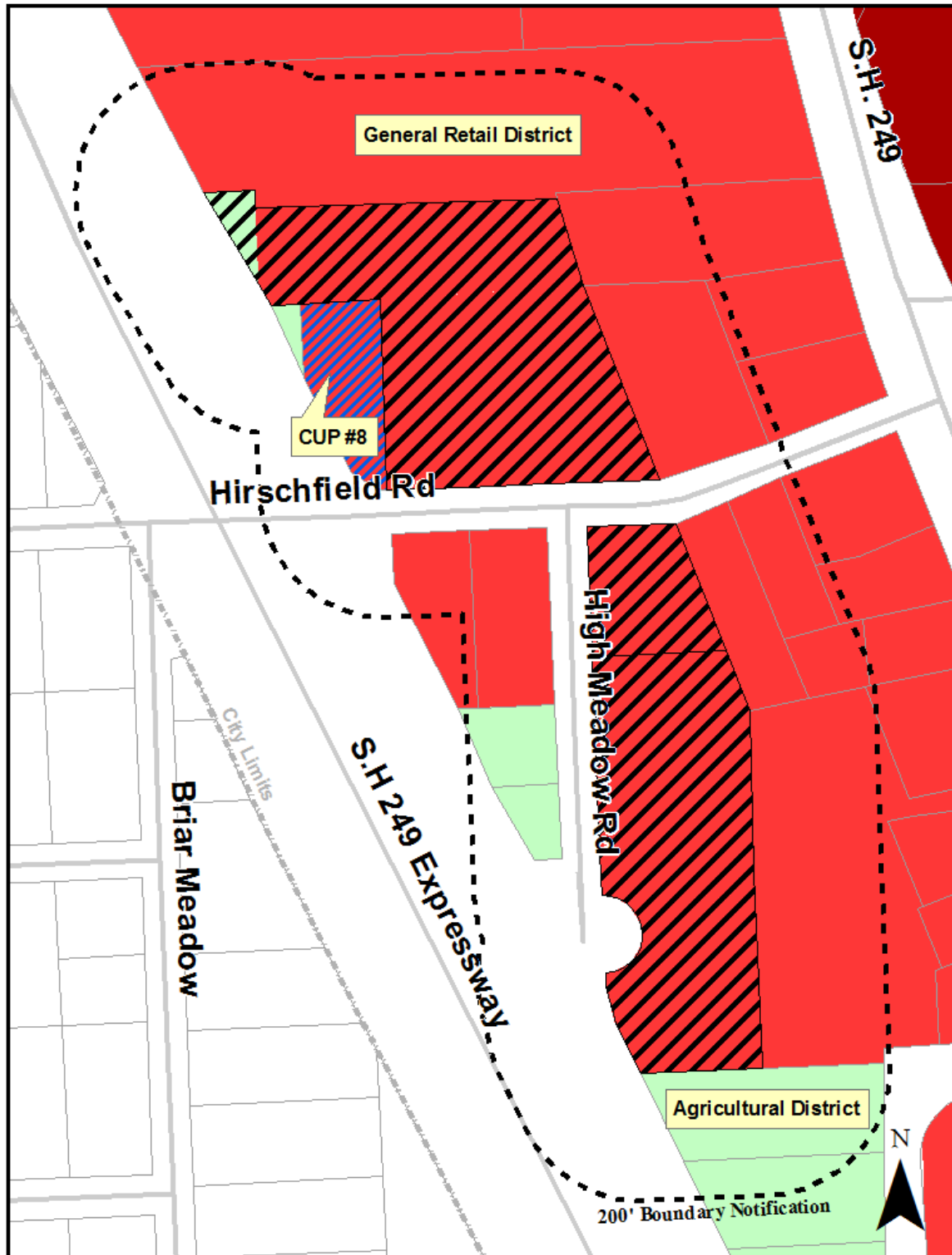


Exhibit "C"
Comprehensive Plan Future Land Use Map

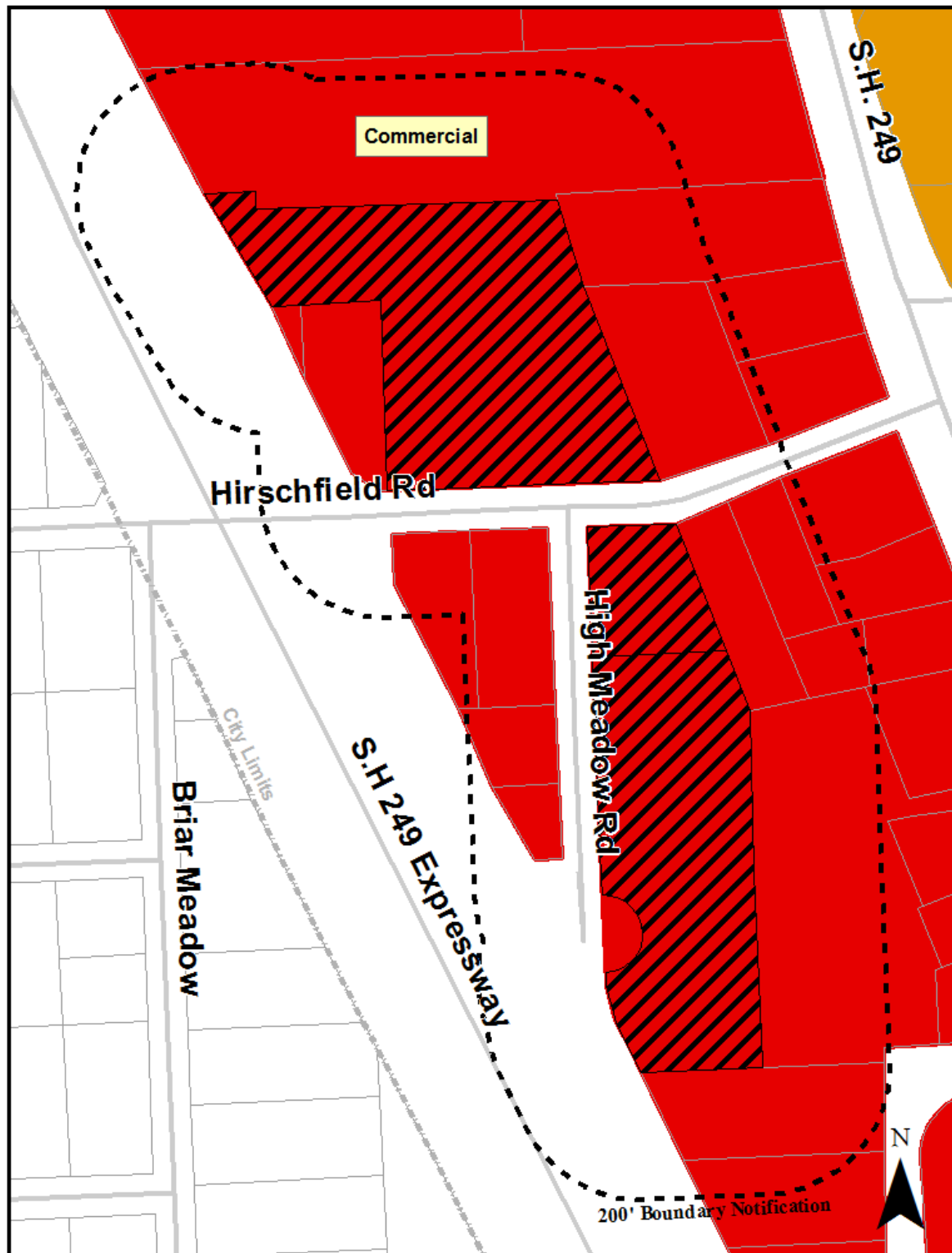


Exhibit "D"
Rezoning Application



**Application for
Planned Development**
Engineering & Planning Department

Revised 1/20/09



The PD, Planned Development, district is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., single-family, multi-family, Duplex (Two Family), etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A Planned Development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts.

No planned development shall be established and no building permit shall be issued for any use designated as a Planned Development within any zoning district until a Planned Development Permit is approved and issued in accordance with the provisions of the Zoning Ordinance and Concept Plan.

The minimum acreage for a planned development request shall be four (4) acres.

APPLICATION SUBMITTAL: Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant

Name: P Jackie Moon Title: Representative
Mailing Address: 22511 Walden Way City: Tomball State: TX
Zip: 77375
Phone: (281) 516-9149 Fax: () Email: jamoarc@gmail.com

Owner

Name: Breaux Properties, LTD Title: _____
Mailing Address: 13842 Hirschfield Rd City: Tomball State: TX
Zip: 77377
Phone: (281) 351-4042 Fax: (281) 351-2640 Email: _____

Engineer/Surveyor (if applicable)

Name: David Broussard, PE Title: Owner
Mailing Address: 17527 Hawkins Lane City: Tomball State: TX
Zip: 77377
Phone: (281) 732-0464 Fax: () Email: David_broussard1950@yahoo.com

Description of Proposed Project: Machine Works Complex

Physical Location of Property: 13842 Hirschfield Rd and surrounding 8.9954 acres Breaux Machine Works P.D.
[General Location – approximate distance to nearest existing street corner]

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405

www.ci.tomball.tx.us

Legal Description of Property: see attached 'STEWART TITLE & 'Nesvadba Letter'
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: see attached map Acreage: 8.9954

Current Use of Property: Machine Works Shop

Proposed Use of Property: same, plus Shipping and Receiving

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

x Jackie Moor 9-30-13
Signature of Applicant Date

x N. Z. Bryant 9-30-13
Signature of Owner Date

BREAUX MACHINE WORKS

September 27, 2013

City of Tomball Planning and Zoning
501 James Street
Tomball, TX 77375

Reference: The Rezoning of the Breaux Machine Works and properties, Comprehensive Plan, Amendment Request Letter, in Tomball, Texas

City of Tomball Staff,

Breaux Machine Works and Properties request that the City of Tomball consider rezoning the 8.9954 acres (Composite of 3 individual tracts) known as Breaux Machine Works and properties from its current 'Non-Conforming use of the business to a Planned Development District. Breaux Machine works has been at its current site since 1976 and has purchased surrounding acreage in order to grow their business. Our submittal includes the current buildings and the non-developed surrounding lands owned by Mr. Tommy Breaux and Breaux Machine Works. The plats for these properties were prepared and recorded in (see attached). This project has followed by all rules and guidelines set forth and we believe it is a great asset to the community. These projects when complete will not only provide a well planned business park but jobs and economic impact to the City of Tomball. By allowing rezoning we know that our business will grow and continue to add to the growth and prosperity of our city. This project will not have negative effects on traffic or the adjacent properties in the area. The rezoning only looks to encourage growth in a manner which reflects the growing needs of the City in a manner which is consistent with the City's rules and regulations. Thank you for your consideration.

Respectfully,

Tommy Breaux
Breux Machine Works
13842 Hirschfield Rd.
Tomball, TX 77375



BREAUX MACHINE WORKS

September 27, 2013

City of Tomball Planning and Zoning
501 James Street
Tomball, TX 77375

Reference: The Rezoning of the Breaux Machine Works and properties Planned Development, in Tomball, Texas

City of Tomball Staff,

Breaux Machine Works and Properties request that the City of Tomball consider rezoning the 8.5594 Acres (Composite of three individual tracts) known as Breaux Machine Works and properties from its current 'Non-Conforming' issue of the business to a Planned Development District. Breaux Machine works has been at its current site since 1976 and has purchased surrounding acreage in order to grow their business. This project has followed by all rules and guidelines set forth and we believe it is a great asset to the community. This project, when complete will not only provide a well-planned business park for our company but jobs and positive economic impact to the City of Tomball.

We are using this Planned Development to have more flexibility for our future growth and expansion while adhering to the City of Tomball's Comprehensive Plan for growth and development. We are requesting that we be allowed to expand our business per this Planned Development submission which will, in turn, help us and the City of Tomball.

This proposed Plan Development will accommodate the need usage of our property so that our business can continue to grow and it will benefit the City of Tomball as we employee more people as we grow. This Planned Development will allow for the adjustment of our changing needs as our business grows and the City of Tomball by (1) providing for a well planned expansion of our business. (2) All new buildings will meet and/or exceed the requirements of the city with the required green space and landscaping and (3) will meet and exceed the standards of this Ordinance.

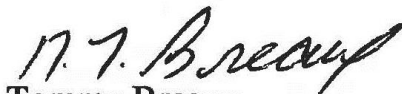
Breaux Machine Works
September 27, 2013
Page 1

Proposed Use for Breaux Machine Works Planned Development

Machine Works

These uses are allowed on the existing properties of Breaux Machine Works and we are requesting his additional land included in this Planned Development be allowed to continue the current uses the afforded the company presently. By approving this Planned Development of Breaux Machine Works you will be benefiting the City of Tomball as well as the company in that the company can continue to grow and bring in more employees and the City can benefit from their growth in new revenues for the City. We are presenting this Planned Development to be consistent with the City's rules and regulations. Thank you for your consideration.

Respectfully,



Tommy Breaux
Breaux Machine Works

Page 2

Exhibit "E"
Concept Plan

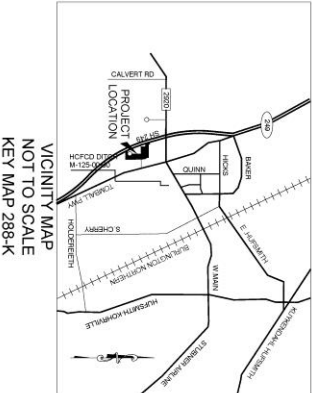
BREAUX MACHINE WORKS

PLANNED DEVELOPMENT (BMW NORTH & BMW SOUTH)

13842 HIRSCHFIELD ROAD, TOMBALL, TEXAS 77377

CONTACT: MR. N.T. BREAUX, PRES. 281.351.4042

HOURS OF OPERATION: 7:00 AM TO 6:00 PM
MONDAY THROUGH FRIDAY



VICINITY MAP
NOT TO SCALE
KEY MAP 288-K

- DRAWING INDEX
- C-1 COVER SHEET
 - C-2 OVERALL BREAUX MACHINE WORKS P.D.
 - C-3 BREAUX MACHINE WORKS NORTH
 - C-4 BREAUX MACHINE WORKS SOUTH

OVERALL PARKING SUMMARY	
PROPOSED DEVELOPMENT	138,422 S.F. (3.1 ACRES)
EXISTING DEVELOPMENT	138,422 S.F. (3.1 ACRES)
TOTAL DEVELOPMENT	276,844 S.F. (6.2 ACRES)
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OVERALL LANDSCAPE SUMMARY	
PROPOSED DEVELOPMENT	138,422 S.F. (3.1 ACRES)
EXISTING DEVELOPMENT	138,422 S.F. (3.1 ACRES)
TOTAL DEVELOPMENT	276,844 S.F. (6.2 ACRES)
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BREAUX MACHINE WORKS
PLANNED DEVELOPMENT (BMW NORTH & BMW SOUTH)
13842 HIRSCHFIELD ROAD, TOMBALL, TEXAS 77377
CONTACT: MR. N.T. BREAUX, PRES. 281.351.4042



DAVID S. BROUSSARD, P.E.
TITZEL HAWKLAND
DAVID.BROUSSARD@titzel.com
JOB NO. D983 FIRM NO. F-6022 AUG 2013

PROPOSED PLANNED
DEVELOPMENT

C-1





PLANNED DEVELOPMENT (BMW NORTH & BMW SOUTH)
13842 HIRSCHFIELD ROAD, TOMBALL, TEXAS 77377
CPNTACT: MR. N.T. BREAU, PRES. 281.351.4042

BEN-CHAM
H.C. FLOOD LAIN RESTITUTION MARK
T.A.B.R. NEW NO. 007875
BRASS CASH ON SOUTH SIDE OF
H.C. FLOOD LAIN
H.C. FLOOD LAIN M.D. 5000
ELEV. 981.1
NAVED AREA. 2001 AGJ

T.M.
P.W. HALL IN CENTER OF CONCRETE
OCCUPANCY OF HIGH MEDICINE ROOM
ELEV. 980.06

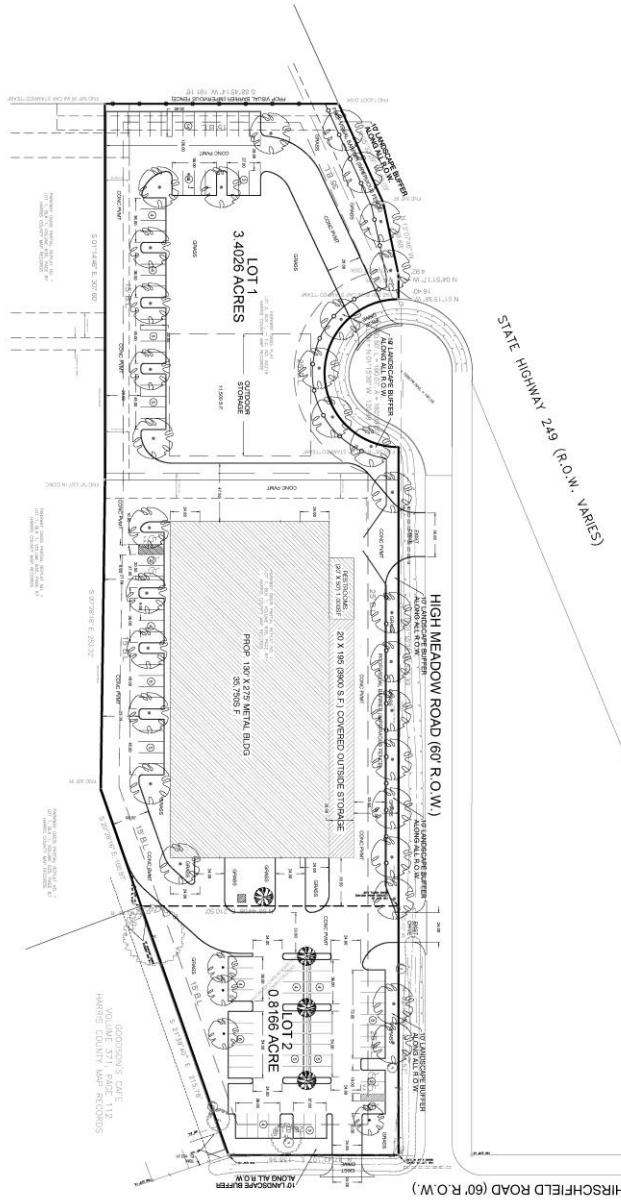
P.L.OODERMAN SITUATION
SOUTH SIDE OF FLOOD LAIN
AS PER B.M. CORRELATION
PANEL NO. 4001-C-2754.

