

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



MONDAY, APRIL 19, 2010

7:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, April 19, 2010 at 7:00 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 Pastor Kay Johnson, Rosehill United Methodist Church

3.0 Pledges to U.S. and Texas Flags

- Led by members of the THS Student Council

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

accordance with law.]

5.0 Presentations:

- Proclamation to Tomball Regional Medical Center Day – April 19, 2010
- Proclamation for Tomball Invocation Leaders Day – April 19, 2010
- Proclamation for Tomball High School Student Council Day – April 19, 2010
- Proclamation and Plaque for Thomas “T. Lee” Ollison Day – April 22, 2010
- Proclamation for Motorcycle Safety Awareness Month - May 2010

6.0 Reports and Announcements

- Report from City Manager regarding Error Discovered in Contract between the City of Tomball and Sandra Van Zandt Art Sculptures, LLC for the Beckendorf Statue
- Report from the Tomball Sister City Organization regarding **German Heritage Festival**
- April 26-May 4 – **Early Voting** at City Hall
- Report from City Staff regarding the **2nd Annual City of Tomball Bunny Run 5K and Kids 1 Mile**
- April 27, 2010 – Volunteer Firefighters and Reserve Police Officers Banquet
- May 6, 2010 – **Mayor's Coffee** – (New Location) **Bootsie's** – 5:30 p.m.-7:00 p.m.
- **May 8, 2010 – Election Day – General City Election at City Hall, 7:00 a.m.-7:00 p.m.**
- May 8, 2010 - **Farmers Market**
- May 8, 2010 - **2nd Saturday at the Depot**
- **Walk Tomball!** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken

7.0 Approve the Minutes of the following Meetings:

- Special City Council Meeting of April 5, 2010
- Regular City Council Meeting of April 5, 2010
- Special City Council Meeting of April 14, 2010

8.0 New Business:

8.1 Approve, as a Project of the Corporation, an agreement with FabCorp, Inc., to make direct incentives to, or expenditures for, the creation or retention of primary jobs and that are found by the Board of Directors to be required or suitable for the promotion of new or expanded business development, to wit: FabCorp, Inc. relocation of its light weldments line of machined fabrications to 27807 Red Fox Road in Tomball's extraterritorial jurisdiction (ETJ). The estimated amount of expenditure for such Project is \$156,000.00

8.2 Adopt, on First Reading, Ordinance No. 2010-06, an Ordinance of the City of

Tomball, Texas, amending Chapter 26, “Emergency Services” of the Code of Ordinances of the City to Establish Policies, Procedures and Regulations as they relate to Alarms; Providing a Penalty in an Amount of not more than \$500 for Violation of any Provision Hereof; Providing for Savings and Severability; Providing for Publication; and Making other Provisions and Findings Related Thereto

- 8.3 Consideration and Possible Action Regarding **ZONING CASE P10-206:**
Request by Brian Matthews, on behalf of Crescent Directional Drilling, to amend the City’s Comprehensive Zoning Ordinance to rezone approximately 5.006 acres of land, legally described as Tract 281 Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the westerly side of South Persimmon Street, northerly of Agg Road from the SF-20-E Single-Family Estate Residential-20 District to the LI - Light Industrial District.

- Conduct a Public Hearing on **ZONING CASE P10-206**
- Adopt on First Reading, Ordinance No. 2010-07, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 5.006 Acres of land, Legally Described as Tract 281, Tomball Outlots, of the Map Records of Harris County, Texas, from the SF-20-E Single-Family Estate Residential-20 District to the LI - Light Industrial District; Said Property Being Located on the westerly side of South Persimmon Street, northerly of Agg 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.

- 8.4 Consideration and Possible Action Regarding **ZONING CASE P10-208:**
Request by the Tomball Independent School District to amend the Comprehensive Zoning Ordinance to rezone approximately 2.456 acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, within the City of Tomball, Harris County, Texas, from the SF-6 Single-Family Residential-6 District to the OT&MU - Old Town and Mixed Use District; said property being generally located on the westerly side of South Cherry Street, southerly of Fannin Street.

- Conduct a Public Hearing on **ZONING CASE P10-208**
- Adopt on First Reading, Ordinance No. 2010-08, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 2.456 Acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, within the City of Tomball, Harris County, Texas, from the SF-6 Single-Family Residential-6 District to the OT&MU - Old Town and Mixed Use District, said property being generally located on the westerly side of South Cherry Street, southerly of Fannin Street; 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.

8.5 Consideration and Possible Action Regarding **ZONING CASE P10-218**: Request by Russ Brown, on behalf of PCOT Investments, Inc., to amend Section 38 (Use Regulations) of the City's Comprehensive Zoning Ordinance to establish a Model Home and Temporary Real Estate Sales Office use in all zoning districts that permit Residential Use either by right or conditionally, to amend Section 43 (Supplemental Regulations) to add standards for development related to model home and temporary real estate sales office use, and to amend Section 45 (Definitions) to amend and add the definitions related thereto.

- Conduct a Public Hearing on **ZONING CASE P10-218**
- Adopt on First Reading, Ordinance No. 2010-09, an Ordinance of the City of Tomball, Texas, Amending Its Comprehensive Zoning Ordinance by Amending Section 38, Use Regulations, to add "Temporary Real Estate Field Office" and "Model Home" as Listed Uses; Amending Section 43.8, Temporary Buildings, to Rename the Section "Temporary Structures and Uses" and add Development Regulations for Such; Amending Section 45, Definitions, to add a New Definition for "Temporary Real Estate Field Office;" 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

8.6 Approve Contract between the City of Tomball and TXU Energy for the Purchase of Electrical Energy.

8.7 Discuss and Possibly Take Action Regarding a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court

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

- Section 551.071 – Consultation with Attorney regarding a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court
- Section 551.074 – Personnel Matters – To Deliberate the Hiring/Employment, Duties and Responsibilities of a City Manager

8.9 Possible Action Regarding a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court

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 15th day of April 2010 by 6:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer

Doris Speer

City Secretary, TRMC

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

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

Regular City Council
Agenda Item
Data Sheet

Meeting Date: April 19, 2010

Topic:

- Proclamation to Tomball Regional Medical Center Day – April 19, 2010
- Proclamation for Tomball Invocation Leaders Day – April 19, 2010
- Proclamation for Tomball High School Student Council Day – April 19, 2010
- Proclamation and Plaque for Thomas “T. Lee” Ollison Day – April 22, 2010
- Proclamation for Motorcycle Safety Awareness Month - May 2010

Background:

Origination:

Recommendation:

Funding:

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

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

ATTACHMENTS:

Tomball Regional Medical Center Day - April 19, 2010

Tomball Invocation Leaders Day

Tomball High School Student Council Day

Thomas "T. Lee" Ollison Day

Motorcycle Safety Awareness Month - May 2010

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS** Tomball Regional Medical Center is a landmark in our community and, since opening in 1976, has grown to its current 350-bed capacity, employs over 1,500 area residents, and offers a wide range of inpatient, outpatient and emergency medical services to a population of more than 330,000 people who reside in an 11-zip code area; and
- WHEREAS** Tomball Regional Medical Center has earned a number of prestigious awards and recognitions throughout its history, including recently being ranked by HealthGrades, a leading independent national healthcare ratings organization, as among the Top 5% of All Hospitals in America for Clinical Excellence; and
- WHEREAS** Tomball Regional Medical Center is a community-based hospital, whose board of directors is composed of community members, dedicated to the continued improvement of the hospital and its healthcare programs; and
- WHEREAS** more than 350 highly qualified physicians care for patients at Tomball Regional Medical Center, utilizing state-of-the-art technology, diagnostic procedures, rehabilitation services and education to provide the highest possible quality of service; and
- WHEREAS** the City of Tomball wishes to honor the commitment of Tomball Regional Medical Center to provide the highest quality, cutting-edge healthcare services possible to the citizens of Tomball and the surrounding community through the Robert F. Schaper Heart Center, the Women's Center, the Cancer Treatment Center, the Texas Wound and Lymphedema Center, the Texas Sports Medicine Center, the Diagnostic Imaging Center, and the Heritage Retirement Community;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim Monday, April 19, 2010, as:

"TOMBALL REGIONAL MEDICAL CENTER DAY."



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

ATTEST:

DATE:

April 2, 2010

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS** the members of numerous civic, business, religious, political, and non-profit organizations in the Tomball community have participated in City of Tomball Council meetings, beginning on December 3, 2007, by providing an invocation for the success of each Council meeting; and
- WHEREAS** these community leaders demonstrate the qualities of leadership, citizenship, and civic involvement; and
- WHEREAS** the City of Tomball wishes to honor and thank these community members for their participation and encouragement in the Tomball Council meetings;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim Monday, April 19, 2010 as:

“TOMBALL INVOCATION LEADERS DAY.”



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

ATTEST:

DATE:

[Signature]
[Signature]
April 15, 2010

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS** the members of the Tomball High School Student Council have participated in City of Tomball Council meetings, beginning on December 3, 2007, leading those in attendance in reciting the pledges to the United States and Texas flags; and
- WHEREAS** the purpose of the Student Council is to serve and represent the entire student body of Tomball High School, promoting the general betterment of the school through effective student government, placing the emphasis upon citizenship and leadership; and
- WHEREAS** in support of that purpose, the participation of the members of the THS Student Council in Tomball City Council meetings provides an example of the best qualities of motivation, leadership, citizenship, and civic involvement ; and
- WHEREAS** the City of Tomball wishes to honor and thank the members of the Tomball High School Student Council for their participation in the Tomball Council meetings;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim Monday, April 19, 2010 as:

“TOMBALL HIGH SCHOOL STUDENT COUNCIL DAY.”



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

ATTEST:

DATE:

[Signature]
[Signature]
April 15, 2010

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS,** **Thomas Lee "T. Lee" Ollison** was hired by the City of Tomball on June 19, 1980 as a Sanitation Worker in the Publics Works Department; and
- WHEREAS,** **"T. Lee" Ollison**, through his work as a conscientious and dedicated employee, has risen to the position of Streets and Drainage Serviceperson; and
- WHEREAS,** in 2002, **"T. Lee" Ollison** was selected as **Employee of the Year** by his peers; and
- WHEREAS,** **"T. Lee" Ollison** joined the Tomball Fire Department in 1997 as a volunteer firefighter, a service to the city that he continues to this day; and
- WHEREAS,** **"T. Lee"** has served the City of Tomball well throughout his career, receiving multiple compliments from the citizens of Tomball, including special appreciation for his work efforts during the aftermath of Hurricane Ike in 2008; and
- WHEREAS,** after giving the City of Tomball 30 years of dedicated service, **"T. Lee"** has decided to retire to spend time with his family and friends; and
- WHEREAS,** the City of Tomball wishes to honor **"T. Lee" Ollison** for his distinguished service to the citizens of this great City with a retirement reception on April 22, 2010 at the Public Works building to commemorate his many years of service to the City of Tomball and its citizens;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, Texas do hereby proclaim Thursday, April 22, 2010 as:

"THOMAS LEE "T. LEE" OLLISON DAY."



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

[Signature]

ATTEST: *[Signature]*

DATE: *April 15, 2010*

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS,** today's society finds more citizens involved in motorcycling on the roads of our country; and
- WHEREAS,** motorcyclists are less protected and much more likely to be injured or killed in a crash than other vehicle drivers; and
- WHEREAS,** campaigns have helped inform riders and motorists alike on motorcycle safety issues to reduce motorcycle related risks, injuries, and, most of all, fatalities through a comprehensive approach to motorcycle safety; and
- WHEREAS,** it is the responsibility of all road users to become aware of motorcyclists, regarding them with the same respect as any other vehicle traveling the highways of this country and sharing the road respectfully; and
- WHEREAS,** the City of Tomball wishes to join with the Houston Region of the Texas Confederation of Clubs and Independents, Texas Motorcycle Safety Coalition, in urging motorcyclists to be well-trained and properly licensed and to ride responsibly by making themselves visible to other motorists;

NOW, THEREFORE, I, GRETCHEN FAGAN, MAYOR OF THE CITY OF TOMBALL, TEXAS, do hereby proclaim the month of May 2010 as:

"MOTORCYCLE SAFETY AND AWARENESS MONTH"

in Tomball, Texas and urge all citizens to avoid distracted driving and to share the road safely.

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

Gretchen Fagan

ATTEST: *Don Spain*

DATE: *April 5, 2010*



Regular City Council Agenda Item Data Sheet

Meeting Date: April 19, 2010

Topic:

- Report from City Manager regarding Error Discovered in Contract between the City of Tomball and Sandra Van Zandt Art Sculptures, LLC for the Beckendorf Statue
- Report from the Tomball Sister City Organization regarding **German Heritage Festival**
- April 26-May 4 – **Early Voting** at City Hall
- Report from City Staff regarding the **2nd Annual City of Tomball Bunny Run 5K and Kids 1 Mile**
- April 27, 2010 – Volunteer Firefighters and Reserve Police Officers Banquet
- May 6, 2010 – **Mayor's Coffee** – (New Location) **Bootsie's** – 5:30 p.m.-7:00 p.m.
- **May 8, 2010 – Election Day – General City Election at City Hall, 7:00 a.m.-7:00 p.m.**
- May 8, 2010 - **Farmers Market**
- May 8, 2010 - **2nd Saturday at the Depot**
- **Walk Tomball!** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken

Background:

Origination:

Recommendation:

Funding:

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

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

ATTACHMENTS:

Notice of General Election
Farmers Market

NOTICE OF GENERAL ELECTION
(AVISO DE ELECCIÓN GENERAL)
(THÔNG BÁO VỀ CUỘC TỔNG TUYỂN CỬ)

To the Registered Voters of the City of Tomball, Texas:

(A los votantes registrados de la Ciudad de Tomball, Texas:)

(Gửi các Cử Tri Ghi Danh Bỏ Phiếu của Thành Phố Tomball, Texas:)

Notice is hereby given that the polling places listed below will be open from 7:00 a.m. to 7:00 p.m. on May 8, 2010, for voting in a general election to elect Mayor and Council Position 3.

(Notifíquese, por el presente, que las casillas electorales citadas abajo abrirán desde las 7:00 a.m. hasta las 7:00 p.m. el 8 de mayo de 2010 para votar en una elección general para elegir un Alcalde y un Concejal para la Posición 3.)

(Theo đây, chúng tôi yêu cầu tổ chức một Cuộc Tổng Tuyển Cử vào ngày 8 tháng Năm, 2010 để bầu chọn Thị Trưởng và Thành viên hội đồng vị trí số 3.)

LOCATION OF POLLING PLACE: (DIRECCIÓN DEL LUGAR DE VOTACIÓN:) (ĐỊA ĐIỂM BỎ PHIẾU:)

401 Market Street, Tomball, Texas 77375.

Early voting by personal appearance will be conducted each weekday at: 401 Market Street, Tomball, Texas 77375, between the hours of 7:45 a.m. and 5:00 p.m., Monday, Wednesday, and Thursday, between the hours of 7:45 a.m. and 7:45 p.m. on Tuesday, and between the hours of 7:45 a.m. and 4:00 p.m. on Friday, beginning on April 26, 2010 and ending on May 4, 2010.

(La votación anticipada en persona se llevará a cabo de lunes a viernes en: 401 Market Street, Tomball, Texas 77375, entre las 7:45 a.m. y las 5:00 p.m. el lunes, miércoles y jueves, entre las 7:45 a.m. y las 7:45 p.m. el martes, y entre las 7:45 a.m. y 4:00 p.m. el viernes, comenzando el 26 de abril de 2010 y culminando el 4 de mayo de 2010.)

(Thủ tục đích thân tới bỏ phiếu sớm sẽ diễn ra vào tất cả các ngày thường tại 401 Market Street, Tomball, Texas 77375, từ 7 giờ 45 sáng tới 5 giờ chiều, thứ Hai, thứ Tư và thứ Năm, từ 7 giờ 45 sáng tới 7 giờ 45 tối thứ Ba, và từ 7 giờ 45 sáng tới 4 giờ chiều thứ Sáu, bắt đầu từ ngày 26 tháng Tư, 2010 tới ngày 4 tháng Năm, 2010.)

Applications for ballot by mail shall be mailed to: (Las solicitudes de boletas para votar por correo deben enviarse a:)

(Quý vị có thể gửi đơn xin lá phiếu bầu qua đường bưu điện tới cho:)

Doris Speer

(Name of Early Voting Clerk)

(Nombre de la Secretaria de Votación Anticipada)

(Tên của Thư Ký phụ trách Bỏ Phiếu Sớm)

401 Market Street

(Address) (Dirección) (Địa chỉ)

Tomball, TX

77375

(City) (Ciudad) (Thành phố)

(Zip Code) (Código Postal) (Số Zip Code)

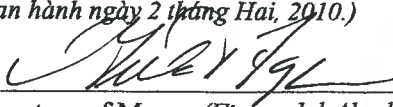
Applications for ballot by mail presented in person must be received no later than the close of business on April 23, 2010. (Las solicitudes de boletas para votar por correo hechas en persona deberán recibirse para el fin del horario de oficina el 23 de abril de 2010.)

(Đơn xin lá phiếu bầu qua thư đích thân đến nộp phải được nhận không trễ quá cuối giờ làm việc ngày 23 tháng Tư, 2010.)

Issued this the 2nd day of February 2010.

(Emitido este día 2 de febrero de 2010.)

(Ban hành ngày 2 tháng Hai, 2010.)



