

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



MONDAY, OCTOBER 3, 2011

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, October 3, 2011 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 Father Fred Valone, St. Anne's Catholic Church

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 Reports and Announcements

- **Farmers Market** – 9 a.m.-1:00 p.m. (Every Saturday, September 24-November 12)
- October 8, 2011 – **Open House at the Central Fire Station**, 10:00 a.m.–3:00 p.m..
- October 8, 2011 – **2nd Saturday at the Depot “Spooktacular Bash”** – 5:00 p.m.
- October 10, 2011 – **Fall Cleanup Week**
- October 10, 2011 – Planning and Zoning Commission Meeting – moved to 5:00 p.m.
- October 10, 2011 – Special Council Meeting – Public Hearing on Proposed Tax Rate – 6:00 p.m.
- October 15, 2011 – **E-Waste and Shredding Event – LoneStar-Tomball College Campus, Parking Lot N3**
- October 15, 2011 – **Tomball Art Walk**, 2:00 p.m.–6:00 p.m.; Free Concert at the Depot (Grateful Geezers Band), 4:30 p.m.–7:00 p.m.
- October 22, 2011 – **2nd Annual American Heart Association’s Northwest Harris County Virtual Heart Walk** to support the American Heart Association – 9:30 a.m.; Heart Walk routes (1, 2 or 3 mile options) begin at The Heart Center at Tomball Regional (north entrance; use free parking garage or adjacent lots)
- October 24, 2011 – Tourism Advisory Committee Meeting – moved to 4:00 p.m.
- October 24, 2011 – Special Council and Planning and Zoning Commission Meeting regarding the Downtown Specific Plan – 6:00 p.m.
- October 28-29, 2011 – **Fire Department Fall Festival, 709 West Main** – 7:00 p.m.-12:00 Midnight
- November 1, 2011 – **Mayor’s Coffee**, 5:30 p.m.–7:00 p.m., **Nona’s Italian Grill**
- November 5, 2011 - Appointments to Tourism Advisory Committee for Terms expiring December 5, 2011
- November 12, 2011 – **2nd Saturday at the Depot** – 5:00 p.m.
- November 19, 2011 – **46th Annual Holiday Parade** – 10:00 a.m.
- November 19, 2011 - **Special Walk Tomball** in the Holiday Parade behind the Walk Tomball! It’s a Wonderful Life banner – 10:00 a.m.
- November 19, 2011 – **Tomball Art Walk**, 2:00 p.m.–6:00 p.m.; Free Concert at the Depot, 5:00 p.m.–7:30 p.m.
- **Walk Tomball!** (Every Saturday at 8:00 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
 - Mike Baxter – September 17, 2011 **Tomball Art Walk** and October 1, 2011 **Bugs, Brew and Barbecue** Events

6.0 Approve the Minutes of the September 19, 2011 Regular Council Meeting

7.0 Old Business:

- 7.1 Adopt on Second Reading, Ordinance 2011-21, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 3.9078 acres of land, legally described as tract 2aa out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, from the AG-Agricultural District to the C-Commercial District; said property being generally located on

the westerly side of State Highway 249, northerly of Holderrieth 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

- 7.2 Adopt on Second Reading, Ordinance No. 2011-22, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 97.48 acres of land, legally described as lots 386 and 387 and tract 385 out of the Tomball Outlots and tract 4 out of the Elizabeth Smith Survey, Abstract 70, within the City of Tomball, Harris County, Texas, from the SF-6 - Single-Family Residential-6 District and C-Commercial District to the LI-Light Industrial District; Said property being generally located on the westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth 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

8.0 New Business:

- 8.1 Public Hearing on Tax Rate Increase and Announce Second Public Hearing on October 10, 2011 at 6:00 p.m.
- 8.2 Announce that the Vote on Tax Rate will be held on October 17, 2011 at 6:00 p.m. and October 24, 2011 at 5:30 p.m.
- 8.3 Receive the City Manager's Amendment to the Vested Rights Determination Letter dated July 31, 2008, regarding Timkin Office Park/Chestnut Business Park.
- 8.4 Approve Request by Tomball Fire Department to Close School Street between Main and Malone on Friday Night, October 28, and Saturday Night, October 29, 2011, in Conjunction with the Fire Department's Annual Fall Festival and Haunted House Event, and to Allow the Safe Passage of Pedestrians from the School Parking Lot across School Street to the Event Site
- 8.5 Discussion and Approval of a Personal Services Contract with Baker Botts, LLP for the Creation of a Pension Program for the Volunteer Firefighters of the Tomball Fire Department and Authorize the City Manager to Execute the Contract

9.0 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 30th day of September 2011 by 5:00 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

Meeting Date: October 3, 2011

Data Sheet

Topic:

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- Reports by City staff and members of Council about items of community interest on which no action will be taken
 - Mike Baxter – September 17, 2011 **Tomball Art Walk** and October 1, 2011 **Bugs, Brew and Barbecue** Events

Background:

Origination:

Recommendation:

Funding:

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

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

ATTACHMENTS:

Open House at the Central Fire Station
 2nd Saturday at the Depot “Spooktacular Bash”
 Fall Cleanup Week
 E-Waste and Shredding Event
 Fire Department Fall Festival
 Mayor’s Coffee

Tomball Fire Department

Join Us



Go To: FirePreventionWeek.org

Protect Your Family From Fire

October 9–15, 2011 • It's Fire Prevention Week



OPEN HOUSE

Saturday October 8, 2011

10:00am - 3:00pm



- *Free Food & Drinks*
- *Meet our Firefighters*
- *See our Fire Trucks*
- *Fire Dog Bounce House*
- *See a "Jaws of Life" Demonstration*
- *Fire Extinguisher Demonstrations*
- *Smoke Alarms & More*



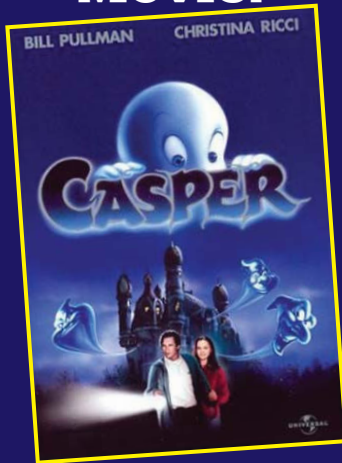
1200 Rudel Road

THIS INFORMATION IS BEING DISTRIBUTED AS A COMMUNITY SERVICE AND
TOMBALL ISD IS NOT A SPONSORING ORGANIZATION FOR THIS ACTIVITY.

**For more info
Call 281-351-7101**

2nd Saturday at the Depot
October 8 **Tomball, TX**
Spooktacular Bash!

Movie:



- **Trick-or-treating at Downtown Shops**
- **Creepy Caboose**
- **Ghostly Gazebo**
- **Monster Maze**
- **Concessions - G Que BBQ**
- **Decorate a Pumpkin** donated by
- **Games Galore**
- **Spooktacular Candy** donated by



**Come dressed in your costume
to receive a special prize!
(while supplies last)**

HISTORIC TOMBALL DEPOT PLAZA
201 South Elm ~ One block south of Main Street
Opens at 5:00 PM ~ Movie begins at dark
Free family entertainment for all ages
Bring your lawn chairs
No Glass Containers!
For more information, please call
Rosalie at 281-610-2595

In case of rain, event will be held at the Tomball Community Center, 221 Market Street.

City of Tomball

Fall Clean up

Week of October 10 to October 15, 2011

Monday – Saturday - 8:00 am - 4:30 pm

Objective:

Provide the citizens of Tomball the opportunity to dispose of large, hard-to-handle items that cannot be collected under the normal garbage service. **** (Remember this is for residents of Tomball only (must have City utility bill as proof); NO COMMERCIAL BUSINESS OPERATORS) ****

Roll Offs will be available at the City Landfill Site (0.4 miles north of E. Hufsmith on Rudolph) to dispose of the acceptable items. See map to landfill site below.

Acceptable Items:

- Lumber
- Bicycle parts
- Plywood (4 cubic yd. max)
- Rugs/carpet
- Siding
- Clothing
- Box springs and mattresses
- Bricks (small amount)
- Empty buckets or pails
- Rocks (small amount)
- Washing machines
- Dryers
- Water heaters
- Furniture
- Gutter material
- Cardboard boxes
- Lawn mowers (oil & gas removed)
- Dishwashers

Not Acceptable:

- Tree trimmings
- Limbs or stumps
- Tires
- Engine blocks
- Structural steel
- Equipment with oil or gasoline
- Fertilizers
- Pool chemicals
- Batteries
- Oil filters
- Insecticides
- Container with unmarked labels holding liquids
- Sealed containers of any type
- Large amounts of construction or demolition material
- Smoke detectors
- Pressurized vessels
- Flammable, combustible or corrosive products
- Raw meats, food products or byproducts
- Televisions
- Computers
- Refrigerators
- AC units
- Appliances with Freon or fluids
- Paint

All appliances must be drained and tagged by a licensed technician.

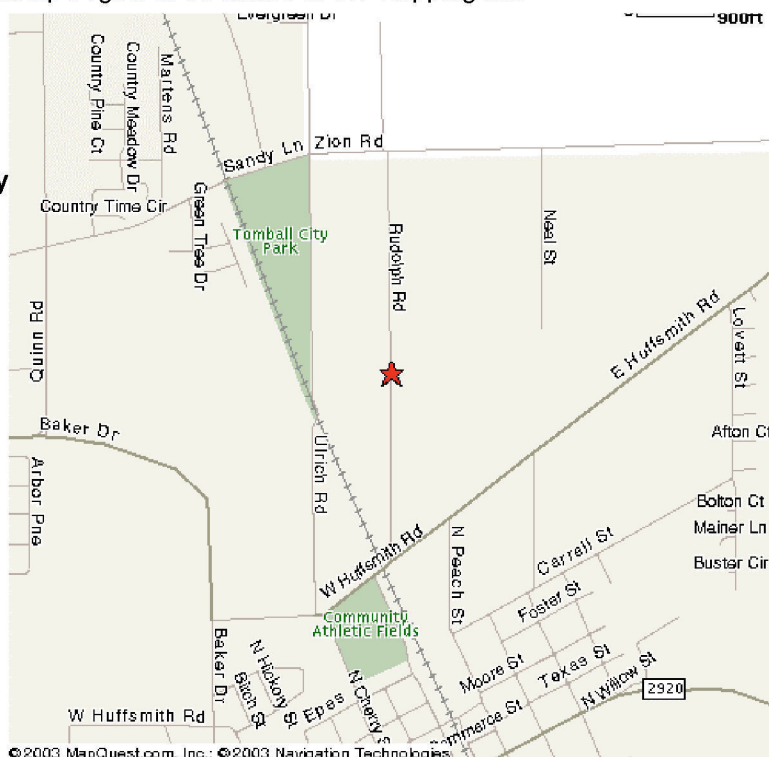
Acceptable items are anything that is inert and would not harm the environment before or after disposal into a landfill.

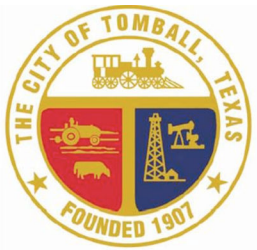
The City of Tomball will provide a free chipping service for brush and small limbs during the week of Tomball Cleanup. To participate, please call **(281) 290-1400** the week before the cleanup begins to be added to the chipping list.

CHIPPING SPECIFICATIONS:

- Turn all big ends toward road or in one direction
- Limit size to 6 ft.-8 ft., maximum
- Keep logs separate from limbs, nothing over 6" dia.
- Place limbs & brush near roadside and not on property
- Leaves, please bag for regular garbage pickup

Map to Tomball landfill site

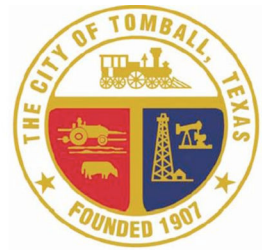




E-WASTE RECYCLING DAY

OCTOBER 15, 2011

9 AM to 1 PM



OBJECTIVE:

To provide a convenient e-waste recycling program to the residents of the City of Tomball, **NO COMMERCIAL BUSINESS OPERATORS**, in the form of an e-waste collection event. ****You must present a city utility bill as proof of residency.**** This event is sponsored by the City of Tomball, Waste Corporation of America, and CompuCycle.

PROGRAM:

CompuCycle will process all e-waste generated by the residents of the City of Tomball at no charge. CompuCycle adheres to the Responsible Recycling (R2) practices. The drive-thru e-waste drop off service will be located at **Lone Star College, 30555 Tomball Parkway, north entrance, parking lot N-3.**

ITEMS ACCEPTED – COMPUTER- RELATED ELECTRONICS:

Computers	Monitors & TVs	Keyboards
Routers	Hubs	Computer Mice
Laptops	Printers	Switches
Power Cords	Cables	Fax Machines
UPS	Servers	Cell Phones
Cellular Phones	DVD Players	Telephones
VCRs	Cable Boxes	Gaming Consoles
Clocks	Batteries	Radios
Toner Cartridges	Ink Jet Cartridges	Copiers

ITEMS NOT ACCEPTED:

Vacuum Cleaners	Refrigerators	Washing Machines
Weed - Eaters		

ABOUT CompuCycle:

CompuCycle, Houston's first EPA - accredited, R2 Certified responsible e-cycling solutions provider focuses on refurbishing equipment for resale, reuse of components, and environmentally responsible e-waste recycling.



7700 Kempwood Dr.
Houston, TX 77055



FALL FESTIVAL

Hosted by: Tomball Fire Department



FRIDAY & SATURDAY

OCTOBER 28 & 29, 2011

7pm - 12am

709 W. Main St.
Tomball, Texas

COME ENJOY THE GAMES & HAY RIDE

ACCEPTING CANNED GOODS AND PET FOOD FOR NON-PROFIT ORGANIZATIONS.

ALSO ACCEPTING DONATIONS FOR NEXT YEARS FALL FESTIVAL.

QUESTIONS? CONTACT LISA GRIFFIN 281-351-7101

November 1, 2011
5:30 P.M.
Nonna's Italian Grill
1025 Alma

Mayor's Coffee

Stop by to get in
touch with Tomball!



Gretchen Fagan
Mayor

For more information call 281-290-1002 or visit ci.tomball.tx.us

Regular City Council

Agenda Item

Data Sheet

Meeting Date: October 3, 2011

Topic:

Approve the Minutes of the September 19, 2011 Regular Council Meeting

Background:**Origination:**

City Secretary

Recommendation:

N/A

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

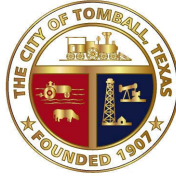
City Secretary

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

ATTACHMENTS:

Draft Minutes - September 19, 2011 Council Meeting

MINUTES OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**MONDAY, SEPTEMBER 19, 2011
6:00 P.M.**

1.0 Call to Order

The Council meeting was called to order by Mayor Gretchen Fagan. Other members present were:

Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson
Councilman Hudgens

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Weber
City Secretary – Doris Speer
City Attorney – Loren Smith
Police Chief – Robert Hauck
Finance Director – Glenn Windsor
Fire Chief – Randy Parr
Assistant City Engineer – Lori Lakatos
Assistant City Planner – Rodney Schmidt
Community Events Coordinator – Rosalie Dillon
Chief-NWEMS – Brian Petrilla
Executive Director-TEDC – Kelly Violette

draft

2.0 The invocation was led by Pastor Denny Dillon, NewLife Community Church

3.0 Pledges to U. S. and Texas Flags were led by Members of the Tomball High School Student Council

4.0 No public comments were received.

5.0 Mayor Fagan presented:

- Proclamation - *Tomball Charter Chapter American Business Women's Association Day* - September 22, 2011
- Swearing In Ceremony for New Tomball Police Officers - Keith Ferguson, Alfred Hernandez, Brandon Patin, and Alex Ramsey
- Presentation by Mayor Fagan to the Tomball Fire Department, Winners of the Annual Mayor's Challenge Community Blood Drive

Mayor Fagan introduced Al Rendl, Board of Directors, North Harris County Regional Water Authority:

- Mr. Rendl presented information regarding progress by NHCRWA in reducing groundwater use to meet the required timeline to meet the 2030 conversion schedule to reduce groundwater usage by 80% (Tom Rollin, Program Manager, and Lisa Sagstetter, Community Relations Coordinator, NHCRWA also present) and the City of Tomball's role in reducing groundwater usage.