TOMBALL, TEXAS 77377
DAVID_BROUSSARD1950@yahoo.com

C-3



BREAUX MACHINE WORKS - SOUTH



DAVID S. BROUSSARD, P.E.
17827 HAWKIN LANE
TOMBALL, TEXAS 77375
DAVID.BROUSSARD@TSCS.COM
JOB NO. D968 FIRM NO. F-6022 AUG. 2013

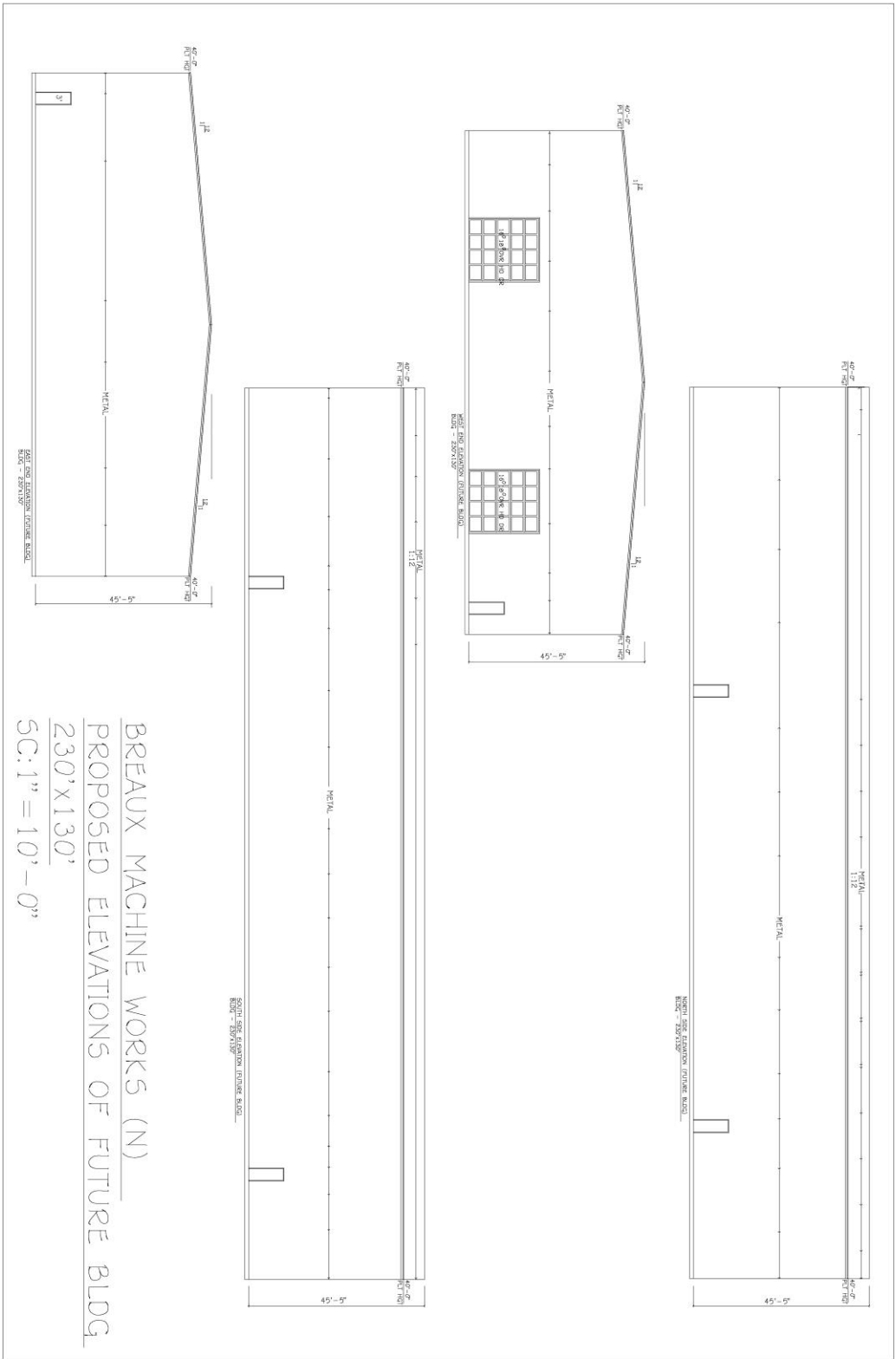
PROPOSED PLANNED
DEVELOPMENT

C-4

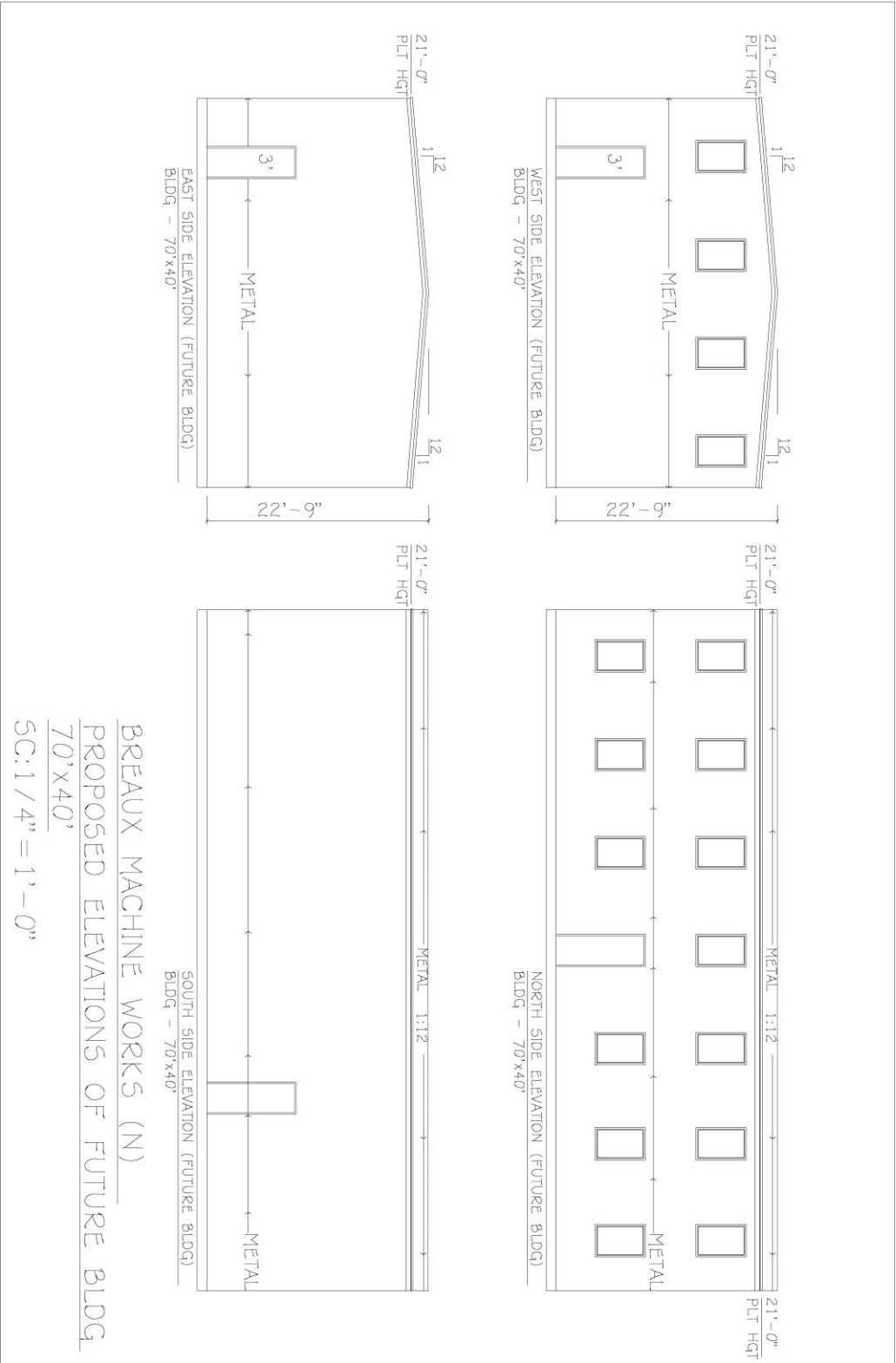
BREAUX MACHINE WORKS

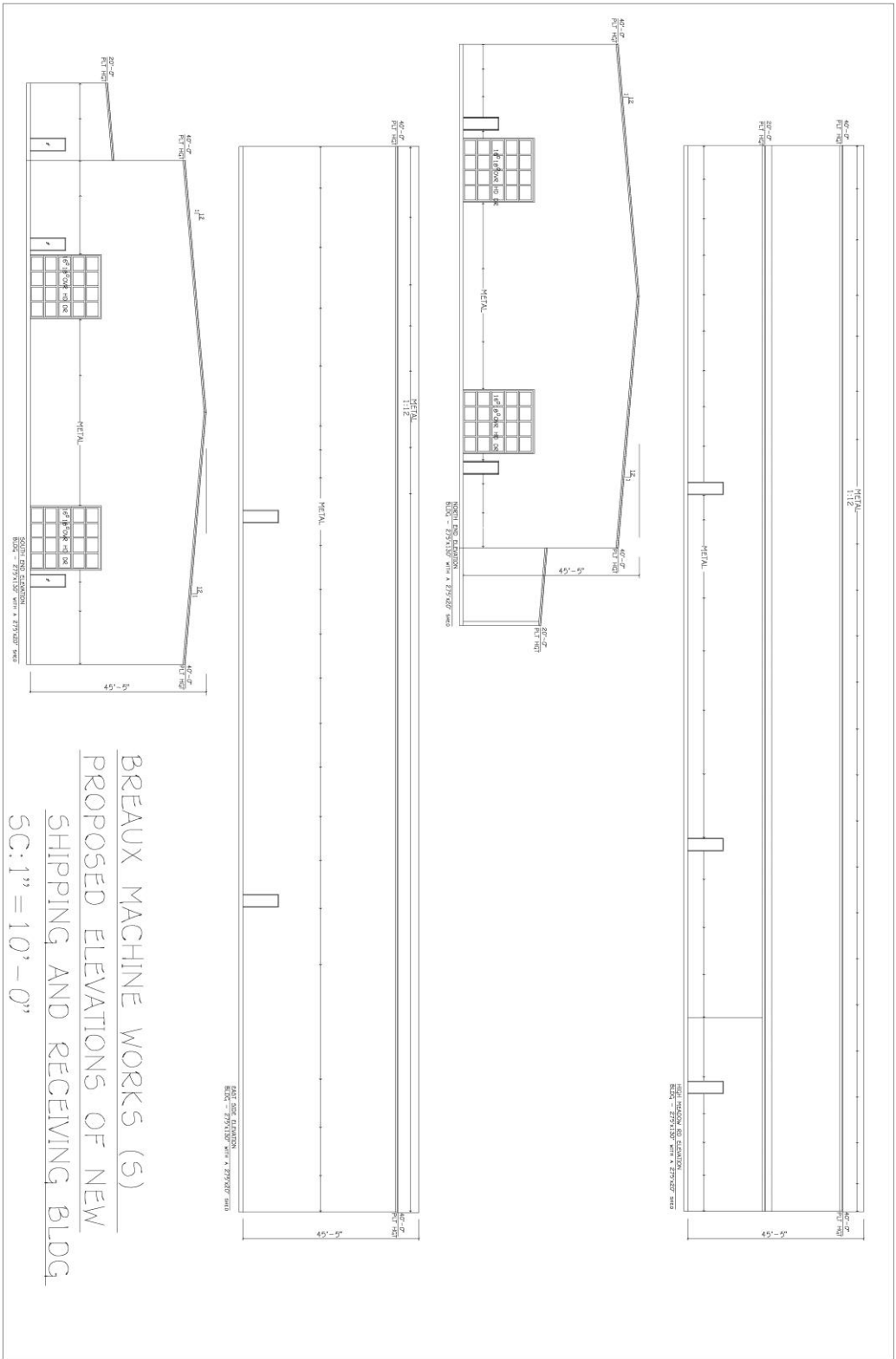
PLANNED DEVELOPMENT (BMW NORTH & BMW SOUTH)
13842 HIRSCHFIELD ROAD, TOMBALL, TEXAS 77377
CONTACT: MR. N.T. BREAUX, PRES. 281.351.4042

NOTES:
1. THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION.
2. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
3. THE OWNER SHALL BE RESPONSIBLE FOR MAINTAINING ALL RECORDS OF THIS PROJECT.
4. THE OWNER SHALL BE RESPONSIBLE FOR PAYING ALL FEES AND CHARGES ASSOCIATED WITH THIS PROJECT.
5. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE COVERAGE.
6. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY TITLE INSURANCE.
7. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY EASEMENTS.
8. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RIGHTS-OF-WAY.
9. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY UTILITIES.
10. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY SERVICES.
11. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY SUPPLIES.
12. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY EQUIPMENT.
13. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY MATERIALS.
14. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY LABORERS.
15. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY SUBCONTRACTORS.
16. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY VENDORS.
17. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY SUPPLIERS.
18. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY DISTRIBUTORS.
19. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RETAILERS.
20. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY WHOLESALE DEALERS.



BREAUX MACHINE WORKS (N)
 PROPOSED ELEVATIONS OF FUTURE BLDG.
 230'x130'
 SC: 1" = 10'-0"





**Exhibit “F”
Site Photos**



Figure 1: Subject site.



Figure 2: Subject site.



Figure 3: Building materials sales to the north.



Figure 4: Vacant land to the south.



Figure 5: Feed and grain store to the west.



Figure 6: Single-family residence to the west.



Figure 7: Office/warehouses to the west.



Figure 8: Minor auto repair and furniture and appliance store to the east.



Figure 9: Auto parts sales to the east.



Figure 10: Eating establishment to the east.



Figure 11: Medical office to the east.



Figure 12: Office/warehouse to the east.



Figure 13: Convenience store to the east.



Figure 14: Multi-use strip center to the east.

Regular City Council

Agenda Item

Meeting Date: December 2, 2013

Data Sheet

Topic:

Adopt on Second Reading, Ordinance No. 2013-22, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance by changing the zoning district classification of approximately 0.68 acres of land, legally described as Lot 2, Block 2, Brown-Hufsmith Commercial within the City of Tomball, Harris County, Texas, from the Planned Development - 1 District to the Office District; said property being generally located southerly of Brown Road between State Highway 249 and Quinn Road; providing for the amendment of the official Zoning Map of the City; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

Background:

On August 20, 2013, City staff met with the applicant, Stutts Cox Builders, Inc., to discuss the possible construction of an accountant's office with residential quarters at the subject site. City staff informed the applicant that the property is zoned PD-1 District which allows "Office w/Residential look," per the original Zoning Ordinance and Map adopted by the City on February 4, 2008. However, the Zoning Ordinance did not approve an associated Concept Plan nor establish any building standards such as building setbacks, building heights, lot coverage, parking requirements, or landscaping minimums or elaborate on the permitted uses.

Because the Zoning Ordinance did not establish building standards, approve a Concept Plan, or make mention of whether or not a residential component could be allowed for an office, City staff informed the applicant that they would be required to submit a Planned Development District (PDD) application to the Planning & Zoning Commission and City Council. The applicant indicated their desire to not do this because of the number of property owners within PD-1 District, the effort it would take to create an ordinance and Concept Plan that would satisfy all of them, and because the rest PD-1 District is not ready for development. City staff then informed the applicant that they could request the property be removed from PD-1 District by requesting that it be rezoned to the Office District. City staff then informed the applicant that a "Residential Use" is not permitted in the Office District. Staff further elaborated that they felt this was a possible oversight in the original Zoning Ordinance and that they would be concurrently bringing forth a City-initiated text amendment to allow a "Residential Use" with a Conditional Use Permit (CUP) in the Office District (Zoning Case P13-161). On October 3, 2013, the City received a rezoning application requesting that the subject site be rezoned from the PD-1 District to the Office District.

The Planning and Zoning Commission voted to recommend approval of Zoning Case P13-158 on November 11, 2013, with a 5-0 unanimous vote. On November 18, Council adopted Ordinance No. 2013-22 on first reading.

Origination:

Stutts Cox Builders, Inc., on behalf of Ronald and Amy Haffner

Recommendation:

Adopt Ordinance No. 2013-22 on Second Reading

Funding:

Party(ies) responsible for placing this item on agenda:

Brandy Pate, Engineering and Planning

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ordinance No. 2013-22

Notice of Public Hearing

Property Owner Notification Letter

P13-158 Staff Report

ORDINANCE NO. 2013-22

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 0.68 ACRES OF LAND, LEGALLY DESCRIBED AS LOT 2, BLOCK 2, BROWN-HUFSMITH COMMERCIAL, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE PLANNED DEVELOPMENT - 1 DISTRICT TO THE OFFICE DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED SOUTHERLY OF BROWN ROAD BETWEEN STATE HIGHWAY 249 AND QUINN ROAD; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

Whereas, the owner(s) of approximately 0.68 acres of land, legally described as Lot 2, Block 2, Brown-Hufsmith Commercial, generally located southerly of Brown Road between State Highway 249 and Quinn Road, in the City of Tomball, Harris County, Texas, (the "Property"), have requested that the Property be rezoned; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days written notice of that hearing to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the proposal to change the zoning for the Property from the Planned Development - 1 District to the Office District; and

Whereas, the public hearing was held at least forty (40) calendar days after the City's receipt of the request for rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council grant such proposed change in the zoning district classification of the Property; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing on the proposal to change the zoning district classification for the Property from the Planned Development - 1 District to the Office District, the City Council held the public hearing on the proposal to change the zoning for the Property and the City Council considered the final report of the Planning & Zoning Commission regarding the change of zoning district classification, and

Whereas, the City Council deems it appropriate to grant such proposed change in the zoning district classification of the Property.

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

Section 1. The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

Section 2. The zoning classification of the Property is hereby changed from the Planned Development - 1 District to the Office District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas shall be revised and amended to show the designation of the Property as Office District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for the Property to the Office District as described above.