Signature of Mayor (Firma del Alcalde) (Chữ ký của Thị Trưởng)



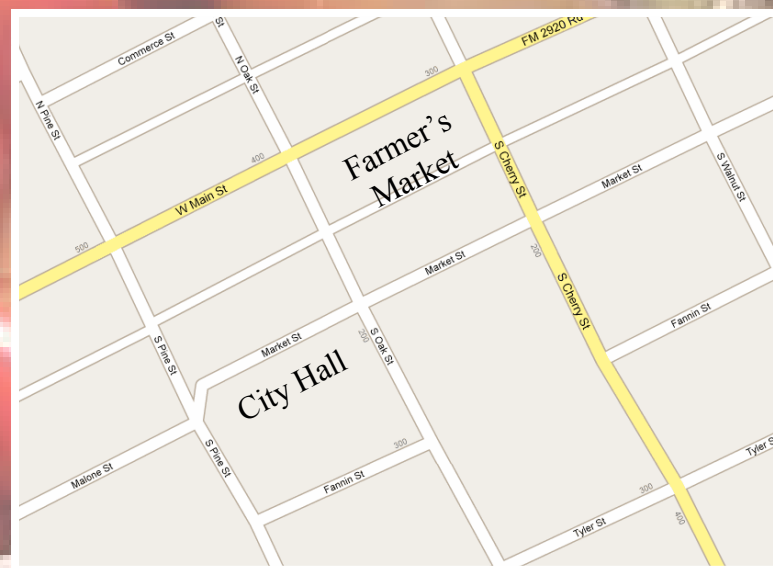
Bringing the farmers back to the community!

Come enjoy the Tomball Farmer's Market! We'll have produce, prepared foods and crafts for you to purchase.

**Now open on the
2nd & 4th Saturday
of every month!**

**Market opens
at 9 AM!**

**Located at the
corner of Cherry &
FM 2920**



Regular City Council Agenda Item Data Sheet

Meeting Date: April 19, 2010

Topic:

Approve the Minutes of the following Meetings:

- Special City Council Meeting of April 5, 2010
- Regular City Council Meeting of April 5, 2010
- Special City Council Meeting of April 14, 2010

Background:**Origination:****Recommendation:****Funding:**

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

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

ATTACHMENTS:

Draft Minutes - April 5, 2010 Special City Council
Draft Minutes - April 5, 2010 Regular City Council
Draft Minutes - April 14, 2010 Special City Council

**MINUTES OF SPECIAL CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, APRIL 5, 2010

5:00 P.M.

1.0 Call to Order

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

Councilman Stoll
Councilman Webb
Councilman Townsend
Councilman Driver

Members absent:

Councilman Quinn

Others present:

Interim City Manager – Christal Kliewer
City Secretary – Doris Speer
City Attorney – Scott Bounds
Finance Director – Glenn Windsor
Director of Public Works – David Kauffman
Director of Engineering & Planning – Mark McClure
City Planner – Kelly Violette
Assistant to City Manager – Shawn Cox

2.0 No public comments were received.

3.0 Workshop Session:

- The City Council entered into a Workshop Session to consider the following:
 - development ordinances
 - electric power purchase contract.

draft

4.0 Motion was made by Councilman Townsend, second by Councilman Driver, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 19th day of April 2010.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

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



MONDAY, APRIL 5, 2010

7:00 P.M.

1.0 Call to Order

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

Councilman Stoll
Councilman Webb
Councilman Townsend
Councilman Driver

Members absent:

Councilman Quinn

Others present:

Interim City Manager – Christal Kliever
City Secretary – Doris Speer
City Attorney – Scott Bounds
Finance Director – Glenn Windsor
Director of Public Works – David Kauffman
Fire Chief – Randy Parr
Director of Engineering & Planning – Mark McClure
Assistant to City Manager – Shawn Cox
Community Events Coordinator – Rosalie Dillon
Chief, NWEMS – Brian Petrilla

draft

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

3.0 The pledges to U. S. and Texas Flags were led by Surayah Longe of the THS Student Council

4.0 No public comments were received.

5.0 Presentations:

- Mayor Fagan presented a Letter of Recognition to Grant Mottershaw, Eagle Scout, Troop 471, Orion District
- Mayor Fagan presented a Proclamation for Klein's Supermarket Heritage Day – April 5, 2010 to Robert and Ruthie Klein, Joe Klein, and Jeffrey and Traci Klein
- Mayor Fagan presented a Proclamation for Northwest Rural EMS – 30th Anniversary to Chief Brian Petrilla and members of NWEMS
- Mayor Fagan presented a Proclamation for National Public Safety Telecommunicators Week - April 11-17, 2010 to Chief Randy Parr and Chief Brian Petrilla
- The Proclamation for Motorcycle Safety Awareness Month - May 2010 will be presented at the April 19, 2010 Council meeting.

6.0 Reports and Announcements:

- April 10, 2010 – **Farmers Market**
- April 10, 2010 – **2nd Annual City of Tomball Bunny Run 5K and Kids 1 Mile**
- April 10, 2010 – **2nd Saturday at the Depot**
- April 27, 2010 – Volunteer Firefighters and Reserve Police Officers Banquet
- **May 8, 2010 – Election Day – General City Election at City Hall, 7:00 a.m.-7:00 p.m.**
- May 8, 2010 - **2nd Saturday at the Depot**
- **Walk Tomball!** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken

7.0 Motion was made by Councilman Stoll, second by Councilman Townsend, to approve the Minutes of the Regular City Council Meeting of March 15, 2010.

Motion carried unanimously.

8.0 Old Business:

- 8.1 Motion was made by Councilman Townsend, second by Councilman Driver, to adopt, on second reading, Ordinance No. 2010-04, an Ordinance of the City of Tomball, Texas, Continuing the City's Juvenile Curfew Ordinance; and Making Other Findings and Provisions Related Thereto. Vote was as follows:

Councilman Stoll	<u>Aye</u>
Councilman Webb	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Driver	<u>Aye</u>
Councilman Quinn	<u>Absent</u>

Motion carried unanimously.

- 8.2 Motion was made by Councilman Townsend, second by Councilman Driver, to adopt, on second reading, Ordinance No. 2010-05, an Ordinance of the City of Tomball, Texas, Finding and Determining that Public Convenience and Necessity no Longer Require the Continued Existence of an Unimproved Road Right-of-Way Commonly Known as Stasney Road, Said Land Being a Roadway Right-of-Way out of the Ralph Hubbard Survey, Harris County, Texas and Being a Portion of a 30-Foot Wide Right-of-Way in the Tomball Townsite Subdivision Recorded in Volume 2, Page 65 of the Harris County Plat Records; Vacating, Abandoning, and Closing Said Roadway Right-of-Way; Authorizing the Mayor to Execute and the City Secretary to Attest Respectively, to a Deed Without Warranty of Title; Providing for Severability; and Containing Other Provisions Relating to the Subject. Vote was as follows:

Councilman Webb	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Driver	<u>Aye</u>
Councilman Quinn	<u>Absent</u>
Councilman Stoll	<u>Aye</u>

Motion carried unanimously.

9.0 New Business:

- 9.1 Shawn Cox presented an overview of the proposed Resolution. Motion was made by Councilman Driver, second by Councilman Townsend, to approve Resolution No. 2010-05, a Resolution of the City of Tomball, Texas, Authorizing the City Manager or the City Manager's Designee to Negotiate with Energy Providers to obtain a Set Price, for a Specific Period up to Forty-eight (48) Months, with One or More Amendments, for the City's Future Purchases of Electricity; and Providing other Matters related to the Subject.

Motion carried unanimously.

- 9.2 Shawn Cox presented an overview of the proposed Resolution. Motion was made by Councilman Townsend, second by Councilman Stoll, to approve Resolution 2010-06, a Resolution Approving the Articles of Incorporation and Bylaws of Cities Aggregation Power Project, Inc., a Political Subdivision Corporation; Accepting Membership in Said corporation; Appointing a Representative to Serve on behalf of the City of Tomball; Approving Payment of an Initial Membership Fee. Vote was as follows:

Councilman Stoll	<u>Aye</u>
Councilman Webb	<u>Nay</u>
Councilman Townsend	<u>Aye</u>
Councilman Driver	<u>Aye</u>

Motion carried, 3 Aye votes to 1 Nay vote.

- 9.3 Randy Parr presented an overview of the requested funding increase. Motion was made by Councilman Driver, second by Councilman Stoll, to approve Increase in Funding from the Hotel/Motel Tax Funds for the July 4th Fireworks Display from \$20,000 to \$23,500. Vote was as follows:

Councilman Stoll	<u>Aye</u>
Councilman Webb	<u>Nay</u>
Councilman Townsend	<u>Nay</u>
Councilman Driver	<u>Aye</u>

The vote being tied, Mayor Fagan cast the deciding vote: Aye

Motion carried, 3 Aye votes to 2 Nay votes.

- 9.4 Doris Speer presented an overview of the proposed application. Motion was made by Councilman Townsend, second by Councilman Stoll, to approve Application for Emergency Wrecker License by Tomball Towing and Storage, Inc. to participate in the Emergency Wrecker Rotation.

Motion carried unanimously.

- 9.5 David Kauffman presented an overview of the proposed Contract. Motion was made by Councilman Webb, second by Councilman Stoll, to award Contract for Project #2010-03, Diesel Fuel and Gasoline Contract, to Pumpelly Oil Company, LLC.

Motion carried unanimously.

- 9.6 Glenn Windsor presented an overview of the proposed Agreement. Motion was made by Councilman Driver, second by Councilman Stoll, to approve an Interlocal Agreement through the City of Garland for the Purchase of Goods and Services. Vote was as follows:

Councilman Stoll	<u>Aye</u>
Councilman Webb	<u>Nay</u>
Councilman Townsend	<u>Nay</u>
Councilman Driver	<u>Aye</u>

The vote being tied, Mayor Fagan cast the deciding vote: Aye

Motion carried, 3 Aye votes to 2 Nay votes.

- 9.7 Mark McClure presented an overview of the Plat. Motion was made by Councilman Stoll, second by Councilman Webb, to accept **SHEPHERD'S PROPERTY – FINAL PLAT**: Being a 1.2613 Acre Tract Situated in the City of Tomball, Texas in the Joseph House Survey, Abstract 314, Harris County, Texas, Being Comprised of a 0.9485 Acre Tract (H.C.C.F. NO. Z-433094) and a 0.3127 Acre Tract (H.C.C.F. NO. S-775139).

Motion carried unanimously.

- 9.8 Mark McClure presented an overview of the Proposal. Motion was made by Councilman Driver, second by Councilman Townsend, to approve Proposal from Cobb, Fendley and Associates for Landman and Appraisal Services Associated with the Tomball Hufsmith Water and Gas Improvements Project, in an Amount Not to Exceed \$103,250.00.

Motion carried unanimously.

- 9.9 Mark McClure presented an overview of the proposed Request. Motion was made by Councilman Driver, second by Councilman Townsend to approve Request by the Owners of Pine Country Subdivision, Section One, for the Extension of City of Tomball's Water Main to Service Their Eight-Lot Subdivision.

Motion was made by Councilman Stoll, second by Councilman Townsend, to table consideration of the proposed request until Mark McClure recalculates the estimated costs for 5 or 6 customers with a 2-inch water line instead of a 12-inch water line and provides the information to Council.

Motion to table carried unanimously.

- 9.10 The City Council recessed at 8:14 p.m. to meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purposes:

- Section 551.071 – Consultation with Attorney regarding Pending Litigation: Cause No. 2009-18524: *David Kallus and Lady Edwards v. City of Tomball and Redflex Traffic Systems, Inc.*; in the 55th District Court of Harris County Texas
- Section 551.074 – Personnel Matters – To Deliberate the Hiring/Employment, Duties and Responsibilities of a City Manager

Upon reconvening into Regular session at 9:08, no action was taken.

- 9.11 No Action was taken regarding Funding of City's Participation in Cause No. 2009-18524: *David Kallus and Lady Edwards v. City of Tomball and Redflex Traffic Systems, Inc.*; in the 55th District Court of Harris County Texas.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 19th day of April 2010.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

MINUTES OF SPECIAL CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



WEDNESDAY, APRIL 14, 2010
5:00 P.M.

1.0 Call to Order

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

Councilman Quinn
Councilman Webb
Councilman Townsend
Councilman Driver

Members absent:

Councilman Stoll - Excused

Others present:

City Secretary – Doris Speer
City Attorney – Scott Bounds
Director of Engineering & Planning – Mark McClure
Assistant to City Manager – Shawn Cox

draft

2.0 New Business

2.1 Discuss and Possibly Take Action Regarding a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court

Gary Smith, property owner, made a presentation to Council regarding the slope failure on his property, located at 31422 Rigel Court.

Mark McClure presented information and a timeline regarding the property at 31422 Rigel Court.

2.2 **EXECUTIVE SESSION:** The City Council recessed at 6:28 p.m. to meet in Executive Session, as authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose:

- Section 551.071 – Consultation with Attorney regarding the Matter Discussed

Upon reconvening at 6:53 p.m., no action was taken.

3.0 Motion was made by Councilman Townsend, second by Councilman Driver, for adjournment.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this ____ day of _____ 2010.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council Agenda Item Data Sheet

Meeting Date: April 19, 2010

Topic:

Approve, as a Project of the Corporation, an agreement with FabCorp, Inc., to make direct incentives to, or expenditures for, the creation or retention of primary jobs and that are found by the Board of Directors to be required or suitable for the promotion of new or expanded business development, to wit: FabCorp, Inc. relocation of its light weldments line of machined fabrications to 27807 Red Fox Road in Tomball's extraterritorial jurisdiction (ETJ). The estimated amount of expenditure for such Project is \$156,000.00

Background:

All expenditures of the Tomball EDC sales tax revenue must first be approved as a "Project". At a special meeting on April 6, 2010 the Tomball EDC Board of Directors did take formal action to approve, as a project of the Tomball EDC, an agreement with FabCorp, Inc. The City Council of Tomball has final approval authority over all projects and agreements of the Tomball EDC.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval of the performance agreement, as a Project of the Tomball EDC.

Funding: Yes

Account Number:

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

Betty Reinbeck

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

ATTACHMENTS:

Cover Letter

Request Letter

Economic Impact

Agreement



TO: Board of Directors
Tomball Economic Development Corporation

FROM: Betty Reinbeck
Executive Director

MEETING DATE: April 6, 2010

SUBJECT: FabCorp, Inc.

As you can see by the letter from John W. Stump, Chief Financial Officer of FabCorp, Inc., this is a very diversified and successful company.

Since its beginning in 1993, FabCorp, Inc. has established itself as the premier fabrication/machine parts supplier in the South-Central United States. It has enjoyed unparalleled success in supplying various military customers worldwide and in supplying industrial markets, with emphasis on subsea drilling for customers such as Cameron, Aker, FMC, Oilstates, GE, Hydrill, and commercial markets.

FabCorp, Inc. is planning to relocate fifty-two (52) full-time employees to either its facility in Tomball or its location on Rankin Road in Houston. Its facility in Tomball currently has four (4) employees. They plan to make the move by April 30, 2010.

FabCorp, Inc.'s facility in Tomball is located at 27807 Red Fox Road in Tomball's extraterritorial jurisdiction (ETJ) and is approximately two blocks west of the southbound lanes of Tomball Expressway between Hirschfield Road and Alice Road. The company is willing to petition to be annexed into the city limits once it is eligible to do so.

An economic impact model form is included with the agreement to show the five (5) year impact of this firm on Tomball's economy when they are annexed into the city. Additionally, these fifty-two (52) employees and visitors will have an immediate impact on our local economy through their purchases while they are here, etc.

I hope you will find this to be a very positive opportunity for the City of Tomball.

Should you decide to approve this agenda item, please move to approve, as a Project of the TEDC, an agreement between the TEDC and FabCorp, Inc. in an amount not to exceed \$156,000.



6951 WEST LITTLE YORK
HOUSTON, TEXAS 77040
Ph (713) 466-3962
Fx (713) 466-3470
www.fabcorp.com

WORLD CLASS FABRICATION AND MACHINING

Betty Reinbeck
Executive Director
Tomball Economic Development Corporation
P.O. Box 820
Tomball, Texas 77377-0820

Dear Ms Reinbeck:

We are pleased to submit our request for funding assistance related to our expansion project for our operations in Tomball. Our intent is to locate approximately 56 total full-time employees as well as make substantial investment in capital equipment to be used in our manufacturing operations.

Company Name : Fabcorp, Inc.
CEO: Allan Hohman
Principals and Contact Information:

All Officed at:

6951 West Little York, Houston, Tx 77040
Or 27807 Red Fox Road, Tomball, Tx. 77377

- Allan Hohman (713) 875-8973 CEO
 - Marianne Hohman (713) 824-8101 President
 - Jim Morris (713) 875-8880 Engineering Manager
 - John Stump (832) 456-4546 Chief Financial Officer
- Contact person for this application

Since its beginning in 1993, Fabcorp, Inc. has distinguished itself in providing its customers top-quality work and has established itself as the premiere fabrication/machine parts supplier in the South-Central United States.

We offer many processes including::

- Flame/Plasma/WaterJet/Laser cutting of sheet & plate;
- complete weldments in Tig/Mig/CNC Robotic stations;
- complete fabrications including shearing/bending/punching/rolling ;
- CNC milling & turning.
- Powder coating operations are currently located in Tomball.

FabCorp has enjoyed unparalleled success as a woman owned enterprise supplying various fabricated, machined and assembled components to Government specifications. We produce over five hundred different items for various military customers worldwide. We have served the U.S. Army, U.S. Navy and various subcontractors. We are also a supplier to NASA, the Bureau of Reclamation, and the Department of the Interior.

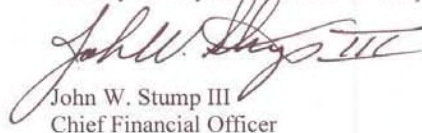
Fabcorp enjoys a leadership role in supplying industrial markets, with emphasis on subsea drilling for customers such as Cameron, Aker, FMC, Oilstates, GE, Hydrill ; and commercial markets .

Our plans for the Tomball location include relocation of our light weldments line of machined fabrications, serving both military and industrial OEM's. Also, we will be locating our Hippo-Hopper product line in Tomball. This is our own product line in which we market self-dumping hoppers nationally and internationally to the material handling industry.