6.0 Reports and Announcements:

- **Farmers Market** – 9 a.m.-1:00 p.m. (Every Saturday, September 24-November 12)
- September 28, 2011 – **Homecoming Parade and Rally at the Depot**, 6:00 p.m.–8:00 p.m.
- October 1, 2011 – **Bugs, Brew and Barbecue at the Depot**, 12:30 p.m.–6:00 p.m.
- October 8, 2011 – **Open House at the Central Fire Station**, 10:00 a.m.–3:00 p.m.
- October 8, 2011 – **2nd Saturday at the Depot "Spooktacular Bash" – 5:00 p.m.**
- October 10, 2011 – **Fall Cleanup Week**
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- **Walk Tomball!** (Every Saturday at 8:00 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
 - Doris Speer provided report that, in order to assist the Tri-County Fire victims in their recovery efforts, the City of Tomball will provide a single copy of a Tomball-born birth certificate, from May 1980 to present, for \$5.00; acceptable proof of loss must be presented with application. Birth certificates for those born outside of Tomball or before May 1980 will still cost \$23.00, as required under the Health and Safety Code, as these records are held by the State.

7.0 Motion was made by Councilman Townsend, second by Councilman Dodson, to approve the minutes of the following meetings:

- September 6, 2011 Special Council and Planning and Zoning Meeting
- September 6, 2011 Regular Council Meeting

Motion carried unanimously.

9.0 New Business:

9.8 Motion was made by Councilman Brown, second by Councilman Stoll, to move consideration of Item 9.8 before Old Business items. Councilman Dodson stated that he would abstain from participation in discussion or action on Item 9.8, based on the Conflict of Interest Affidavit previously filed with the City Secretary.

Rodney Schmidt advised Council that the applicant and his attorney have requested withdrawal of the current re-zoning request and will bring a new zoning request before the Planning and Zoning Commission on November 21, 2011.

No action necessary.

Consideration to approve **ZONING CASE P11-349**: Request by Peter and Sylvia Hildreth to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.928 acres of land, legally described as Lots 36, 43, 44, and 45 out of the Tomball Hills Addition Plat, within the City of Tomball, Harris County, Texas, generally located on the easterly side of State Highway 249, northerly of Zion Road, from the SF-9 - Single-Family Residential-9 District to the C - Commercial District.

- Conduct a Public Hearing on **ZONING CASE P11-349**
- Adopt of First Reading, Ordinance 2011-23, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 6.928 acres of land, legally described as lots 36, 43, 44, and 45 out of the Tomball Hills Addition Plat, Within the City of Tomball, Harris County, Texas, from the SF-9 - Single-Family Residential-9 District to the C -Commercial District; Said property being generally located on

the easterly side of State Highway 249, northerly of Zion 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

Mayor Fagan called a recess at 6:55 p.m.; upon reconvening into session at 7:02 p.m., the following items were considered:

8.0 Old Business:

- 8.1 Doris Speer presented information regarding action by Council to ratify the FY 2012 Budget and acknowledge that the proposed Tax Rate will raise more revenue than the FY 2011 Budget. Motion was made by Councilman Dodson, second by Councilman Brown to Ratify the FY 2012 Budget and to Find that the Proposed Tax Rate of \$0.341455/\$100 Generates More Property Tax Revenue than the FY 2011 Budget. Vote was as follows:

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

Motion carried, 3 votes Aye, 2 votes Nay.

- 8.2 Doris Speer presented recommendations regarding the proposed public hearing dates. Motion was made by Councilman Brown, second by Councilman Dodson, to Set October 3, 2011 at 6:00 p.m. and October 10, 2011 at 6:00 p.m. as the Dates for Public Hearings on the Proposed Tax Rate of \$0.341455/\$100.

Motion carried unanimously.

- 8.3 Kelly Violette presented the proposed Resolution. Motion was made by Councilman Dodson, second by Councilman Hudgens, to approve, on Second Reading, Resolution No. 2011-17-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 the City of Tomball to Make Direct Incentives to, or Expenditures for, the Expansion and Development of Medical Complex Drive; Containing Other Provisions Relating to the Subject; and Providing for Severability, Approving, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to or expenditures for, the expansion and development of Medical Complex Drive in the City of Tomball. The estimated amount of expenditures for such project is \$850,000.

Motion carried unanimously.

- 8.4 George Shackelford presented the proposed revised concept plan. Motion was made by Councilman Stoll, second by Councilman Hudgens, to approve Revised Concept Plan and Contract with Aquascapes Pool & Spas, LLC for the Construction of an Entry Fountain and Splash Pad at Depot Plaza, in the amount of \$67,435 plus \$4,200 for Additional Pavers to Create a Walkway from the Driveway Area on the South Side, for a Total Estimated Cost of \$71,635, of which a Portion will be Offset by Selling Pavers and Other Possible Donations, pending minor changes in the design.

Motion carried unanimously.

9.0 New Business:

- 9.1 Doris Speer presented the proposed dates for the vote on the proposed \$0.341455 tax rate. Motion was made by Councilman Hudgens, second by Councilman Stoll, to set October 17, 2011 at 6:00 p.m. and October 24, 2011 at 5:30 p.m. as the dates for Vote on Tax Rate Increase on the Proposed Tax Rate of \$0.341455/\$100.

Motion carried unanimously.

- 9.2 George Shackelford presented the proposed Heart Walk. Motion was made by Councilman Townsend, second by Councilman Brown, to approve Request from Tomball Regional Hospital for City Support of the "2011 Heart Walk" on Saturday, October 22, 2011, to Support the American Heart Association.

Motion carried unanimously.

- 9.3 Doris Speer presented the proposed Request by WCA Waste Corporation. Motion was made by Councilman Dodson, second by Councilman Brown, to approve Request by WCA Waste Corporation (WCA) for an Annual CPI Adjustment of 3.4%, to become effective October 1, 2011.

Motion carried unanimously.

- 9.4 Doris Speer presented an overview of the proposed Amendment. Motion was made by Councilman Dodson, second by Councilman Brown, to approve proposed First Amendment to Solid Waste Collection and Disposal Service Contract between the City of Tomball and WCA Waste Corporation (WCA), to provide an adjustment request period of May 31-June 1 of each contract year, with the effective date for rate adjustments to remain as October 1.

Motion carried unanimously.

- 9.5 Lori Lakatos presented an overview of the proposed Plats. Motion was made by Councilman Dodson, second by Councilman Brown, to approve the Following Plats, as recommended by Planning and Zoning Commission:

- **THE POINT FINAL PLAT**: Being a subdivision of 6.3637 acres of land out of the Claude M. Pillot Survey, Abstract No. 632, in the City of Tomball, Harris County, Texas.
- **KLEIN ISD BERNSHAUSEN ELEMENTARY SCHOOL SEC. 1**: Being a Replat of Lots 485, 486 and part of lot 484 of the five-acre tracts Tomball Townsite Vol. 2, Pg. 65 H.C.M.R., a subdivision of 13.8198 acres out of the J. Pruitt Survey, Abstract No. 629 Harris County, Texas.
- **ROSE GARDENS REPLAT**: Being a subdivision of 0.5062 acre tract, 22, 049.39 Square Feet, Being a Replat of New Lot 25, Block 82 of Kana Industrial Park, as recorded in Film Code No. 437064 Harris County Map Records and 7,827.73 Square Feet of Abandoned Ash Street and Timkin Road Right of Way Situated in the William Hurd Survey a-371, Harris County, Texas.

Motion carried unanimously.

- 9.6 Rodney Schmidt presented the staff report on **ZONING CASE P11-347**: Request by John Thomas, on behalf of R.K. McGaughy, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 3.9078 acres of land, legally described as Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, generally located on the westerly side of State Highway 249, northerly of Holderrieth Road, from the AG-Agricultural District to the C-Commercial District.

- Mayor Fagan opened the Public Hearing on **ZONING CASE P11-347** at 7:25 p.m.; no public comments being received, Mayor Fagan closed the public hearing at 7:25 p.m.
- Motion was made by Councilman Townsend, second by Councilman Dodson, to read Ordinance No. 2011-21 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 2011-21, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 3.9078 acres of land, legally described as tract 2aa out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, from the AG-Agricultural District to the C-Commercial District; said property being generally located on the westerly side of State Highway 249, northerly of Holderrieth 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 Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>
Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>

Motion carried unanimously.

- 9.7 Rodney Schmidt presented the staff report on **ZONING CASE P11-348**: Request by the Tomball Economic Development Corporation, on behalf of Capital One, National Association, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 97.48 acres of land, legally described as Lots 386 and 387 and Tract 385 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70, within the City of Tomball, Harris County, Texas, generally located on the westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth Road, from the SF-6 - Single-Family Residential-6 District and C -Commercial District to the LI - Light Industrial District.

- Mayor Fagan opened the Public Hearing on **ZONING CASE P11-348** at 7:30 p.m.; no public comments being received, Mayor Fagan closed the public hearing at 7:30 p.m.
- Motion was made by Councilman Brown, second by Councilman Stoll, to read Ordinance No. 2011-22 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 2011-22, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 97.48 acres of land, legally described as lots 386 and 387 and tract 385 out of the Tomball Outlots and tract 4 out of the Elizabeth Smith Survey, Abstract 70, within the City of Tomball, Harris County, Texas, from the SF-6 - Single-Family Residential-6 District and C-Commercial District to the LI-Light Industrial District; Said property being generally located on the westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth 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 Dodson	<u>Aye</u>
Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>

Motion carried unanimously.

- 9.9 George Shackelford presented the proposed 2011-2016 Strategic Plan. Motion was made by Councilman Brown, second by Councilman Dodson, to approve the 2011-2016 Strategic Plan.

Motion carried unanimously.

- 9.10 Mayor Fagan presented the Employment Contract for George Shackelford. Motion was made by Councilman Dodson, second by Councilman Brown, to approve the Amendments to and Extension of the Employment Contract for George Shackelford, City Manager.

Motion carried unanimously.

- 10.0 Motion was made by Councilman Townsend, second by Councilman Dodson, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this _____ day of _____ 2011.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Meeting Date: October 3, 2011

Data Sheet

Topic:

Adopt on Second Reading, Ordinance 2011-21, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 3.9078 acres of land, legally described as tract 2aa out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, from the AG-Agricultural District to the C-Commercial District; said property being generally located on the westerly side of State Highway 249, northerly of Holderrieth 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 1, 2011, the Engineering and Planning Department received an application to rezone the subject site from the Agricultural District to the Commercial District. The rezoning application states the proposed use of the property will be for "Office, Restaurants, Service Stations, etc." The property is currently undeveloped.

The site was annexed into the City of Tomball as part of the 172.812-acre Tomball Expressway Road right-of-way annexation in December 2008. At the time of annexation, the property was given an interim zoning classification of Agricultural District.

The uses along the State Highway 249 corridor through Tomball are predominately commercial and retail related. As such, the rezoning and permitted land uses in the Commercial District would be in keeping with the existing and intended land uses in the vicinity.

After reviewing the rezoning request, staff prepared a report to the Planning and Zoning Commission recommending approval. On September 12, 2011, the Planning and Zoning Commission, after conducting a public hearing on this request, voted to recommend approval of Zoning Case P11-347. This case is now being forwarded to City Council for consideration and possible action.

On September 19, 2011 Council adopted Ordinance No. 2011-22 on First Reading

Origination:

John Thomas, on behalf of R.K. McGaughy

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted to approve Zoning Case P11-347.

Funding:

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

City Secretary

ACTION TAKEN

APPROVAL ☐ YES ☐ NO	READINGS PASSED ☐ 1 ST ☐ 2 ND	OTHER
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ATTACHMENTS:

Ordinance No. 2011-21

Notice of Public Hearing

Property Owner Notification Letter

P11-347 Staff Report

ORDINANCE NO. 2011-21

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 3.9078 ACRES OF LAND, LEGALLY DESCRIBED AS TRACT 2AA OUT OF THE C.N. PILLOT SURVEY, ABSTRACT NUMBER 632, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AG-AGRICULTURAL DISTRICT TO THE C-COMMERCIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE WESTERLY SIDE OF STATE HIGHWAY 249, NORTHERLY OF HOLDERRIETH 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 3.9078 acres of land, legally described as Tract 2AA out of the C.N. Pilot Survey, Abstract Number 632, generally located on the westerly side of State Highway 249, northerly of Holderrieth Road, from the AG-Agricultural District to the C-Commercial District; and

Whereas, at least eight (8) 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 AG-Agricultural District to the C-Commercial District; and

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

Whereas, the Planning and 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 AG-Agricultural District to the C-Commercial 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 3.9078 acres of land, legally described as Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, is hereby changed from the AG-Agricultural District to the C-Commercial District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas-Ordinance 2008-01, ("Zoning District Map"), shall be revised and amended to show the designation of 3.9078 acres of land, legally described as Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, generally located on the westerly side of State Highway 249, northerly of Holderrieth Road, as C-Commercial 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 3.9078 acres of land, legally described as Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, generally located on the westerly side of State Highway 249, northerly of Holderrieth Road, to C-Commercial 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 19TH DAY OF SEPTEMBER 2011.

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 3RD DAY OF OCTOBER 2011.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARINGS
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
SEPTEMBER 12, 2011
&
CITY COUNCIL
SEPTEMBER 19, 2011**



Notice is Hereby Given that Public Hearings will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, September 12, 2011, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, September 19, 2011, 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 P11-347: Request by John Thomas, on behalf of R.K. McGaughy, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 3.9078 acres of land, legally described as Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, generally located on the westerly side of State Highway 249, northerly of Holderrieth Road, from the AG-Agricultural District to the C-Commercial District.

ZONING CASE P11-348: Request by the Tomball Economic Development Corporation, on behalf of Capital One, National Association, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 97.48 acres of land, legally described as Lots 386 and 387 and Tract 385 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70, within the City of Tomball, Harris County, Texas, generally located on the westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth Road, from the SF-6 - Single-Family Residential-6 District and C - Commercial District to the LI - Light Industrial District.

ZONING CASE P11-349: Request by Peter and Sylvia Hildreth to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.928 acres of land, legally described as Lots 36, 43, 44, and 45 out of the Tomball Hills Addition Plat, within the City of Tomball, Harris County, Texas, generally located on the easterly side of State Highway 249, northerly of Zion Road, from the SF-9 - Single-Family Residential-9 District to the C - Commercial District.

Persons interested in these cases will be given an opportunity to be heard. Action by the Planning and 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 one or more of the above cases, 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 and Zoning Commission. 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 Engineering & Planning Department office, located at 501 James Street, Tomball, TX 77375. **Contact Assistant City Planner** Rodney Schmidt, (281) 290-1410, rschmidt@ci.tomball.tx.us

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 **8th** day of **September** 2011 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

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 AND ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P11-347

APPLICANT: John Thomas, on behalf of R.K. McGaughy

LOCATION: Westerly side of State Highway 249, northerly of Holderrieth Road

PROPOSAL: Request to amend the City's Comprehensive Zoning Ordinance to rezone approximately 3.9078 acres of land, legally described as Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, from the AG-Agricultural District to the C-Commercial District.