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 6. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 7. City Council finds and determines that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Tex.Gov't. Code ch. 551.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF NOVEMBER 2013.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF
THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF
DECEMBER 2013.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
NOVEMBER 11, 2013
&
CITY COUNCIL
NOVEMBER 18, 2013**



Notice is Hereby Given that a Public Hearing will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, November 11, 2013, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, November 18, 2013, at 6:00 P.M.** at Regular Meetings, in the City Council Chambers of the City of Tomball at City Hall, 401 Market Street, Tomball, Texas. On such dates, the Planning & Zoning Commission and City Council will consider the following:

ZONING CASE P13-157: Request by Jackie Moon, on behalf of Breaux Properties, LTD, to amend the City's Zoning Ordinance by rezoning approximately 8.55 acres of land, legally described as Lot 1, Block 3, Hirschfield Farms (Unrecorded); Lot 2, Block 3, Hirschfield Farms (Unrecorded); Lot 3, Block 3, Hirschfield Farms (Unrecorded); 0.1246 acres being a residue of a called 2.8805 acre tract as described in Harris County Clerk's File Number J-904080; 1.5918 acres being a residue of a called 3.5864 acre tract as described in Film Code Number 119-48-0065, Harris County Clerk's File; Lot 1, Block 1, Hirschfield Farms (Unrecorded); Lot 5, Block 1, Final Plat of Parkway Oasis; and being a portion of Lot 1, Block 1, Final Plat of Parkway Oasis Replat No. 1, according to the map or plat recorded in Film Code No. 635087 of the Harris County Map Records, as recorded under Harris County Clerk's File No. 20070358349; within the City of Tomball, Harris County, Texas, generally located northerly and southerly of Hirschfield Road, between State Highway 249 and State Highway 249 Expressway, from the General Retail and Agricultural Districts to the Planned Development - 5 District to facilitate the expansion of Breaux Machine Works.

ZONING CASE P13-158: Request by Stutts Cox Builders, Inc., on behalf of Ronald and Amy Haffner, to amend the City's Zoning Ordinance by rezoning approximately .68 acres of land, legally described as Lot 2, Block 2, Brown-Hufsmith Commercial within the City of Tomball, Harris County, Texas, generally located southerly of Brown-Hufsmith Road between State Highway 249 and Quinn Road, from the Planned Development - 1 District to the Office District.

ZONING CASE P13-161: Request by the City of Tomball to amend Section 38.2 (“Use Charts”) of the City’s Zoning Ordinance by allowing a “Residential Use” with a Conditional Use Permit in the Office District.

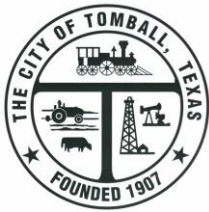
Persons interested in this case will be given an opportunity to be heard. Action by the Planning & Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Should the Planning & Zoning Commission vote to table a decision/recommendation on this case, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a decision/recommendation is forwarded to the City Council by the Planning & Zoning Commission. The application is available for public inspection Monday through Friday, holidays excepted, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the Assistant City Planner, Rodney Schmidt, at (281) 290-1410, rschmidt@tomballtx.gov.

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the 7th day of **November 2013** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Brandy Pate
Brandy Pate
Senior Administrative Assistant
P&Z Commission Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary’s office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.



Notice of Public Hearing

YOU ARE INVITED TO ATTEND Public Hearings before the **PLANNING & ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P13-158

APPLICANT: Stutt Cox Builders, Inc., on behalf of Ronald and Amy Haffner

LOCATION: Southerly of Brown-Hufsmith Road between State Highway 249 and Quinn Road

PROPOSAL: Request to amend the City's Zoning Ordinance by rezoning approximately .68 acres of land, legally described as Lot 2, Block 2, Brown-Hufsmith Commercial within the City of Tomball, Harris County, Texas, from the Planned Development - 1 District to the Office District.

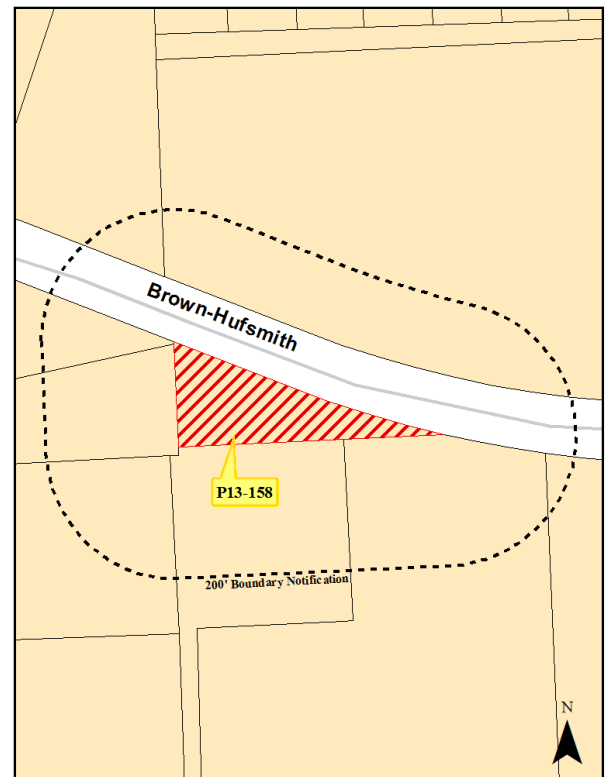
CONTACT: Rodney Schmidt

PHONE: (281) 290-1410

E-MAIL: rschmidt@tomballtx.gov

Interested parties may contact the City of Tomball between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The application is available for public inspection Monday through Friday, holidays excepted, between the hours of 8:00 a.m. and 5:00 p.m. in the Community Development Department office, located at 501 James Street, Tomball, TX 77375. The staff report will be available no later than 4:00 p.m. on the Friday preceding the meeting.

This notice is being mailed to all owners of real property within 200 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll. Interested parties may appear and speak on the project or the staff recommendation at the meeting. Written comments may also be submitted for consideration.

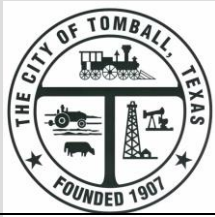


**Planning & Zoning Commission
Public Hearing:
Monday, November 11, 2013, 6:00 PM**

**City Council Public Hearing:
*Monday, November 18, 2013, 6:00 PM**

**The Public Hearings will be held in the
City Council Chambers, City Hall
401 Market Street, Tomball, Texas**

*Should the Planning & Zoning Commission vote to table the recommendation on the case, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a recommendation is forwarded to the City Council by the Planning & Zoning Commission.



Rezoning Staff Report

Planning & Zoning Commission Public Hearing Date: November 11, 2013

Rezoning Case: P13-158

Property Owner: Ronald and Amy Haffner

Applicant: Stutts Cox Builders, Inc.

Legal Description: Lot 2, Block 2, Brown-Hufsmith Commercial

Location: Southerly of Brown Road between State Highway 249 and Quinn Road (Exhibit "A")

Area: 0.68 acres

Present Zoning and Use: Planned Development - 1 District (Exhibit "B") / Undeveloped

Comp Plan Designation: Employment/Office (Exhibit "C")

Proposed Zoning and Use: Office District¹ / Office with residential quarters

Adjacent Zoning & Land Uses:

- North:** Planned Development – 1 (PD-1) and General Retail Districts / Brown Road and undeveloped land
- South:** PD-1 and SF-20-E Districts / Single-family residences
- West:** PD-1 and General Retail Districts / Single-family residences
- East:** PD-1 District / Brown Road

BACKGROUND

On August 20, 2013, City staff met with the applicant, Stutts Cox Builders, Inc., to discuss the possible construction of an accountant's office with residential quarters at the subject site. City staff informed the applicant that the property is zoned PD-1 District which allows "Office w/Residential look," per the original Zoning Ordinance and Map adopted by the City on February 4, 2008. However, the Zoning Ordinance did not approve an associated Concept Plan nor establish any building standards such as building setbacks, building heights, lot coverage, parking requirements, or landscaping minimums or elaborate on the permitted uses. Because the Zoning Ordinance did not establish building standards, approve a Concept Plan, or make mention of whether or not a residential component could be allowed for an office, City staff informed the applicant that they would be required to submit a Planned Development District (PDD) application to the Planning & Zoning Commission

¹ Any use permitted in the proposed district would be allowed at this location if the zoning is changed. Furthermore, the Planning & Zoning Commission and City Council may consider zoning classifications other than that sought by the applicant for this property.

and City Council. The applicant indicated their desire to not do this because of the number of property owners within PD-1 District, the effort it would take to create an ordinance and Concept Plan that would satisfy all of them, and because the rest PD-1 District is not ready for development. City staff then informed the applicant that they could request the property be removed from PD-1 District by requesting that it be rezoned to the Office District. City staff then informed the applicant that a “Residential Use” is not permitted in the Office District. Staff further elaborated that they felt this was a possible oversight in the original Zoning Ordinance and that they would be concurrently bringing forth a City-initiated text amendment to allow a “Residential Use” with a Conditional Use Permit (CUP) in the Office District (Zoning Case P13-161). On October 3, 2013, the City received a rezoning application requesting that the subject site be rezoned from the PD-1 District to the Office District (Exhibit “D”).

ANALYSIS

Single-family residences and undeveloped lands are the two predominant land uses within the vicinity of the subject site. To the north are Brown Road and undeveloped land; to the south and west are single-family residences; and to the east is Brown Road (Exhibit “E”). The uses permitted in the Office District appear to be compatible with the existing uses in the vicinity.

If this rezoning and the City-initiated Zoning Ordinance text amendment to allow residential uses in the Office District with a Conditional Use Permit are approved by City Council, it is the applicant’s stated intent to seek a corresponding CUP to allow for residential uses on the subject site. Because the adjacent PD-1 zoned properties have the requirement that they be developed as “Office[s] w/Residential Look,” the City may request as part of the CUP similar requirements such as the proposed office be developed to have the appearance of a single-family residence, be limited to two stories or thirty-five feet (whichever is greater), and/or limit its hours of operation from 9 AM to 6 PM so as not to disturb the adjacent residences. These conditions may help to ensure that this proposed development ultimately has a similar appearance, and functions in a similar manner, as the adjacent PD-1 District when it is finally built.

There are several zoning classifications in the vicinity of the subject site. To the north are the PD-1 and General Retail Districts; to the south are the PD-1 and SF-20-E Districts; to the west are the PD-1 and General Retail Districts; and to the east is the PD-1 District. The Office District “is established to create an appropriate setting for low intensity office and professional uses. The district can be used as a transition district between residential uses and more intense uses, and with appropriate buffers and landscaping, this district may be located in close proximity to residential districts.” The Office District appears to be compatible with the existing zoning districts in the vicinity.

The Comprehensive Plan’s Future Land Use (FLU) map identifies the site as “Employment/Office.” Employment/Office is “where employment uses that are not industrially focused should occur. These uses include corporate headquarters, regional offices, professional offices, light enclosed manufacturing or assembly facilities, office/showrooms, and small business office suites. Some retail activities are permitted in this land use to support offices and employment operations.” The Office District appears to be consistent with the Comprehensive Plan.

ZONING CONSIDERATIONS

In making its recommendation regarding a proposed zoning change, the Planning & Zoning Commission shall consider the following factors:

- A. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the City as a whole.**

The uses permitted in the proposed rezoning appear to be compatible with the existing uses in the vicinity.

- B. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area.**

The proposed rezoning is not anticipated to negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.

- C. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.**

There is no vacant property in the vicinity zoned Office District; there is a limited amount of vacant property elsewhere in the City zoned Office District.

- D. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.**

There has been no recent development City-wide in the Office District.

- E. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved.**

If the proposed zoning change were approved, few, if any affects on other areas designated for similar developments are anticipated.

- F. Any other factors that will substantially affect the public health, safety, morals, or general welfare.**

The proposed rezoning is not anticipated to affect the public health, safety, morals, or general welfare.

- G. Whether the request is consistent with the Comprehensive Plan.**

The proposed rezoning appears to be consistent with the Comprehensive Plan

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on October 31, 2013; no public comments have been received as of November 7, 2013.

CONCLUSION

Staff recommends **APPROVAL** of Zoning Case P13-158 based on the following:

- a. The uses permitted in the Office District appear to be compatible with the existing uses in the vicinity;
- b. The Office District appears to be compatible with the existing zoning districts in the vicinity;
- c. The Office District appears to be consistent with the Comprehensive Plan; and
- d. The proposed rezoning is not anticipated to negatively affect the public health, safety, morals, or general welfare.

RECOMMENDATION

APPROVAL of Zoning Case P13-158.

EXHIBITS

- A. Aerial Photo
- B. Zoning Map
- C. Comprehensive Plan Future Land Use Map
- D. Rezoning Application
- E. Site Photos

Exhibit "A"
Aerial Photo



Exhibit "B"
Zoning Map

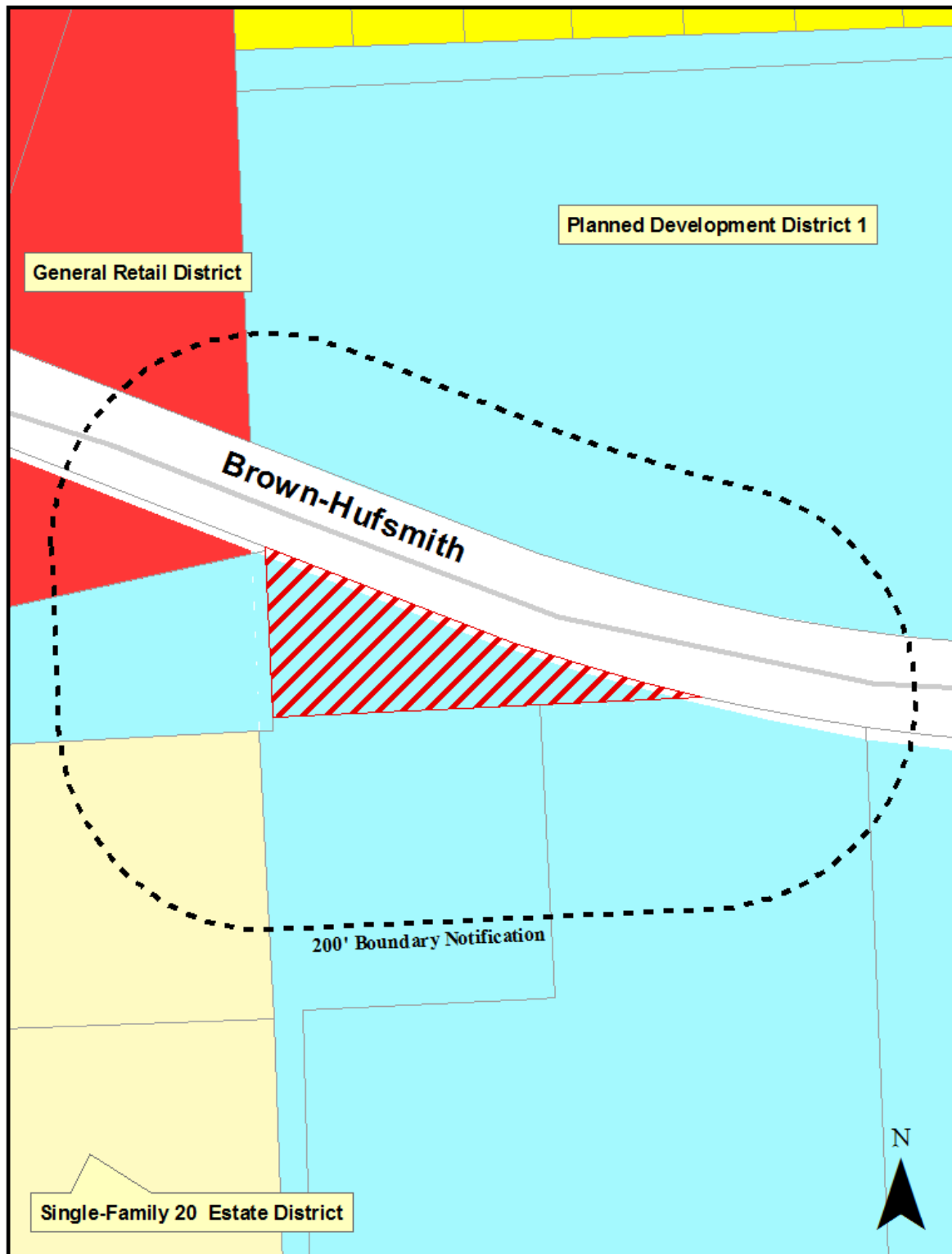


Exhibit "C"
Comprehensive Plan Future Land Use Map

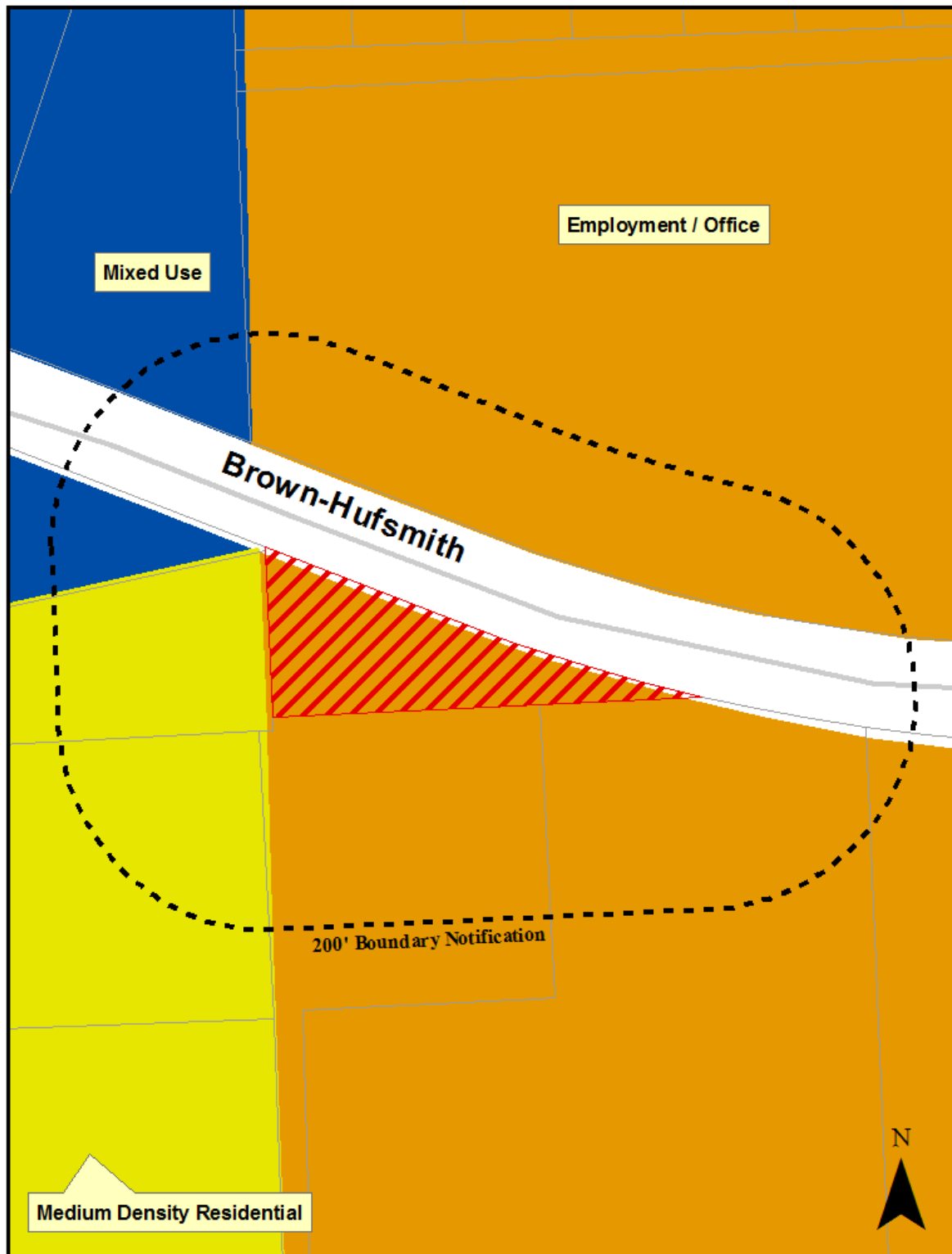


Exhibit "D"
Rezoning Application

Revised 1/20/09



APPLICATION FOR REZONING
Engineering & Planning Department

APPLICATION SUBMITTAL: Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant STUTTS Cox Builders, Inc
Name: ALLAN COX **Title:** Sec-Treas
Mailing Address: P O Box 1026 **City:** TOMBALL **State:** TX
Zip: 77377-1026
Phone: (281) 255-8100 **Fax:** (281) 754-4661 **Email:** secox@3bco.com