NAICS Codes:	332111 332116 332313 and 332999
Location of our plant	27807 Red Fox Road, Tomball, Tx. 77377
Size of Property	140,511 square feet – approximately 3.3 acres
Value of Property	\$1,068,707
Value of equipment and inventory for tax purposes	\$450,000
Square footage of buildings	approx. 45,000
Value of capital improvements	
	New construction \$ 40,000
	Rehab – Piping & electrical \$125,000
	Additions to building None
Project start date	April 30, 2010
Completion date	April 30, 2010
Site plan attached	
Planned number of total jobs in Tomball	56
Planned number of new jobs created in Tomball	52
Average wage of all jobs new to Tomball	\$ 38,000

We look forward to working with you and increasing the scope of our operations in Tomball. Please contact John Stump for any information you need to process our application. As we are hoping to have our operations ready to begin employment by April 30th we will appreciate your efforts to complete the grant process to meet that schedule.

Thank you for your assistance in this project,



John W. Stump III
Chief Financial Officer

FABCORP, INC.

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

CITY OF TOMBALL ECONOMIC IMPACT MODEL

Average Annual Wage Assessment:

Number of Employees	Average Hourly Wage	Average Weekly Wages	Total Annual Wages (52 wks.per Yr.)
Existing:			
Prospective: 52	18.50	740	
TOTAL: 52	18.50	740	2,000,960
Federal Income and FICA Taxes at 28% deducted			560,269
Fixed payments for rent, insurance, etc. at 25%			500,240
Net Disposable Annual Income			940,451

Total Return to Local Government by Annual Payroll:

Local Sales Tax Rate of 2% on Fixed Payments:	10,005
Average Multiplier effect of the Dollar turning over 3.5 times to Calculate the Total Annual Local Sales Tax Impact:	35,017

Annual Sales Tax Impact:

Value of Retail Sales	Sales Tax	
972,000	2.00%	19,440

Estimated Property Tax Impact:

Value of Property and Improvements	Tomball Tax Rate (per \$100)	
1,683,707	0.25146	4,234
Annual Economic Impact of Manufacturing and Maintenance Facility		58,691
Economic Impact over a Five Year Period		293,453

AGREEMENT

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

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the “TEDC”), and **FabCorp, Inc.** (the “Company”), 6951 West Little York, Houston, Texas 77040.

WITNESSETH:

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

WHEREAS, the Company owns a 3.3 acre tract of land within the City’ ETJ, located at 27807 Red Fox Road, Tomball, Texas 77377 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the Company, currently located at 6951 West Little York, Houston, Texas 77040 proposes to relocate its light weldments line of machined fabrications, serving both military and industrial OEM’s, and as part of the process, plans to expend funds to make capital improvements (the “Improvements”), as are necessary; and,

WHEREAS, the Company also proposes to move fifty-two (52) full-time employees in conjunction with the relocation and upgrading of its business operations to the Property; and

WHEREAS, the TEDC agrees to provide to the Company the sum of One Hundred Fifty-Six Thousand Dollars (\$156,000.00) to assist in the relocation of the fifty-two (52) employees; and

WHEREAS, this expenditure is found by the Board of Directors of the TEDC to be required or suitable for the promotion and development of new or expanded business enterprises and in furtherance of creation and retention of primary jobs; and

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

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

1.

The Company covenants and agrees that it will operate and maintain the proposed business on the Property for a term of five (5) years, and will for such term, except as provided by paragraph 5 hereof, maintain fifty-two (52) employees on the Property at its prevailing wage.

2.

The Company also covenants and agrees that the relocation of the fifty-two (52) employees shall occur within eighteen (18) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

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

4.

The Company further covenants and agrees, contemporaneous with its execution of this Agreement, to petition the City of Tomball, Texas, in accordance with the requirements of the Texas Local Government Code, as amended, requested and consenting to the City’s annexation of the property into the boundaries of the City. The Company understands and agrees that such petition and consent, in the form attached hereto as Exhibit “B” and made a part hereof, shall be irrevocable and binding on the Company, its successors and assigns, and any subsequent purchasers of the Property so long as this Agreement is in effect. If at the conclusion of the Agreement term, the Property has not been annexed by the City, the Request shall be withdrawn and of no effect.

5.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company the sum of One Hundred Fifty-Six Thousand Dollars (\$156,000.00) to fund the relocation of the fifty-two (52) employees to the Company’s business operations on the Property. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include proof that the Company has relocated the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce

Commission form C-3 or Internal Revenue Service Form 941. In the event the number of jobs originally projected is not met or maintained, the amount of the funding provided to the Company by the TEDC will be reduced on a pro rata basis to reflect the actual number of jobs at the time of the request for disbursement of funds. Annually, on the anniversary date of this Agreement, for the five year term, Company shall provide proof that Company is maintaining the number of employees on the Property as provided in paragraph 1, evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service Form 941. It is understood and agreed by the parties that, in the event Company shall fail to maintain on the Property, the number of employees provided in paragraph 1, for the first three years of such five year term, Company shall reimburse the TEDC for the full amount paid to Company, with interest, in accordance with paragraph 6 hereof. In the event Company shall fail to maintain on the Property, the number of employees provided in paragraph 1, for the remaining two years, Company shall reimburse the TEDC the amount of One Thousand Five Hundred Dollars (1,500.00), plus interest, for each of the 52 positions for which it fails to maintain an employee during such two year term in accordance with paragraph 6 hereof.

6.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall, except as provided in paragraph 5, reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus $\frac{1}{2}\%$ per annum, within 30 days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the

90-day Treasury Bill plus ½% per annum, within 30 days after the TEDC notifies the Company of the violation.

The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such funds. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default.

7.

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

8.

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

If to City:

Tomball Economic Development Corporation
401 W. Market Street
Tomball, Texas 77375

Attn: President, Board of Directors

If to Company:

FabCorp, Inc.
6951 West Little York
Houston, Texas 77040
Attn: Mr. J. Allan Hohman, CEO

9.

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

10.

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

11.

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

12.

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

13.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this _____ day of _____ 2010 (the "Effective Date").

FABCORP, INC.

By: _____

Name: J. Allan Hohman

Title: Chief Executive Officer

ATTEST:

By: _____

Name: _____

Title: _____

**TOMBALL ECONOMIC DEVELOPMENT
CORPORATION**

By: _____

Name: _____

Title: President, Board of Directors

ATTEST:

By: _____

Name: _____

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §

§

COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____
2010, by J. Allan Hohman, Chief Executive Officer of, FabCorp, Inc. for and on behalf of said
corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____
2010, by _____, President of the Board of Directors of the
Tomball Economic Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit “A”

Legal Description of Property

DRAFT

EXHIBIT “B”

ANNEXATION PETITION

TO THE MAYOR AND CITY COUNCIL §
§
OF THE CITY OF TOMBALL, TEXAS §

The undersigned, owner of all of the territory described in Exhibit “A” attached hereto and made a part hereof for all purposes (the “Territory”), which is adjacent to the City of Tomball, Texas, is one-half (1/2) miles or less in width, and is uninhabited, or on which fewer than three (3) qualified voters reside, hereby petitions the City of Tomball to extend the present city limits so as to include the Territory.

EXECUTED this _____ day of _____ 2010.

FABCORP, INC.

By: J. Allan Hohman

Title: Chief Executive Officer

ACKNOWLEDGMENT

TO THE MAYOR AND CITY COUNCIL §

§

OF THE CITY OF TOMBALL, TEXAS §

BEFORE ME, the undersigned authority personally appeared J. Allan Hohman, Chief Executive Officer of FabCorp, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed said instrument for and on behalf of said corporation in the capacity therein stated.

WITNESS MY HAND and seal of office this ____ day of _____ 2010.

Notary Public in and For the State of Texas
(SEAL)

Exhibit “A”
To Annexation Petition

Metes and Bounds/Plat Map

DRAFT

Regular City Council

Agenda Item

Data Sheet

Meeting Date: April 19, 2010

Topic:

Adopt, on First Reading, Ordinance No. 2010-06, an Ordinance of the City of Tomball, Texas, amending Chapter 26, "Emergency Services" of the Code of Ordinances of the City to Establish Policies, Procedures and Regulations as they relate to Alarms; Providing a Penalty in an Amount of not more than \$500 for Violation of any Provision Hereof; Providing for Savings and Severability; Providing for Publication; and Making other Provisions and Findings Related Thereto

Background:

The City of Tomball has previously enacted Article II of Chapter 26 of the Code of Ordinances which pertains to emergency alarm systems installed in buildings within the City Limits of Tomball. Presently, Article II does not require a permit and fee for the installation or operation of the alarm.

Each year, the Tomball Police and Fire Departments respond to numerous incidents in which it is determined that the alarm has been generated by a faulty system in the building. On several occasions, multiple responses to the same address occur often times over a several week period. Presently, Article II only provides for fees for false alarms to which the police department responds.

There are costs associated with responding to every call including those that are generated by an automatic sensing device. Staffing costs and vehicle costs are the two most significant. Police and day-time duty crew firefighters are paid at an hourly rate while volunteer firefighters are paid on a per call basis. Vehicles have an initial cost which must be depreciated over their estimated useful life. Over and above the initial acquisition cost, operating and fuel costs must be considered. Additionally, if a unit is committed to the response to an automatic alarm, it is unavailable to respond to another possibly more serious incident.

It is the intent of the Emergency Services Departments to employ an outside contractor to whom the fire and police monthly run records will be downloaded. From that information, the contractor will bill the alarm holder according to the provisions of the ordinance. The contractor will collect the false alarm response fees and remit the City's share to us.

The Tomball Fire and Police Departments are requesting Council to consider amending Chapter 26 of the Codes and Ordinances of the City to include a more comprehensive set of rules pertaining to the permitting, installation and operation of alarm systems installed in residences and businesses inside the City Limits of Tomball.

Origination:

Fire and Police Departments

Recommendation:

Staff recommends approval

Funding:

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

Randy Parr and Rob Hauck

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

ATTACHMENTS:

Ordinance No. 2010-06

Fire Department False Alarm Data

Police Department false alarm data

Cry Wolf Admin Services proposal

Cry Wolf false alarm program proposal

ORDINANCE NO. 2010-06

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 26, "EMERGENCY SERVICES" OF THE CODE OF ORDINANCES OF THE CITY TO ESTABLISH POLICIES, PROCEDURES AND REGULATIONS AS THEY RELATE TO ALARMS; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$500 FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SAVINGS AND SEVERABILITY; PROVIDING FOR PUBLICATION; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

WHEREAS, various state laws regulate alarms, alarm companies, alarm installers and alarm sales in the state of Texas; and

WHEREAS, Texas Local Government Code § 214.191 (formerly Tex.Loc.Gov't Code Ch. 218) authorizes municipal permits for certain alarm systems; and

WHEREAS, Texas Local Government Code § 233.091 authorizes county regulation of certain alarm systems and expressly does not affect the authority of a municipality to enact ordinances regulating alarm systems; and

WHEREAS, City Council finds it necessary to amend its existing alarm regulations to protect the public safety based on changing technology and use of alarm systems; now therefore

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

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

Section 2. Chapter 26, Emergency Services, of the Code of Ordinances of the City of Tomball is hereby to read as follows:

“Chapter 26 – Emergency Services

Article I. In General

Sec. 26.1 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alarm notification means a notification to the Tomball Police or Fire Department, intended to summon the proper public safety entity, and designed to be initiated:

- (a) intentionally by a person;
- (b) by an alarm system that responds to a stimulus characteristic of unauthorized intrusion; or
- (c) by an automatic or manual response to an incident of a fire or by the activation of a fire suppression or fire detection system.

Alarm site means the property served by an alarm system and under the control of a single owner, tenant, or lessor.

- (a) Residential site means a single family residence and each residential unit of a multi-unit building or complex that is served by an alarm system.
- (b) Commercial site means every premises or location where any business activity is regularly conducted and that is served by an alarm system. Each unit of a business premise or business location, if served by a separate alarm system in a multi-unit building or complex, shall be considered a separate commercial alarm system site.
- (c) Financial site means every premise or location of a financial institution that is required to have an alarm system pursuant to the Bank Protection Act of 1968.
- (d) Education/government site means every premise or location of a public or private school, as well as every location of a federal, state, county, or municipal governmental building.

Alarm system means electrical, electronic, or mechanical equipment that emits, transmits, or relays a signal intended to summon the police or fire department by direct or indirect means, except:

- (a) an alarm system installed on a motor vehicle, unless the vehicle is permanently located at an alarm site;
- (b) an alarm system designed to alert only the residents of a premise not equipped with a local alarm;
- (c) an alarm system installed on a premise:
 - (1) occupied by the United States Government; or
 - (2) owned and occupied by state government;

Alarm system business means a person who sells, installs, services, monitors, or responds to alarm systems or alarm notifications.

Burglar alarm means a device or system that transmits a signal intended to summon police in response to a burglary.

City means the City of Tomball, Texas.

False alarm notification means an alarm notification to the police or fire department resulting in a finding by the responding officer or fire officer or a subsequent investigation by the City, that there is no evidence of actual or attempted unauthorized intrusion, robbery, attempted robbery, other illegal activity or the presence of fire.

Fire alarm system means an alarm system intended to summon the Fire Department for the presence of smoke, fire, heat, or sprinkler system activation, activated by manual or automatic means.

Fire Department means the City of Tomball Fire Department.

Local alarm means an alarm system that emits a signal at an alarm site that is audible or visible from the exterior of a structure and is not connected to a monitoring site.

Master alarm permit means a permit issued to the owner or property manager of a residential apartment complex in which an alarm system operates in one or more individual residential units.

Owner means the person in control of the property including, but not limited to, every person in possession of land within the corporate limits of the City either as owner, purchaser, lessee, tenant or licensee.

Panic alarm means an alarm system that is utilized at either a business, or at the residence of a person, monitored by an alarm system company, and designed only to permit the person to signal the occurrence

of a personal emergency so that the company may dispatch appropriate aid.

Permit holder means the individual responsible for payment of all fees, charges or any civil action that may arise from the operation of an alarm system.

Police Department means the City of Tomball Police Department.

Sec. 26.2 Policies and Procedures

The City Manager may:

- (a) adopt policies and procedures to implement this chapter;
- (b) publish standards of operation for an alarm system; and
- (c) provide a copy of the standards to each permit holder.

Sec. 26.3 Public Safety Response

The Tomball Police Department or the Tomball Fire Department shall respond to the activation of a permitted alarm system as prescribed by the policies and procedures adopted by the City Manager, including the response priorities established by the departments.

Sec. 26.4 Governmental Immunity

An alarm permit is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, for a city emergency response. Any and all liability and consequential damage resulting from the failure or inability to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By applying for an alarm permit, the alarm user acknowledges that a city emergency response may be influenced by factors such as the availability of city emergency services, priorities of calls, weather conditions, emergency conditions, staffing levels, and prior response history.

Article II. Permits and Applications

Sec. 26.10. Permit Required

- (a) A person shall obtain an alarm permit issued by the City of Tomball before the person operates an alarm system.
- (b) A person must obtain a separate alarm permit for each alarm site.

- (c) A permit holder shall:
 - (1) keep the alarm permit at the alarm site; and
 - (2) produce the alarm permit for inspection at the request of an employee of the Police or Fire Department.

Sec. 26.11 Permit Application Fees

The nonrefundable application fee for an alarm permit, an annual permit renewal, or a permit reinstatement is:

- (a) \$15 for residential alarm site;
- (b) \$35 for a residential unit of an apartment complex;
- (c) \$50 for nonresidential areas of an apartment complex equipped with a burglary alarm, hold-up, panic, duress alarm system, or fire alarm system; and
- (d) \$50 for commercial alarm sites equipped with a burglary alarm, hold-up, panic alarm, or fire alarm system.

Sec. 26.12 Permits for System in an Apartment Complex

- (a) The owner or property manager of an apartment complex shall obtain a master alarm permit if an alarm system is operated in:
 - (1) a residential unit on the premises, whether the alarm system is furnished by the owner or property manager or contracted for by an individual tenant; or
 - (2) a non-residential area of the apartment complex, including a common tenant area, office, storage, or equipment area.
- (b) A tenant of an apartment complex shall obtain an individual alarm permit before the tenant operates or causes the operation of an alarm system in the tenant's residential unit.

Sec 26.13 Permit Applications and Renewal

- (a) A person who owns leases, occupies, or manages an alarm site shall file an application for an alarm permit and the application fee under this chapter with the City of Tomball on an approved form.
 - (1) The name, address, telephone number, and driver's license number of the person who will be the permit holder and be responsible for the proper maintenance and operation of the

- alarm system and payment of fees assessed under this article;
 - (2) the classification of the alarm site as either residential or commercial;
 - (3) identification of the alarm system as either a burglar alarm, hold-up, panic, duress alarm, fire alarm system or a combination of the above;
 - (4) any other information required by the City that is necessary for the enforcement of this article.
- (b) A permittee shall file an application to renew a permit not later than 30-days before its expiration.

Sec 26.14 Permit Terms

- (a) A permit issued under this chapter is effective for 12 months from the date of issuance.
- (b) A permit issued under this chapter is non-transferable and non-refundable.

Sec 26.15 Other Fees.

A permittee, including the holder of a master alarm permit, shall pay to the City of Tomball:

- (a) the permit application fee;
- (b) a late payment fee, if the person fails to pay the permit fee by its due date; and
- (c) other fees related to a permit, including a false alarm service fee assessed under Sec. 26.21 (*False Alarm Notification*).

Sec. 26.16 Grounds for Permit Denial

The City Manager may deny an application for a permit after at least 30 days notice if the applicant has:

- (a) made a false statement on the application;
- (b) made a false oral statement in connection with the application;
- (c) failed to pay a fee assessed under this chapter; or
- (d) had an alarm permit for an alarm site revoked and the violation resulting in the revocation remains uncorrected.