* * *

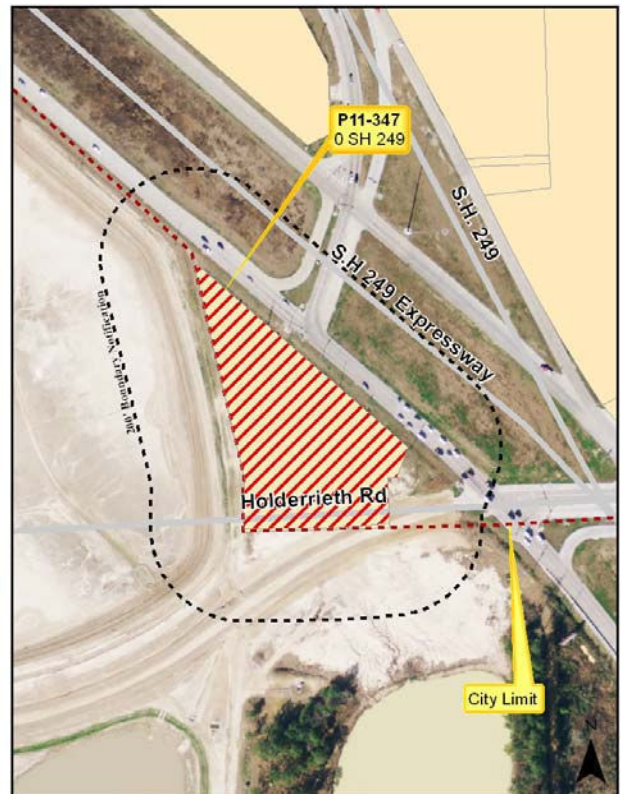
CONTACT PLANNER: Rodney Schmidt

PHONE: (281) 290-1410

E-MAIL: rschmidt@ci.tomball.tx.us

Interested parties may contact the City Planner between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The rezoning 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 Engineering and Planning 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.

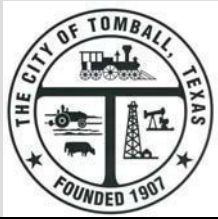


**Planning and Zoning Commission
Public Hearing:
Monday, September 12, 2011, 6:00 PM**

**City Council Public Hearing:
*Monday, September 19, 2011, 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 and Zoning Commission.



Rezoning Staff Report

Planning and Zoning Commission Hearing Date: September 12, 2011

Rezoning Case: P11-347
Property Owner(s): R.K. McGaughy
Applicant(s): John Thomas
Legal Description: Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas
Location: Generally located on the westerly side of State Highway 249, northerly of Holderrieth Road
Area: 3.9078 acres
Present Zoning and Use: AG-Agricultural District / Undeveloped
Comp Plan Designation: Commercial
Proposed Zoning and Use: C-Commercial District / Office, restaurants, service station, etc.

It should be noted, that any use permitted in the proposed district would be allowed at this location if the zoning is changed. Furthermore, the Planning & Zoning Commission may consider zoning classifications other than that sought by the applicant for this property.

Adjacent Zoning & Land Uses:

North: C-Commercial District / SH 249 Expressway ROW and undeveloped land
South: ETJ (unzoned) / Undeveloped land and Harris County Flood Control District detention facility
East: C-Commercial District / SH 249 ROW
West: ETJ (unzoned) / Harris County Flood Control District detention facility

BACKGROUND

The subject site is 3.9078 acres of land legally described as Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas. The site is generally located on the westerly side of State Highway 249 (SH 249), northerly of Holderrieth Road (Exhibit "A"). The entire site is currently undeveloped.

The property was annexed into the City of Tomball on December 1, 2008 as part of the 172.812 acre SH 249 Bypass (Tomball Expressway) Road Right-of-Way annexation (Exhibit "B"). Because the subject site was annexed after the passage of the Zoning Ordinance and because a concurrent rezoning request was not filed by the property owner, the subject site was given a

zoning classification of AG-Agricultural District. Section 6.1 of the Zoning Ordinance states, “For any period of time following official annexation by the City until a zoning action has been officially adopted to zone the land, the interim zoning of the land shall be considered to be Agricultural (‘AG’), and all zoning and development regulations of the ‘AG’ zoning district shall be adhered to with respect to the development and use of the land.”

On August 1, 2011, the applicant submitted a rezoning application and letter (Exhibits “C” and “D”) to rezone the subject site from the AG-Agricultural District to the C-Commercial District in order to allow land uses such as “office, restaurants, service stations, etc.”

ANALYSIS

According to the Tomball Zoning Ordinance, the C-Commercial District “is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Some light manufacturing may also be allowed with certain conditions. The uses envisioned for the district will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration.”

The uses along the SH 249 corridor through Tomball are predominately commercial and retail related. However, much of the land in the immediate vicinity of the subject site is currently undeveloped. To the north of the subject site is SH 249 Expressway ROW and undeveloped land within the Commercial District, to the south is undeveloped land and a Harris County Flood Control District detention facility within the unzoned extraterritorial jurisdiction of Tomball, to the east is SH 249 ROW within the Commercial District, and to the west is a Harris County Flood Control District detention facility within the unzoned extraterritorial jurisdiction of Tomball (Exhibits “A” and “E”).

The proposed rezoning to the C-Commercial District is consistent with the “Commercial” Comprehensive Plan land use designation (Exhibit “F”). The Comprehensive Plan states that the Commercial land use designation “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.” Additionally, the “Commercial Planning Guidelines” outlined in the Comprehensive Plan provide that commercial development is to be compatible with surrounding land uses and that consideration for the impacts of commercial development on the local and regional roadway network shall be determined.

Due to the fact the requested rezoning is consistent with the Comprehensive Plan’s Future Land Use Plan Map, is consistent with the intended uses in the area, and will help support the commercial development pattern along the SH 249 corridor, staff is supportive of the rezoning request.

As a matter of information, 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. A site plan application, which require 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 Engineering & Planning Department and Fire Marshal’s Office prior to a building permit application submittal.

ZONING CONSIDERATIONS

In making its recommendation regarding a proposed zoning change, the Planning and 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 along the SH 249 corridor through Tomball are predominately commercial and retail related. However, much of the land in the immediate vicinity of the subject site is currently undeveloped. To the north of the subject site is SH 249 Expressway ROW and undeveloped land within the Commercial District, to the south is undeveloped land and a Harris County Flood Control District detention facility within the unzoned extraterritorial jurisdiction of Tomball, to the east is SH 249 ROW within the Commercial District, and to the west is a Harris County Flood Control District detention facility within the unzoned extraterritorial jurisdiction of Tomball. See site photos (Exhibit “G”).

Staff feels the rezoning and permitted land uses in the C-Commercial District would be in keeping with the existing and intended land 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.**

There is currently sufficient water, sewer, and gas capacity in the area to service this site. The future development of the site may require the extension of utilities to and through the site.

SH 249 and SH 249 Expressway are designated as “State Highways” on the adopted Major Thoroughfare Plan (MTP). The MTP states, “The main purpose of State Highways and FM Roadways is to move large volumes of traffic through urban areas and provide direct access to local freeways, while also providing controlled access to adjacent businesses.” The right-of-way for State Highway 249 and State Highway 249 Expressway has been acquired in the vicinity and the impacts to these roadways due to the rezoning of the site are anticipated to be minimal.

The development of the site for commercial purposes would not impact the public school system as it would not increase attendance to the school system.

As a matter of information, the future development of the site will likely result in increased impervious area, thereby altering absorption rates and increasing surface runoff. Drainage improvements shall comply with the requirements of the City’s Engineering and Planning Department.

- 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 a limited number of undeveloped properties zoned Commercial District in the immediate vicinity. However, there is a large amount of vacant land available along Holderrieth Road and in the rest of the City of Tomball zoned Commercial District. Most of the undeveloped acreage along SH 249 and SH 249 Expressway (within the City of Tomball) is zoned Agricultural District because of the December 2008 annexation, however it is anticipated that these properties will be rezoned at some point in the future to accommodate future commercial growth.

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.

The subject property is located along the SH 249 corridor which is extensively developed with commercial and retail uses. The surrounding commercial and retail uses have developed steadily for a number of years due to the high traffic volumes and visibility on SH 249.

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 zone change is not anticipated to adversely affect health, safety, morals, or general welfare.

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

According to the Comprehensive Plan, rezonings are “to conform to the intended future land use pattern shown on the Future Land Use Plan and should occur only when economic, physical, social, and other factors will allow the proposed land use to be developed:

- Within the capacities of existing or funded infrastructure and public facilities and services;
- In a compatible manner with surrounding land uses;
- To standards specified for and appropriate to the proposed land use; and,
- In a way that furthers or helps achieve the goals of the Plan.”

The request is consistent with the Comprehensive Plan’s land use designation. The Comprehensive Plan states that the Commercial land use “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. Small professional office uses such as physicians, accountants, or therapy offices would be permitted.”

Additionally, the “Commercial Planning Guidelines” aim to ensure commercial development compatibility with surrounding land uses and provide proper transitions, buffers, or architectural reliefs to minimize negative impacts to adjacent uses.” The proposed rezoning of the property to the Commercial District is consistent with the Comprehensive Plan’s Future Land Use Plan Map, will help to ensure commercial land use consistency along the SH 249 corridor, and will enhance the area’s long-term economic viability.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on September 1, 2011 and, as of the writing of this report, no public comment forms were received.

RECOMMENDATION

That the Planning and Zoning Commission recommend:

1. APPROVAL of Zoning Case P11-347 based on the following:
 - a. The proposed zoning of Commercial District will be compatible with the land uses along the SH 249 corridor.
 - b. The proposed zoning of Commercial District is compatible with the Tomball Comprehensive Plan.
 - c. The proposed zoning of Commercial District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.
 - d. There is sufficient utility capacity to service commercial uses on this site.
2. APPROVAL of the staff report as the Planning and Zoning Commission’s final recommendation to the City Council.

EXHIBITS

- A. Aerial Photo
- B. Ordinance 2008-32 Annexation Map
- C. Rezoning Application
- D. Rezoning Request Letter
- E. Location/Zoning Map
- F. Comprehensive Plan Future Land Use Map
- G. Site Photos

Exhibit "A"
Aerial Photo

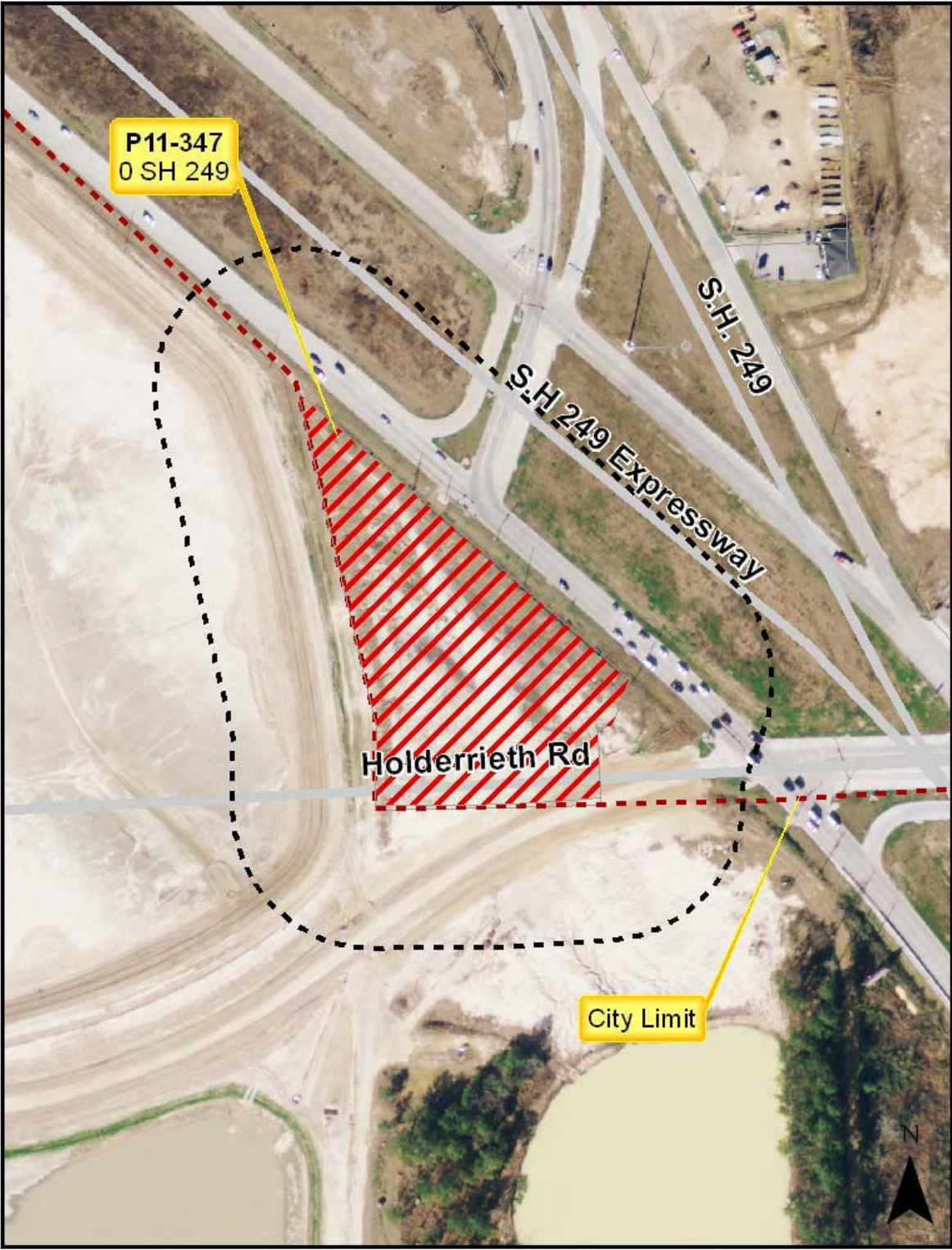
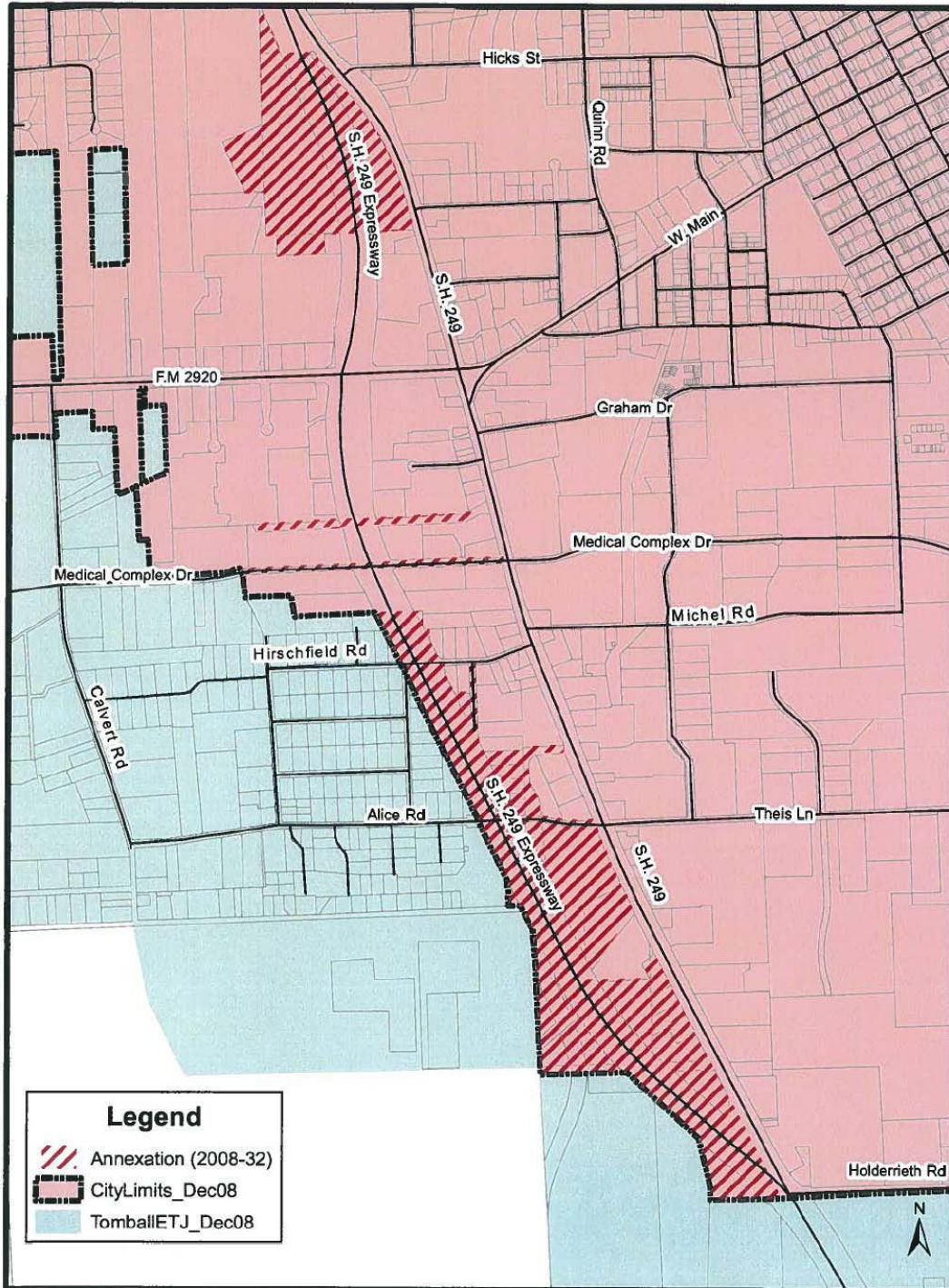


Exhibit "B"
Ordinance 2008-32 Annexation Map

City of Tomball Annexation (Ordinance #:2008-32)



Date Created: 2/26/09
Map Created By: City of Tomball
Engineering & Planning Dept.