Owner:
Name: Ron & Amy Haffner **Title:** OWNERS
Mailing Address: 1401 PARK DR, Suite 113 **City:** TOMBALL **State:** TX
Zip: 77377
Phone: (281) 381-5469 **Fax:** (281) 351-5370 **Email:** ron@tomballcpas.com

Engineer/Surveyor (if applicable)
Name: C & C Surveying, Inc. **Title:** _____
Mailing Address: 1424 FM 1480, Suite A **City:** Magnolia **State:** TX
Zip: 77354

Phone: (281) 356-5172 **Fax:** (281) 356-1935 **Email:** onesurveyataime@3bco.com
City: Tomball **MAZINGA-713-628-3404 **tommy@mazingaeng.com**
Description of Proposed Project: Approx 3,000 SF Office Bldg - Stone + Brick**

Physical Location of Property: 500' east of SH 249-South side of Brown Road
[General Location -- approximate distance to nearest existing street corner]

Legal Description of Property: TRACT 2-Brown-Hudson Commercial, 0.66 acres
Joseph Hulse Survey, A-34, Harris Co.
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: PLAN DEVELOPMENT 1

Current Use of Property: VACANT

Proposed Zoning District: OFFICE DISTRICT

Proposed Use of Property: CPA OFFICE

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405

www.ci.tomball.tx.us

HCAD Identification Number: 130883002002 Acreage: 0.68

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

X 
Signature of Applicant *Sec. Thayer* Oct. 2, 2013
Date

X *Gon Hoffer*
Signature of Owner Oct 2, 2013
Date

1. *Journal of the American Medical Association*, 1997; 278: 1039-1044.



STUTTS COX BUILDERS INC.
GENERAL CONTRACTORS

October 2, 2013

TO: City of Tomball
Engineering and Planning Department

Re: Haffner Property – Brown Road – Tract 2 - 0.68 acres

This 0.68 acre tract resulted from splitting the original tract by the condemnation process to acquire the property needed to construct the extension of Brown Road from SH 249 to Quinn Road. The condemned land, 1.5 acres, was valued by the City appraiser at \$24K but the commission valued the land at \$80K. The City refused to pay the higher value so the Haffner's donated the land in order to keep the project moving forward. Haffner's good will effort to accommodate the City and County cost Haffner substantially. The division produced two separate tracts, 1 and 2, as shown on recorded plat, Brown-Hufsmith Commercial, filed May 14, 2008 in the Harris County Records. This 0.68 acre pie shaped property is located on the south side of the new Brown Road extension approximately 500 yards east of the intersection of SH 249 and Brown Road.

Our intent is to construct an office building for the Haffner's CPA practice that is single story with a standing seam metal roof, large porch and stone / brick accents. The elevations and look is to be "Hill Country" style so that the building looks more like a residence than an office. The building will have offices, a kitchen / break area along with one bedroom for overnight stays during tax season. We will develop a conceptual plan pending approval of the rezoning request.

We request that the City rezone this property from Plan Development 1 (PD1) to Office District and include a text amendment allowing for over night stay. This property is located in an area that is suited for office buildings due to good visibility from through traffic and good access to SH 249. Due to the small size of the tract, any other commercial use for this property is impractical. Office hours are typically 8:00 AM to 5:00 PM Monday through Friday and most days there are no more than 5 or 6 automobiles in the parking lot. With the attractive style of the building and the quiet nature of the business, this development has no adverse impact to the neighbors.

We thank you in advance for your consideration for this rezoning request.

Ron Haffner

Allan Cox, Sec - Treas
Stutts Cox Builders, Inc.

P.O. Box 1026 • Tomball, TX 77377-1026 • 281-255-8100 • Fax 281-255-8124

**Exhibit “E”
Site Photos**



Figure 1: Subject site and single-family residence to the east and south.



Figure 2: Undeveloped land to the north.



Figure 3: Single-family residence to the west.

Regular City Council

Agenda Item

Meeting Date: December 2, 2013

Data Sheet

Topic:

Adopt on Second Reading, Ordinance No. 2013-23, an Ordinance of the City of Tomball, Texas, amending its Zoning Ordinance by amending Section 38.2 ("Use Charts") by allowing a "Residential Use" with a Conditional Use Permit in the Office District; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof; making findings of fact; and providing for other related matters.

Background:

A "Residential Use" is defined in Section 45 of the Zoning Ordinance as, "A dwelling unit or group of dwelling units; includes dwelling units within the second story of a building wherein other parts of the building are used for a nonresidential purpose, such as a retail establishment or office." Section 38.2 of the Zoning Ordinance permits this use by right in the Agricultural, SF-20-E, SF-9, SF-6, Duplex, Multi-Family, Manufactured Home Park, and Old Town & Mixed Use Districts; with a Conditional Use Permit in the General Retail and Commercial Districts; and is prohibited in the Office and Light Industrial Districts. Because this use is permitted with a Conditional Use Permit in the General Retail and Commercial Districts, which are considered less restrictive districts than the Office District, and the use appears to be consistent with the nature of the businesses permitted within the Office District, City staff is requesting that Residential Uses also be permitted in the Office District with a Conditional Use Permit.

The Planning and Zoning Commission voted to recommend approval of Zoning Case P13-161 on November 11, 2013, with a 5-0 unanimous vote. On November 18, Council adopted Ordinance No. 2013-23 on first reading.

Origination:

City of Tomball

Recommendation:

Adopt Ordinance No. 2013-23 on Second Reading

Funding:

Party(ies) responsible for placing this item on agenda:

Brandy Pate, Engineering and Planning

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ordinance No. 2013-23

Notice of Public Hearing

P13-161 Staff Report

ORDINANCE NO. 2013-23

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS ZONING ORDINANCE BY AMENDING SECTION 38.2 (“USE CHARTS”) BY ALLOWING A “RESIDENTIAL USE” WITH A CONDITIONAL USE PERMIT IN THE OFFICE DISTRICT; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

WHEREAS, the City of Tomball has requested that Section 38.2 (“Use Charts”) of the Zoning Ordinance be amended by allowing a “Residential Use” with a Conditional Use Permit in the Office District;

WHEREAS, the Planning & Zoning Commission and the City Council of the City of Tomball, Texas, have published notice and conducted hearings regarding the request to amend the City’s Zoning Ordinance;

WHEREAS, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

WHEREAS, the Planning & Zoning Commission recommended in its final report that the City Council approve the proposed amendment to the Zoning Ordinance;

WHEREAS, having considered the recommendation of the Planning and Zoning Commission, the City Council has determined to adopt their recommendation and to amend the City’s Zoning Ordinance as provided herein;

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

Section 1. The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

Section 2. Section 38.2 (“Use Charts”) of the Comprehensive Zoning Ordinance is hereby amended by adding the following text:

Types of Land Uses	Residential Zoning Districts							Non-Residential Zoning Districts							OT&MU	Parking Ratio (Also see Section 39)
	AG	SF-20-E	SF-9	SF-6		D	MF	MHP	O	GR			C	LI		
Residential																
Residential Use	P	P	P	P		P	P	P	C		C		C		P	2 spaces: dwelling

Section 3. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or

provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 4. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 5. This Ordinance shall become effective fourteen days after the final reading and adoption of this Ordinance when the caption hereof is caused to be published once in the official newspaper of the City, by the City Secretary, as required by law. The City Secretary is directed to publish the caption of this Ordinance in the City's official newspaper within 14 days after the passage of the ordinance.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF NOVEMBER 2013.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>NAY</u>
COUNCILMAN DODSON	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF DECEMBER 2013.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
NOVEMBER 11, 2013
&
CITY COUNCIL
NOVEMBER 18, 2013**



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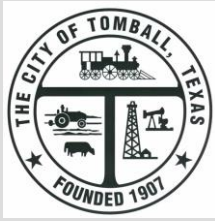
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C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the 7th day of **November 2013** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Brandy Pate
Brandy Pate
Senior Administrative Assistant
P&Z Commission Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary’s office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.



Text Amendment Staff Report

Planning & Zoning Commission Hearing Date: November 11, 2013

ZONING CASE P13-161: Request by the City of Tomball to amend Section 38.2 (“Use Charts”) of the City’s Zoning Ordinance by allowing a “Residential Use” with a Conditional Use Permit in the Office District.

PROPOSED AMENDMENTS

Section 38.2 “Use Charts”

Types of Land Uses	Residential Zoning Districts							Non-Residential Zoning Districts							OT&MU	Parking Ratio (Also see Section 39)
	AG	SF-20-E	SF-9	SF-6		D	MF	MHP	O	GR		C	LI			
Residential																
Residential Use	P	P	P	P		P	P	P	C		C		C		P	2 spaces: dwelling

ANALYSIS

A “Residential Use” is defined in Section 45 of the Zoning Ordinance as, “A dwelling unit or group of dwelling units; includes dwelling units within the second story of a building wherein other parts of the building are used for a nonresidential purpose, such as a retail establishment or office.” Section 38.2 of the Zoning Ordinance permits this use by right in the Agricultural, SF-20-E, SF-9, SF-6, Duplex, Multi-Family, Manufactured Home Park, and Old Town & Mixed Use Districts; with a Conditional Use Permit in the General Retail and Commercial Districts; and is prohibited in the Office and Light Industrial Districts. Because this use is permitted with a Conditional Use Permit in the General Retail and Commercial Districts, which are considered less restrictive districts than the Office District, and the use appears to be consistent with the nature of the businesses permitted within the Office District, City staff is requesting that Residential Uses also be permitted in the Office District with a Conditional Use Permit.

PUBLIC COMMENT

A public hearing notice was published in the Tomball Tribune on October 28, 2013; no public comments have been received as of November 6, 2013.

RECOMMENDATION

APPROVAL of Zoning Case P13-161.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 2, 2013

Topic:

Approve Resolution No. 2013-34, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Annual Baseball Parade, to be held in Tomball on Saturday, March 20, 2014

Background:

The Tomball Sports Association requests approval of Resolution No. 2013-34, expressing the City's support of the annual baseball parade, which will be held on Saturday, March 20, 2014. This Resolution is required for submission of TSA's Traffic Control Plan to the Texas Department of Transportation.

The parade will begin at the intersection of Buvinhausen and Main Streets (FM 2920), continue east on Main Street, turn north onto North Cherry Street, and finish at the Little League Park in the Wayne Stovall Sports Complex.

As information regarding the cost of City-provided support services, this is considered a short, simple event, using a 'rolling barricade', and costs are approximately 15% the cost of a normal parade event. The estimated cost for the Public Works Department is \$250 and for the Police Department is \$500 for personnel to manage the parade. In addition, the Fire Department removes one or two vehicles from service to use in the parade as the "rolling barricade," either the tanker and the tower or the tower and the old city pumper. A minimum of two firefighters accompany each vehicle; the estimated total cost of personnel and fuel is \$250.

Origination:

Tomball Sports Association

Recommendation:

Approve Resolution No. 2013-34

Funding:

Party(ies) responsible for placing this item on agenda:

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Resolution No. 2013-34

RESOLUTION NO. 2013-34

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF TOMBALL, TEXAS, SUPPORTING THE
ANNUAL BASEBALL PARADE, TO BE HELD IN
TOMBALL ON SATURDAY, MARCH 20, 2014.**

* * * * *

WHEREAS the Tomball Sports Association will undertake its Annual Baseball Parade to kick off the Spring 2014 baseball season, to be held in the City of Tomball at 9:00 a.m. on Saturday, March 20, 2014; and

WHEREAS the purpose of the Annual Baseball Parade is to celebrate the beginning of the baseball season and provide an event for our community and the children who enjoy sports; and

WHEREAS it is a chance for Tomball area merchants and business people to come out and encourage our young people by attending the Annual Baseball Parade; and

WHEREAS the Annual Baseball Parade will begin at the intersection of Buvinghausen and Main Streets (FM 2920) and will continue east on Main Street (FM 2920), turning north on North Cherry Street, and finishing at the Little League Park, located in the Wayne Stovall Sports Complex; and

WHEREAS the Tomball Sports Association desires and requests the support and endorsement of the City of Tomball in this community-wide effort;

NOW, THEREFORE, BE IT RESOLVED that the City of Tomball and its governing body endorses and supports the efforts of the Tomball Sports Association in promoting and undertaking the Annual Baseball Parade and pledge to encourage this effort to celebrate the beginning of baseball season;

**PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL
HELD ON THE 2ND DAY OF DECEMBER 2013.**

GRETCHEN FAGAN, Mayor

ATTEST:

Doris Speer, City Secretary

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 2, 2013

Topic:

Approve Resolution No. 2013-33, a Resolution of the City of Tomball, Texas, Authorizing the Purchase of Property from the Texas General Land Office and School Land Board; and Authorizing the City Manager to Execute All Documents Related Thereto.

Background:

This item is to approve Resolution No. 2013-33 authorizing the purchase of Tax Foreclosed Land, Lot 7, Block 6, City of Tomball, 0 Tyler Street, Harris County, Texas, File Number TFL-000122. Please see attached for background.

Origination:

Finance

Recommendation:

Approval of Resolution 2013-33

Funding:**Party(ies) responsible for placing this item on agenda:**

Glenn Windsor, CPA, CFE, CGFO

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Land Purchase Documents

Resolution No. 2013-33 Authorizing Purchase of Land - Lot 7 Block 6 - 0 Tyler Street

TEXAS



GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

November 15, 2013

City of Tomball
c/o Micheal J. Darlow
1235 North Loop West #600
Houston, TX 77008

Sent Via email to mdarlow@pbfc.com

Re: Application to Purchase Tax Foreclosure Land, Lot 7, Block 6, City of Tomball, 0 Tyler Street, Harris County, Texas, File Number TFL-000122

Dear Mr. Darlow:

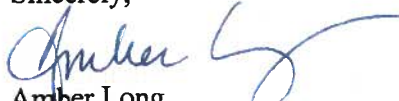
Pursuant to your inquiry expressing interest in purchasing the referenced tract, I have enclosed the necessary form to purchase by direct sale. Since the City of Tomball is a political subdivision, the land may be sold directly to them. In addition to the notarized application, I will need a resolution from the City of Tomball's board of directors authorizing the purchase of the property and asking the General Land Office and the School Land Board to sell it to the City of Tomball. The resolution should also state the authority by which the City of Tomball is indeed a political subdivision or governmental entity of the State of Texas.

When I have received the required form and resolution, I will ask the School Land Board for its approval of the sale. The board has the sole discretion of setting the terms and conditions of the sale of all tax foreclosed property, including changing the recommended sales price. I will notify you of the board's decision and, if approved, of the appropriate amount of money the City should forward in order to close the sale.

In addition to the \$1,650.00 recommended sales price, there will be a 1.5% statutory sales fee of \$24.75 as required by Texas Natural Resources Code Section 32.110. This fee represents 1.5% of the total purchase price.

If you have any questions, please contact me at (512) 463-4802. In order to insure proper handling, please direct all correspondence to my attention at: Texas General Land Office, Asset Management Division, PO Box 12873, Austin, Texas, 78711-2873.