Sec. 26.17 Permit Revocation

The City of Tomball shall revoke an alarm permit if the City Manager determines after at least 30 days notice that:

- (a) an applicant has made:
 - (1) a false statement made on a permit application; or
 - (2) a false oral statement relating to a permit application; or
- (b) A permittee has:
 - (1) violated this chapter
 - (2) failed to pay a fee assessed under this chapter; or
 - (3) failed to maintain the alarm system to minimize false alarm notifications and ensure proper operation of the alarm system.

Sec. 26.18 Reinstatement of Permit

The City Manager may reinstate a permit revoked under Sec. 26.17 (*Permit Revocation*) if the City Manager determines that the applicant:

- (a) has paid the fees required under Sec. 26.15 (*Fees*); and
- (b) operates the alarm system in accordance with this chapter.

Sec. 26.19 Appeal From Denial of Revocation

- (a) If the City Manager denies an application for, or revokes an alarm permit, then the City Manager shall notify the applicant or permittee by certified mail, return receipt requested.
- (b) Not later than the 10th day after the affected person receives notice of an adverse action by the City Manager, the person may file a notice of appeal to the Municipal Court, including the reason for the appeal. Failure to file a timely appeal under this subsection results in the City Manager's action becoming final.
- (c) If an applicant or permittee files a timely appeal under this section, the City Manager's action is stayed.
- (d) The Municipal Court shall hear the appeal. The Municipal Court:
 - (1) shall make a decision based on the basis of a preponderance of the evidence presented;

- (2) shall render a decision not later than the 60th day after an appeal is filed; and
 - (3) may affirm, reverse, or modify the action of the City Manager.
- (e) The decision of the Municipal Court is final.

Sec. 26.20 Operation and Maintenance of an Alarm System

- (a) A permittee;
 - (1) shall maintain a premise containing an alarm system to ensure the proper operation of the alarm system;
 - (2) shall maintain the alarm system to minimize false alarm notifications;
 - (3) within one hour of notification by the city that an alarm system requires repair or inactivation, shall:
 - a. respond or cause an alarm system business representative to respond to repair or inactivate the malfunctioning alarm system;
 - b. provide access to the premises; or
 - c. provide security for the premises; and
 - (4) may not manually activate an alarm system except to report the occurrence of an event that the alarm system was designed to report.
- (b) A permittee with a local alarm shall adjust the mechanism to prevent an alarm signal from sounding for longer than 15 minutes after activation.
- (c) A permittee shall notify the City if the permittee relinquishes control of the alarm site and cancels the permit. If a permittee fails to notify the City under this section, the permittee shall pay fees associated with the permit, if any.

Sec. 26.21 False Alarm Notification

- (a) If an alarm system transmits more than three false burglar alarms or fire alarm notifications within a 12-month period, the permittee shall pay a service fee for the fourth and each subsequent false burglar alarm notification.

Residential Alarms

- (1) For each response for the first through the 3rd
No Fee

- (2) For each response after the 3rd through the 5th
\$25.00
- (3) For each response after the 5th through the 8th...
\$50.00
- (4) For each response after the 8th
\$100.00

Commercial Alarms

- (1) For each response for the first through the 3rd
No Fee
 - (2) For each response after the 3rd through the 5th
\$50.00
 - (3) For each response after the 5th through the 8th
\$75.00
 - (4) For each response after the 8th
\$100.00
- (b) If an alarm system transmits more than two false panic alarm notifications within a 12-month period, the permittee shall pay the maximum service fee permitted by state law, but not more than \$100, for the third and each subsequent false panic alarm notification.
 - (c) A tenant holding an individual alarm permit shall pay a false alarm notification fee related to a transmission from the alarm system in the tenant's unit.
 - (d) The permittee holding the master alarm permit holder shall pay a false alarm notification fee related to a transmission from an unoccupied unit or a unit for which a tenant has not obtained an individual alarm permit.
 - (e) The City Manager may investigate and waive payment of a service fee assessed under this section.

Article III. Offenses and Penalties

Sec. 26.30 Offenses

- (a) A person commits an offense if the person operates, cause to be operated, or allows the operation of an alarm system:
 - (1) without a permit issued under this chapter;
 - (2) in violation of this chapter; or
 - (3) that automatically dials the 911 Emergency Communications System.

Sec. 26.31 Penalties

- (a) A person who fails to comply with this chapter commits a class C misdemeanor punishable by a fine of not more than \$500.00.
- (b) Each day or portion of a day during which a violation occurs or continues constitutes a separate offense.
- (c) In addition to a criminal penalty under this chapter, a person who operates, causes to be operated, or allows to be operated an alarm system without a valid permit shall be charged a fee for each Police Department or Fire Department response to the activation of an un-permitted alarm system.
- (d) In this chapter, a guilty plea, deferred disposition, deferred adjudication, or probation by a court of competent jurisdiction constitutes a conviction.
- (e) A person who makes a false statement on an application commits a violation of Section 37.10 (*Tampering with Governmental Record*) of the Texas Penal Code.”

Section 3. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred (\$500.00) dollars for each offense.

Section 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's home rule Charter.

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 APRIL, 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN WEBB	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

SECOND READING:

READ, PASSED AND ADOPTED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 5TH DAY OF MAY, 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN WEBB	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

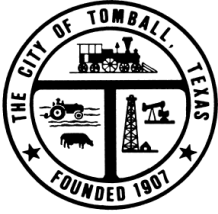
Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**TOMBALL FIRE DEPARTMENT
ANALYSIS OF FALSE ALARM RESPONSES
2006 - 2009**

	<u>Total False Alarms</u>	<u># of responses to same address</u>	<u>Number of addresses</u>	<u>Estimated fees</u>
2006	157	55	10	\$ 1,600
2007	194	80	17	\$ 1,825
2008	239	121	21	\$ 3,825
2009	212	134	24	\$ 4,425



Tomball Police Department

Memorandum

Date: April 15, 2010

To: Rob Hauck
Chief of Police

From: Rick Grassi
Patrol Captain

Re: Amendment to False Alarm Ordinance – Chapter 26

It is the goal of the City of Tomball to implement a City Ordinance pertaining to False Activation of Business and Residential Alarms. The City of Tomball currently has in its Code of Ordinances – Chapter 26: Emergency Services, which touches on Emergency Alarm Systems; however, due to the growth and development within the city, the ordinance needs to be updated.

Non-critical calls for service, such as false alarms, decrease the amount of time that officers can spend responding to true emergencies and reduce the number of staff that can work proactively to prevent crime. This environment also places officer and public safety at increased risk.

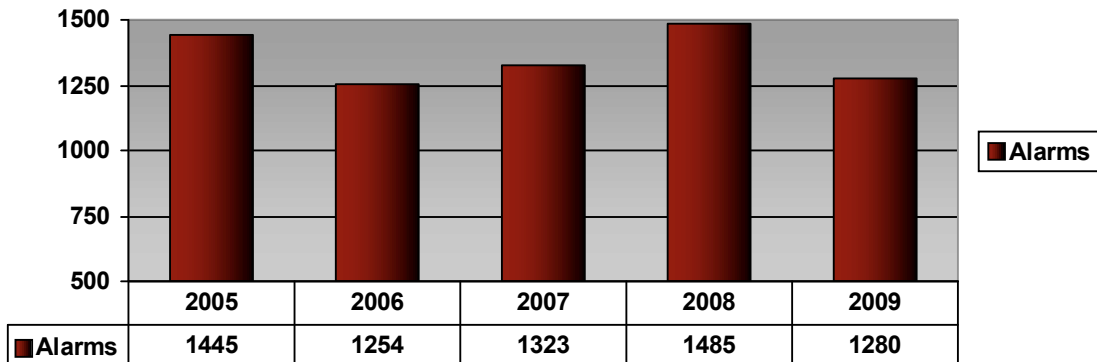
False activation of business or residence alarms, whether burglary or fire, has continued to be a problem for the Tomball Police Department, as well as the Tomball Fire Department. A false alarm can be defined as an alarm signal that is activated when no intrusion has been attempted, often caused by user or mechanical error.

In preparation of updating the Code of Ordinances, Chapter 26, a study was conducted to determine the frequency of false activations of business and fire alarms, as well as the amount of resources exhausted to respond to such events. By use of the Computer-Aided Dispatch system implemented in 2003, we were able to retrieve the following data to conduct a five-year study from 2005 – 2009 on both business and resident alarms. The results are as follows:

- From January 2005 through December 2009, Tomball Police Department received 41,993 citizen generated calls for service.
- In the five years observed, 12,067 Tomball Police Officers responded to 6,787 business and/or residential alarms.
- Of the 6,787 alarms that officers responded to, 98.8 percent, or 6,870 were false alarms or human errors.

The sole reason we exist is to serve the citizens of Tomball.

- Tomball Police Officers respond to an average of 1,357 business or residential alarms per year.
- Business or residential alarms account for 16.2% of all citizen generated calls for service.



Attached you will find an “An Ordinance to Amend the Code of the City of Tomball, Article I: Chapter 26”. In establishing a Code of Ordinance for False Alarms, it was the goal of the City of Tomball to prepare reasonable and prudent guidelines. Policies and procedures were reviewed from various municipalities to be implemented within the City of Tomball to assist in minimizing false alarms, create retailer and residential awareness, and establish monetary compliance for excessive false alerts.

Had the attached proposed City Ordinance been effective in 2009, the following information could be retrieved:

- 88 businesses and 7 residences would have been in violation of excessive false alarms.
- There would have been 400 chargeable business violations, and 16 residential violations.

Based on the results, a recommendation is being made for the implementation of the attached False Alarm Ordinance in amendment to the already established city ordinance.

**DRAFT SCOPE OF
ALARM MANAGEMENT SERVICES
For
TOMBALL, TEXAS
(June 26, 2008)**

Purpose

The purpose of this Scope of Services is to describe the duties and responsibilities of AOT Public Safety Corporation ("PSC"), and Tomball, Texas ("Tomball") in managing the Tomball False Alarm Reduction Program ("Program"). This is a Draft list of services that may be further tailored to specific Tomball needs.

PSC Responsibilities

PSC will be responsible for the daily operation of the Program. This will include, but may not be limited to:

1. Initially importing electronically into PSC's alarm processing system (CryWolf®) database alarm system registration / permit data obtained from Tomball and/or alarm companies, as authorized by Tomball;
2. Registering and updating alarm permits in accordance with the Tomball Alarm Ordinance ("Ordinance"). Permit registrations may be processed by mail and/or online;
3. Importing daily into the PSC alarm billing system, false alarm incident data (in formats prescribed by PSC) extracted from Tomball's VisionAIR CAD/911 System. PSC will provide Tomball at no charge PSC's proprietary VisionAIR CAD alarm data extraction program, if requested.
4. Initializing, maintaining, securing and backing up Program databases including alarm registration and incident data, alarm-related financial transactions and accounts receivable information. PSC will comply with the provisions of the Ordinance, and update Program business rules to comply with any Ordinance changes;
5. Processing false alarm incident data, including the matching of false alarm incidents with the security alarm registration / permit database maintained by PSC;
6. Billing and corresponding with alarm users in accordance with the Alarm Ordinance provisions. This will include but may not be limited to notifications of false alarms, invoices, and delinquent payment notices;
7. Providing Tomball specific information on false alarm reduction and Ordinance requirements in the first false alarm notice / warning letter sent to alarm users;
8. Answering telephone inquiries from City alarm users that are placed to a false alarm program toll-free customer service number;
9. Processing fee / penalty payments mailed and received from other payment channels, e.g. online, as agreed on by PSC and Tomball, and applying these payments to alarm accounts;
10. Supporting alarm hearings and appeals by notifying the City of any such appeals, providing a City Alarm Program representative with documentation supporting

- noticing/billing decisions; and updating the system with the disposition of any hearing results;
11. Providing and maintaining computer equipment, software, mailing equipment and furniture at the Program processing facilities;
 12. Providing Tomball secure, online, on-demand access to alarm management information and reports including, but not limited to, alarm account transaction history, registration/permit and suspension information, and financial transactions/balances with format and content specified by the CryWolf® Alarm Management System and the designated Bank, and agreed on between Tomball and PSC, and,
 13. Performing special collection functions as approved by Tomball such as retaining third party collection agency or providing delinquent account information to other City agencies.

PSC is responsible for all costs of carrying out these responsibilities including, but not limited to, the costs of staff, facilities, equipment and consumable supplies. Only third-party bank and credit card fees, third party collection costs (if any), e.g. collection agency fee, and citizen refunds will be shared by PSC and Tomball through payment from gross Program revenues.

Tomball Responsibilities

1. Appointing a Tomball Alarm Administrator (“Administrator”) who will be the primary point of contact between PSC and Tomball. The Administrator is responsible for overseeing PSC’s operation of the False Alarm Management Services Program (“Program”) and accessing Program information, as needed, via PSC provided online access.
2. Requesting Alarm Companies to provide alarm system registration information and supporting PSC, as needed, to ensure that Alarm Companies comply with alarm system information requests;
3. Making any and all decisions about alarm call response, determining whether calls are false alarms, providing any on-scene communication of alarm related information to alarm users, and for documenting alarm related information within the Tomball CAD/911 system;
4. Extracting false alarm incident data from the CAD/911 System and transferring this data electronically to PSC (via email or PSC FTP site). Tomball staff is also responsible for entering, or causing to be entered, into the CAD/911 System any false alarm related information that Tomball may choose to display to CAD/911 System operators through the CAD/911 System;
5. Scheduling, conducting and making appeal decisions for any false alarm hearings;
6. Conducting any general public education programs on false alarms; and,
7. Transferring any and all financial information from the Program generated alarm reports to other Tomball financial systems, as needed.

Tomball is responsible for all costs of carrying out these responsibilities, including, but not limited to the costs of staff, facilities, computer equipment and consumable supplies.

OUTSOURCE ALARM SERVICES OVERVIEW

AOT Public Safety Corporation (PSC) is pleased to describe its Alarm Management Services to the City of Tomball, Texas. PSC is committed to providing cities with a superior, turnkey solution that meets all of their data processing, customer service, and information management needs.

For more than eight years, PSC has provided false alarm management solutions to local governments across the country. In every case, PSC technology and services have helped these jurisdictions reduce false alarms, increase collections and improve efficiency. Today, PSC is the leading provider of false alarm management solutions to cities and counties throughout the United States, including the Texas cities of Cedar Hill, Desoto, Grapevine, Highland Village, Lake Jackson, Lewisville, Marshall, Temple, Texas City and Tyler. Our experience includes extensive outsource alarm registration, tracking and billing services on a “self-funded”, revenue sharing basis to many jurisdictions including Concord NC, Douglas County CO, Greenville NC, Jefferson County KY, Highland Village TX, Huntersville NC, Kannapolis NC, Larimer County CO, Louisville KY and Spokane WA. We also team with others to administer the false alarm programs for Baltimore City MD, Charlotte-Mecklenburg NC, New Castle County DE and Wilmington DE.

As a core part of this proposal, we are pleased to offer Tomball the leading alarm registration and false alarm management technology in the industry, CryWolf®. Our patented technology has been chosen by more than 140 cities and counties in 28 states, and Canada. The depth of our alarm management experience helps to ensure the Tomball Program’s operational success.

Our unique system interface expertise greatly minimizes the technical risk of our system and services. As a VisionAIR Business Partner, CryWolf® already imports alarm event information generated by VisionAIR CAD/911 systems in multiple jurisdictions. We also work with CAD systems manufactured by over a dozen other companies. Because CryWolf® is our proprietary, patented system; we can assure Tomball that its citizens and businesses will continue to receive reliable, state-of-the-art Alarm Management Services (“AMS”) throughout the life of the project.

Our alarm management expertise and technology offering are unmatched and provide Tomball a superior solution for the AMS program. We are especially proud of our unique online information access and web-based functionality which we believe support the City’s customer oriented, technology goals and provide the convenient service expected in larger cities, like Tomball. We also offer the technical infrastructure necessary to keep City alarm data secure and confidential.

The PSC Difference – Understanding the City’s Needs

In most areas of the country, law enforcement resources are unfortunately scarce. When combined with the demand for services created by the special needs of communities such as Tomball, governments continually ask Police Departments to do more with less.

In this context, non-critical calls for service, such as false alarms, decrease the amount of time that officers can spend responding to true emergencies and reduce the number of staff that can work proactively to prevent crime from occurring. Officer and public safety are also put at risk.

Unfortunately, the number of false alarms that law enforcement must respond to has increased in recent years. Tomball estimates that it currently responds to about 1,300 annual false alarms. The proposed alarm management services would allow the City to:

- Quickly implement a false alarm reduction program. Alarm System registrations can usually start within 30 days;
- Minimize administrative staff time to administer the Alarm Program;
- Focus efforts on enforcing the Alarm Ordinance including the proactive billing and collection of all amounts due the City; and,
- Reduce false alarms by rigorously enforcing the City's new alarm ordinance.

Meeting Tomball's Needs - The PSC Solution

PSC has a track record of helping cities and counties increase their service levels, expand the use of innovative technologies, and increase revenue collections on a risk-free basis – PSC will obtain payment exclusively from the revenues we help generate. We require no upfront systems development, licensing, conversion, or equipment costs. PSC will purchase, configure, install, and customize everything we need to administer the Tomball alarm program.

PSC proposes to provide Tomball with a solution that meets all of its tracking, noticing, billing, collection and customer service requirements. Specifically, our solution includes the following functionality:

- **Alarm Registration/Permitting and Database Maintenance.** PSC will register alarm systems, maintain registration holder information, and identify non-registered locations. Outstanding charges will be automatically tracked for all accounts regardless of registration. Both AMS program staff and the Tomball designated Program Administrator will be able to easily access online data stored in the system by a variety of fields including but not limited to registration status, registration number/partial number, name/partial name, address/partial address, phone number/partial phone number and type of alarm. Even CAD/911 Dispatch operators can access key premise information, if desired.
- **Automated generation of violation invoices and notices to alarm users.** Our solution will automatically generate letters/notices and invoices for false alarm events in accordance with the Tomball alarm ordinance for annual registration fees, registration suspension/revocation, and violation penalties for false activations. The technology we offer fully supports differences in fees and notices for residential, commercial and other locations; burglary and holdup events; and registered, suspended and revoked locations. In addition, our system maintains critical account information for every account including

outstanding balances, reason for registration issuance denial or the suspension of an account.