Exhibit "C"
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

Name: John G. Thomas Title: Surveyor
Mailing Address: 14340 Torrey Chase Blvd. City: Houston State: Texas
Zip: 77014
Phone: (281) 440-7730 Fax: (281) 440-7737 Email: john@thomaslandsurveyin.com

Owner

Name: R.K. McGaughy, Trustee Title: _____
Mailing Address: 14343-B Torrey Chase Blvd. City: Houston State: Texas
Zip: 77014
Phone: (281) 580-4855 Fax: (281) 580-3808 Email: terprealestate@mindspring.com

Engineer/Surveyor (if applicable)

Name: _____ Title: _____
Mailing Address: _____ City: _____ State: _____
Zip: _____
Phone: () _____ Fax: () _____ Email: _____

Description of Proposed Project: Vacant property - proposed Commercial development
Physical Location of Property: West Side St. Hwy 249 Bypass 900ft North of Willowick.
[General Location - approximate distance to nearest existing street corner]

Legal Description of Property: Claude Pillat Survey, A-632
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: Agricultural District

Current Use of Property: NA

Proposed Zoning District: Commercial District

Proposed Use of Property: Office, Restaurants, Service Stations, etc.

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

www.ci.tomball.tx.us

044-058-000-0290
HCAD Identification Number: 044-058-000-029 Acreage: 3.9078 Acres

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 John H. Thomas 7/27/11
Signature of Applicant Date

X R. B. McLaughlin, Jr. 7/27/11
Signature of Owner Date

Exhibit "D"
Rezoning Request Letter



July 29, 2011

Reference: 3.9078 Acres
Claude M. Pillot Survey, A-632
Tomball, Harris County, Texas

To Whom It May Concern:

We have requested a zoning change on the referenced tract from ag zoning to Commercial zoning as the tract is proposed to be used for commercial purposes.

Respectfully


John G. Thomas

14340 Torrey Chase Boulevard · Suite 270 · Houston, Texas 77014
(281) 440-7730 · Fax (281) 440-7737
www.thomaslandsurveying.com

Exhibit "E"
Location/Zoning Map

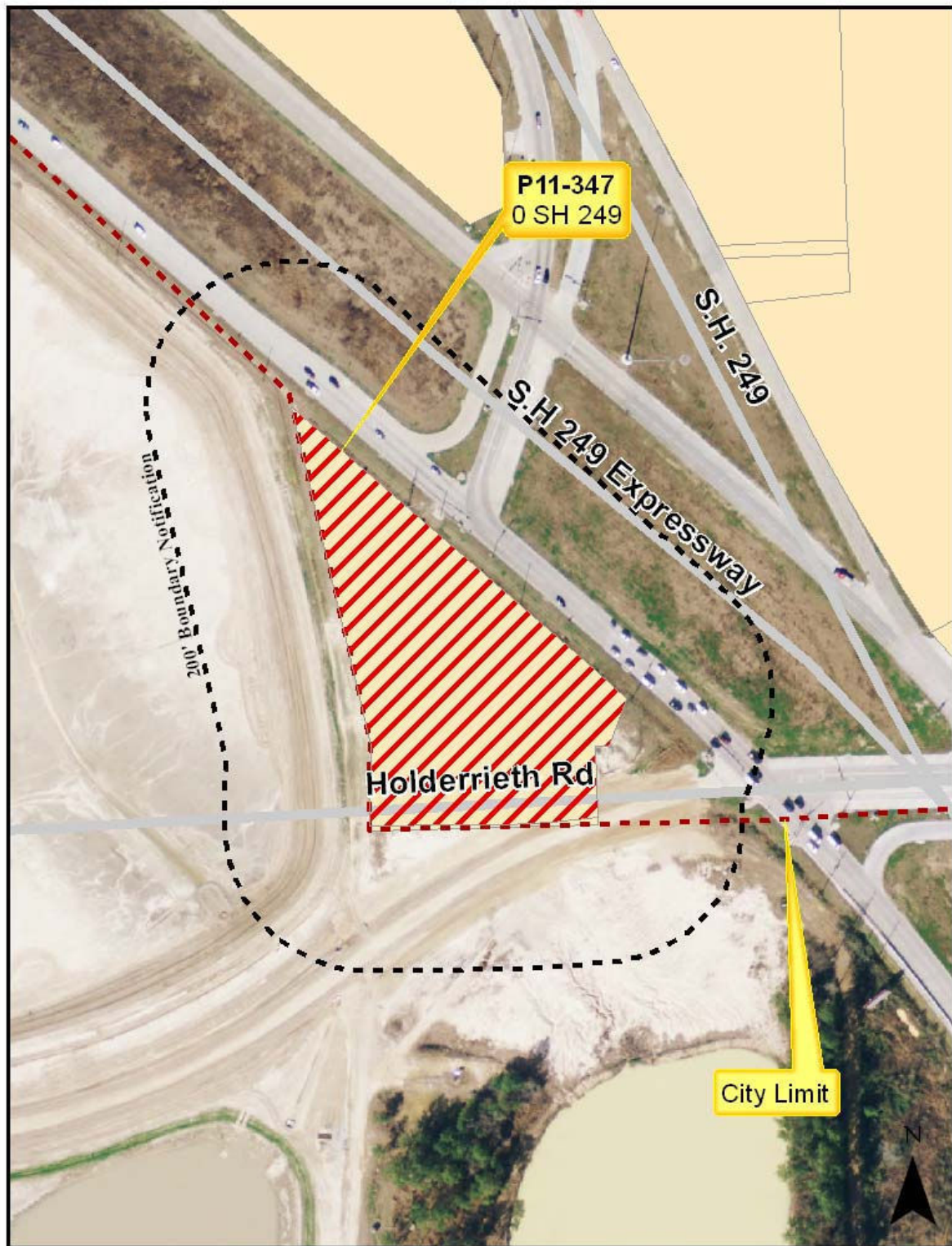


Exhibit "F"
Comprehensive Plan Future Land Use Map



**Exhibit “G”
Site Photos**



Figure 1: Southwesterly view of subject site.



Figure 2: Southeasterly view down S.H. 249 Expressway. Subject site on right.



Figure 3: Northwesterly view up S.H. 249 Expressway. Subject site on left.



Figure 4: Northeasterly view. Subject site on left.

Regular City Council

Agenda Item

Meeting Date: October 3, 2011

Data Sheet

Topic:

Adopt on Second Reading, Ordinance No. 2011-22, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 97.48 acres of land, legally described as lots 386 and 387 and tract 385 out of the Tomball Outlots and tract 4 out of the Elizabeth Smith Survey, Abstract 70, within the City of Tomball, Harris County, Texas, from the SF-6 - Single-Family Residential-6 District and C-Commercial District to the LI-Light Industrial District; Said property being generally located on the westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth 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 3, 2011, the Engineering and Planning Department received an application to rezone the subject site from the Single-Family Residential-6 and Commercial Districts to the Light Industrial District. The rezoning application states the proposed use of the property will be for a "Business Park." The property is currently undeveloped.

On May 24, 2011, the Tomball Economic Development Corporation (TEDC) Board of Directors approved the designation of the subject site as a possible location for a business and technology park. On July 18, 2011, Tomball City Council approved the business and technology park project and the acquisition of the subject site.

After reviewing the rezoning request, staff prepared a report to the Planning and Zoning Commission recommending approval. On September 12, 2011, the Planning and Zoning Commission, after conducting a public hearing on this request, voted to recommend approval of Zoning Case P11-348. This case is now being forwarded to City Council for consideration and possible action.

On September 19, 2011 Council adopted Ordinance No. 2011-22 on First Reading.

Origination:

Tomball Economic Development Corporation, on behalf of Capital One, National Association

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted to recommend approval of Zoning Case P11-348.

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:

Ordinance No. 2011-22

Notice of Public Hearing

Property Owner Notification Letter

P11-348 Staff Report

Public Comment Form - Lorie Rabalais

ORDINANCE NO. 2011-22

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 97.48 ACRES OF LAND, LEGALLY DESCRIBED AS LOTS 386 AND 387 AND TRACT 385 OUT OF THE TOMBALL OUTLOTS AND TRACT 4 OUT OF THE ELIZABETH SMITH SURVEY, ABSTRACT 70, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE SF-6 - SINGLE-FAMILY RESIDENTIAL-6 DISTRICT AND C-COMMERCIAL DISTRICT TO THE LI-LIGHT INDUSTRIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE WESTERLY SIDE OF HUFSMITH-KOHRVILLE ROAD, NORTHERLY OF HOLDERRIETH 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 97.48 acres of land, legally described as Lots 386 and 387 and Tract 385 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70, generally located on the westerly side of Hufmsith-Kohrville Road, northerly of Holderrieth Road, from the SF-6 - Single-Family Residential-6 District and C-Commercial District to the LI-Light Industrial District; and

Whereas, at least eight (8) 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 SF-6 - Single-Family Residential-6 District and C-Commercial District to the LI-Light Industrial District; and

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

Whereas, the Planning and 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 SF-6 - Single-Family Residential-6 District and C-Commercial District to the LI-Light Industrial 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 97.48 acres of land, legally described as Lots 386 and 387 and Tract 385 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70, within the City of Tomball, Harris County, Texas, is hereby changed from the SF-6 - Single-Family Residential-6 District and C-Commercial District to the LI-Light Industrial District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas-Ordinance 2008-01, ("Zoning District Map"), shall be revised and amended to show the designation of 97.48 acres of land, legally described as Lots 386 and 387 and Tract 385 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70, generally located on the westerly side of Hufmsith-Kohrville Road, northerly of Holderrieth Road, as LI-Light Industrial 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 97.48 acres of land, legally described as Lots 386 and 387 and Tract 385 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70, generally located on the westerly side of Hufmsith-Kohrville Road, northerly of Holderrieth Road, to LI-Light Industrial 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 19TH DAY OF SEPTEMBER 2011.

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 3RD DAY OF OCTOBER 2011.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARINGS
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
SEPTEMBER 12, 2011
&
CITY COUNCIL
SEPTEMBER 19, 2011**



Notice is Hereby Given that Public Hearings will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, September 12, 2011, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, September 19, 2011, 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 P11-347: Request by John Thomas, on behalf of R.K. McGaughy, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 3.9078 acres of land, legally described as Tract 2AA out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, generally located on the westerly side of State Highway 249, northerly of Holderrieth Road, from the AG-Agricultural District to the C-Commercial District.

ZONING CASE P11-348: Request by the Tomball Economic Development Corporation, on behalf of Capital One, National Association, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 97.48 acres of land, legally described as Lots 386 and 387 and Tract 385 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70, within the City of Tomball, Harris County, Texas, generally located on the westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth Road, from the SF-6 - Single-Family Residential-6 District and C - Commercial District to the LI - Light Industrial District.

ZONING CASE P11-349: Request by Peter and Sylvia Hildreth to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.928 acres of land, legally described as Lots 36, 43, 44, and 45 out of the Tomball Hills Addition Plat, within the City of Tomball, Harris County, Texas, generally located on the easterly side of State Highway 249, northerly of Zion Road, from the SF-9 - Single-Family Residential-9 District to the C - Commercial District.

Persons interested in these cases will be given an opportunity to be heard. Action by the Planning and 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 one or more of the above cases, 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 and Zoning Commission. 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 Engineering & Planning Department office, located at 501 James Street, Tomball, TX 77375. **Contact Assistant City Planner** Rodney Schmidt, (281) 290-1410, rschmidt@ci.tomball.tx.us

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 **8th** day of **September** 2011 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

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 AND ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P11-348

APPLICANT: Tomball Economic Development Corporation, on behalf of Capital One, National Association

LOCATION: Westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth Road

PROPOSAL: Request to amend the City's Comprehensive Zoning Ordinance to rezone approximately 97.48 acres of land, legally described as Lots 386 and 387 and Tract 385 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70, within the City of Tomball, Harris County, Texas, from the SF-6 - Single-Family Residential-6 District and C-Commercial District to the LI - Light Industrial District.

* * *

CONTACT PLANNER: Rodney Schmidt

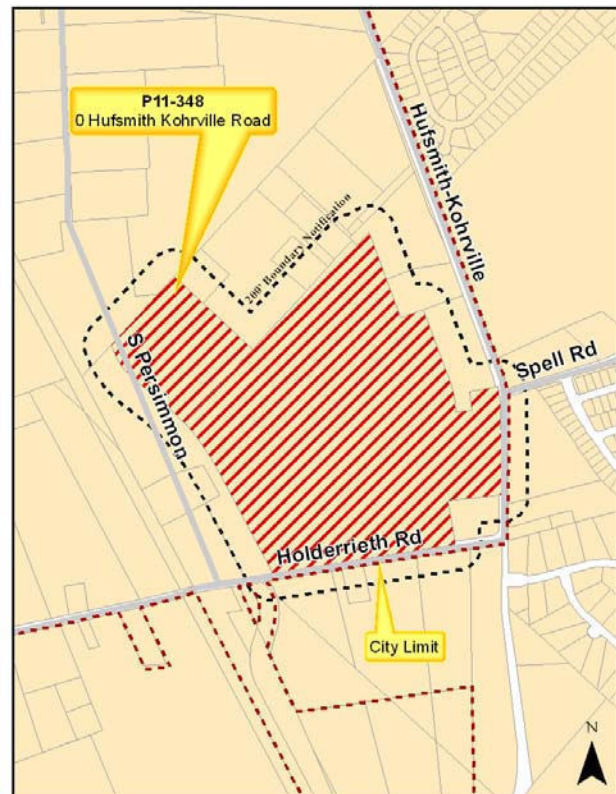
PHONE: (281) 290-1410

E-MAIL: rschmidt@ci.tomball.tx.us

Interested parties may contact the City Planner between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The rezoning 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 Engineering and Planning 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.

City of Tomball Engineering and Planning Department – 501 James Street – Tomball, TX 77375



**Planning and Zoning Commission
Public Hearing:**

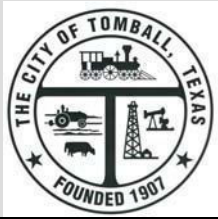
Monday, September 12, 2011, 6:00 PM

City Council Public Hearing:

***Monday, September 19, 2011, 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 and Zoning Commission.



Rezoning Staff Report

Planning and Zoning Commission Hearing Date: September 12, 2011

Rezoning Case: P11-348
Property Owner(s): Capital One, National Association
Applicant(s): Tomball Economic Development Corporation
Legal Description: Lots 385, 386 and 387 out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70
Location: Generally located on the westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth Road
Area: 97.48 acres
Present Zoning and Use: Single-Family Residential-6 and Commercial Districts / Undeveloped
Comp Plan Designation: Business/Industrial and Rural Residential
Proposed Zoning and Use: Light Industrial District / Business and technology park

It should be noted, that any use permitted in the proposed district would be allowed at this location if the zoning is changed. Furthermore, the Planning & Zoning Commission may consider zoning classifications other than that sought by the applicant for this property.