Sincerely,


Amber Long
Asset Management

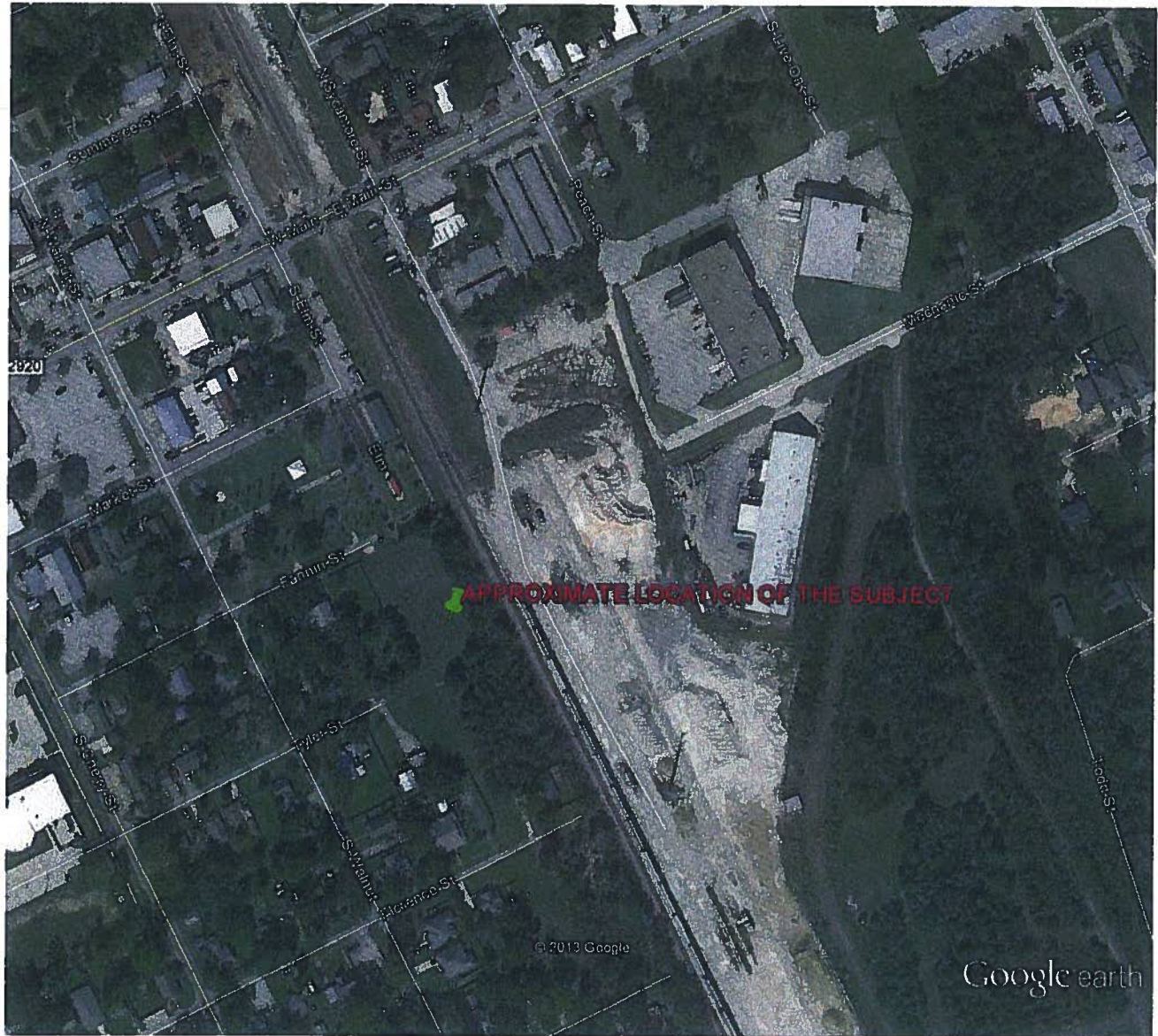
Stephen F. Austin Building • 1700 North Congress Avenue • Austin, Texas 78701-1495

Post Office Box 12873 • Austin, Texas 78711-2873

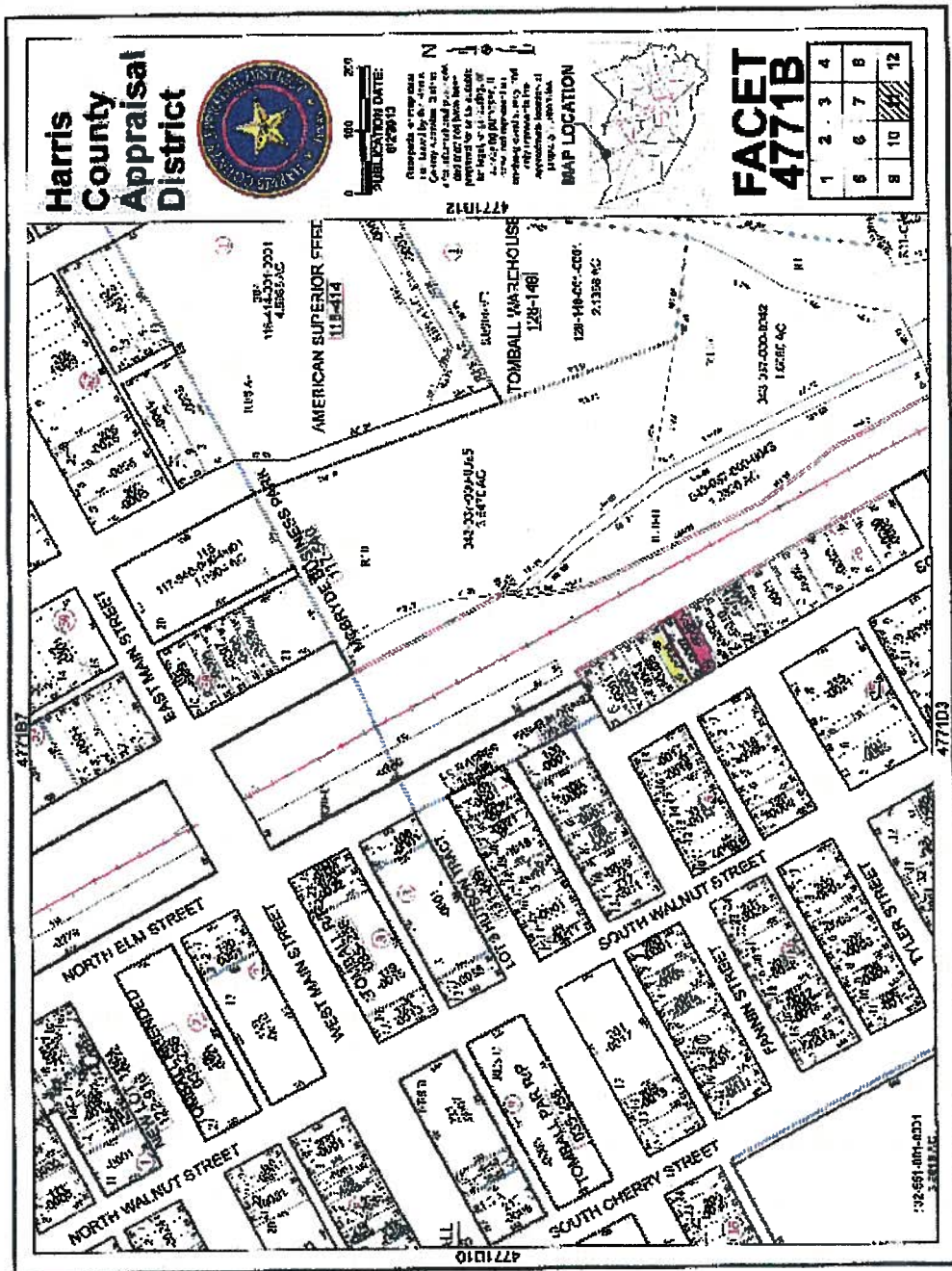
512-463-5001 • 800-998-4GLO

www.glo.state.tx.us

Aerial Photo



Adjoining Landowner Map



Adjoining Landowners

The subject tract, Lot 7, Block 6, is outlined in red on the preceding map.

YELLOW SHADING ADJOINING THE SUBJECT TRACT TO THE NORTH OR NORTHWEST

City of Tomball
401 Market Street
Tomball, Texas 77375-4645

Lot 6, Block 6, City of Tomball.

PINK SHADING ADJOINING THE SUBJECT TRACT TO THE SOUTH OR SOUTHEAST

Current Owner
Address Unknown

Lot 8, Block 6, City of Tomball. This lot is reportedly in the process of being acquired by the City of Tomball. The Harris County Appraisal District has apparently not been able to determine the ownership of this lot, since the lot is listed under Current Owner, Address unknown.

South Elm Street adjoins the west or southwest side of the subject tract. This street legally exists but is not currently paved or maintained.

**STATE OF TEXAS
GENERAL LAND OFFICE
APPLICATION TO PURCHASE
TAX FORECLOSURE LAND
BY DIRECT SALE WITH CASH**

To the Commissioner of the Texas General Land Office, Austin, Texas:

Date: DECEMBER / 2 / 2013

Re: Application to Purchase 0.0574 acre, Lot 7, Block 6, City of Tomball, 0 Tyler Street, Harris County, Texas, File Number TFL-000122 (Property)

By virtue of Texas Natural Resources Code (TNRC) Sections 32.112 and 51.052, I do hereby tender this application to purchase the Property, described above, owned by the State of Texas.

This application to purchase is submitted on behalf of a governmental entity, which will be purchasing the Property with cash. Upon notice of acceptance by the School Land Board, a remittance will be due for 100% of the purchase price plus a statutory sales fee of 1.5% of the purchase price, pursuant to TNRC Section 32.110.

I understand that the State of Texas will reserve and retain (1) all oil, gas, coal, lignite, sulphur and other mineral substances from which sulphur may be derived or produced, salt, potash, uranium, thorium, and all other minerals in and under the Property wherever located and by whatever method recovered; (2) the right to test for, explore for, produce, lease, and store such minerals and to place, construct, maintain, and operate any structures necessary and incident thereto at a site or sites as determined by the State; and (3) the right of ingress and egress necessary to explore for, produce and store the said minerals.

Please type or print the name and address of the person or entity, applying to purchase the land, as you wish it to appear on the deed.

APPLICANT: CITY OF TOMBALL, TEXAS

TAX ID NUMBER: 74-6003588

MAILING ADDRESS: 401 MARKET STREET

CITY: TOMBALL STATE: TX ZIP: 77375

PHONE: (281) 290-1002 or (281) 290-1006

SIGNATURE of applicant or authorized agent: _____

PRINT name of applicant or authorized agent: _____

Signed and acknowledged before me this _____ day of _____, 20____.

Notary Public in and for the State of Texas

RESOLUTION NO. 2013-33

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL,
TEXAS AUTHORIZING THE PURCHASE OF PROPERTY FROM THE TEXAS
GENERAL LAND OFFICE AND SCHOOL LAND BOARD; AND
AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS
RELATED THERETO.**

* * * * *

WHEREAS, the City of Tomball desires to purchase Lot 7, Block 6, City of Tomball, 0 Tyler Street, Harris County, Texas, File Number TFL-000122, being a parcel containing 0.00574 acres (97,141 square feet) of land, Harris County Appraisal District Number 035-257-006-0007, for use in the further development and/or expansion of the Depot area; and

WHEREAS, the City of Tomball has contacted the owners of the Property, Texas General Land Office and the School Land Board, regarding the purchase of the property; and

WHEREAS, the City Council of the City of Tomball wishes to approve the purchase of the Property and to authorize the City Manager to execute all documents related to the purchase of the Property; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS that the purchase of the Property described above is hereby approved and the City Manager is hereby authorized to execute all documents related to the purchase of the Property.

PASSED, APPROVED, AND RESOLVED this 2nd day of December 2013.

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

Regular City Council

Agenda Item

Meeting Date: December 2, 2013

Data Sheet

Topic:

Approve, on First Reading, Resolution No. 2013-35-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and Garth Lodging Corporation, to make direct incentives to, or expenditures for, assistance with infrastructure costs for the promotion of new or expanded business enterprise related to the construction of a Holiday Inn Express & Suites Hotel to be located at 14055 Park Drive, Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$56,000.00.

Background:

All expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project" of the Corporation. At its regular meeting on November 19, 2013, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with Garth Lodging Corporation for the promotion of new or expanded business development related to the construction of a Holiday Inn Express & Suites Hotel to be located at 14055 Park Drive, Tomball, Texas 77375. The Tomball City Council has final approval authority over all projects and agreements of the TEDC.

Origination:

Snehal (Sam) Patel, Owner/VP of Operations, Garth Lodging Corporation

Recommendation:

Approval of Resolution No. 2013-35-TEDC on first reading

Funding: Yes

Account Number: Project Grants

Party(ies) responsible for placing this item on agenda:

Kelly Violette, Executive Director, Tomball Economic Development Corporation

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Resolution

Memo
Request Letter
Draft Agreement
Economic Impact Analysis

RESOLUTION NO. 2013-35-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CORPORATION AND GARTH LODGING CORPORATION TO PROMOTE AND DEVELOP A NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

WHEREAS, the Tomball Economic Development Corporation (the "TEDC"), created pursuant to the Development Corporation Act, now Chapter 501 of the Texas Local Government Code, as amended (the "Act"), desires to adopt projects and provide incentives for economic development within the City; and

WHEREAS, the Board of Directors of the TEDC has adopted, as a specific project, the expenditure of the estimated amount of Fifty-Six Thousand Dollars (\$56,000.00) to fund the construction of approved infrastructure related to the development of certain property for a proposed Holiday Inn Express & Suites Hotel at 14055 Park Drive, Tomball, TX 77375; and

WHEREAS, pursuant to the Act, the TEDC may not undertake such project without the approval of Tomball City Council; and

WHEREAS, City Council finds and determines that such project promotes new or expanded business development and is in the best interests of the citizenry; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure of the estimated amount of Fifty-Six Thousand Dollars (\$56,000.00) in accordance with an economic development agreement by and between the TEDC and Garth Lodging Corporation, to promote and develop a new or expanded business enterprise, namely the construction of a Holiday Inn Express & Suites Hotel to be located at 14055 Park Drive, Tomball, TX 77375;

Section 3. In the event any clause, phrase, provision, sentence, or part of this

Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this ____ day of _____, 2013.

PASSED, APPROVED, AND RESOLVED on second and final reading this ____ day of _____, 2013.

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: December 2, 2013

SUBJECT: Garth Lodging Corporation Agreement

The Tomball Economic Development Corporation has received a request from Snehal (Sam) Patel, of Garth Lodging, Inc., for assistance with infrastructure costs related to the development of a proposed 70 unit Holiday Inn Express & Suites Hotel to be located at 14055 Park Drive, Tomball, TX 77375. The proposed 43,000 square foot facility will be constructed on approximately 2.4095 acres of land located on the east frontage road of the Tomball Expressway at the end of Park Drive. The hotel will have over 1,000 square feet of meeting space, an outdoor pool with a gazebo, free complimentary hot breakfast, high speed internet and a social every Wednesday night.

The project will bring 20 full time jobs and 5 part time positions to the community. The estimated value of the property and improvements is \$6,000,000.

Mr. Patel is requesting grant funding assistance with infrastructure costs that are necessary to develop this project. The eligible infrastructure improvements include water and sewer extensions, drainage facilities, electrical service, and related site improvements totaling approximately \$140,000.

Although this project does not create primary jobs, it does promote the development and expansion of business enterprise, which is considered a permissible project as outlined in Texas Economic Development Legislation.

An economic impact analysis is included with the agreement to show the impact of this project on Tomball's economy.



Garth Lodging, Inc.

November 8, 2013

Garth Lodging, Inc.
DBA: Holiday Inn Express & Suites
5820 Katy Freeway
Houston, Texas 77007

Tomball Economic Development Corporation
P.O. Box 820
Tomball, Texas 77377

RE: Grant Assistance Application

Dear Ms. Violette:

Per the requirements of the TEDC grant process, I am writing this letter to request the mega grant to help us construct the new hotel in Tomball. We believe that a new 70 room hotel in Tomball, equipped with 1,000 sq feet of meeting space, outdoor pool and gazebo would be a great addition to this already great town. Our company is Garth Lodging, Inc., our NAICS code is 721110 and I am the managing partner/owner in this organization, we are located at 5820 Katy Freeway in Houston, Texas and I can be reached at 281-451-7065 or via email at sam.patel3@hilton.com.

Our hotel will serve as the preferred place to stay when guests are visiting Tomball for leisure or business. We have an established relationship with Baker Hughes with our other hotels around Houston so we will be helping them keep most of their trainees in Tomball vs. going out to the Willowbrook area. The property will be located at the end of Park Drive between the new 249 bypass and the old 249 with access from both roads. The total square footage of the site is approximately 2 acres and the building will be 43,000 sq ft. The project will cost a total of \$6,000,000 of which \$1,350,000 will be furniture, fixtures, and equipment. We plan to start this project no later than December 15th, if we can get all of the necessary approvals from the City, and plan to complete in approximately 8 months on August 15th. This project will bring 20 new full time jobs and 5 new part time jobs to the Tomball community. The hourly team members will receive an average of \$10 per hour and the salary team members will receive an average of \$40,000 per year.

We are very excited to become a part of this great community and growing with it as well. I look forward to hearing from you in the near future on what steps I need to take going forward. Please contact me if you should have any questions or concerns at 281-451-7065.

Thank you,

Snehal Patel (Sam)
Owner / VP of Operations

**5820 Katy Freeway
Houston, Texas 77007**

AGREEMENT

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

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to the Development Corporation Act, now Chapter 501 et seq. of the Texas Local Government Code, located in Harris County, Texas (the “TEDC”), and **Garth Lodging Corporation** (the “Company”), 5820 Katy Freeway, Houston, Texas 77007.

WITNESSETH:

WHEREAS, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the “City”), and thereby enhance the economic stability and growth of the City; and

WHEREAS, the Company proposes to develop a 2.4095 acre tract of land within the City, located at 14055 Park Drive, Tomball, TX 77375 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, such development shall be an internationally known franchise hotel, required and suitable for use for tourist purposes and events; and

WHEREAS, the TEDC agrees to provide to the Company funding in an amount not to exceed Fifty-Six Thousand Dollars (\$56,000), as assistance in the construction of approved infrastructure and site preparation necessary to promote and develop a new business enterprise on the Property; and

WHEREAS, the approved infrastructure, which is found by the Board of Directors of TEDC to be required or suitable to develop the Property, is water, sewer, electric utilities, drainage, and site preparation (the “Improvements”), identified and described in Exhibit “B,” attached hereto and made a part hereof; and

WHEREAS, the Company has agreed, in exchange and as consideration for the funding, to satisfy and comply with certain terms and conditions;

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Company agree as follows:

1.

The Company covenants and agrees that it will construct and maintain on the Property a three-story, seventy (70) room Holiday Inn Express Hotel (the “Hotel”). In conjunction with development of the Property, the Company further agrees to construct the Improvements contemplated by this Agreement, in accordance with the requirements of the ordinances of the City and the plans and specifications approved by the City. The Company further represents and agrees that it will certify the final estimated costs of the construction of such Improvements to the TEDC prior to construction.