- **Proven Collection Techniques.** As described in greater detail below, with over 1 million false alarms processed annually by our technology, PSC is the proven industry leader in alarms processing and collections. Our solution includes a variety of techniques to help the City collect fines including multiple and varied noticing, research of bad addresses, and other targeted collection techniques.
- **Production of Management Reports.** Tomball will have direct access to a variety of management and tracking reports that can be produced by our system. For example, reports can be generated that sort alarm data by a variety of categories including new alarm registrations, annual renewals, number of activations, user address, Police area, alarm company, and age of outstanding fees and fines. The system can also generate individual account histories that include payment dates and all actions taken regarding an individual account.

Features that are especially unique to our service offering include:

- **Secure, Online Tomball access to many tailorable reports.** We will provide Tomball with direct data inquiry and report generation access via web-based, real-time connection to the alarm database. We have already implemented this access in multiple Alarm Programs. The approach offers flexibility, security and timeliness that no other reporting process provides.
- **Internet-based, fully-interactive alarm registration and updating.** When citizens need to register their systems, have questions or want to update their registration information, they would like to be able to obtain prompt access. PSC supports this not only with skilled customer service representatives (CSRs), but with secure, online access technology that allows an alarm user to register online or enter a unique registration number/password combination, and have limited access to his/her registration information without waiting to speak with a CSR. This service is available on a 24/7 basis.
- **Internet-based payment of invoices.** PSC can process false alarm payments made over the web. If desired by Tomball, we will integrate a real-time, Pay-by-Web system directly into the existing City website so that citizens can pay individual alarm invoices or the full balance owed from their web browser on a 24/7 basis.
- **Enhanced Alarm Data Security.** Alarm Management services require the collection, maintenance and communication of sensitive and highly confidential data about alarm locations. Understandably, businesses, citizens, security alarm companies and City officials are concerned with unauthorized access to this information. In providing its alarm Management services, PSC has the technical infrastructure required to ensure the highest levels of data security. This includes core network and DMZ server firewalls; private internal IP addresses; 128-bit encrypted data access and transfer; and real-time, and virus scanning of all incoming and outgoing data.

- **Extensive Adjudication and Hearing Support.** Our service offering contains a fully integrated hearing and appeal system that will allow for the adjudication of any action for any account. Our system also generates various reports that document and support all billing, noticing and status change decisions.
- **Unparalleled Technology Enhancement Program.** Our patented CryWolf® technology includes a robust enhancement program driven by the needs of more than 140 cities and counties. This program has resulted in over 500 added features in the last 5 years. Our solution assures Tomball that the technology will evolve to keep up with technical and programmatic advances over the life of the services contract.

A Team with National Experience and Understanding of Current Technologies

We are proud to be able to offer this comprehensive solution to meet Tomball's false alarm billing needs. Our team provides the City with a state-of-the-art solution:

AOT Public Safety Corporation (PSC), was established in 1999 by a large engineering services firm (AOT). PSC is headquartered in Waldorf, Maryland, a suburb of Washington, DC.

As described in detail in the attached Scope of Services, the Tomball False Alarm Reduction Program will be operated from our processing facility in Waldorf. Tomball citizens will be provided toll-free, citizen-service telephone access from 9am - 5pm CST, Monday through Friday on normal business days.

Conclusion

PSC is confident that the proposed solution will meet Tomball's requirements and help reduce the number of false alarm calls responded to by Tomball Police officers annually. We already have the necessary program components in place and have proven our proposed methodology in many jurisdictions nationwide. Accordingly, we believe that we can offer Tomball a fast-paced Program implementation that begins live registration activities within 30 days of contract approval.

We look forward to working with the City to successfully implement this new process and to realize program improvements benefiting Police, citizens, the City, and the perception of City services.

Regular City Council

Agenda Item

Meeting Date: April 19, 2010

Data Sheet

Topic:

Consideration and Possible Action Regarding **ZONING CASE P10-206**: Request by Brian Matthews, on behalf of Crescent Directional Drilling, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.006 acres of land, legally described as Tract 281 Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the westerly side of South Persimmon Street, northerly of Agg Road from the SF-20-E Single-Family Estate Residential-20 District to the LI - Light Industrial District.

- Conduct a Public Hearing on **ZONING CASE P10-206**
- Adopt on First Reading, Ordinance No. 2010-07, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 5.006 Acres of land, Legally Described as Tract 281, Tomball Outlots, of the Map Records of Harris County, Texas, from the SF-20-E Single-Family Estate Residential-20 District to the LI - Light Industrial District; Said Property Being Located on the westerly side of South Persimmon Street, northerly of Agg 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 February 19, 2010, the City received a rezoning application from Brian Matthews of Protective Concepts, Inc., on behalf of the property owner, Crescent Directional Drilling, to rezone an approximately 5.006 acre vacant tract of land, legally described as Tract 281, Tomball Outlots, generally located on the westerly side of South Persimmon Street, northerly of Agg Road from the SF-20-E - Single-Family Estate Residential-20 District to the LI - Light Industrial District.

The applicant is requesting to rezone the property from the SF-20-E - Single-Family Estate Residential-20 District to the LI - Light Industrial District in order to facilitate the construction of a manufacturing facility for Protective Concepts, Inc. The applicant has indicated that the site will be used by Protective Concepts, Inc. as the company's headquarters for manufacturing "passive fire protection covers for equipment in the oil/gas/petrochemical industries."

After reviewing the request, staff prepared a report to the Planning and Zoning Commission recommending denial based on the fact that the proposed zoning and use is incompatible with the largely residential land uses in the vicinity, is inconsistent with the Comprehensive Plan's Future Land Use Plan Map designation of Low Density Residential and due to the lack of sufficient utilities in the area to service an industrial use on the site.

On April 12, 2010, the Planning and Zoning Commission, after conducting a public hearing on this request, voted 3-2 to recommend denial. This request is now being forwarded to City Council for consideration and possible action.

Should this rezoning be approved, staff requests that City Council provide direction on whether or not to propose an amendment to the Comprehensive Plan to reflect a change in vision for this area of Tomball during its annual review process in early 2011.

Origination:

Brian Matthews of Protective Concepts, Inc., on behalf of the property owner, Crescent Directional Drilling

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted 3-2 to deny Zoning Case P10-206, as recommended by staff, based on the following: a. The proposed zoning of LI-Light Industrial District will be incompatible with the existing and intended land uses in the vicinity. b. The proposed zoning of LI-Light Industrial District is inconsistent with the Tomball Comprehensive Plan. c. There are insufficient utilities in the area to service an industrial use on this site.

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

Kelly Violette, City Planner

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

ATTACHMENTS:

P10-206 Staff Report

Draft Ordinance No. 2010-07

Notice of Public Hearing

Adjacent Property Owner Notification

Applicant Submitted Packet (PZ 4/12/10)



Rezoning Staff Report

Planning and Zoning Commission Hearing Date: April 12, 2010

Rezoning Case: P10-206
Property Owner(s): Crescent Directional Drilling
Applicant(s): Brian Matthews, Protective Concepts, Inc.
Legal Description: Tract 281 (Tomball Outlots)
Location: Generally located on the westerly side of South Persimmon Street, northerly of Agg Road
Area: 5.006 acres
Present Zoning and Use: SF-20-E - Single-Family Estate Residential-20 District / Vacant
Comp Plan Designation: Low Density Residential
Proposed Zoning and Use: LI - Light Industrial District / Passive Fire Protection Jacket Manufacturing

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: Conditional Use Permit #2 MHP / Mobile Home Park
South: SF-20-E / Undeveloped and Metallic Warehouse
East: SF-20-E / South Persimmon Street ROW and Vacant
West: SF-20-E / Residential

BACKGROUND

The subject site is a 5.006 acre rectangular tract legally described as Tract 281 (Tomball Outlots), generally located on the westerly side of South Persimmon Street, northerly of Agg Road (Exhibit "B"). The site is currently vacant and is approximately 377.6 feet wide and 577.51 feet deep.

The applicant is requesting to rezone the property from the SF-20-E - Single-Family Estate Residential-20 District to the LI - Light Industrial District in order to facilitate the construction of a manufacturing facility for Protective Concepts, Inc. According to the applicant, the use proposed is a "Manufacturing Facility for Passive Fire Protection Jackets for Oil/Gas Industry" (Exhibit "E"). The conceptual site plan submitted by the applicant indicates that an approximately 9,375 square foot main building along with an accessory building and parking

area are being proposed for this site (Exhibit “F”). Two vehicular access points are proposed off of South Persimmon Street to service the site.

ANALYSIS

The Light Industrial District is intended primarily for conducting 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 require accessibility to major thoroughfares, major highways, and/or other means of transportation such as the railroad.

The applicant has indicated that the site will be used by Protective Concepts, Inc. as the company’s headquarters for manufacturing “passive fire protection covers for equipment in the oil/gas/petrochemical industries” (Exhibit “E”). According to the company’s website, the protective covers or “jackets” can be placed on wellheads, valves, actuators, riser tensioners, cable trays, bulkheads, and penetration seals to protect from flames and blast. The applicant states that “There is no noise or air pollution as a result of our operation that would negatively impact the surrounding area” (Exhibit “E”). The proposed use is considered “Textile Products Manufacturing” under the City’s Zoning Ordinance, which is a permitted use in the LI-Light Industrial District.

When reviewing a rezoning request and change in land use, staff looks at several criteria, including how the proposed use fits into the surrounding area, whether there are any constraints to development at the proposed site with regard to access and utilities, and if the proposed use is consistent with the City’s development regulations and long-range planning objectives. The existing land uses and zoning designations in the surrounding area are reviewed to determine the proposal’s compatibility and appropriateness at the proposed location. It is important that the proposed use, zoning district and Future Land Use Plan Map designation be compatible and appropriate so that future land use conflicts do not occur.

The subject site is not contiguous to any existing light industrial developments. The existing adjacent land use to the north is an existing manufactured home park, which serves as a buffer between the nonresidential uses to the north and the residential uses along the southerly portion of South Persimmon. To the east is vacant land, to the west is a single family residence, and to the south are vacant land and a tract developed with a metallic warehouse within the SF-20-E District. In March 2009, the owner of the metallic warehouse applied for a rezoning from the SF-20-E District to the C-Commercial District for a proposed concrete facility, but the request was denied by Council on May 18, 2009. There is a legally non-conforming commercial use two lots to the north of the subject site; however the majority of nonresidential uses in the area are along the east side of South Persimmon, northerly of Lizzie Lane.

With regard to utilities, the site is not currently serviced by water, gas, or sewer lines (Exhibit “H”). There is an existing 6 inch water line approximately 300 feet to the north of the site; however it does not have adequate capacity to serve additional uses within the area. In order to serve the site with water, the line down South Persimmon would need to be upgraded to a minimum 12 inch water line from FM 2920, which would require street right-of-way and easement dedications. Alternatively, the property owner could install an on-site water well system to service the site. With regard to sanitary sewer and gas, the closest lines are approximately 1,900 feet to the east of the subject site along Hufsmith-Kohrville. Development of this site would require the installation of a septic system or the extension of the sewer line

from Hufsmith-Kohrville. Without existing infrastructure to serve this site, staff feels that light industrial zoning is inappropriate for this area.

Additionally, the Comprehensive Plan's Future Land Use Plan Map identifies this area as Low Density Residential. The proposed rezoning is inconsistent with this designation and with the Comprehensive Plan's Planning Guidelines and Land Use and Development objectives which recommend appropriate buffer areas and transitional uses, access to major transportation corridors, and logical extensions of public infrastructure. It is staff's opinion that the use at the intensity proposed is not compatible with the surrounding area, nor consistent with the Comprehensive Plan.

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 existing adjacent land uses are primarily residential and undeveloped agricultural land with the only exception being a piece of property to the south that is owned by Joe Serna that Harris County Appraisal District has listed as a "Warehouse-Metallic." There is a commercial use two lots to the north of the subject site but the bulk of the light industrial activity along South Persimmon is north of the subject site between F.M. 2920 and Lizzie Lane. The proposed use of the site as a "Manufacturing Facility for Passive Fire Protection Jackets for Oil/Gas Industry" would be out of character with the area. Additionally, rezoning this land for a light industrial use could signal to others in the area to attempt a similar request which is not consistent with the long range vision for this area.

Should this rezoning request be approved, the applicant will be required to meet all of the City's screening, buffering and fencing requirements to protect any adjacent residential uses. The applicant will also be required to shield and position all on-site lighting such that lights do not adversely impact adjacent residential areas.

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.

Public utilities or roadway improvements are not proposed along South Persimmon within the City's five year capital improvements plan. Any approved development would be responsible for extending utilities to the site. Since there are no utilities with sufficient capacity within 1,000 feet of the site, the only alternative would be a well and septic system, which is not favorable for a light industrial use due to the potential for surface and groundwater degradation.

South Persimmon is a two lane road with a varying right-of-way width between 30 and 60 feet. It is designated as a Minor Arterial on the adopted Major Thoroughfare Plan, with an ultimate right-of-way width of 80 feet. This right-of-way has not been acquired

in the vicinity. Minor Arterials distribute traffic from state highway/farm-to-market roadways and major arterials to the collector system and to adjacent land uses and are found in areas of significant traffic movement.

A light industrial designation would not impact the public school system as the proposed use of the site for light industrial purposes would not increase attendance to the school system.

As a matter of information, the future development of the site will likely result in increased impermeable area, thereby altering absorption rates and increasing surface runoff. Drainage improvements shall comply with the requirements of the City's Engineering and Public Works Departments.

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 currently several tracts of land zoned for light industrial use to the north of the subject site along South Persimmon Street. Additionally, there are several undeveloped lots in Tomball Industrial Park that are already zoned for light industrial use.

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.

Commercial and light industrial uses have been increasingly developing on the south side of the City. The northern portion of South Persimmon Street from F.M. 2920 to Lizzie Lane has been developing steadily with a mixture of commercial/light industrial uses over the past several years. However, the land uses in the project vicinity have remained largely vacant, agricultural, and residential. Because of the "Low Density Residential" Comprehensive Plan designation of the site (Exhibit "B"), it is anticipated that the area will remain agricultural/residential.

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 intent and purpose of the Zoning Ordinance is to protect the public health, safety, and general welfare; regulate the use of land and buildings within zoning districts to assure compatibility; and to protect property values. If light industrial development is allowed to occur in a primarily residential/agricultural area that currently does not have the infrastructure to service such a use, the nearby residential properties could be adversely impacted.

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.”

It is staff’s opinion that the request is not consistent with the Comprehensive Plan. The Comprehensive Plan’s land use designation for the subject site is “Low Density Residential” (Exhibit “B”) which generally allows for single family detached residential development on minimum 20,000 square foot lots or greater, not light industrial uses.

Should this request be approved, City staff requests the Planning & Zoning Commission and City Council to provide direction on whether or not to propose an amendment to the Comprehensive Plan to reflect a change in vision for this area of Tomball during its annual review process in early 2011.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on March 31, 2010 and four public comment forms were received regarding this request (Exhibit “J”):

In Favor:

- Crescent Directional Drilling, 1300 North Sam Houston Parkway, # 210, Houston, TX, 77032 (current property owner)
- Higinio Sanchez, 15202 River Park Drive, Houston, TX, 77070 (adjacent property owner to the south of the site)

Opposed:

- John Ford, 930 Agg Road, Tomball, TX, 77375 (property owner to the south of the site)
- Kimber Svetlik, 1333 Pitchford Road, Tomball, TX 77375 (adjacent property owner to the west of the site)

RECOMMENDATION

That the Planning and Zoning Commission recommend:

1. DENIAL of Zoning Case P10-206 based on the following:
 - a. The proposed zoning of LI-Light Industrial District will be incompatible with the existing and intended land uses in the vicinity.

- b. The proposed zoning of LI-Light Industrial District will be incompatible with the Tomball Comprehensive Plan.
 - c. There are insufficient utilities in the area to service an industrial use on this site.
- 2. APPROVAL of the staff report as the Planning and Zoning Commission's final recommendation to the City Council.