Adjacent Zoning & Land Uses:

North: Single-Family Estate Residential-20 and Agricultural Districts / Undeveloped, Residential, and Agricultural
South: General Retail District and Unzoned ETJ / Retail, Undeveloped, Commercial, Industrial, and Residential
East: Agricultural District and Unzoned ETJ / Commercial, Undeveloped, and Residential
West: Agricultural, Single-Family Estate Residential-20, and Light Industrial Districts / Undeveloped and Industrial

BACKGROUND

The subject site is legally described as Lots 385, 386 and 387 (Exhibit "A") out of the Tomball Outlots and Tract 4 out of the Elizabeth Smith Survey, Abstract 70 within the City of Tomball, Harris County, Texas totaling approximately 97.48 acres. The site is generally located on the westerly side of Hufsmith-Kohrville Road, northerly of Holderrieth Road and is currently undeveloped (Exhibit "B").

On May 24, 2011, the Tomball Economic Development Corporation (TEDC) Board of Directors approved the designation of the subject site as a possible location for a business and technology park. On July 18, 2011, Tomball City Council approved the business and technology park project and the acquisition of the subject site.

On August 3, 2011, the Engineering & Planning Department received a rezoning application and letter for the subject site (Exhibits “C” and “D”). As part of their due diligence phase, the applicant is requesting to rezone the property from the Single-Family Residential-6 and Commercial Districts to the Light Industrial District to properly zone the subject site for their intended business and technology park.

ANALYSIS

According to the Tomball Zoning Ordinance, “The LI, Light Industrial, district is intended primarily for the conduct of light manufacturing, assembling and fabrication activities, and for warehousing, research and development, wholesaling and service operations that do not typically depend upon frequent customer or client visits. Such uses do require accessibility to major thoroughfares, major highways, and/or other means of transportation such as the railroad.”

There is a mixture of land uses in the vicinity (Exhibits “B” and “E”). To the north of the subject site is undeveloped, residential, and agricultural land in the Single-Family Estate Residential-20 and Agricultural Districts; to the south is a retail, undeveloped, commercial, industrial, and residential land within the General Retail District and Tomball’s unzoned extraterritorial jurisdiction; to the east is commercial, undeveloped, and residential land in the Agricultural District and Tomball’s unzoned extraterritorial jurisdiction; and to the west is undeveloped and industrial land in the Agricultural, Single-Family Estate Residential-20, and Light Industrial Districts.

The proposed rezoning to the Light Industrial District is generally consistent with the Comprehensive Plan land use designations (Exhibit “F”). The majority of the site is designated as “Business/Industrial” with the northern tip designated as “Rural Residential.” The Comp Plan states, “Boundary lines are to be considered approximate and discretion may be used in determining them. Variations, particularly where significant natural or manmade features are present, may be acceptable. It will be the responsibility of the Tomball City Council, with the recommendation of the Planning & Zoning Commission, city planning staff, and guidance provided by the Comprehensive Plan to establish and more accurately define the boundaries if questions arise.”

The Comprehensive Plan states the Business/Industrial land use designation is “where industrial and intensive employment activities should occur. Activities that will require unenclosed assembly, repair and/or storage and require heavy truck or rail transportation support are acceptable. Also included would be warehousing and distribution facilities, as well as offices and showrooms.” The business and technology park proposed by the TEDC will be generally consistent with the land uses envisioned for Business/Industrial areas.

The business and technology park is anticipated to accomplish the following items from the Comp Plan’s “Business/Industrial Planning Guidelines”:

- Locate employment designated land uses with access to major transportation corridors.

- Ensure that truck traffic associated with employment-related land uses do not use residential streets for access.
- Encourage high intensity employment in campus or urbanized areas that are adjacent to collector or arterial roadways with access to transit and an integrated pedestrian environment.

The proposed project also meets Goal EO 1 of Chapter 6 (Economic Opportunity) of the Comprehensive Plan, which states "Grow, diversify, and evolve Tomball's economy to raise the standard of living, create new employment opportunities, and generate revenues so the City can provide quality public services and amenities." The ability to offer sites zoned for employment-type land uses will help to attract companies looking to locate and/or expand in the area. Additionally, the location provides direct access to SH 249 and FM 2920, and will be in close proximity to the future Grand Parkway, enabling park occupants to have easy access to major thoroughfares with little impact to the community and residential neighborhoods.

As a matter of information, 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. A site plan application, which will require civil drawings, including all proposed grading, paving, drainage, and utility plans, building elevations and landscape plans, is required to be submitted and approved by the Engineering & Planning Department and Fire Marshal's Office prior to a building permit application submittal.

ZONING CONSIDERATIONS

In making its recommendation regarding a proposed zoning change, the Planning and 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.

There is a mixture of land uses in the vicinity. To the north of the subject site is undeveloped, residential, and agricultural land in the Single-Family Estate Residential-20 and Agricultural Districts; to the south is a retail, undeveloped, commercial, industrial, and residential land within the General Retail District and Tomball's unzoned extraterritorial jurisdiction; to the east is commercial, undeveloped, and residential land in the Agricultural District and Tomball's unzoned extraterritorial jurisdiction; and to the west is undeveloped and industrial land in the Agricultural, Single-Family Estate Residential-20, and Light Industrial Districts. See site photos (Exhibit "G").

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 land currently classified for similar development in the immediate vicinity of the subject site. However, there are several undeveloped properties zoned Light Industrial within the City of Tomball, particularly south of Mechanic Street between the Burlington Northern Santa Fe railway and South Chestnut Street and on the west side of South Persimmon south of Lizzie Lane.

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 limited Light Industrial District development city-wide and within the vicinity.

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 zone change is not anticipated to adversely affect health, safety, morals, or general welfare.

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

According to the Comprehensive Plan, rezonings are “to conform to the intended future land use pattern shown on the Future Land Use Plan and should occur only when economic, physical, social, and other factors will allow the proposed land use to be developed:

- Within the capacities of existing or funded infrastructure and public facilities and services;
- In a compatible manner with surrounding land uses;
- To standards specified for and appropriate to the proposed land use; and
- In a way that furthers or helps achieve the goals of the Plan.”

The proposed rezoning to the Light Industrial District is generally consistent with the Comprehensive Plan land use designations. The majority of the site is designated as “Business/Industrial” with the northern tip designated as “Rural Residential.” The Comp Plan states, “Boundary lines are to be considered approximate and discretion may be used in determining them. Variations, particularly where significant natural or manmade features are present, may be acceptable. It will be the responsibility of the Tomball City Council, with the recommendation of the Planning & Zoning Commission, city planning staff, and guidance provided by the Comprehensive Plan to establish and more accurately define the boundaries if questions arise.”

The Comprehensive Plan states the Business/Industrial land use designation is “where industrial and intensive employment activities should occur. Activities that will require unenclosed assembly, repair and/or storage and require heavy truck or rail transportation support are acceptable. Also included would be warehousing and distribution facilities, as well as offices and showrooms.” The business and technology park proposed by the TEDC will be generally consistent with the land uses envisioned for Business/Industrial areas.

The business and technology park is anticipated to accomplish the following items from the Comp Plan’s “Business/Industrial Planning Guidelines”:

- Locate employment designated land uses with access to major transportation corridors.
- Ensure that truck traffic associated with employment-related land uses do not use residential streets for access.
- Encourage high intensity employment in campus or urbanized areas that are adjacent to collector or arterial roadways with access to transit and an integrated pedestrian environment.

The proposed project also meets Goal EO 1 of Chapter 6 (Economic Opportunity) of the Comprehensive Plan, which states "Grow, diversify, and evolve Tomball's economy to raise the standard of living, create new employment opportunities, and generate revenues so the City can provide quality public services and amenities." The ability to offer sites zoned for employment-type land uses will help to attract companies looking to locate and/or expand in the area. Additionally, the location provides direct access to SH 249 and FM 2920, and will be in close proximity to the future Grand Parkway, enabling park occupants to have easy access to major thoroughfares with little impact to the community and residential neighborhoods.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on September 1, 2011 and, as of the writing of this report, no public comment forms were received.

RECOMMENDATION

That the Planning and Zoning Commission recommend:

1. APPROVAL of Zoning Case P11-348 based on the following:
 - a. The proposed zoning of Light Industrial District is compatible with the Tomball Comprehensive Plan.
 - b. The proposed zoning of Light Industrial District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.
 - c. There is sufficient utility capacity to service light industrial uses on this site.

2. APPROVAL of the staff report as the Planning and Zoning Commission's final recommendation to the City Council.

EXHIBITS

- A. Property Survey
- B. Aerial Photo
- C. Rezoning Application
- D. Rezoning Request Letter
- E. Location/Zoning Map
- F. Comprehensive Plan Future Land Use Map
- G. Site Photos

Exhibit "A" Property Survey

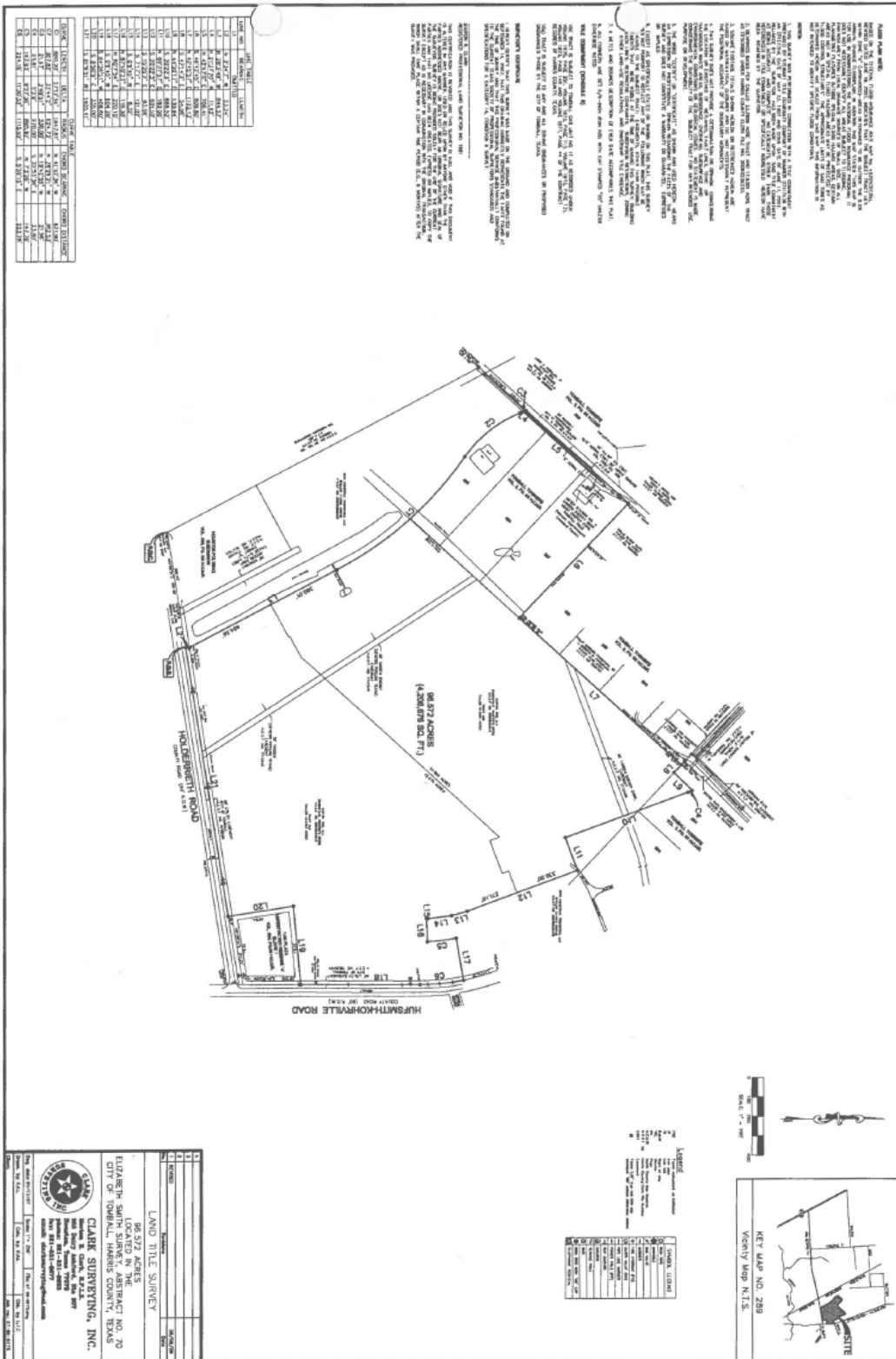


Exhibit “B”
Aerial Photo

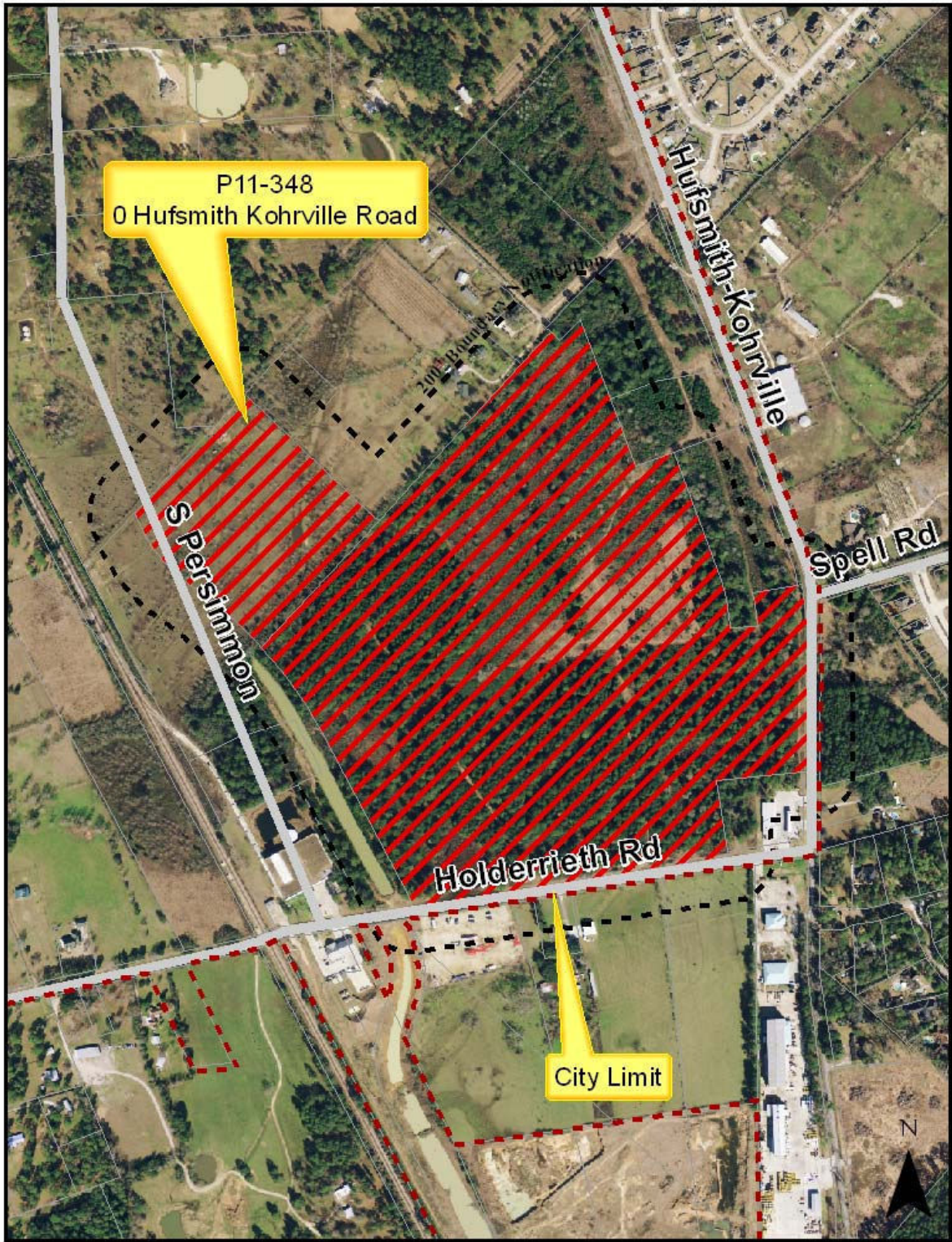


Exhibit "C"
Rezoning Application

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

Name: Tomball Economic Development Corporation Title: _____
Mailing Address: P.O. Box 820 City: Tomball State: TX
Zip: 77377
Phone: (281) 401-4088 Fax: (281) 351-7223 Email: kviolette@tomballtxedc.org

Owner

Name: Capital One, National Association Title: _____
Mailing Address: P.O. Box 61540 City: New Orleans State: LA
Zip: 70161
Phone: (504) 533-2188 Fax: 504 533-5210 Email: debbie.pitter@capitalonebank.com

Engineer/Surveyor (if applicable)

Name: N/A Title: _____
Mailing Address: _____ City: _____ State: _____
Zip: _____
Phone: () _____ Fax: () _____ Email: _____

Description of Proposed Project: Business Park

Physical Location of Property: NW corner of Holderrieth & Hufsmith-Kohrville Roads
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: TR 4, Abstract 70 E Smith & LT 386 & 387 & TR 385 of the Tomball Outlots
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: SF-6 & C-Commercial

Current Use of Property: Vacant Land

Proposed Zoning District: LI- Light Industrial

Proposed Use of Property: Business Park

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405 www.ci.tomball.tx.us

HCAD Identification Number: 0410260000020 & 0352920000384 Acreage: 96.572

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.