2.

Development of the Property, including construction of the Improvements, must commence within 180 days from the date of this Agreement (the “Start Date”), and the Company shall notify the TEDC of such Start Date. The Development of the Property, including construction of the Improvements shall be completed, and all necessary occupancy permits from the City shall be obtained, within eighteen months of the Start Date. Extensions of these

deadlines, due to extenuating circumstances or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

The Company further represents and agrees that the development described in Paragraph 1 hereof will be operated and maintained for a term of at least five (5) years.

4.

The Company further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An “undocumented worker” shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized by law to be employed in that manner in the United States.

5.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to reimburse the Company for the actual cost of the Improvements in an amount not to exceed Fifty-Six Thousand Dollars (\$56,000), or an amount equal to Forty Percent (40%) of actual Improvement costs if less than the sum stated above. The TEDC agrees to reimburse the Company for such amount within thirty (30) days of receipt of a letter from the Company requesting such payment and including: (a) certification of the actual cost of constructing the Improvements; (b) a copy of the City's occupancy permit for the Hotel constructed on the Property, indicating that the new structure meets or exceeds three-stories and seventy (70) rooms; (c) a copy of a letter from the City acknowledging that all necessary plats, plans, and specifications have been received, reviewed, and approved; (d) verification that the Infrastructure Improvements have been constructed in accordance with the approved plans and specifications; (e) an affidavit stating that all contractors and subcontractors providing work and/or materials in

the construction of the Infrastructure Improvements have been paid and any and all liens and claims regarding such work have been released; and, (f) Proof of payment to all contractors and subcontractors providing work and/or materials in the construction of the Infrastructure Improvements, proof of payment must include copies of canceled checks and/or credit card receipts and copies of paid invoices from all contractors and subcontractors.

6.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus one-half percent ($\frac{1}{2}\%$) per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company, or any owner or lessee of the Improvements, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus one-half percent ($\frac{1}{2}\%$) per annum, within thirty (30) days after the TEDC notifies the Company of the violation.

The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such funds. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default. It is understood and agreed by the parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either a) the termination of this Agreement or b) a suit for specific performance.

7.

Personal Liability of Public Officials: To the extent permitted by law, no director, officer, employee or agent of the TEDC, and no officer, employee or agent of the City of Tomball, shall be personally responsible for any liability arising under or growing out of this Agreement.

8.

This Agreement shall inure to the benefit of and be binding upon the TEDC and the Company, and upon the Company's successors and assigns, affiliates, and subsidiaries, and shall remain in force whether the Company sells, assigns, or in any other manner disposes of, either voluntarily or by operation of law, all or any part of the Property and the agreements herein contained shall be held to be covenants running with the Property for so long as this Agreement, or any extension thereof, remains in effect.

9.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City:	Tomball Economic Development Corporation
	401 W. Market Street
	Tomball, Texas 77375
	Attn: President, Board of Directors

If to Company: Garth Lodging Corporation
5820 Katy Freeway
Houston, TX 77007
Attn: Snehal Patel, Owner / VP of Operations

10.

This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

11.

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the parties hereto.

12.

The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

13.

This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

14.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or

unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this _____ day of _____ 2013 (the “Effective Date”).

GARTH LODGING CORPORATION

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

**TOMBALL ECONOMIC DEVELOPMENT
CORPORATION**

By: _____

Name: _____

Title: President, Board of Directors

ATTEST:

By: _____

Name: _____

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2013, by _____, the _____ of
Garth Lodging Corporation and on behalf of said Company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2013, by _____, President of the Board of Directors of the
Tomball Economic Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

EXHIBIT A

Legal Description of Property

A 2.4095 acre tract of land legally described as Lot F1 of Tomball Park One Subdivision in the City of Tomball, Harris County, Texas.

EXHIBIT B

The Improvements

Water, sewer, electric utilities – exterior work only

Drainage improvements

Site improvements

Economic Impact of Garth Lodging in Tomball, TX

Executive Summary

November 15, 2013

Prepared by:

Tomball Economic Development Corporation
29201 Quinn Road
Tomball, TX 77375

This summary was prepared by the Tomball Economic Development Corporation using Quick Impact by Impact DataSource. Please consult the full economic impact report for additional details and assumptions used in this analysis.

ECONOMIC IMPACT EXECUTIVE SUMMARY: GARTH LODGING

Project Description

Garth Lodging plans to develop a 70 unit Holiday Inn Express & Suites in Tomball Texas; fully equipped with, over 1,000 sq feet of meeting space, outdoor pool with a gazebo, free complimentary hot breakfast, high speed internet and a social every Wednesday night. The project bring 20 full time jobs and 5 part time positions to the community. We plan to be the preferred place to stay when in Tomball for business or leisure. Our company has several hotels in the Greater Houston area as well as Austin, Livingston, and Corpus Christi. Our companies philosophy is based around one core believe "Impressing Guests" which has led us to be the first choice for our guests when traveling.

Economic Impact Over the First 10 Years

The project will have the following economic impact on the City of Tomball area over the first 10 years:

Economic Impact Over the First 10 Years			
	Direct	Indirect & Induced	Total
Total number of permanent direct and indirect jobs to be created	20	7	27
Salaries to be paid to direct and indirect workers	\$5,044,107	\$2,513,983	\$7,558,090
Taxable sales and purchases expected in the city	\$89,647,383	\$219,974	\$89,867,356
The value of new residential property to be built for direct and indirect workers who move to the city by Year 10	\$0	\$0	\$0
The market value the firm's property on local tax rolls in Year 1	\$6,000,000	\$0	\$6,000,000

Fiscal Impact Over the First 10 Years

Over the first 10 years, the City of Tomball and Tomball EDC can expect the following net benefits from the facility, its employees, and workers in spin-off jobs created in the community:

Costs and Benefits for the City Over the First 10 Years			
	Benefits	Costs	Net Benefits
Sales taxes allocated to the City	\$1,348,010	\$0	\$1,348,010
Sales taxes allocated to Tomball EDC	\$449,337	\$0	\$449,337
Property taxes	\$199,670	\$0	\$199,670
Utility revenues	\$375,619	\$0	\$375,619
Utility franchise fees	\$35,886	\$0	\$35,886
Hotel occupancy taxes	\$7,175,710	\$0	\$7,175,710
Other taxes and user fees	\$14,016	\$0	\$14,016
Building permits and fees	\$12,390	\$0	\$12,390
Costs of providing utilities	\$0	\$338,057	(\$338,057)
Costs of providing municipal services for new residents	\$0	\$25,885	(\$25,885)
Total	\$9,610,637	\$363,942	\$9,246,695

ECONOMIC IMPACT EXECUTIVE SUMMARY: GARTH LODGING

Net Benefits To The City From The Direct and Indirect Sources

The city will receive benefits from direct and indirect economic impacts that result from the project. The benefits, associated costs and net benefits for the first 10 years are shown below, divided between direct and indirect impacts.

Net Benefits to the City from Direct and Indirect Sources			
<i>Benefits/Costs from:</i>			
	<i>Direct</i>	<i>Indirect & Induced</i>	<i>Total</i>
<u><i>Additional revenues:</i></u>			
Sales taxes allocated to the City	\$1,344,711	\$3,300	\$1,348,010
Sales taxes allocated to Tomball EDC	\$448,237	\$1,100	\$449,337
Property taxes	\$199,670	\$0	\$199,670
Utility revenues	\$360,826	\$14,793	\$375,619
Utility franchise fees	\$34,750	\$1,135	\$35,886
Hotel occupancy taxes	\$7,175,710		\$7,175,710
Other taxes and user fees	\$10,512	\$3,504	\$14,016
Building permits and fees	\$12,390		\$12,390
Total additional revenues	\$9,586,806	\$23,832	\$9,610,637
<u><i>Additional costs:</i></u>			
Costs of providing utilities	\$324,744	\$13,314	\$338,057
Costs of providing municipal services for new residents	\$19,414	\$6,471	\$25,885
Total additional costs	\$344,157	\$19,785	\$363,942
Net Benefits	\$9,242,648	\$4,047	\$9,246,695
<i>Percent of total net benefits for city</i>	<i>100%</i>	<i>0%</i>	

The net benefits to the city over the first 10 years are estimated to accrue as detailed below.

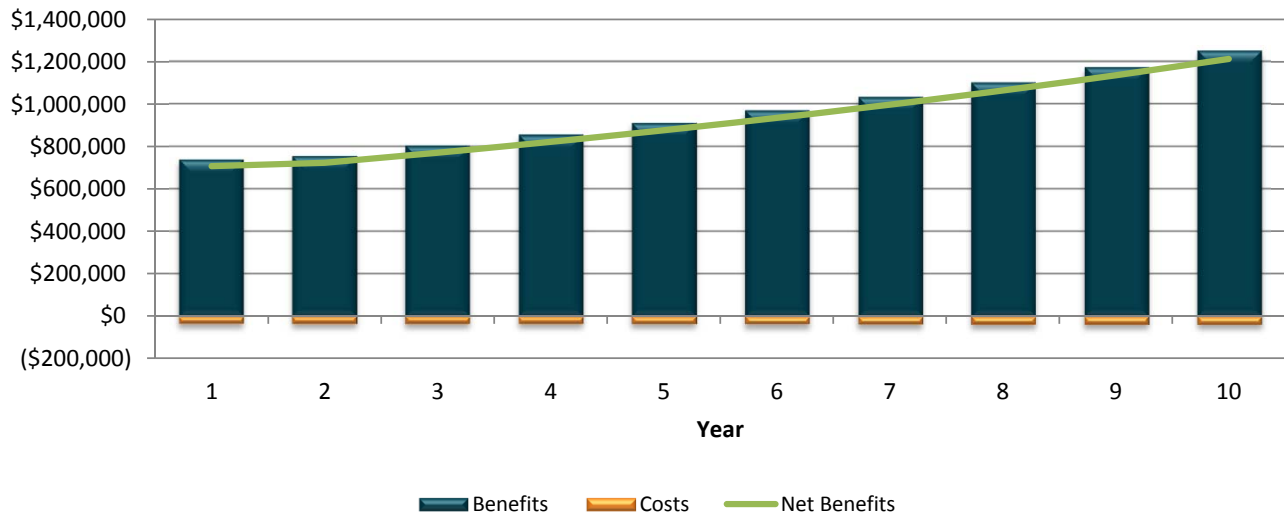
Net Benefits to the City by Year				
	Benefits	Costs	Net Benefits	Cumulative Benefits
Year 1	\$740,656	\$33,238	\$707,419	\$707,419
Year 2	\$756,766	\$33,902	\$722,864	\$1,430,283
Year 3	\$805,210	\$34,580	\$770,630	\$2,200,913
Year 4	\$857,019	\$35,272	\$821,747	\$3,022,660
Year 5	\$912,430	\$35,977	\$876,452	\$3,899,112
Year 6	\$971,694	\$36,697	\$934,997	\$4,834,109
Year 7	\$1,035,084	\$37,431	\$997,653	\$5,831,762
Year 8	\$1,102,889	\$38,180	\$1,064,709	\$6,896,471
Year 9	\$1,175,419	\$38,943	\$1,136,476	\$8,032,947
Year 10	\$1,253,470	\$39,722	\$1,213,748	\$9,246,695
Total	\$9,610,637	\$363,942	\$9,246,695	
<i>Present Value of Net Benefits*</i>			<i>\$6,962,945</i>	

**The Present Value of Net Benefits is a way of expressing in today's dollars, dollars to be paid or received in the future. A dollar today and a dollar to be received or paid at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.*

Fiscal Impact Over the First 10 Years

The graph below depicts the costs, benefits and net benefits to the city over the first 10 years.

Net Benefits Over the First 10 Years



Regular City Council

Agenda Item

Meeting Date: December 2, 2013

Data Sheet

Topic:

Approve First Amendment to Economic Development Agreement between the Tomball Economic Development Corporation and One Moore Holdings

Background:

The Tomball Economic Development Corporation has received a request from Chad Moore, owner of One Moore Holdings, for an amendment to the economic development agreement related to the development of a new dry cleaning and laundry processing facility. The original agreement was approved by the TEDC Board of Directors on December 4, 2012 and by the Tomball City Council on January 7, 2013.

The agreement provided for funding assistance for infrastructure costs related to the proposed development of an 11,800 square foot dry cleaning and laundry processing facility to be located on a 5.0120 acre tract of land at 15423 FM 2920 in Tomball. The approved grant amount was \$56,425.00.

Per Mr. Moore, the location of the project has changed due to the costs associated with the development of the facility which required extensive utility extensions. As such, Mr. Moore has purchased a 0.9572 acre tract of land within the Chestnut Business Park and plans to invest approximately \$902,000 in the project: \$180,000 for land, \$572,000 for buildings and other real property improvements, and \$150,000 in business personal property. The proposed 11,200 square foot facility is anticipated to have 21 employees over the first five years with average annual salaries of \$26,000.

Based on the new project location, the proposed amendment, which was approved by the TEDC Board of Directors on November 19, 2013, provides for the following changes:

1. The grant amount shall be reduced to the sum of \$49,668.00, or an amount equal to Forty Percent (40%) of actual construction costs if less than the sum stated above;
2. The project site shall be a 0.9572 acre tract of land located at 421 Chestnut Business Park Drive, Tomball, TX 77375.
3. Construction of the Improvements on the Property, including construction of the Infrastructure Improvements must commence within 180 days from the Effective Date of the Amendment.

As a matter of information, Mr. Moore currently owns and operates Christian Dry Cleaners located in a 4,000 square foot building at 706 West Main Street in Tomball, as well as several other locations in surrounding areas.

Although this project does not create primary jobs, it does promote the development and expansion of business enterprise, which is considered a permissible project as outlined in Texas Economic

Development Legislation.

An economic impact analysis is included with the agreement to show the impact of this project on Tomball's economy.

Origination:

Chad Moore, One Moore Holdings

Recommendation:

Approval of the grant funding amendment to the One Moore Holdings-TEDC Agreement

Funding: Yes

Account Number: Project Grants

Party(ies) responsible for placing this item on agenda:

Kelly Violette, Executive Director Tomball Economic Development Corporation

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Request Letter

Draft Agreement

Economic Impact

Kelly,

Please advise the board members the reasoning for our change of property locations within the city of Tomball. Although we were eager to have frontage road exposure, we just could not justify the massive and cumbersome expenses associated with the city requirements for the utilities and site work. Our decision was based on the bids we received for boring under Hwy FM 2920 for the city required sized lines for gas and water. Additionally, the site work for the retention pond and drainage continued to escalate in costs based on the city requirements, and it was at that point that this site did not make sense any longer. Therefore, we reevaluated the area and found an alternative location whereby we could stay in the city of Tomball and continue to build our business.

I plan on investing \$752,000 in development costs for the purchase and construction of a new warehouse processing facility of 11,200 square feet that will be dedicated to laundry and dry cleaning at 421 Chestnut Business Park Drive. My plans are to build a 1st class facility that the City of Tomball has never had, and to offer the community the biggest and best dry cleaning / laundry processing facility within several counties. My vision is to have the capacity to attract new accounts for wholesale and commercial laundry. Also, within the processing facility, we will have state-of-the-art equipment with first rate employees to offer the Tomball community the best product possible. My plan is to offer retail and wholesale services that will support the size and overhead for this facility. Initially, 4-10 new employees will be hired to help manage and operate this facility, and our plans are to be over 40 total employees within 2 years.

Regards,

Chad Moore

One Moore Holdings

**FIRST AMENDMENT
TO
ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION
AND
ONE MOORE HOLDINGS**

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

This First Amendment to the Economic Development Agreement (“First Amendment”) is made by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to the Development Corporation Act, now Chapter 501 *et seq.* of the Texas Local Government Code, located in Harris County, Texas (the “TEDC”), and **One Moore Holdings** (the “Company”), 95 North Almondell Circle, The Woodlands, TX 77354.

RECITALS:

WHEREAS, the Tomball Economic Development Corporation entered into an economic development agreement (the “Agreement”), and the Tomball City Council, by Resolution No. 2012-35-TEDC, adopted December 17, 2012, approved the agreement to grant One Moore Holdings the sum of Fifty Six Thousand Four Hundred Twenty Five Dollars (\$56, 425), or an amount equal to Forty Percent (40%) of actual construction costs if less than the sum stated above, to assist with the construction of certain infrastructure improvements relating to the development of an 11,800 square foot dry cleaning and laundry processing facility on a 5.0120 acre tract of land within the City, located at 15423 FM 2920, Tomball, TX 77375; and

WHEREAS, the Company now proposes to locate that development on a 0.9572 acre tract of land located at 421 Chestnut Business Park Drive, Tomball, TX 77375 (the “Property”), more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, such development shall include the construction of an 11,200 square foot dry cleaning and laundry processing facility (the “Improvements”) on the site, and more particularly described in Exhibit “B,” attached hereto and made a part hereof; and

WHEREAS, all other terms and conditions of the Agreement, not in conflict with this Amendment, shall remain in full force and effect; **NOW, THEREFORE**, in consideration of the foregoing, the Tomball Economic Development Corporation and One Moore Holdings hereby agree to the approved First Amendment to the Agreement as follows:

1. The grant amount shall be reduced to the sum of Forty Nine Thousand Six Hundred and Sixty Eight Dollars (\$49,668.00), or an amount equal to Forty Percent (40%) of actual construction costs if less than the sum stated above, to assist in the construction of infrastructure necessary to promote and develop a new business enterprise on the Property. The infrastructure found by the Board of Directors of TEDC to be required to develop the Property are site improvements and utilities to the exterior of the building (the “Infrastructure Improvements”), identified and described in Exhibit “C,” attached hereto and made a part hereof.
2. The project site shall be a 0.9572 acre tract of land located at 421 Chestnut Business Park Drive, Tomball, TX 77375.
3. Construction of the Improvements on the Property, including construction of the Infrastructure Improvements must commence within 180 days from the Effective Date of this Amendment.

4. It is understood and agreed by the parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either a) the termination of this Agreement or b) a suit for specific performance.
5. Personal Liability of Public Officials: To the extent permitted by law, no director, officer, employee or agent of the TEDC, and no officer, employee or agent of the City of Tomball, shall be personally responsible for any liability arising under or growing out of this Agreement.

IN TESTIMONY OF WHICH, THIS AMENDMENT has been executed by the parties on this _____ day of _____ 2013 (the "Effective Date").