EXHIBITS

- A. Location/Zoning Map
- B. Aerial Photo
- C. Comp Plan Future Land Use Map
- D. Rezoning Application
- E. Rezoning Request Letter
- F. Conceptual Site Plans
- G. Property Survey
- H. Utility Block Map
- I. Site Photos
- J. Public Comment Form(s)

Exhibit "A"
Location/Zoning Map

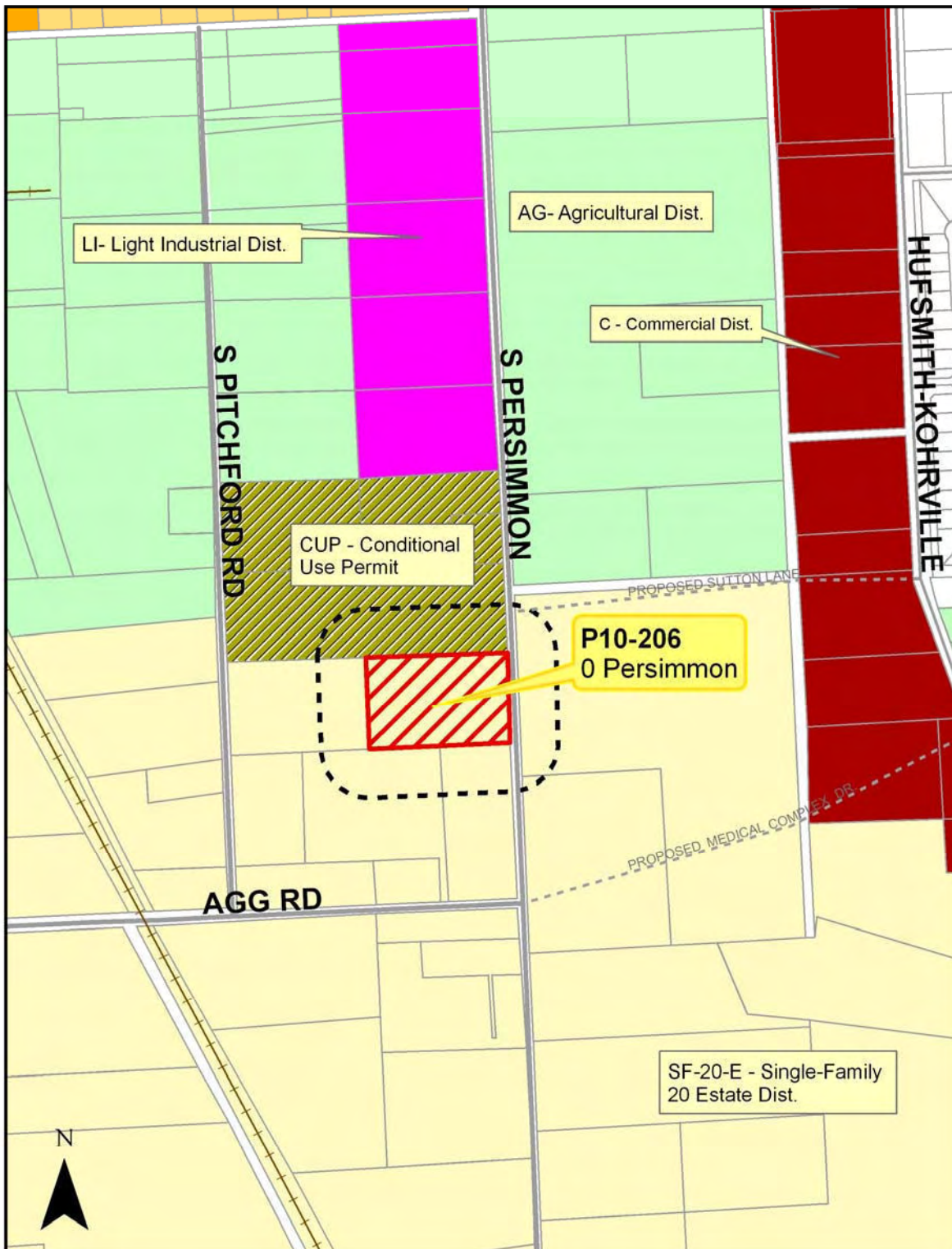


Exhibit "B"
Comp Plan Future Land Use Map

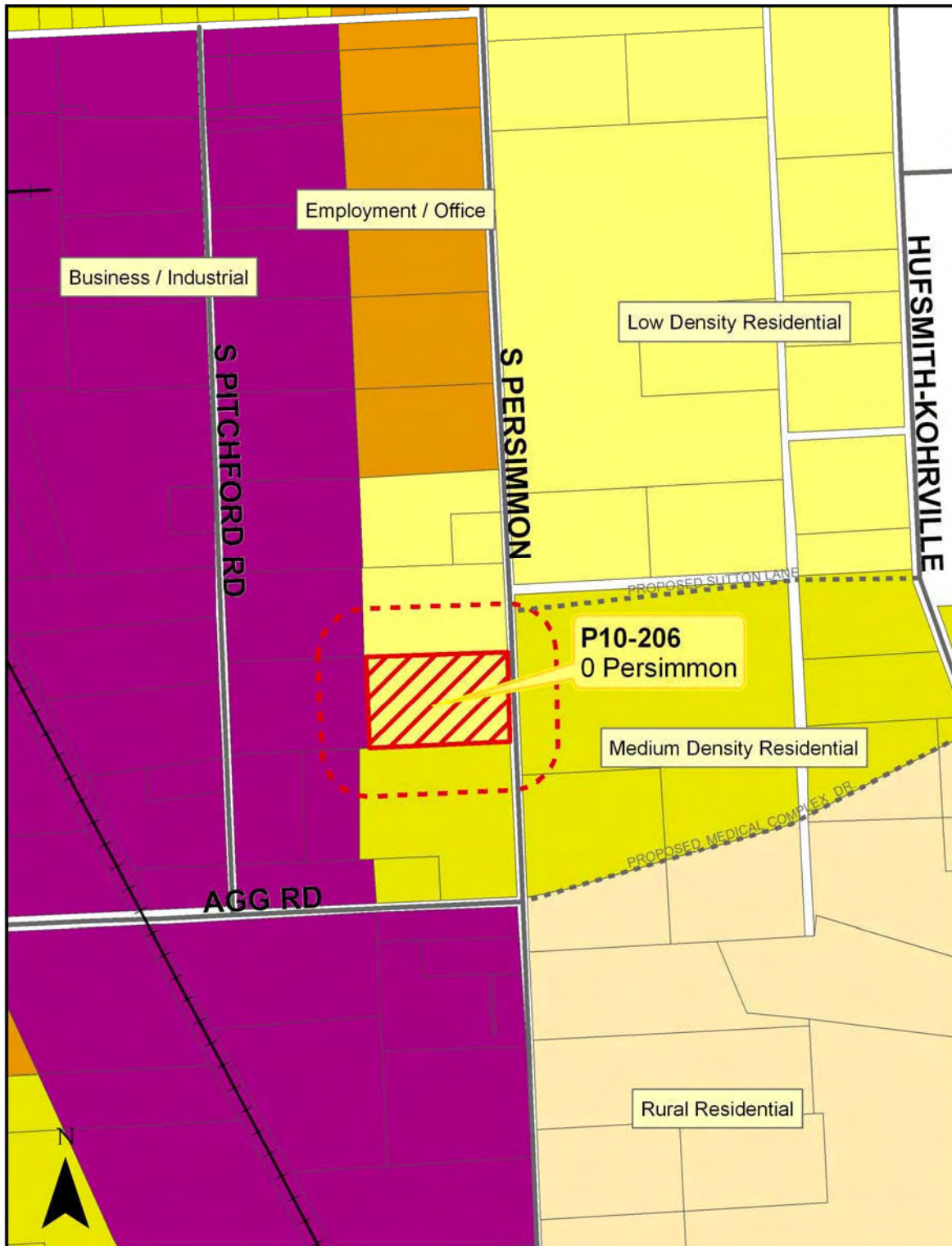


Exhibit "C"
Aerial Photo



Exhibit "D"
Rezoning Application

Revised 1/20/09



APPLICATION FOR REZONING
Engineering & Planning Department

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

Applicant

Name: Brian Matthews, Protective Concepts, Inc. Title: Manager
Mailing Address: PO Box 11407 City: Spring State: TX
Zip: 77391
Phone: (281) 351-9992 x102 Fax: (281) 351-4554 Email: brian.matthews@procon2000.co

Owner

Name: Crescent Directional Drilling Title: _____
Mailing Address: 1300 N. Sam Houston Pkwy E, Ste 210 City: Houston State: TX
Zip: 77032
Phone: (281) 668-9500 Fax: (281) 668-9539 Email: _____

Engineer/Surveyor (if applicable)

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

Description of Proposed Project: TR 281 - S. Persimmon, Tomball, TX 77375
(5.006 Acres)

Physical Location of Property: 1035' North of Agg Rd on Persimmon in Tomball, TX
[General Location - approximate distance to nearest existing street corner]

Legal Description of Property: TR 281 Tomball Outlots
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: SF-20

Current Use of Property: Vacant / Empty Field

Proposed Zoning District: LI

Proposed Use of Property: Manufacturing Facility for Passive Fire Protection Jackets for Oil/Gas Industry (Sewn product; No Fumes or Noise Pollution)

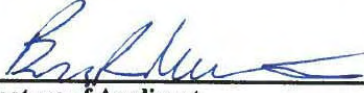
City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405

www.ci.tomball.tx.us

HCAD Identification Number: 035288000420 Acreage: 5.006

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  2/18/2010
Signature of Applicant Date

X  FEB 18, 2010
Signature of Owner Date

Exhibit "E"
Rezoning Request Letter

To Whom It May Concern:

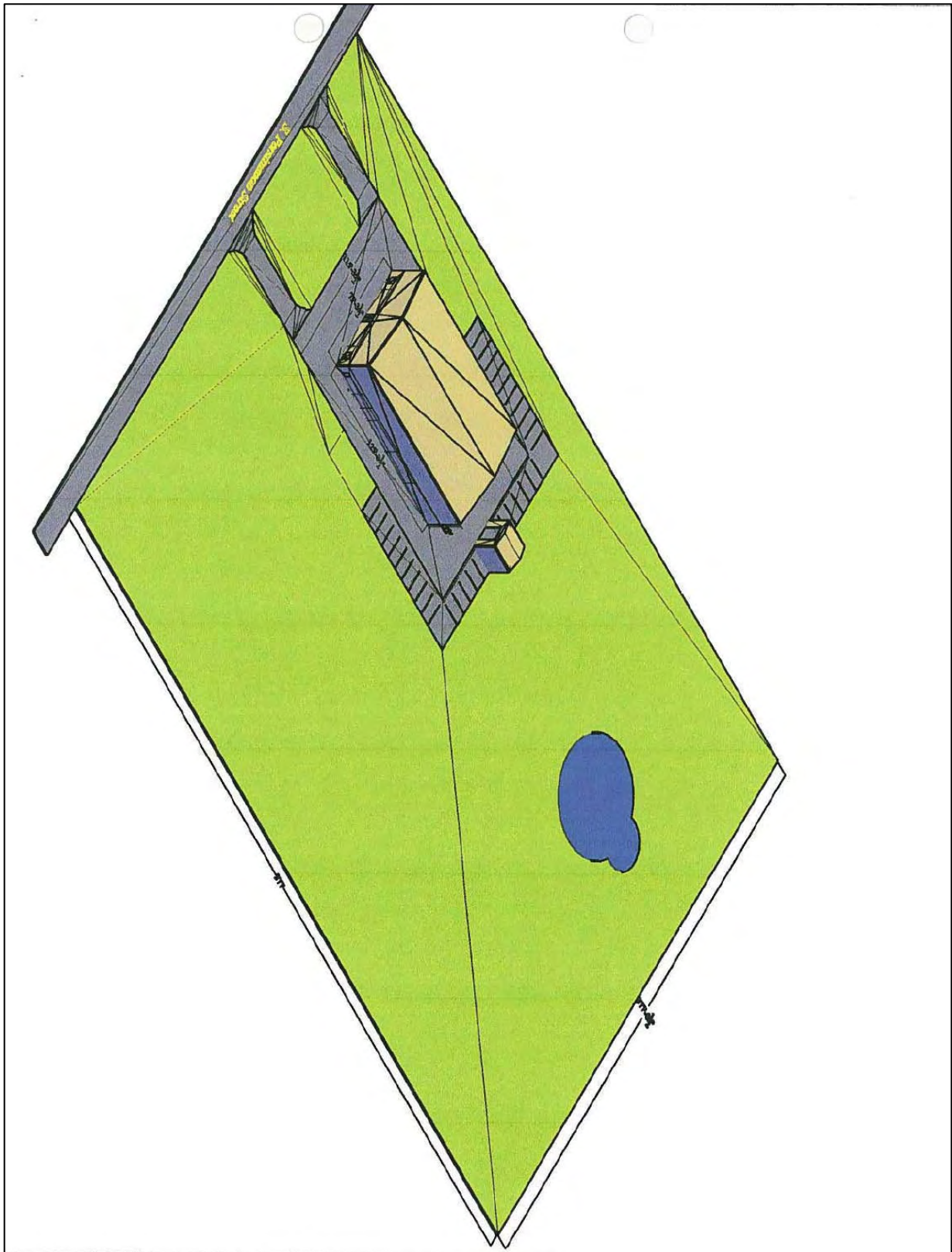
We are requesting that the property located at 1201 S. Persimmon St (Outlot 281) in Tomball, TX be rezoned for Light Industrial use. We are proposing to build our company headquarters and manufacturing facility on the 5 acre tract of land. We manufacture passive fire protection covers for equipment in the oil/gas/petrochemical industries. There is no noise or air pollution as a result of our operation that would negatively impact the surrounding area. Thank you for your consideration.

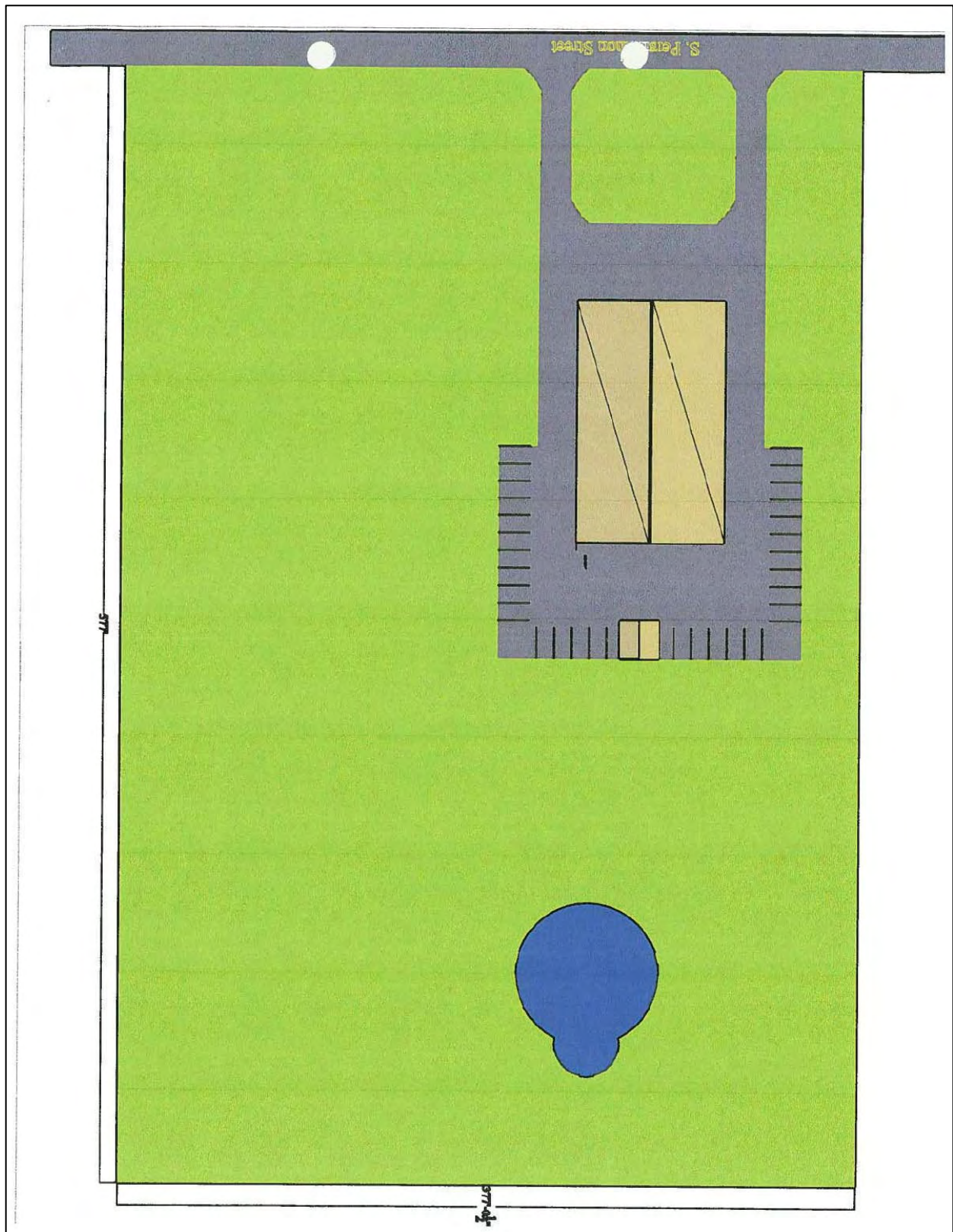
Sincerely,

A handwritten signature in black ink, appearing to read "Brian R. Matthews", with a long horizontal flourish extending to the right.

Brian R. Matthews
Manager
Protective Concepts, Inc.