Kelly Viollette Executive Director
X Tomball EDC 8/2/11
Signature of Applicant Date

Capital One, N.A.
X *Raymond D. Potter* 7-28-11
Signature of Owner Date

**Exhibit “D”
Rezoning Request Letter**



August 3, 2011

Mr. Rodney Schmidt
Assistant City Planner
Engineering & Planning Department
501 James Street
Tomball, TX 77375

RE: Rezoning request for approximately 97.5 acres of land located at the northwest corner of Holderrieth & Hufsmith-Kohrville Roads

Dear Mr. Schmidt,

The Tomball Economic Development Corporation (TEDC) is under contract to purchase approximately 97.5 acres of land located at the northwest corner of Holderrieth and Hufsmith-Kohrville Roads for purposes of developing a business/technology park to support the creation and retention of primary jobs in the City of Tomball. A primary job is defined as a job available at a company that exports a majority of its products or services to markets outside the local region, infusing new dollars into the local economy.

The TEDC Board of Directors approved the designation of the business park as a Project of the Corporation on May 24, 2011, and City Council subsequently approved the project and property acquisition on July 18, 2011. We are currently in our due diligence phase and as part of that process are submitting this rezoning application to request that the site be rezoned from the SF-6 and C-Commercial Districts to the LI-Light Industrial District.

It is the intent of the TEDC to acquire the land and construct the public infrastructure, including roadways, utilities, and drainage facilities in order to offer “fully improved” sites. All future potential businesses to be located within the business park will be required to be reviewed and approved by the TEDC Board of Directors and Tomball City Council, thereby ensuring that the uses are compatible with the vision for and purpose of the business/technology park.

The requested rezoning is generally consistent with the Future Land Use Plan Map Designation of Business Industrial which supports industrial and intensive employment related activities. Although the northern portion of the site is shown as Rural Residential on the Future Land Use Plan Map, the Comprehensive Plan states that the “boundary lines are to be considered approximate and discretion may be used in determining them.”

The existing configuration of the site is irregular in shape and borders primarily commercial developments on the east, south, and west. As such, we believe that the proposed project will be compatible with the long-term vision for the area as an employment activity center.

Additionally, the proposed project meets the following Business Industrial Planning Guidelines outlined in the Comprehensive Plan:

- Locate employment designated land uses with access to major transportation corridors.
- Ensure that truck traffic associated with employment-related land uses do not use residential streets for access.
- Encourage high intensity employment in campus or urbanized areas that are adjacent to collector or arterial roadways with access to transit and an integrated pedestrian environment.

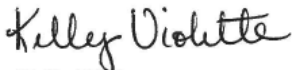
The proposed project also meets Goal E0 1 of Chapter 6 (Economic Opportunity) of the Comprehensive Plan, which states “Grow, diversify, and evolve Tomball’s economy to raise the standard of living, create new employment opportunities, and generate revenues so the City can provide quality public services and amenities.” The ability to offer “fully-improved” sites that are zoned for employment-type land uses will enable Tomball to become a regional and statewide competitor for companies looking to locate and/or expand in the area thereby increasing employment opportunities for our residents and growing the economic base of our City. Additionally, the location provides direct access to SH 249 and FM 2920, and will be in close proximity to the future Grand Parkway, enabling park occupants to have easy access to major thoroughfares with little impact to the community and residential neighborhoods.

The development of a planned business park would be a unique asset for the City of Tomball and would have a positive economic impact on the City. In addition to the standards outlined in the Zoning Ordinance, the TEDC intends to develop deed restrictions for the park in order to maintain property values, ensure a campus-like environment, uphold property maintenance standards, and attract high quality businesses and industries.

The TEDC respectfully requests consideration of this rezoning in order to complete the property acquisition and begin the development of the park.

Please don’t hesitate to contact me at 281-401-4086 should you have any questions.

Sincerely,



Kelly Violette
Executive Director

**Exhibit “E”
Location/Zoning Map**

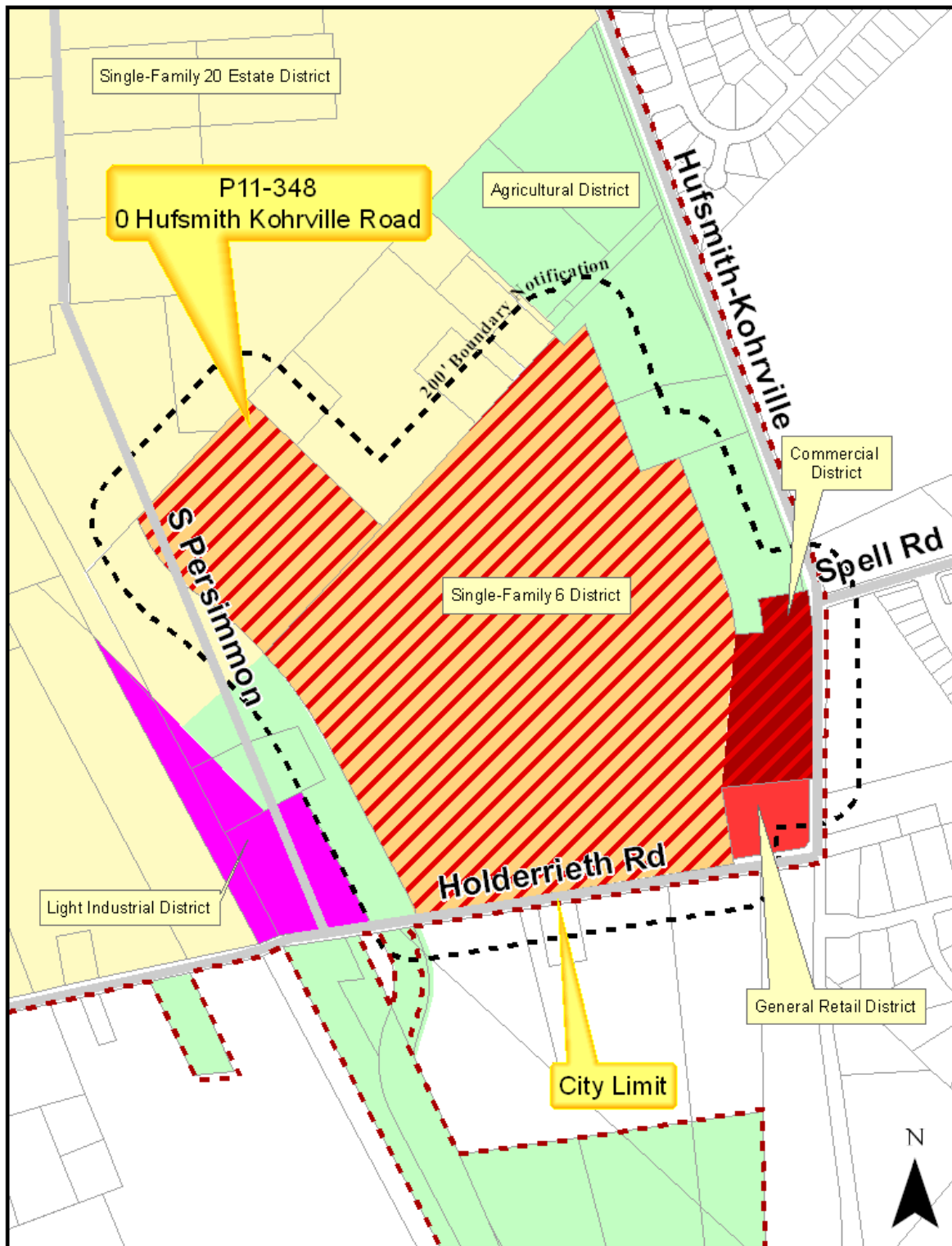
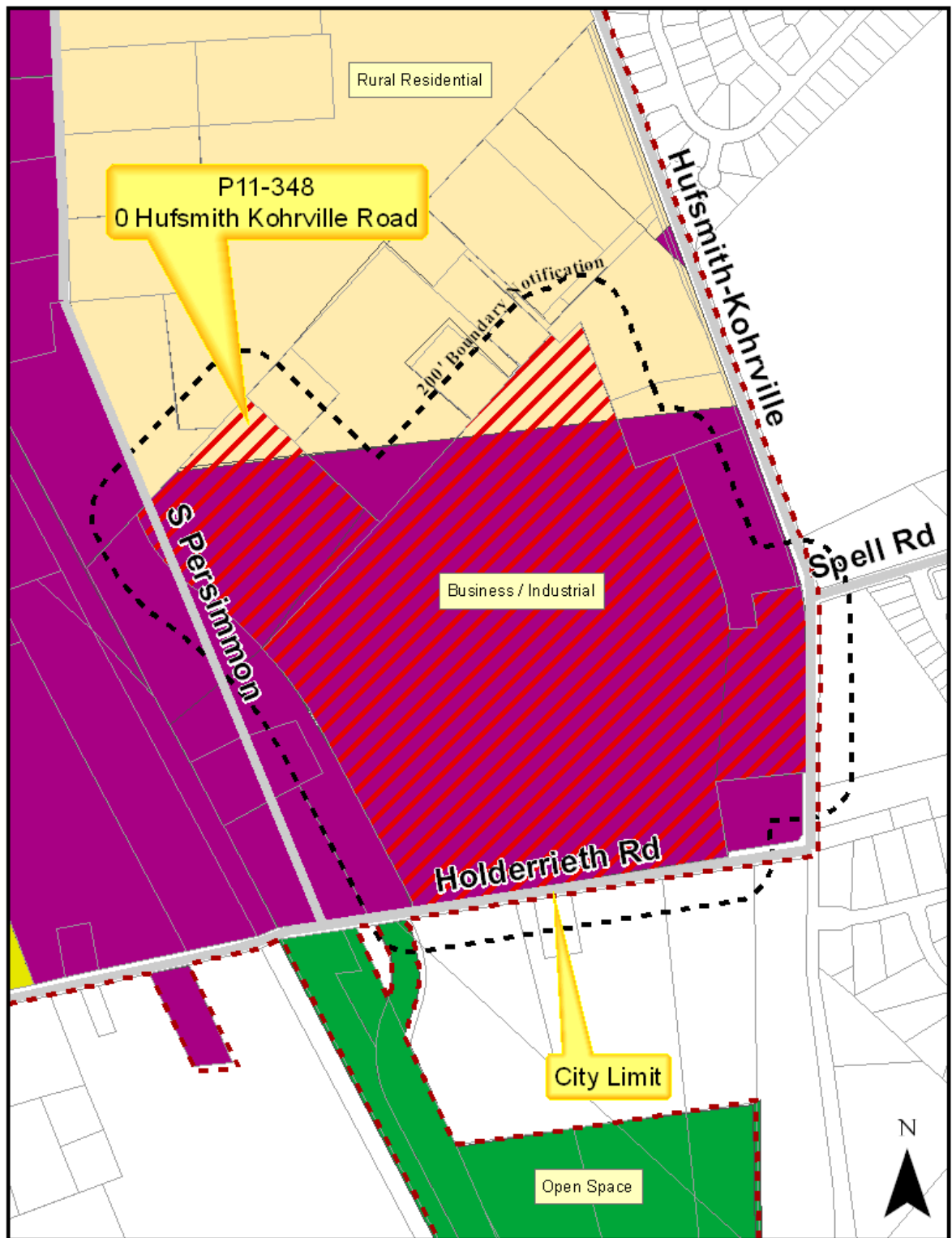


Exhibit “F”
Comprehensive Plan Future Land Use Map



**Exhibit “G”
Site Photos**



Figure 1: Northerly view of subject site.



Figure 2: Houston Poly Bag to the west of subject site.



Figure 3: Tomball Fire Department Station #2 south of subject site.



Figure 4: Residence to the south of subject site.



Figure 5: Mustang/Cat, SAI Power Systems, and Cnrg Facilities to the southeast of subject site.



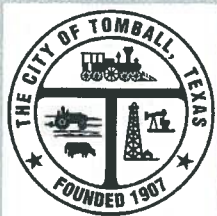
Figure 6: Convenience store to the southeast of subject site.



Figure 7: Residence to the east of subject site.



Figure 8: Creacom facility east of the subject site.



Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:

City of Tomball

Department of Engineering & Planning

Attn: Rodney Schmidt

501 James Street

Tomball, TX 77375



Name:

LORIE Rabalais

(please print)

Address:

315 JANET DR

Pineville, LA 71360

Signature:

LORIE Rabalais

Date:

9/7/2011



I am **FOR** the requested rezoning as explained on the attached public notice for **Zoning Case P11-348**. (Please state reasons below)

I am **AGAINST** the requested rezoning as explained on the attached public notice for **Zoning Case P11-348**. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, September 12, 2011, 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, September 19, 2011, 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

With railroad near the land could be made into industrial park for warehouse which would produce more jobs

You may also comment via email to rschmidt@ci.tomball.tx.us. Please reference the Zoning Case number in the subject line.

For questions regarding this request please call 281-290-1410.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: October 3, 2011

Topic:

Public Hearing on Tax Rate Increase and Announce Second Public Hearing on October 10, 2011 at 6:00 p.m.

Background:

The notice of effective tax rate and the notice of public hearings on tax increase have been published in the official newspaper as required (see attached).

The effective tax rate would provide approximately the same amount of revenue as received in 2010; the rollback rate will provide approximately the same amount of tax revenue as received in 2010 plus sufficient funds to pay anticipated debt in the coming year.

Under the State's Truth-in-Taxation laws (Chapter 26, Tax Code, Section 26.06), the City must publish special notices regarding the tax rate and must hold two public hearings before adopting a tax rate that exceeds the lower of the rollback rate or the effective tax rate, with a minimum of seven (7) days' notice for each public hearing. While the proposed tax rate of \$0.341455/\$100 does not exceed the rollback tax rate of \$0.372830/\$100, it does exceed the effective tax rate of \$0.258190/\$100; therefore, two public hearings are required before Council's vote on the tax rate.

Due to the delay in receiving the effective and rollback tax rates from Harris County, the dates selected for the public hearings on the proposed tax rate were October 3, 2011 (regular meeting) and October 10, 2011 (special meeting), at 6:00 p.m.; following each public hearing, the council must announce the date and time for the vote on the proposed tax rate.