ONE MOORE HOLDINGS

By: _____
Name: Chad Moore
Title: President

ATTEST:

By: _____
Name: _____
Title: _____

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: _____
Name: Gretchen Fagan
Title: President, Board of Directors

ATTEST:

By: _____

Name: Bill Sumner

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2013, by Chad Moore, President, One Moore Holdings, for and on behalf of said company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2013, by _____, President of the Board of Directors of the Tomball
Economic Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit “A”

Legal Description of Property

A tract of land containing 0.9572 acres described as Lot 2, Block 2 of the Chestnut Business Park Final Plat, within the City of Tomball, Harris County, Texas.

Exhibit “B”

Description of Improvements

Construction of an 11,200 square foot commercial dry cleaning and laundry processing facility to be located at 421 Chestnut Business Park Drive, Tomball, TX 77375.

Exhibit “C”

Description of Infrastructure Improvements

Site work

- Site work for parking areas, building pad, etc.)
- Erosion control

Site utilities

- Domestic water, sewer and gas connections
- Underground storm sewer piping and inlets
- Electrical power service to the building
- Communications conduits to the building

Note: No costs for tap fees or impact fees or fees by the power company have been included in the costs estimates that have been submitted.

Economic Impact of One Moore Holdings in Tomball, TX

Executive Summary

November 13, 2013

Prepared by:

Tomball Economic Development Corporation
29201 Quinn Road
Tomball, TX 77375

This summary was prepared by the Tomball Economic Development Corporation using Quick Impact by Impact DataSource. Please consult the full economic impact report for additional details and assumptions used in this analysis.

ECONOMIC IMPACT EXECUTIVE SUMMARY: ONE MOORE HOLDINGS

Project Description

One Moore Holdings proposes to develop an 11,200 square foot dry cleaning and laundry processing facility on an approximately 0.9572 acre tract of land located at 421 Chestnut Business Park Drive in Tomball. The company will invest approximately \$902,000 in the project: \$180,000 for land, \$572,000 for buildings and other real property improvements, and \$150,000 in business personal property. The facility expects to employ 21 people over the first five years with average annual salaries of \$26,000.

Economic Impact Over the First 10 Years

The project will have the following economic impact on the City of Tomball area over the first 10 years:

Economic Impact Over the First 10 Years			
	Direct	Indirect & Induced	Total
Total number of permanent direct and indirect jobs to be created	21	10	31
Salaries to be paid to direct and indirect workers	\$4,788,561	\$1,608,477	\$6,397,038
Taxable sales and purchases expected in the city	\$12,027,688	\$321,695	\$12,349,384
The value of new residential property to be built for direct and indirect workers who move to the city by Year 10	\$0	\$0	\$0
The market value the firm's property on local tax rolls in Year 1	\$902,000	\$0	\$902,000

Fiscal Impact Over the First 10 Years

Over the first 10 years, the City of Tomball and Tomball EDC can expect the following net benefits from the facility, its employees, and workers in spin-off jobs created in the community:

Costs and Benefits for the City Over the First 10 Years			
	Benefits	Costs	Net Benefits
Sales taxes allocated to the City	\$185,241	\$0	\$185,241
Sales taxes allocated to Tomball EDC	\$61,747	\$0	\$61,747
Property taxes	\$30,984	\$0	\$30,984
Utility revenues	\$769,467	\$0	\$769,467
Utility franchise fees	\$12,362	\$0	\$12,362
Hotel occupancy taxes	\$0	\$0	\$0
Other taxes and user fees	\$3,504	\$0	\$3,504
Building permits and fees	\$2,706	\$0	\$2,706
Costs of providing utilities	\$0	\$692,520	(\$692,520)
Costs of providing municipal services for new residents	\$0	\$6,471	(\$6,471)
Total	\$1,066,010	\$698,991	\$367,019

ECONOMIC IMPACT EXECUTIVE SUMMARY: ONE MOORE HOLDINGS

Net Benefits To The City From The Direct and Indirect Sources

The city will receive benefits from direct and indirect economic impacts that result from the project. The benefits, associated costs and net benefits for the first 10 years are shown below, divided between direct and indirect impacts.

Net Benefits to the City from Direct and Indirect Sources			
Benefits/Costs from:			
	Direct	Indirect & Induced	Total
<u>Additional revenues:</u>			
Sales taxes allocated to the City	\$180,415	\$4,825	\$185,241
Sales taxes allocated to Tomball EDC	\$60,138	\$1,608	\$61,747
Property taxes	\$30,984	\$0	\$30,984
Utility revenues	\$769,467	\$0	\$769,467
Utility franchise fees	\$12,362	\$0	\$12,362
Hotel occupancy taxes	\$0		\$0
Other taxes and user fees	\$3,504	\$0	\$3,504
Building permits and fees	\$2,706		\$2,706
Total additional revenues	\$1,059,576	\$6,434	\$1,066,010
<u>Additional costs:</u>			
Costs of providing utilities	\$692,520	\$0	\$692,520
Costs of providing municipal services for new residents	\$6,471	\$0	\$6,471
Total additional costs	\$698,991	\$0	\$698,991
Net Benefits	\$360,585	\$6,434	\$367,019
<i>Percent of total net benefits for city</i>	<i>98%</i>	<i>2%</i>	

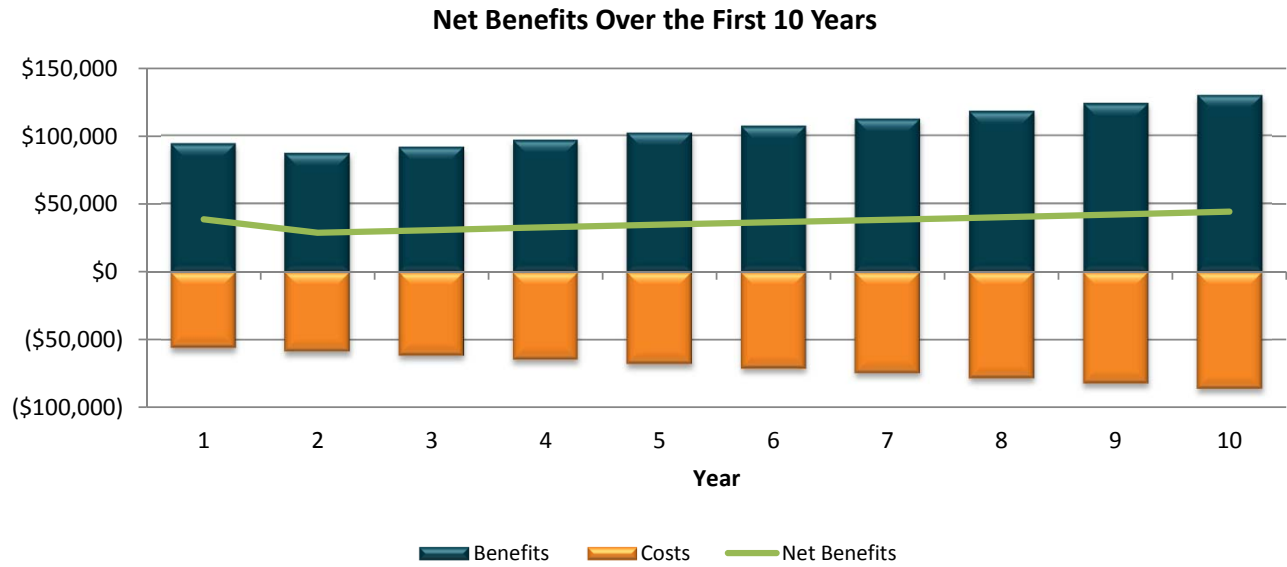
The net benefits to the city over the first 10 years are estimated to accrue as detailed below.

Net Benefits to the City by Year				
	Benefits	Costs	Net Benefits	Cumulative Benefits
Year 1	\$94,433	\$55,807	\$38,627	\$38,627
Year 2	\$87,276	\$58,543	\$28,733	\$67,359
Year 3	\$92,073	\$61,415	\$30,658	\$98,017
Year 4	\$97,124	\$64,429	\$32,695	\$130,712
Year 5	\$102,441	\$67,593	\$34,848	\$165,560
Year 6	\$107,443	\$70,914	\$36,529	\$202,088
Year 7	\$112,703	\$74,400	\$38,303	\$240,392
Year 8	\$118,236	\$78,059	\$40,177	\$280,569
Year 9	\$124,055	\$81,900	\$42,155	\$322,724
Year 10	\$130,226	\$85,931	\$44,295	\$367,019
Total	\$1,066,010	\$698,991	\$367,019	
<i>Present Value of Net Benefits*</i>			<i>\$279,574</i>	

*The Present Value of Net Benefits is a way of expressing in today's dollars, dollars to be paid or received in the future. A dollar today and a dollar to be received or paid at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

Fiscal Impact Over the First 10 Years

The graph below depicts the costs, benefits and net benefits to the city over the first 10 years.



Incentives

Tomball EDC may consider the following incentives for the project:

Incentives	
Year 1	\$49,668
Year 2	\$0
Year 3	\$0
Year 4	\$0
Year 5	\$0
Year 6	\$0
Year 7	\$0
Year 8	\$0
Year 9	\$0
Year 10	\$0

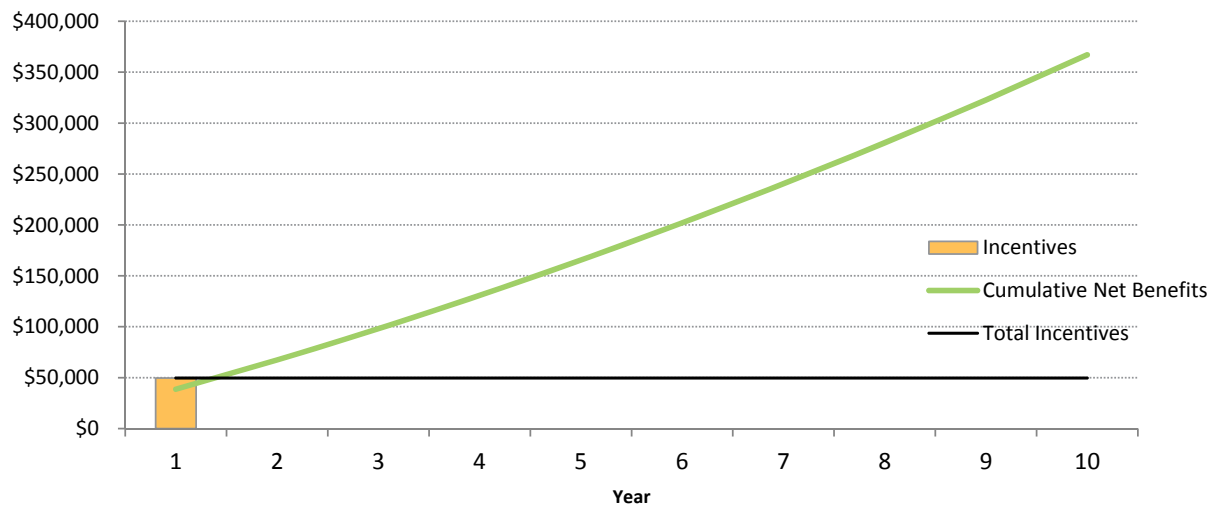
The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return and payback period.

Analysis of Incentives	
Total Incentives	\$49,668
Incentives Per Job	\$2,365
Rate of Return Over 5 Years	66.7%
Payback period (years)	1.4

* Rate of Return and Payback Period are calculated based on the sum of annual incentives rather than the PV of incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the city. The intersection indicates the length of time until the incentives are paid back.

Incentives vs. Cumulative Net Benefits



Regular City Council

Agenda Item

Meeting Date: December 2, 2013

Data Sheet

Topic:

Approve a Commercial Real Estate Listing Agreement between the Tomball Economic Development Corporation (TEDC) and Colliers International for the sale of TEDC-owned property in the Tomball Business & Technology Park.

Background:

At the TEDC Meeting on August 26, 2013, the Board of Directors requested the Executive Director to prepare an agreement with Colliers International to represent the TEDC in the listing and sale of the Tomball Business & Technology Park located at the northwest corner of Hufsmith-Kohrville Road and Holderrieth Road.

The attached Commercial Real Estate Listing Agreement submitted by Tom Condon, Jr. of Colliers International was approved unanimously by the Tomball Economic Development Corporation Board of Directors on November 19, 2013.

The term of the agreement shall be one year. The broker's fee is offered at 6% per the Board's discussion; however it includes a special provision for broker's fees in the event that the property is sold to the current prospect, known as "P.R. Prospect."

Mr. Condon is an aggressive, proactive broker and is known for providing his clients a distinct advantage in the successful resolution of challenges faced in today's real estate market. Mr. Condon joined Colliers International brokerage team in 2013. Prior to joining Colliers, Mr. Condon was with The Betz Companies for 19 years, during which he specialized in investment properties, industrial and residential land transactions, and the sale of commercial office and industrial buildings.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval of the Commercial Real Estate Listing Agreement with Colliers International.

Funding:

Party(ies) responsible for placing this item on agenda:

Kelly Violette, Executive Director, Tomball Economic Development Corporation

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Commercial Real Estate Listing Agreement



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
 ©Texas Association of REALTORS®, Inc. 2010

1. PARTIES: The parties to this agreement (this Listing) are:

Seller: Tomball Economic Development Corporation
 Address: P.O. Box 820
 City, State, Zip: Tomball, TX 77377
 Phone: (281) 401-4086 Fax: (281) 351-7223
 E-Mail: KViolette@tomballtxedc.org

Broker: Colliers Appelt Womack Inc dba Colliers International
 Address: 24 Waterway Ave, Suite 630
 City, State, Zip: The Woodlands, TX 77380
 Phone: (713) 830-4007 Fax: (713) 830-4057
 E-Mail: tom.condon.jr@colliers.com

Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. PROPERTY:

A. "Property" means the following real property in Texas:
 Address: NWC Quadrant Holderieth & Hufsmith-Kohrville Roads
 City: Tomball County: Harris Zip: 77375
 Legal Description *(Identify exhibit if described on attachment)*: _____

approximately 97.5 gross acres known as the "Tomball Business & Technology Park" as depicted on the Site Map attached hereto as Exhibit "A" and being incorporated herein.

- B. Except as otherwise provided in this Listing, Broker is to market the Property together with:
- (1) all buildings, improvements, and fixtures;
 - (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, easements and rights-of-way;
 - (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
 - (4) Seller's interest in all licenses and permits related to the Property;
 - (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
 - (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
 - (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: _____

(Describe any exceptions, reservations, or restrictions in Special Provisions or an addendum. If the Property is a condominium, attach Condominium Addendum to Listing (TAR-1401).)

3. LISTING PRICE:

- A. Seller instructs Broker to market the Property at the following gross sales price: as per the attached
Pricing Schedule Addendum
(Listing Price).
- B. Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. ~~Seller will~~
pay all typical closing costs charged to sellers of commercial real estate in Texas (seller's typical closing
costs are those set forth in the commercial contract forms published by the Texas Association of
REALTORS®) except _____

4. TERM:

- A. This Listing begins on date of Executive Director's execution on page 9
on _____ and ends at 11:59 p.m.
after _____ . Seller may terminate this Listing on notice to Broker any time
after _____ .
- B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and
the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. BROKER'S FEE:

- A. Fee: When earned and payable, Seller will pay Broker a fee of:
- ☒ (1) 6.0 % of the sales price.
- ☐ (2) _____

- B. Earned: Broker's fee is earned when any one of the following occurs during this Listing:
- (1) Seller sells, exchanges, agrees to sell, or agrees to exchange all or part of the Property to anyone at
any price on any terms;
 - (2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to
buy all or part of the Property at the Listing Price or at any other price acceptable to Seller; or
 - (3) Seller grants or agrees to grant to another person an option to purchase all or part of the Property.
 - ~~(4) Seller transfers or agrees to transfer all or part of Seller's interest (stock or shares) in any entity that
holds title to all or part of the Property for the purpose of conveying all or part of the Property to
another person; or~~
 - ~~(5) Seller breaches this Listing.~~
- C. Payable: Once earned, Broker's fee is payable either during this Listing or after it ends at the earlier of:
- (1) the closing and funding of any sale or exchange of all or part of the Property;
 - (2) Seller's refusal to sell the Property after Broker's Fee has been earned;
 - (3) Seller's breach of this Listing; or
 - (4) at such time as otherwise set forth in this Listing.
- Broker's fee is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's
failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to
sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore
the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a
contract for the sale of the Property.
- D. Other Fees:
- ~~(1) Lease of Property: If, during this Listing, Broker procures a tenant to lease all or part of the Property
and Seller agrees to lease all or part of the Property to the tenant, Seller will pay Broker at the time~~

~~the lease is executed the fee described below. If, during the term of the lease, the tenant agrees to purchase all or part of the Property, Seller will pay Broker the fee specified in Paragraph 5A in addition to the amount described below.~~

- ☐ (a) _____ % of all base rents to be paid over the term of the lease and the same percentage of the following items to be paid over the term of the lease: ☐ expense reimbursements; and ☐ _____.
- ☐ (b) _____

- (2) Breach by Buyer Under Contract: If Seller collects earnest money, the sales price, or damages by suit, compromise, settlement or otherwise from a buyer who breaches a contract for the sale of all or part of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Fee stated in Paragraph 5A. Any amount paid under this Paragraph 5D(2) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.
- (3) Service Providers: If Broker refers Seller or a prospective buyer or tenant to a service provider (e.g., mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(3) is in addition to any other compensation Broker may receive under this Listing.
- (4) Transaction Fees and/or Reimbursable Expenses: _____

E. Protection Period:

- (1) "Protection period" means that time starting the day after this Listing ends and continuing for 90 days.
- (2) Not later than 10 days after this Listing ends Broker may send Seller written notice specifying the names of persons whose attention Broker has called to the Property during this Listing. If Seller agrees to sell ~~or lease~~ all or part of the Property during the protection period to a person named in the notice or to a relative or business associate of a person named in the notice, Seller will pay Broker, upon the closing of the sale ~~or upon execution of the lease~~, the amount Broker would have been entitled to receive if this Listing were still in effect.
- (3) "Person" means any person in any capacity whether an individual or entity. "Sell" means any transfer of any interest in the Property whether by agreement or option.
- (4) This Paragraph 5E survives termination of this Listing.