Exhibit "F"
Conceptual Site Plans





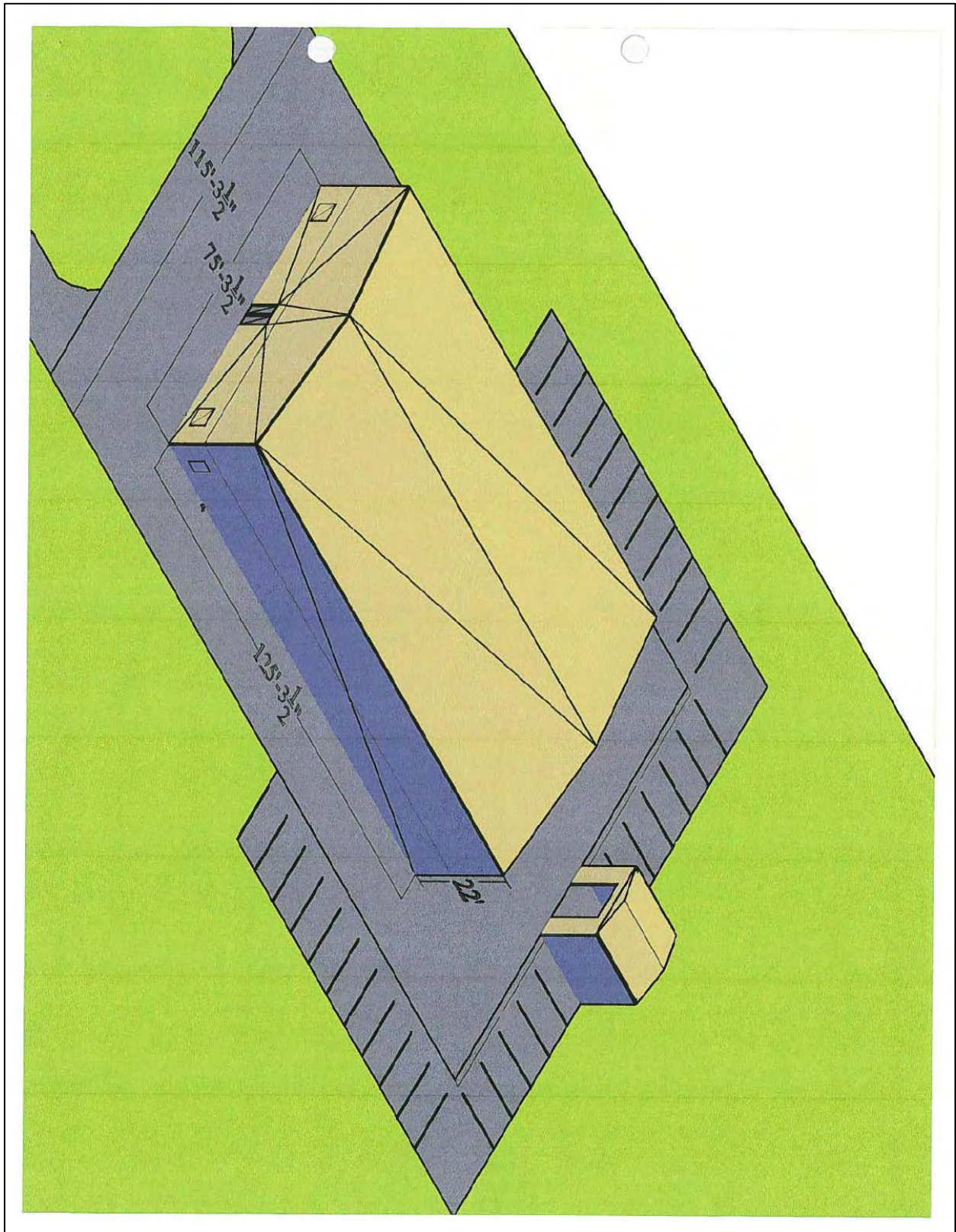


Exhibit “G” Property Survey

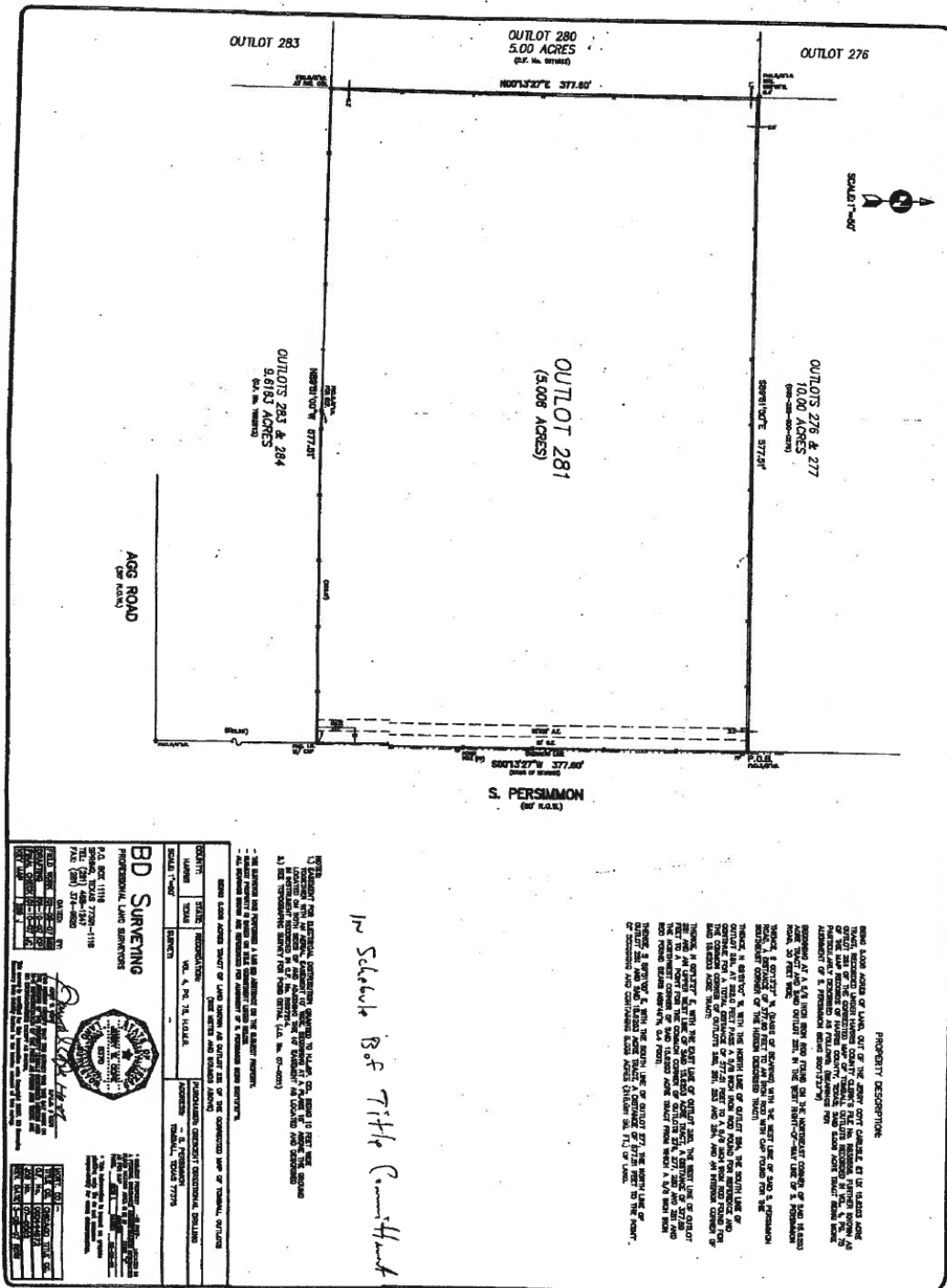
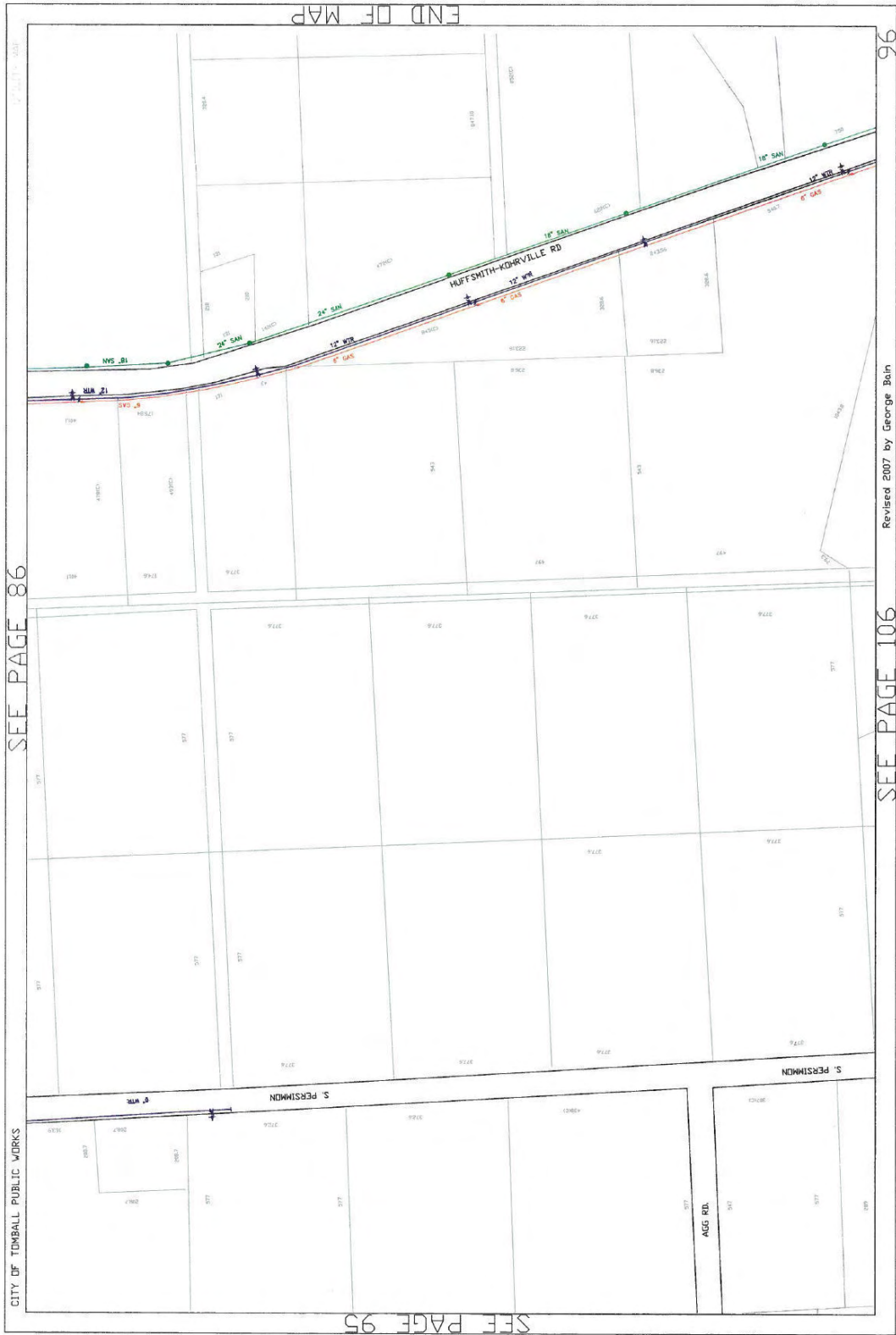


Exhibit “H”

Utility Block Map



**Exhibit “I”
Site Photos**



Figure 1: Westerly view of subject site.



Figure 2: Northerly view up South Persimmon Street. Subject site on left, undeveloped lot to the right.



Figure 3: Sutton Place manufactured home park to the north of subject site.



Figure 4: “Residential Improved” (per HCAD) land use to the west of subject site.



Figure 5: Typical single-family residence to the south of subject site.



Figure 6: Undeveloped lot to the south of subject site.

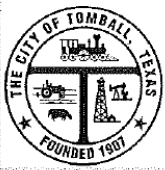


Figure 7: Rock processing facility to the north of subject site.



Figure 8: Typical commercial uses along South Persimmon Street between FM 2920 and Lizzie Lane.

Exhibit "J"
Public Comment Form(s)

	<i>Engineering and Planning Department</i>
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: Kelly Violette
501 James Street
Tomball, TX 77375

Name: CRESCENT DIRECTIONAL DRILLING
(please print)
Address: 1300 N. SAM HOUSTON PKWY E, # 210
HOUSTON, TX 77032
Signature: TAD PAVE
Date: APRIL 5, 2010

☒ I am **FOR** the requested rezoning as explained on the attached public notice for **Zoning Case P10-206**. (Please state reasons below)

☐ I am **AGAINST** the requested rezoning as explained on the attached public notice for **Zoning Case P10-206**. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:
Monday, April 12, 2010, 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, April 19, 2010, 7:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

CRESCENT DIRECTIONAL DRILLING WILL BE REPRESENTED BY THE FOLLOWING:
1) JAY STUBBS
2) BRIAN MATTHEWS

TAD PAVE
CEO
CRESCENT DIRECTIONAL DRILLING

You may also comment via email to kviolette@ci.tomball.tx.us. Please reference the Zoning Case number in the subject line.
For questions regarding this request please call 281-290-1491.



Engineering and Planning Department

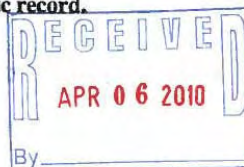
Public Comment Form

(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: Kelly Violette
501 James Street
Tomball, TX 77375



Name: HIGINIO SANCHEZ
(please print)
Address: 15202 RIVER PARK DR.
HOUSTON, TX 77070
Signature: Higinio Sanchez
Date: 4-2-10

☒ I am **FOR** the requested rezoning as explained on the attached public notice for **Zoning Case P10-206**. (Please state reasons below)

☐ I am **AGAINST** the requested rezoning as explained on the attached public notice for **Zoning Case P10-206**. (Please state reasons below)

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

Monday, April 12, 2010, 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, April 19, 2010, 7:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

For the future growth of Tomball. Light Industrial
Complexes would bring more Revenue + Jobs to Tomball.

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

For questions regarding this request please call 281-290-1491.

From: BrahmanJ@aol.com [mailto:BrahmanJ@aol.com]
Sent: Wednesday, April 07, 2010 7:40 PM
To: Kelly Violette
Subject: Zoning Change for Cresent drilling

April 7, 2010

Dear Kelly;

I am writing in opposition to the proposed zoning change requested by Cresent Directional Drilling of approximately 5 acres located westerly of persimmon and northerly of agg road. My opposition to this as a resident of the area is as follows:

1. Clearly this entire area south of the mobile home park including at least 25 tracts of land is currently zoned SF-20 and many people including myself have built 200K + properties and homes in this area.
2. The adjacent property to the south of this 5 acre property has petitioned for a zoning change from SF 20 to industrial or other odd use in the past and has been turned down.
3. Making this property light industrial would create an island of industrial use in the midst of a residential area. Light industrial does exist on the other side of the mobile home park, but changing this property would sandwich in the mobile home park between industrial areas and start closing-in on the huge block of SF 20 residences. This is why we have zoning to prevent this type of change.
4. The future land use map clearly indicates that this property is for residential and industrial areas are to the north and south of this property off persimmon.

In closing, I oppose this change because it imposes a completely different and potentially hazardous industrial area in a residential zone. This is exactly why zoning is in place. Please recommend a no vote for changing this parcel of land from SF-20 to industrial.

Thanks

John Ford

From: Kimber Svetlik [Kimber@TuffTiger.com]
Sent: Monday, April 12, 2010 4:51 PM
To: Kelly Violette
Subject: FW: P10-206

Ms Violette,

Pursuant to the notification we received in regards to P10-206 we are against the requested rezoning. We purchased the property at 1333 Pitchford Rd with the deed restrictions for homes and do not want a business out our back door. Our plans a home there.

Kimber Svetlik
713.494.7364

ORDINANCE NO. 2010-07

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 5.006 ACRES OF LAND, LEGALLY DESCRIBED AS TRACT 281, TOMBALL OUTLOTS, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, FROM THE SF-20-E SINGLE-FAMILY ESTATE RESIDENTIAL-20 DISTRICT TO THE LI - LIGHT INDUSTRIAL DISTRICT; SAID PROPERTY BEING LOCATED ON THE WESTERLY SIDE OF SOUTH PERSIMMON STREET, NORTHERLY OF AGG 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 5.006 acres of land, legally described as Tract 281, Tomball Outlots, generally located on the westerly side of South Persimmon Street, northerly of Agg Road, in the City of Tomball, Harris County, Texas, (the "Property"), have requested that the Property be rezoned; 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-20-E Single-Family Estate Residential-20 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 made a recommendation to the City Council in its final report regarding 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-20-E Single-Family Estate Residential-20 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 5.006 acres of land, legally described as Tract 281 Tomball Outlots, generally located on the westerly side of South Persimmon Street, northerly of Agg Road, in the City of Tomball, Harris County, Texas, (the "Property"), is hereby changed from SF-20-E Single-Family Estate Residential-20 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 5.006 acres of land, legally described as Tract 281 Tomball Outlots, generally located on the westerly side of South Persimmon Street, northerly of Agg 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 5.006 acres of land, legally described as Tract 281 Tomball Outlots, generally located on the westerly side of South Persimmon Street, northerly of Agg 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 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 APRIL 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN WEBB	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

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 MAY 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN WEBB	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

ATTEST:

Gretchen Fagan, Mayor

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
APRIL 12, 2010
&
CITY COUNCIL
APRIL 19, 2010**



Notice is Hereby Given that a Public Hearing will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, April 12, 2010, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, April 19, 2010, at 7:00 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 P10-206: Request by Brian Matthews, on behalf of Crescent Directional Drilling, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.006 acres of land, legally described as Tract 281 Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the westerly side of South Persimmon Street, northerly of Agg Road from the SF-20-E Single-Family Estate Residential-20 District to the LI - Light Industrial District.

ZONING CASE P10-208: Request by Tomball Independent School District to amend the Comprehensive Zoning Ordinance to rezone approximately 2.456 acres of land, legally described as all of Block 16, Tomball Townsite, from the SF-6 Single-Family Residential-6 and OT&MU Old Town and Mixed Use Districts to the OT&MU Old Town and Mixed Use District and Lots 25 through 36, Block 23, Tomball Townsite, from the SF-6 Single-Family Residential-6 District to the OT&MU Old Town and Mixed Use District within the City of Tomball, Harris County, Texas, both tracts of property being generally located on the westerly side of South Cherry Street, southerly of Fannin Street.

ZONING CASE P10-218: Request by Russ Brown, on behalf of PCOT Investments, Inc., to amend Section 38 (Use Regulations) of the City's Comprehensive Zoning Ordinance to establish a Model Home and Temporary Real Estate Sales Office use in all zoning districts that permit Residential Use either by right or conditionally, to amend Section 43 (Supplemental Regulations) to add standards for development related to model home and temporary real estate sales office use, and to amend Section 45 (Definitions) to amend and add the definitions related thereto.

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 City Planner** Kelly Violette, (281) 290-1491, kviolette@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 **April** 2010 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: P10-206

APPLICANT: Brian Matthews, on behalf of Crescent Directional Drilling

LOCATION: Westerly side of South Persimmon Street, northerly of Agg Road.

PROPOSAL: Request to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.006 acres of land, legally described as Tract 281 Tomball Outlots, within the City of Tomball, Harris County, Texas, from the SF-20-E Single-Family Estate Residential-20 District to the LI - Light Industrial District.