Origination:

State of Texas Truth-in-Taxation Laws.

Recommendation:

Hold Public Hearing as posted.

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:

Notice of Public Hearing on Tax Increase

Notice of Public Hearing on Tax Increase

The City of Tomball, Texas will hold two public hearings on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 32.25 percent (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax calculated under Chapter 26, Tax Code). Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

The first public hearing will be held on October 3, 2011, 6:00 PM
at City Hall, 401 Market Street, Tomball, TX 77375.

The second public hearing will be held on October 10, 2011, 6:00 PM at
City Hall, 401 Market Street, Tomball, TX 77375.

The members of the governing body voted on the proposal to consider the tax increase as follows:

FOR: Councilmembers F.S. Hudgens, Rick Brown, and Preston L. Dodson

AGAINST: Councilmembers Mark Stoll and Derek Townsend

PRESENT and not voting: N/A

ABSENT: N/A

The average taxable value of a residence homestead in the City of Tomball, Texas last year was \$166,526 (average taxable value of a residence homestead in the taxing unit for the preceding tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older). Based on last year's tax rate of \$0.251455 (preceding year's adopted tax rate) per \$100 of taxable value, the amount of taxes imposed last year on the average home was \$418.74 (tax on average taxable value of a residence homestead in the taxing unit for the preceding tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older).

The average taxable value of a residence homestead in the City of Tomball, Texas this year is \$147,746 (average taxable value of a residence homestead in the taxing unit for the current tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older). If the governing body adopts the effective tax rate for this year of \$0.258197 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be \$381.48 (tax on average taxable value of a residence homestead in the taxing unit for the current tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older).

If the governing body adopts the proposed tax rate of \$0.341455 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be \$504.49 (tax on the average taxable value of a residence homestead in the taxing unit for the current tax year, disregarding residence homestead exemptions available only to disabled persons or persons 65 years of age or older).

Members of the public are encouraged to attend the hearings and express their views.

The tax information above is published as a requirement of State Law. Your individual taxes will not increase unless Harris County Appraisal District has appraised your property at a higher value.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: October 3, 2011

Topic:

Announce that the Vote on Tax Rate will be held on October 17, 2011 at 6:00 p.m. and October 24, 2011 at 5:30 p.m.

Background:

The notice of effective tax rate and the notice of public hearings on tax increase have been published in the official newspaper as required (see attached).

Following each public hearing, the Mayor and Council must announce the dates and times at which the vote on the proposed tax rate will take place.

Under the State's Truth-in-Taxation laws (Chapter 26, Tax Code), with each public hearing, the City must announce the date, time and place of the meeting(s) at which it will vote on the tax rate and publish a special notice regarding the vote on the tax rate. The dates approved by Council are October 17, 2011 at 6:00 p.m. and October 24, 2011 at 5:30 p.m., in City Hall, 401 Market Street, Tomball, Texas.

Origination:

State of Texas Truth-in-Taxation requirements.

Recommendation:

Announce date, time and place of the meetings at which Council will vote on the tax rate.

Funding:

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

City Secretary

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

Regular City Council

Agenda Item

Meeting Date: October 3, 2011

Data Sheet

Topic:

Receive the City Manager's Amendment to the Vested Rights Determination Letter dated July 31, 2008, regarding Timkin Office Park/Chestnut Business Park.

Background:

An amendment to the vested rights determination letter was requested by Dean Albers. After reviewing the vested rights amendment request, the City's records, and in consultation with the City's attorney, the City Manager issued an amendment to the vested rights determination on September 21, 2011 in accordance with Section 48.5 of the City's Zoning Ordinance. The amendment includes additional uses in the Retail, Transportation & Auto Services, and Commerical & Wholesale Trade. The issuance of this amendment to the vested rights determination is a legal decision based on information relative to the project prior to the City's adoption of the Zoning Ordinance.

Origination:

City Manager's Office

Recommendation:

Funding:

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

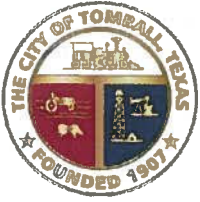
Engineering and Planning

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

ATTACHMENTS:

Amendment to Vested Rights Determination Letter - Timkin Office Park / Chestnut Business Park

Original Vested Rights Determination Letter - Timkin Office Park / Chestnut Business Park



City of Tomball

Gretchen Fagan
Mayor

George Shackelford
City Manager

September 21, 2011

Mr. Dean Albers
Albers Properties
P. O. Box 2458
Granbury, Texas 76048

Re: Amendment to Vested Rights Determination Letter dated July 31, 2008
Timkin Office Park/Chestnut Business Park

Dear Mr. Albers,

This letter shall serve as an amendment to the Vested Rights Determination Letter issued by this office dated July 31, 2008, a true and correct copy of which is attached to this letter as Exhibit "A." This letter shall not be construed as altering any of the terms and conditions set forth in the July 31, 2008 Vested Rights Determination Letter unless specifically enumerated herein.

In addition to the uses permitted in Exhibit "A," the Property may be used for any of the following uses:

Retail: Sign Shop (small scale, such as a storefront; includes sign and banner making for retail sale only; no outside storage); Upholstery Shop (Non-Auto)

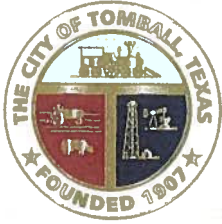
Transportation & Auto Services: Auto Interior Shop/Upholstery

Commercial & Wholesale Trade: Appliance Repair; Electronic Assemble; Fix It Shops - Small Engine, Saw Filing, Mower Sharpening; Heating and Air Conditioning Sales/Services; Locksmith; Maintenance and Repair Service for Buildings/Janitorial; Plumbing Shop; Printing Equipment, Supplies, and Repairs; Scientific Research Lab (Non-Hazardous); Security System Installation Company; Tool and Machinery Rental (Inside Storage Only); Veterinarian Clinic (Indoor Kennels)

All other terms and conditions of the July 31, 2008 Vested Rights Determination Letter, attached hereto as Exhibit "A," including prohibited uses, shall not be altered any way by this amendment.

Sincerely,


George Shackelford
City Manager



City of Tomball

Gretchen Fagan
Mayor

Jan Belcher
City Manager

July 31, 2008

COPY

Dean Albers
Albers Properties
P.O. Box 2458
Granbury, Texas 76048

Re: Vested Rights Determination Letter
Timkin Office Park/Chestnut Business Park

Dear Mr. Albers,

By letter dated June 23, 2008, you have asserted a vested right under Chapter 245 of the Texas Local Government Code with respect to a proposed development of approximately 16 acres of property known as the Timkin Office Park or Chestnut Business Park. After reviewing your vested rights request, the City's records, and consultation with the City's Attorney, I issue this vested rights determination in accordance with Section 48.5 of the Zoning Ordinance.

Property Owner: Albers Properties, L.P.
% Dean Albers / Texca Limited Partnership LLP
1404 Scandianvian Court
(P.O.Box 2458)
Granbury, TX 76048

The Property: Three tracts of land including approximately 16.111 acres out of the Jesse Pruitt Survey, A-629, Harris County, Texas, and generally located on the southerly side of Timkin Road, easterly of South Chestnut Street. See Exhibit A, attached (site plan dated 12.12.2007)

The Project: An office/warehouse plat development consisting of 14 individual lots to be created along a proposed new street to be configured in substantially the same layout as shown in Exhibit A, attached.

Date of First Permit: November 8, 2007.

Regulations Applicable to Property Owner, the Property, and the Project:

All of the City's current Ordinances, including the City's Zoning Ordinance adopted February 4, 2008, are applicable to the Property Owner, the Property and the Project EXCEPT as follows:

1. Articles III and IV of the Zoning Ordinance; and
2. Section 40 (Landscaping Requirements) of the Zoning Ordinance.

The Property shall be deemed to have a prior classification of O-Office District. Until rezoned by the City of Tomball, the Property may be used for any of the following uses:

A. Any use permitted by right by the City under Section 25 and Section 38 of the Zoning Ordinance for an O District; and

B. The following uses as defined by Section 38 of the Zoning Ordinance of the City (provided there is no outdoor storage):

Office: Office Showroom/Warehouse;

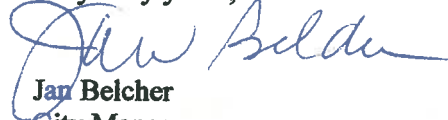
Transportation & Auto Services: Auto Glass Repair/Tinting, Auto Muffler Shop; Auto Repair (Major); Auto Repair (Minor);

Commercial & Wholesale Trade: Communication Equipment Sales/Service (Installation and /or Repair – No outdoor sales or storage or towers/ antennae); Distribution Center; Electric Repair-(Domestic Equipment and Autos), Contractor's Office/Sales, No Outside Storage including Vehicles, Exterminator Service/Company (No Outdoor Sales or Storage); Iron Works (Ornamental), Machine Shop, Pet and Animal Grooming Shop (No Outside Kennels); Publishing and Printing Company, Warehouse (Defined Under Storage or Wholesale Warehouse), Welding Shop, Wholesale Trade-Nondurable Goods, Wood Working Shops;

The following uses are prohibited: Light & Heavy Manufacturing/Industrial.

This letter has certain legal consequences. The Property Owner and/or the Council may appeal this determination to the City's Board of Adjustments if they believe that this vested rights determination is in error. Zoning Ordinance, 48.5. Any appeal of my determination must be filed with the Board of Adjustments within 15 calendar days. Zoning Ordinance 9.8 C. If my determination is not timely appealed to the Board of Adjustments, then my determination shall be considered binding upon the City and the Property Owner for the duration of the Project. Id. 48.8.

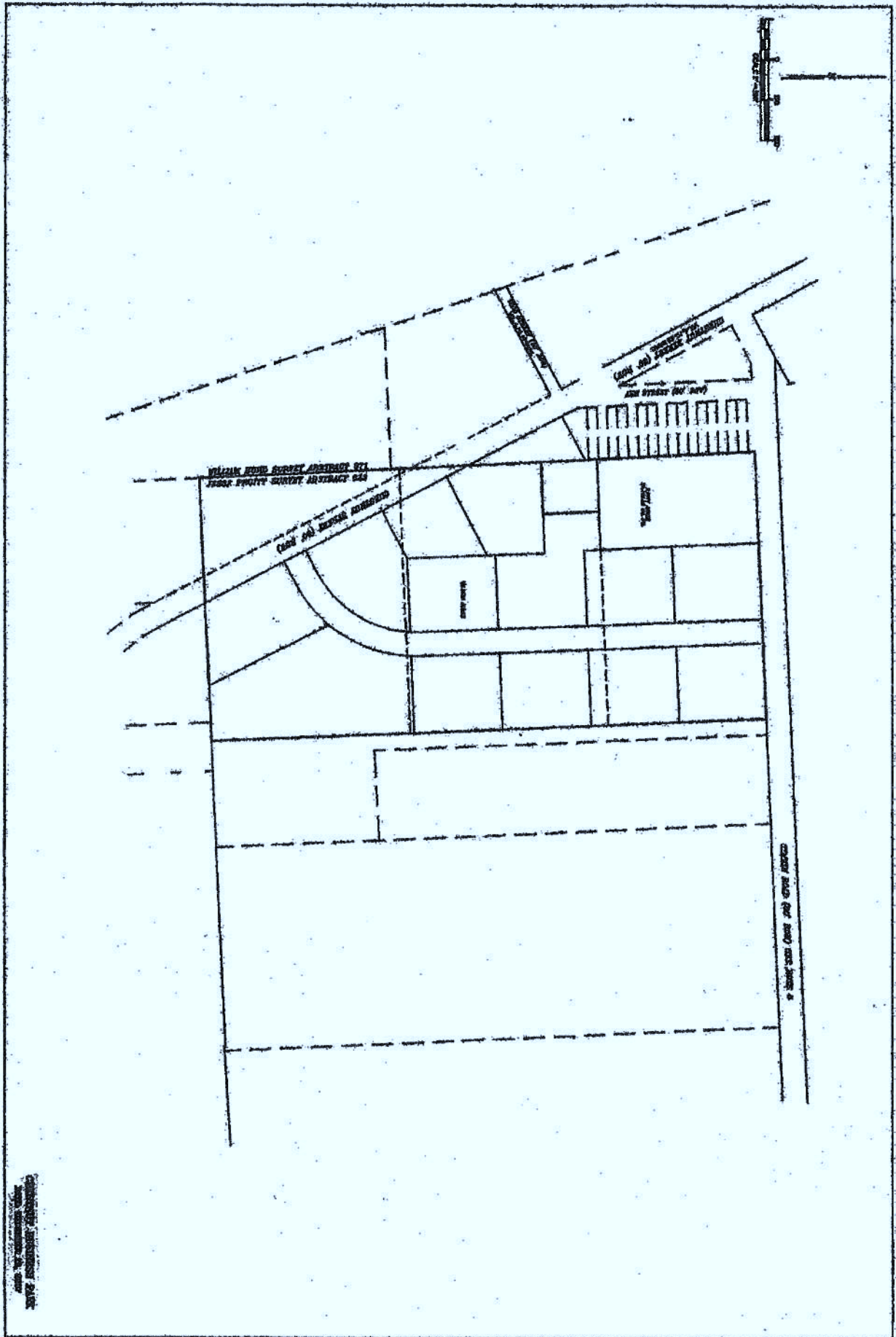
Very truly yours,



Jan Belcher
City Manager
City of Tomball, Texas

cc: Mayor and City Council

Exhibit A



Regular City Council

Agenda Item

Meeting Date: October 3, 2011

Data Sheet

Topic:

Approve Request by Tomball Fire Department to Close School Street between Main and Malone on Friday Night, October 28, and Saturday Night, October 29, 2011, in Conjunction with the Fire Department's Annual Fall Festival and Haunted House Event, and to Allow the Safe Passage of Pedestrians from the School Parking Lot across School Street to the Event Site

Background:

For the past several years, the Tomball Fire Department has hosted a haunted house/fall festival event. The event is free to the public, but donations are accepted to assist in the Department's benevolence programs for Thanksgiving and Christmas.

Council has approved this closure each year it has been requested; the closure of School Street provides additional protection for pedestrians and does not affect traffic on Main Street.

Origination:

Fire Department

Recommendation:

Staff recommends approval

Funding:

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

Randy Parr

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

ATTACHMENTS:

Tomball Fire Department Fall Festival

FALL FESTIVAL

Hosted by: Tomball Fire Department



FRIDAY & SATURDAY

OCTOBER 28 & 29, 2011

7pm - 12am

709 W. Main St.
Tomball, Texas

COME ENJOY THE GAMES & HAY RIDE

ACCEPTING CANNED GOODS AND PET FOOD FOR NON-PROFIT ORGANIZATIONS.

ALSO ACCEPTING DONATIONS FOR NEXT YEARS FALL FESTIVAL.

QUESTIONS? CONTACT LISA GRIFFIN 281-351-7101

Regular City Council

Agenda Item

Data Sheet

Meeting Date: October 3, 2011

Topic:

Discussion and Approval of a Personal Services Contract with Baker Botts, LLP for the Creation of a Pension Program for the Volunteer Firefighters of the Tomball Fire Department and Authorize the City Manager to Execute the Contract

Background:

The Tomball Volunteer Fire Department began participating in the Texas Volunteer Firefighters' Pension Plan in 1998. Originally, contributions to the plan were minimal amounts and based on the number of volunteers on the roster. For amounts to be credited to a participant's account, certain criteria related to attendance at training sessions and responses to emergency calls had to be met.

Over the course of time, the "old guard" membership retired or moved away prior to vesting in the program. The City continued to fund participation based on rostered volunteers. Several years ago, an audit of the retirement program revealed that it was actuarially unsound and the State moved to correct the problem by significantly increasing the monthly contribution amounts. Our volunteer firefighters have become more transient in nature and are not staying with the Department long enough to meet the State's 15-year vesting period for full benefits.