F. County: All amounts payable to Broker are to be paid in cash in Harris County, Texas.

~~G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.~~

NOTICE: Under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against the Property to secure payment of an earned commission.

6. EXCLUSIONS:

- A. **Seller is obligated to pay Insite Commercial Real Estate and/or The Urban Companies a 4.0% broker fee if Seller sells all or part of the Property to a prospect ("P.R. Prospect") represented by Insite/Urban currently considering the Property. (named**
- B. If Seller enters into a contract to sell ~~or lease~~ all or part of the Property to the named exclusion ~~date specified in Paragraph 6A~~, Seller will not be obligated to pay Broker the fees under Paragraph 5 of this Listing, but Seller will pay Broker, upon the closing of the sale ~~or upon execution of the lease~~, a fee equal to:
- (1) 2.0 % of the sales price if Seller sells the Property;
- (2) ~~_____ % of all base rents to be paid over the term of the lease if Seller leases the Property and the same percentage of the following items to be paid over the term of the lease: ☐ expense reimbursements; ☐ _____; and~~
- (3) ~~_____~~
- C. If Seller enters into a contract to sell ~~or lease~~ all or part of the Property to the named exclusion, Broker ☒ will ~~will not~~ assist Seller in negotiating and closing the sale ~~or lease~~ to the named exclusion.
7. **ACCESS TO THE PROPERTY:** Authorizing access to the Property means giving permission to another person to enter the Property, disclosing security codes necessary to enter the Property to such person, and lending a key to the Property to such person. To facilitate the showing and sale of the Property, Seller instructs Broker and Broker's associates to: (i) access the Property at reasonable times; (ii) authorize other brokers, inspectors, appraisers, lenders, engineers, surveyors, and repair persons to enter the Property at reasonable times; and (iii) duplicate keys to facilitate convenient and efficient showings.
8. **COOPERATION WITH OTHER BROKERS:** Broker will allow other brokers to show the Property to prospective buyers. If the other broker procures a buyer who purchases the Property, Broker will offer to pay the other broker a portion of Broker's fee under Paragraph 5, **on the basis of the 50/50 split of Broker's fee assuming Buyer's broker is actively involved in the transaction from the initial contact through closing.**
9. **INTERMEDIARY: (Check A or B only.)**

- ☒ A. **Intermediary Status:** Broker may show the Property to interested prospective buyers or tenants who Broker represents. If a prospect who Broker represents offers to buy ~~or lease~~ the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives.
- (1) If a prospect who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospect to the prospect for the same purpose.
- (2) If a prospect who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospect; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.
- (3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

- ☐ B. No Intermediary Status: Seller agrees that Broker will not show the Property to prospects who Broker represents.

Notice: If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:

- ◆ may not disclose to the prospect that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
- ◆ may not disclose to Seller that the prospect will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospect;
- ◆ may not disclose any confidential information or any information Seller or the prospect specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
- ◆ may not treat a party to the transaction dishonestly; and
- ◆ may not violate the Real Estate License Act.

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any information obtained in confidence regarding any other person Broker represents or may have represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.
- B. In addition to other authority granted by this Listing, Broker may:
- (1) advertise the Property by means and methods as Broker determines is appropriate in any media, including but not limited to:
 - (a) placing a "For Sale" sign or similar marketing sign on the Property; and
 - (b) creating and placing information about the Property (including interior and exterior photographs or videos):
 - (i) on the Internet on Broker's website and on other websites as Broker determines;
 - (ii) in any advertisements whether in print or electronic media; and
 - (iii) into listing services that may publicize the information on the Internet or by other means;
 - (2) reproduce, display, and distribute information about the Property, including the information described under Paragraph 11B(1), for the purposes of marketing the Property;
 - (3) furnish comparative marketing and sales information about other properties to prospects;
 - (4) disseminate information about the Property to other Brokers and prospects, including applicable disclosures, notices, or other information that Seller is required to make under law or a contract;
 - (5) obtain information from any holder of any note secured by a lien on the Property;
 - (6) accept, in trust, any earnest money, option fee, security deposit, or other money related to the purchase ~~or lease~~ of the Property and deliver such money for deposit in accordance with a contract for the sale ~~or lease~~ of the Property;
 - (7) ~~disclose the sales price and terms of a sale or a lease to other brokers, appraisers, other real estate professionals, and any listing services into which information about the Property is placed;~~
 - (8) place information about this Listing and a transaction for the Property on an electronic platform (an electronic platform is typically an Internet-based system where professionals related to the transaction, such as title companies and lenders, may receive, view, and input information); and
 - (9) advertise that Broker "sold" ~~or "leased"~~ the Property after the closing of a sale ~~or execution of a lease~~ of the Property in which Broker was involved, [^] **subject to Seller's prior written approval of any such "advertisement".**

NOTICE: Any submission of information to a listing service must be made in accordance with listing service's rules.

- C. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.
- D. Photographs, videos, and compilations of information submitted to a listing service are the property of the listing service for all purposes.

12. REPRESENTATIONS:

- A. Except as provided otherwise in this Listing, Seller represents that:
 - (1) Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures thereon, unless rented, and the legal capacity to convey the Property;
 - (2) Seller is not bound by a listing agreement with another broker for the sale, exchange, ~~or lease~~ of the Property that is or will be in effect during this Listing;
 - (3) no person or entity has any right to purchase, ~~lease~~, or acquire the Property by an option, right of refusal, or other agreement;
 - (4) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property;
 - (5) the Property is not subject to the jurisdiction of any court;
 - (6) Seller owns sufficient intellectual property rights in any materials which Seller provides to Broker related to the Property (for example, brochures, photographs, drawings, or articles) to permit Broker to reproduce and distribute such materials for the purposes of marketing the Property or for other purposes related to this agreement; and
 - (7) all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge.

- B. Seller and Broker must disclose any known material defect in the Property to a prospective buyer.
(Check only one box.)

- ☐ (1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement. Seller authorizes Broker to furnish prospective buyers and other brokers with a copy of the Property Condition Statement.

- ☒ (2) Except as otherwise provided in this Listing, Seller is not aware of ^{*}
 - ~~(a) any subsurface structures, pits, wastes, springs, or improvements;~~
 - ~~(b) any pending or threatened litigation, condemnation, or assessment affecting the Property;~~
 - ~~(c) any environmental hazards or conditions that materially affect the Property;~~
 - ~~(d) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;~~
 - ~~(e) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants) or other pollutants or contaminants of any nature now exist or have ever existed on the Property;~~
 - ~~(f) any wetlands, as defined by federal or state law or regulation, on the Property;~~
 - ~~(g) any threatened or endangered species or their habitat on the Property;~~
 - ~~(h) any present or past infestation of wood-destroying insects in the Property's improvements;~~
 - ~~(i) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;~~
 - ~~(j) any material physical defects in the improvements on the Property; or~~
 - ~~(k) any condition on the Property that violates any law or ordinance.~~

* any material defects to the Property except that which may be detailed in the environmental reports listed in Section 19 herein.

(List any exceptions to (a)-(k) in Special Provisions or an addendum.)

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing and marketing of the Property;
- B. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- C. not enter into a listing agreement with another Broker for the sale or exchange of the Property to become effective during this Listing;

- D. not enter into a listing agreement for the lease of all or part of the Property with another broker to become effective during this Listing without Broker's written permission;
- E. provide Broker with copies of the following, if any, relating to the Property: a current rent roll, all leases including any amendments, architectural plans and drawings, renderings, survey, a current operating statement, environmental inspection reports, engineering reports, and other relevant information that Broker may request during this Listing;
- F. advise Broker of any tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to sell the Property;
- H. amend any applicable notices and disclosures if any material change occurs during this Listing; and
- I. at Seller's expense, remove from the Property all:
 - (1) "For Sale" (or similarly worded) signs other than Broker's signs;
 - (2) "For Lease" (or similarly worded) signs from the Property unless the Property is listed for lease with another broker; and
 - (3) "For Information" (or similarly worded) signs other than Broker's signs.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker, including but not limited to injuries or losses caused by:
 - (1) other brokers, inspectors, appraisers, lenders, contractors, surveyors, engineers, and other persons who are authorized to access the Property;
 - (2) acts of third parties (for example, vandalism or theft);
 - (3) freezing or broken water pipes;
 - (4) a dangerous condition on the Property; and
 - (5) the Property's non-compliance with any law or ordinance.
- C. ~~* Seller agrees to indemnify and hold Broker and Broker's associates harmless from any damages, costs, attorney's fees, and expenses:~~
 - ~~(1) that arise from Seller's failure to disclose any material information about the Property;~~
 - ~~(2) that are caused by Seller giving incorrect information to Broker, other brokers, or prospects;~~
 - ~~(3) that arise from any claim for misuse of intellectual property in any materials or information that Seller provided to Broker related to the Property or this agreement; or~~
 - ~~(4) that are otherwise caused by Seller or Seller's negligence.~~

15. SPECIAL PROVISIONS:

*** C. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties.**

16. DEFAULT: If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of Broker's fee specified in Paragraph 5A and any other fees Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of any exchange or breach of this Listing, the Listing Price will be the sales price for the purpose of calculating Broker's fee. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.

17. MEDIATION: ~~The parties agree to negotiate in good faith in an effort to resolve any dispute that may arise between the parties. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the costs of mediation equally.~~

18. ATTORNEY'S FEES: If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party may recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA: Addenda or information that are part of this Listing are:

- ☒ A. Information About Brokerage Services
- ☒ B. Property Description Exhibit identified in Paragraph 2
- ☐ C. Condominium Addendum to Listing (TAR-1401)
- ☐ D. Commercial Property Condition Statement (TAR-1408)
- ☐ E. Information About On-Site Sewer Facility (TAR-1407)
- ☐ F. Information about Special Flood Hazard Areas (TAR-1414)
- ☒ G. The following reports are to be provided to buyers with executed contracts: Phase I and II

Environmental Site Assessment and Phase I and II Geologic Fault Study.

20. AGREEMENT OF THE PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligations to pay Broker an earned fee is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assigns.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. Severability: If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. Partial Sales or Leases: If Seller sells ~~or leases~~ part of the Property before the date this Listing ends, this Listing will continue for the remaining part of the Property through the term of this Listing.
- H. Notices: Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail specified in Paragraph 1.

21. ADDITIONAL NOTICES:

- A. **Broker's fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested, or maintained by the Texas Association of REALTORS®, its local affiliates, or any listing service. Broker's fees are negotiable.**

- B. The Property must be made available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g., creed, status as a student, marital status, sexual orientation, or age).**
- C. If the Property contains a residential dwelling built before 1978, federal law requires the Seller to: (1) provide the buyer with the promulgated lead hazard information pamphlet (TAR-2511); and (2) disclose the presence of any known lead-based paint or lead-based paint hazards.**
- D. Broker cannot give legal advice. This is a legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

Seller: Tomball Economic Development Corporation

Broker:

By: _____

Broker / Company Name: Colliers Appelt Womack Inc
dba Colliers International
License No. 0029114

By (signature): _____

Printed Name: Kelly Violette

Title: Executive Director Date: _____

By (signature): _____

Printed Name: Tom Condon, Jr

Title: Sr Vice Pres License No. 419324
Date: _____

By: _____

By (signature): _____

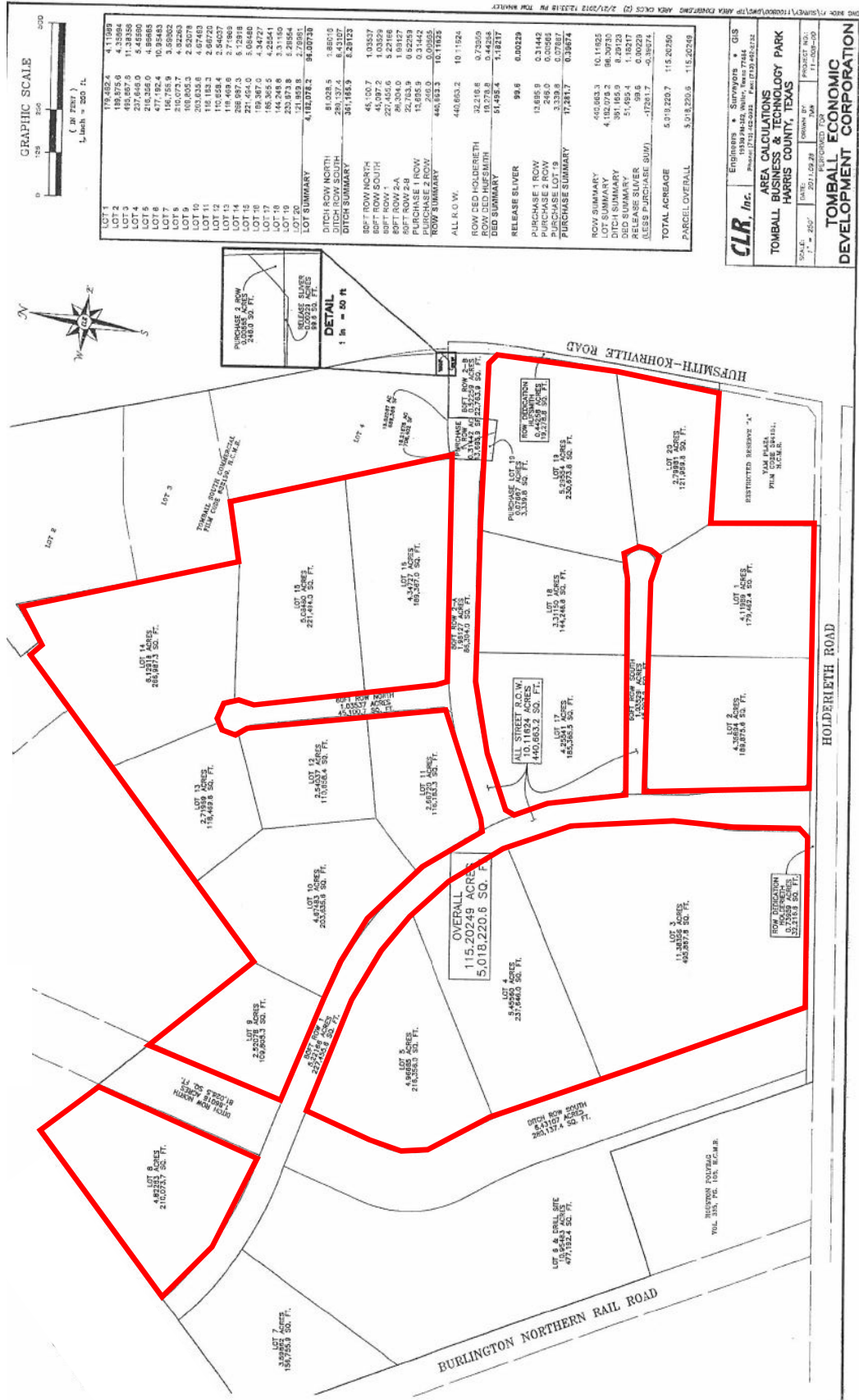
Printed Name: _____

Title: _____ Date: _____

EXHIBIT "A"

SITE MAP

TOMBALL BUSINESS & TECHNOLOGY PARK



**PRICING SCHEDULE ADDENDUM
TOMBALL BUSINESS TECHNOLOGY PARK**

LOT #	SIZE (ACRES)	LOCATION/ROAD FRONTAGE	SUGGESTED ASKING PRICE					
			\$/SF	GROSS				
1	4.12	Holderieth/South cul-de-sac	\$3.45	\$619,161.84				
2	4.36	Holderieth/Persimmon/South cul-de-sac	\$3.70	\$702,709.92				
3	11.38	Holderieth/Persimmon	\$2.75	\$1,363,210.20				
4	5.46	Persimmon	\$3.45	\$820,539.72				
5	4.97	Persimmon	\$3.50	\$757,726.20				
8	4.82	Persimmon/ N of M-118	\$3.35	\$703,363.32				
9	2.52	Persimmon	\$3.60	\$395,176.32				
10	4.87	Persimmon	\$3.50	\$742,480.20				
11	2.87	Persimmon/Spell/North cul-de-sac	\$3.75	\$468,814.50				
12	2.54	North cul-de-sac	\$3.25	\$359,587.80				
13	2.72	North cul-de-sac	\$3.25	\$385,070.40				
14	6.13	North cul-de-sac	\$2.90	\$774,366.12				
15	5.08	North cul-de-sac	\$3.00	\$663,854.40				
16	4.35	Spell/North cul-de-sac	\$3.25	\$615,829.50				
17	4.26	Persimmon/Spell/South cul-de-sac	\$3.75	\$695,871.00				
18	3.31	Spell/South cul-de-sac	\$3.35	\$483,015.06				
19	5.30	Hufsmith-Kohrville/Spell/South cul-de-sac	\$3.75	\$865,755.00				
20	2.80	Hufsmith-Kohrville/South cul-de-sac	\$3.50	\$426,888.00				
TOTAL	81.86	Useable Acres*		\$11,843,419.50			Combined Gross Asking Price	
				\$3.32			Weighted Avg Asking Price/SF	
				\$2.60			85% of Wtd Avg Asking	
							less 8% Closing Costs	
		* ± 10.11 Acres in all proposed street R.O.W's & ± 8.3 Acres in M-118 Drainage Channel; Lots 7 & 8 not owned by TEDC						



Information About Brokerage Services

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

IF THE BROKER REPRESENTS THE OWNER:

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written - listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

IF THE BROKER REPRESENTS THE BUYER:

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

IF THE BROKER ACTS AS AN INTERMEDIARY:

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an

intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

(1) shall treat all parties honestly;

(2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;

(3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and

(4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

Buyer, Seller, Landlord or Tenant

Tomball Economic Development Corporation

Date

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188, 512-936-3000 (<http://www.trec.texas.gov>)

(TAR-2501) 10-10-11

TREC No. OP-K

Colliers International - Corporate, 1233 West Loop South, Suite 900 Houston, TX 77027
Phone: 713-222-2111 Fax: 713-830-2118 Tom Condon

Tomball Bus &

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Regular City Council Agenda Item Data Sheet

Meeting Date: December 2, 2013

Topic:

Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose:

- Sec. 551.072 – Deliberations Regarding Real Property

Background:**Origination:**

George Shackelford, City Manager

Recommendation:

N/A

Funding:**Party(ies) responsible for placing this item on agenda:**

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	