During the 2010/2011 Budget Process, I identified the need to move to a different system in order to create a system that can provide a program that could have some increased value over the State system; Council approved that supplemental request. This professional services contract will allow us to move forward with the project and create a program that will be a significant tool in our recruiting and retention efforts for our volunteer members. Legal costs to complete the necessary documentation to create the pension program will be approximately \$4,000-\$5,000 and funds are budgeted in the Fire Department budget. The volunteer membership supports the creation of this program.

Origination:

Fire Department

Recommendation:

Staff recommends approval

Funding: Yes

Account Number: 142-6020

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

Randy Parr, Fire Chief

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

ATTACHMENTS:

Engagement Letter

September 23, 2011

TOMBALL FIRE DEPARTMENT
(Employee Benefit Matters)

Mr. Randall F. Parr, EFO, CFO
Fire Chief
Tomball Fire Department
1200 Rudel
Tomball, TX 77375

Dear Randy:

Baker Botts L.L.P. (“Baker Botts,” the “Firm” or “we”) is pleased to have the opportunity to represent the Tomball Fire Department (“TFD”). Thank you for selecting us.

By this letter agreement, we seek to confirm a clear, mutual understanding of the services we are to perform and the terms under which those services are to be performed. Of course, if you ever have any questions regarding any aspect of our representation, we encourage you to contact us immediately so that any issues can be promptly resolved to our mutual satisfaction.

Identification of Our Client

You acknowledge that we are counsel to TFD only, and are not hereunder agreeing to act as counsel to any officer, director, stockholder, partner, subsidiary, parent, affiliate, agent or employee of TFD, or to undertake any duties to any such person or entity.

Scope of the Engagement, Fees and Expenses

You have asked us to represent TFD in preparing a deferred compensation plan for its volunteer firefighters (the “Matter”). You are not engaging us for business advice; our professional services are limited to legal matters.

This engagement is only for this Matter. However, should you tender to us other work, and should we expressly accept the representation of you with respect to that other work, this letter will govern our engagement for that other work as well as though it were included in the definition of the “Matter.” Any amendments or modifications to this letter must be in writing and signed by all parties hereto.

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995

TEL +1 713.229.1234
FAX +1 713.229.1522
www.bakerbotts.com

Rob Fowler
TEL +1 713.229.1229
FAX +1 713.229.2729
rob.fowler@bakerbotts.com

ABU DHABI
AUSTIN
BEIJING
DALLAS
DUBAI
HONG KONG
HOUSTON
LONDON
MOSCOW
NEW YORK
PALO ALTO
RIYADH
WASHINGTON

You agree to pay our reasonable attorney's fees and expenses for our work on the Matter, including (even after our representation has concluded) (a) the time and expenses that we may incur responding to discovery requests regarding this engagement, and (b) the time and expenses that we may incur in defending any claims relating to this engagement if the case is (i) adjudicated and we are not found liable, or (ii) settled by you with your consent.

We apply applicable rules of professional conduct to determine the reasonable value of our services in accordance with applicable rules of professional conduct. Fees for our services are based on the time and labor required, the novelty and difficulty of the particular questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in this locality for similar services, the time limitations imposed by the client or by the circumstances, the nature and length of the professional relationship with the client, and the experience, reputation, and ability of the lawyer or lawyers performing the services. These factors are used to determine the hourly rates applicable to this Matter. Our fees for the Matter will be determined primarily by the time recorded by our lawyers and other timekeepers for working on the Matter at the hourly rates reflected in our invoices.

We currently anticipate that Rob Fowler and Alison Sulentic will work on the Matter. Their respective hourly rates for this work during 2011 are \$650 and \$475.

We may use other lawyers and non lawyer staff in order to handle efficiently the Matter and control legal costs. Our U.S. hourly rates for 2011 range from \$500 to \$1,000 per hour for partners, and \$250 to \$750 per hour for associates and other counsel. Our U.S. rates for paralegals and clerks and other non lawyer professionals range from \$125 to \$600 per hour. Our rates for lawyers based outside the U.S. vary depending on local market conditions. Our hourly rates usually increase at the beginning of each calendar year to take into account current levels of legal experience, changes in overhead costs, and other factors.

While complex matters typically require the attention of more than one attorney, it is often desirable for one attorney to serve as the primary contact with the client and be primarily responsible for the work. We anticipate that Rob Fowler will serve in that capacity in connection with the Matter. However, each lawyer working on the Matter considers you to be a valued client, and you may contact any attorney working on the Matter at any time to assist with your needs. Of course, the availability of each of our lawyers varies over time, depending on current workload and personnel changes. As a result, from time to time, the lawyers working on the Matter may change.

At your request, we will provide you with an estimate of the amount of fees and expenses that any particular project or defined phase of a project may cost and we will not commence work on any such project or phase until you have authorized us to do so. Our periodic invoices will give you an update of our actual fees (determined as described above) and expenses so that you can compare them to our estimate. We will endeavor to update our estimates from time to time as we learn more about the project or phase. Nevertheless, you understand that our estimates are just that—estimates—and are neither a fixed fee amount, nor a

maximum fee amount; you agree to pay the actual fees and expenses as invoiced, even if they exceed the estimate. Of course, any decision by you not to authorize us to proceed with a project or phase, as well as any delays in authorizing us so to proceed, may have an adverse effect on your rights or on the outcome of the Matter.

We try to manage our own business efficiently so that we can deliver legal services to our clients in a cost-effective way while honoring our obligations to preserve client confidences. Like many organizations, we may outsource certain functions to operate our business more efficiently, including delivery, storage, duplicating, information technology, and collection of older accounts receivable. We also use the services of consultants and hardware and software vendors to advise us on the efficient operation of the Firm and the effective use of our systems. These parties may have some access to client confidential information in performing their services. All are bound by duties of confidentiality so that their obligations to preserve confidentiality are the same as that of our own employees. You consent to our allowing nonemployees access to information as outlined in this paragraph.

Our practice is to send a periodic statement, usually monthly, for services rendered and expenses posted during the previous interval. The detail in the statement is intended to inform you about the fees and expenses incurred and the nature and progress of the work performed. These invoices usually contain confidential information protected by legal privileges, which may be waived if you do not treat them as confidential.

We do our best to see that our clients are satisfied with our services and charges. We encourage you to inquire about any matter relating to this agreement or our statements that is in any way unclear or appears unsatisfactory. Concerns that are brought to our attention promptly can usually be easily addressed. Should there be any unanticipated delay in the payment of our statements, we will try to resolve any concerns you may have by a brief telephone call. Alternatively, we may send you notice that your account is past due.

Our fees are set with the expectation that they will be paid within 30 days of invoicing. We do not normally charge interest, in consideration of your prompt payment.

Conflicts

We have performed a conflicts check on the names you provided. Based on a check of these names and under the applicable standards in the governing rules of professional conduct, we believe that the Firm is free to undertake the Matter. If we identify a conflict after work has begun, you agree to use reasonable efforts to help us resolve the conflict to the satisfaction of all parties.

Because of our professional ethical responsibilities to each of our clients, we are prohibited from sharing with you any confidential information that we obtain in the course of our representation of another client. By signing below, you acknowledge and agree that the Firm

will have no obligation to share with you confidential information obtained from any of our other clients, even if such information is material to you and your interests.

Issue Conflicts

The Firm has several hundred lawyers in different cities and countries. Our conflicts process involves the application of the standards set forth in applicable rules of professional conduct. We do not undertake to check or disclose other relationships. For example, our conflicts process will not necessarily reveal and we do not check to determine whether other clients of the Firm may be your competitors or may take positions on the subject matter of certain issues that may be adverse to or inconsistent with positions you may favor respecting that subject matter. As a result, we may represent your business competitors, and in fact, we often represent more than one client in any particular industry. Your signature below acknowledges and consents to the limited scope of our conflicts check and any issue conflicts.

Other Conflicts Issues

In addition, the nature of our practice is such that occasionally the Firm may concurrently represent a second client that is adverse to another client in a case or matter that is not substantially related to our current representations of the first client where, in our professional judgment, we can undertake the concurrent representation without adversely limiting the responsibilities we have to either client. For purposes of this engagement letter, use of the term "substantially related" is consistent with the use of such phrase in ABA Model Rule of Professional Conduct 1.9, Texas Disciplinary Rule of Professional Conduct 1.09, and similar rules of professional conduct in the other jurisdictions where we maintain offices. In such a situation, we give careful consideration to the needs of both clients before undertaking any such representation. In view of the nature of our practice, you agree that attorneys at the Firm may represent a party with interests directly adverse to yours, so long as that adverse representation is not substantially related to the matters we have been engaged to handle on your behalf, and so long as we believe that our responsibilities to you and the other client would not be adversely limited by the concurrent representations. Where any such representation involving litigation is undertaken, it is likely that our attorneys representing our other client would be required to conduct adverse discovery against you, your parent company, subsidiaries, or affiliates and perhaps to cross-examine witnesses employed by you, your parent company, subsidiaries, or affiliates if any such matter proceeded to trial. Where any such representation involving a transaction is undertaken, our attorneys representing our other client will assist it in seeking the terms most favorable to it even though different terms may be more advantageous to you. We agree, however, that your prospective consent to conflicting representation will not apply where, as a result of our representation of you, we have obtained sensitive, proprietary, or other confidential information that, if known to our other client, could be used by the other client to your material disadvantage, unless any confidential information we have obtained would be screened from the lawyers working for our other client.

In any event, you consent to our undertaking unrelated matters for any party to whom you are adverse in any of the matters we may handle for you from time to time. As one example, if you engage us to represent you in a financing transaction across from a commercial bank or investment bank, we would be able to represent that bank on any matter unrelated to our work for you and where you are not the adverse party. As a second example, if you engage us to represent you in a lawsuit against an entity, such as an insurance company, we would be able to represent such entity on any matter unrelated to our work for you and where you are not the adverse party.

Termination of the Engagement

You have the right at any time to terminate our representation. Similarly, we reserve the right to discontinue our work on this Matter. Provided you consent, we may withdraw from the representation at any time. In addition, if withdrawal can be accomplished without material adverse effect on your interests, you consent and agree that we may withdraw at any time without your consent. Of course, we may withdraw without your consent in any other circumstance if it becomes ethically proper for us to do so.

In the event your account is past due and we are unable to agree on satisfactory payment terms for past due amounts, the failure to make timely and full payment of the balance due on your account shall constitute your authorization for us to withdraw from our representation of you, and you understand that we may pursue collection of the account. If it should ever be necessary for such an action to be pursued, the costs of collecting the debt, including court costs, filing fees, and reasonable attorney's fees, shall also be recoverable.

If you discharge us or we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further, including executing any documents necessary to complete the termination of the representation. We will take all steps that are ethically and reasonably practicable to protect your interests until our withdrawal is complete. If a discharge or a withdrawal occurs, we will be entitled to be paid or reimbursed for all costs and expenses paid or incurred by us on your behalf, and we will also be entitled to be paid a reasonable fee for the time we spent and those professional services we render to you through completion of the termination process and for which we were not previously paid.

Once our work on the Matter is complete, unless we have accepted other work from you, our representation of you will conclude and our attorney-client relationship shall end.

Tax Matters

Any tax advice that we provide in connection with the Matter must comply with our obligations under the Circular 230 regulations issued by the U.S. Treasury. As part of the U.S. Treasury's effort to combat tax shelters, Treasury issued these regulations imposing elaborate requirements upon the providers of tax advice. Pursuant to these regulations, our written tax advice (including emails) to clients will generally include a disclaimer stating that our

advice cannot be used for the purpose of avoiding penalties under the Internal Revenue Code or for promoting, marketing or recommending to another party the transaction or matter that is the subject of our advice.

The inclusion of such disclaimer language in advice we provide you in no way indicates that we believe any of the tax advice we are providing to you is part of a tax shelter. Rather, we will include such language to comply with the Circular 230 regulations. If, at any time during our representation, you would like to receive tax advice upon which you can rely to avoid tax penalties, please contact the lead lawyer or the tax lawyer working with you on the Matter. We will continue to review our Circular 230 policy in light of developments in this area and other relevant considerations.

Retention and Disposition of Records

We typically maintain a file of paper and electronic documents during the representation containing those documents we consider useful to the work (the "Matter File"). We endeavor to send to you, during the course of, or at the conclusion of, our representation, the originals or copies of all documents that we deem important for you to see or retain. Of course, that will not include everything we receive or generate such as our internal work product. You agree that the documents containing our attorney work product, mental impressions or notes and drafts of documents shall be and remain our property and are not considered part of your Matter File. In addition, electronic documents, such as our internal emails, documents containing or reflecting our internal deliberations or self-evaluations, and our internal databases shall remain our property and are not considered part of your Matter File. At the conclusion of this Matter or any other representation we undertake on your behalf, you agree that all electronic and hard copies of documents or data we have in the Matter File relating to the Matter (or other representation, as applicable), whether we may have received them from you, received them from others, or created them ourselves, may be handled and ultimately destroyed, without further notice to you, in accordance with our record retention policy then in effect (currently providing for a retention period of seven years for most matters). However, if you make a written request for the delivery of specific documents while we still retain them, and if we have received payment of all of our invoiced fees and costs, all documents in our Matter File that you so request (other than documents that are our property as described above) will be copied and delivered to you at your expense.

Other Matters

Teamwork between you and our lawyers is critical to our effort to serve you successfully. We depend upon you to provide accurate, complete, and timely information and to disclose fully and accurately all facts and developments relating to the Matter. You agree to promptly notify us of any change in your contact information so that we may communicate with you effectively and efficiently. We will do our best to schedule meetings, proceedings and depositions to serve your convenience, but this may not always be possible or within our control.

We will do our best to provide you with the legal services necessary to achieve a result satisfactory to you. However, the outcome of all legal matters is subject to uncertainties and risks, and we make no promises or guarantees concerning the outcome of the Matter and our fees are not contingent upon the outcome of the Matter. You acknowledge that any statement of opinion given by us as to the anticipated results of a particular course of action being considered for handling the Matter is nothing more than a statement of opinion based on the information available at the time and is not a promise or guarantee.

Nothing contained herein should be construed to give rise to any fiduciary duty owed to any third party by Baker Botts; no third parties are intended to be beneficiaries hereof.

By signing below, you consent to our describing our work for you as a client of the Firm in our various marketing materials, including on our website.

You acknowledge that communication by cellular telephone, facsimile transmission and email may pose risks to confidentiality and to timely, complete communications; nevertheless, you authorize and consent to our use of such communication technology in connection with representing you.

The Texas Supreme Court has promulgated a creed for Texas lawyers and requires that we provide a copy of it to our new clients. A copy is attached. We must also advise you that the "State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's office of general counsel will provide you with information about how to file a complaint; for more information, call 1-800-932-1900."

Conclusion

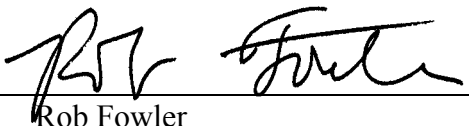
You acknowledge that you have had the opportunity to consult to the extent you deem advisable with your counsel other than us in reviewing and agreeing to this engagement agreement and the consents contained herein.

If the terms and scope of our engagement and the basis of our fees and our billing practices outlined in this letter are acceptable to you, please so indicate by signing below. Our mutual agreement and satisfaction with these matters are necessary prerequisites to the commencement of our work for you. However, if the terms we have outlined are not satisfactory and you would like us to consider an alternative arrangement, please let us know so that we may address your concerns as promptly as possible before we commence work.

We look forward to working on your behalf.

Sincerely,

BAKER BOTTS L.L.P.

By: 
Rob Fowler
Partner

ACCEPTED, ACKNOWLEDGED, AND AGREED:

TOMBALL FIRE DEPARTMENT

By: _____
Randall F. Parr
Fire Chief

THE TEXAS LAWYERS CREED

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, “My word is my bond.”
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client’s legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client’s lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client’s lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demean and abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.
6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, witnesses, the Court, and members of the Court staff with courtesy and civility and will not manifest by words or conduct bias or prejudice based on race, color, national origin, religion, disability, age, sex or sexual orientation.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.