* * *

CONTACT PLANNER: Kelly Violette

PHONE: (281) 290-1491

E-MAIL: kviolette@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, April 12, 2010, 6:00 PM**

**City Council Public Hearing:
*Monday, April 19, 2010, 7:00 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.

Proposed Rezoning of:

Tomball Outlot 281

**1201 S. Persimmon St
Tomball, TX**

“DEVIATIONS FROM THE PLAN”

Taken from the *Tomball Comprehensive Plan*

At times, the City will likely encounter development proposals that do not directly reflect the purpose and intent of the Comprehensive Plan. The Planning & Zoning Commission and City Council may find that a request for a zoning amendment is not consistent with the Future Land Use Plan but should be approved due to changed circumstances or additional, relevant information affecting the appropriate use of the parcel. Review of such development proposals should include the following considerations:

- Will the proposed development enhance the City economically? Yes

- Employing approx. 25 people and growing
- Provides jobs to local residents
- No layoffs in 24 years
- Tax Revenue Generation

		Revenue		
Status	Value	City of Tomball (.25%)	Tomball ISD (1.36%)	Annual Revenue for Tomball
Undeveloped	\$54,494	\$136	\$741	\$877
Proposed Project	\$650,000	\$1,625	\$8,840	\$10,465

- Will the proposed development enhance the City aesthetically? Yes

- Image: Family-owned & operated business for 24 years
- Current property is 5 acres of undeveloped, unkempt land
- Proposed property will be a 75' wide x 125' long x 22' high metal building with a stone/stucco or stone/brick street-facing frontal view and relevant concrete driveway and parking areas

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

- Many of the Goals, Objections, and Actions of the City focus on making Tomball a desirable place to work and live. The development of unkempt land and redevelopment of dilapidated areas serves this purpose well. The land will continue to sit vacant so long as it is required to be residential, so the current zoning is preventing anyone from making good use of the land (see answer to next question for list of reasons)
- By allowing the rezoning, we will improve the area by constructing an aesthetically appealing building and maintaining the land around us
- We will provide jobs to local residents, thereby improving the economic viability of Tomball
- Another focus of the Comprehensive Plan is to minimize the negative impact of one land use on adjacent property; With a mobile home park joining our northern boundary and the property on our western boundary slated for future industrial use, our proposed use of the land is a good fit for the numerous light industrial and commercial businesses along Persimmon St

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

- The reasons against Residential & for Light-Industrial Development are:
 - Close proximity to the mobile home park (adjacent to us on the northern property line)
 - Numerous Industrial/Commercial/Business developments along Persimmon
 - Close proximity to active railroad system
 - Close proximity to the planned extension of Medical Complex Drive along Agg Rd as a Major traffic thorough-fare (approx 600 ft south of our property line)
 - Future use of land adjacent to our western border and the land 600 ft south of us as Light-Industrial
 - Future use of land north of the mobile home park is Employment/Office
 - High cost of soil stabilization work required to make the soil suitable for any type of construction
- Given the current residential zoning requirements, the land has and will continue to sit vacant. The current zoning is preventing anyone from making good use of the land. Our development of the land is a much better use than the current vacant state of the land, as it will be turned from an unkempt field to an aesthetically pleasing manufacturing facility for our growing business that provides tax revenue for the City

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

- The project will increase the aesthetic appeal of the area by converting an unkempt 5-acre tract of land with an aesthetically pleasing manufacturing building and company headquarters
- The closest residential area to us is the Mobile Home park which is adjacent to our property's northern border; we have a letter from the owner of the Mobile Home Park voicing his full support for our intended use of the property
- The next closest residence to us is the blue, metal house/barn to our southwest; we have a letter from the owner of this property as well voicing his full support for our intended use of the property

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

- There are several similar businesses up and down Persimmon St that require Semi-truck access, so the road does provide adequate access for our limited need for deliveries/pick-ups with little impact on traffic, as we average 1 truck every 1 ½ weeks

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

- Our operating hours are from 6am-4pm, Monday through Thursday; a typical business in this area might work from 7-4 or 8-5 M-F, so our hours would coincide with those other businesses
- Does the proposed development present a significant benefit to the public health, safety and welfare of the community? Yes
 - The proposed development does present a significant benefit to the welfare of the community because of the increase tax revenue to improve areas throughout Tomball as well as the increase in school tax revenue for Tomball ISD

Development proposals that are inconsistent with the Comprehensive Plan or that do not meet its general intent should be reviewed based upon the above questions. Such proposals should also be evaluated on their individual merit, on a case-by-case basis. It is important to note that it should be incumbent upon the applicant to provide evidence as to how the proposed development addresses the aforementioned questions.

It is also important to recognize that proposals contrary to the Comprehensive Plan could be an improvement over what is recommended within the Comprehensive Plan. This may be due to changing market, development, and/or economic trends that occur at some point in the future after this Comprehensive Plan is adopted. If such changes occur, and especially if there is a significant benefit to the City of Tomball, then these proposals may be approved, and the Comprehensive Plan should be amended accordingly.



3. 1330 S. Persimmon St. (Joe Serna) – Trs 283, 284, 284A, & 286A, Tomball Outlots



2. NW Corner of Agg Rd. & S. Persimmon St. (Sanchez) – Trs 284D, 284E, & 286, Tomball Outlots



6. 1019 Sutton Ln 23 (K E Jams Investments Inc – O'Brien) – Lts 276 & 277, Tomball Outlots



7. 1100 S. Persimmon St. (MCA Systems Inc - Fano) – Tr 274 A & B, Tomball Outlots



10. S. Persimmon St. (Clarence Ousley) – Lt 267, Tomball Outlots



18. 0 Persimmon Rd S. (Michael Ott) – Lt 347, Tomball Outlots



11. 906 S. Persimmon St. (Foster Investments LLC) – Lt 263, Tomball Outlots



12 & 19. 814 & 826 S. Persimmon St. (Johnson) – Lt 259, Tomball Outlots



32. S. Persimmon S. (Tower Steel Services Inc) – Lts 335 & 336, Tomball Outlots



36. Lizzie Ln. / S. Persimmon St. FM 2920, (Jose & Estela Vazquez)– Lt 1, Blk 1, Vazquez-Phoenix



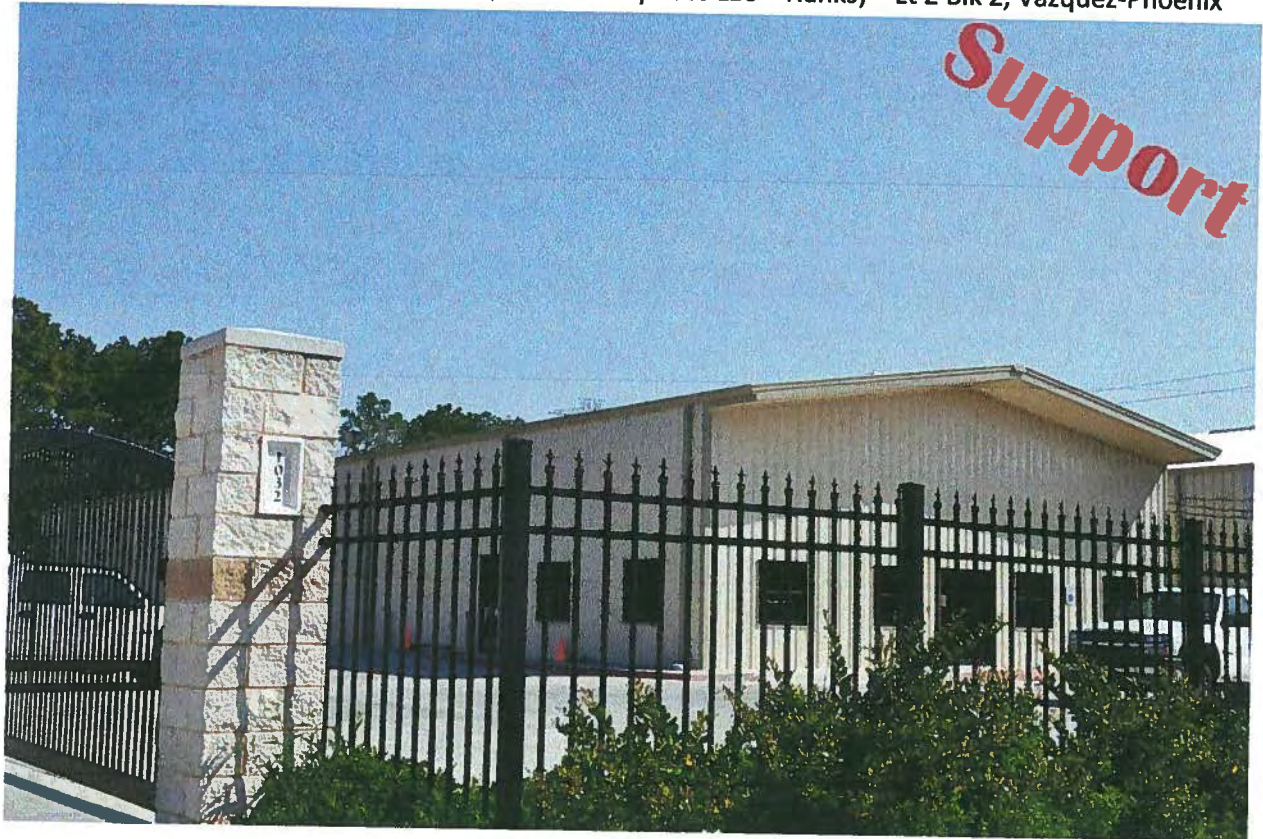
33. 701 S. Persimmon St. (PDGL Partners LP - Mitchell) – Lt 332, Tomball Outlots



35. 702 S. Persimmon St. (Persimmon Development Partners Ltd - Pisano) – Lt 3 Blk 2, Vazquez-Phoenix



37. 1032 Lizzie Ln. (Wiretel Services / MFH Enterprises LLC – Hanks) – Lt 2 Blk 2, Vazquez-Phoenix



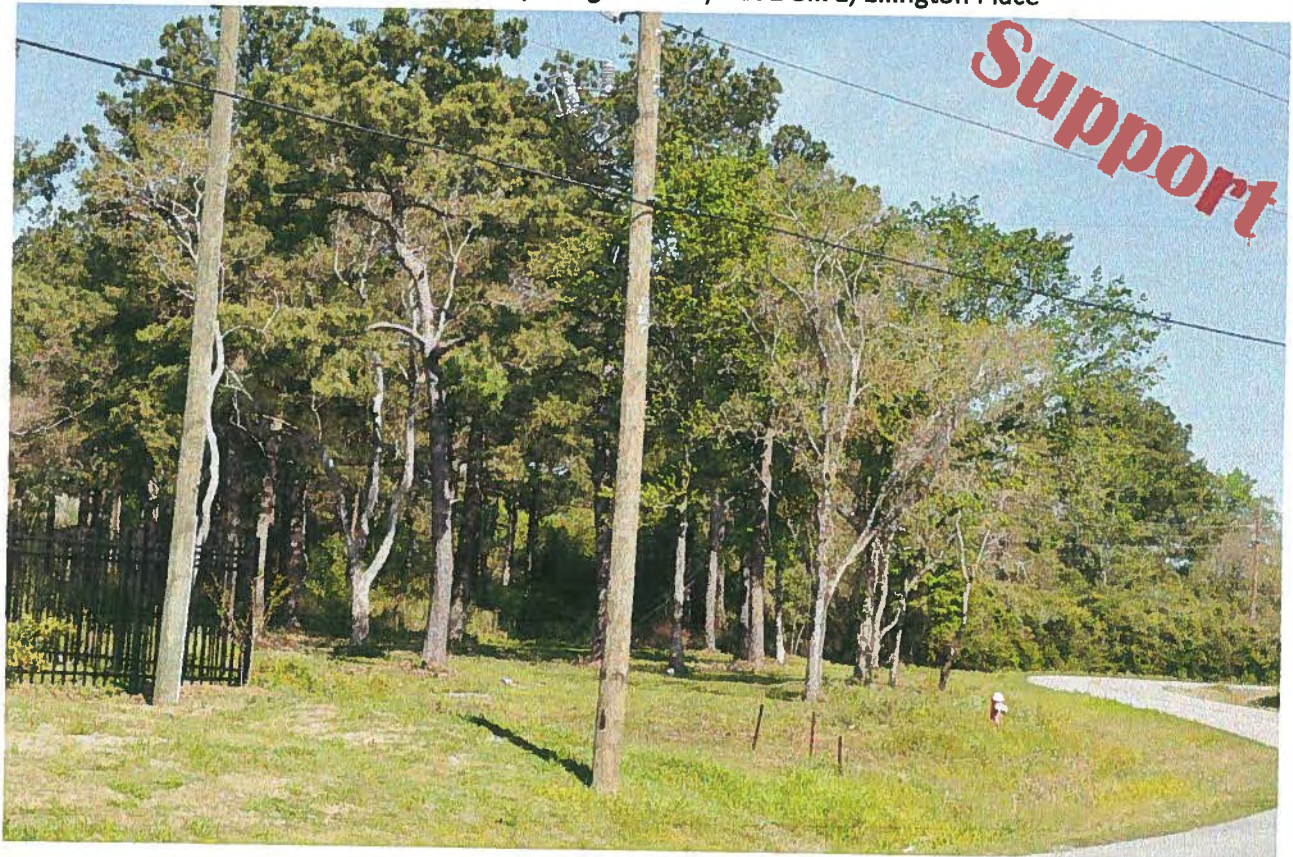
38. 1028 Lizzie Ln. (MICO Group - Smith) – Lt 1 Blk 2, Vazquez-Phoenix



34. 611 S. Persimmon St. (Centerfield Inc - Chaudhry) – Lt 329, Tomball Outlots



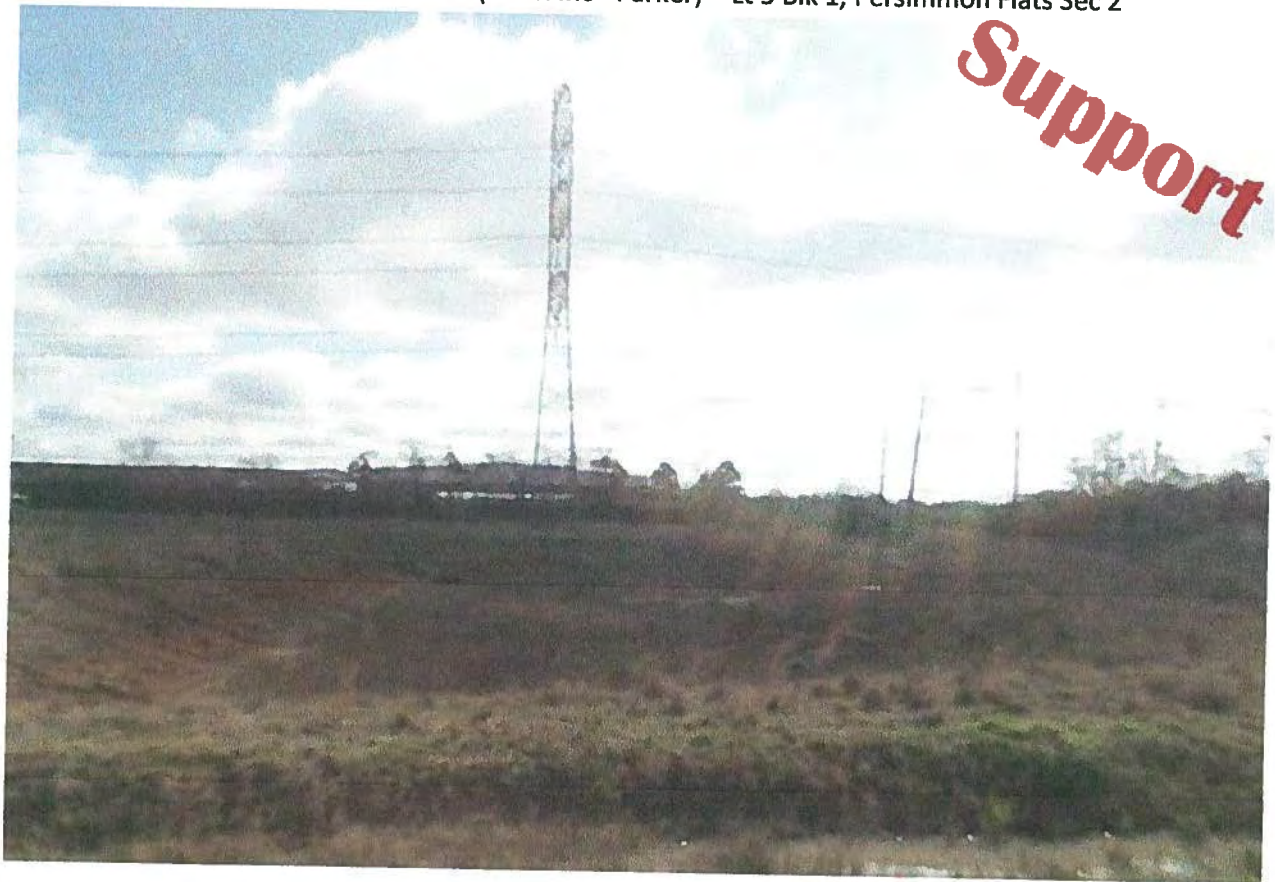
40. S. Persimmon St. (George Givens) – Lt 1 Blk 1, Ellington Place



39. S. Persimmon St. (Quick Turn Machining Inc – Khalaf) – Res A Blk 1, JANSEP Investments



41. 535 S. Persimmon St. (CPAR Inc - Parker) – Lt 5 Blk 1, Persimmon Flats Sec 2



57. S. Persimmon St. (James Juranek) – Tr 8E, Abst 629 J Pruitt



42. 407 S. Persimmon St. (Noram Texas Holdings - Peloski) – Lt 4 Blk 1, Persimmon Flats Sec 2



43. 403 S. Persimmon St. (Shadow Manufacturing - Janicki) – Lt 3 Blk 1, Persimmon Flats Sec 2



44. 325 S. Persimmon St. (Texson Office Park - Thompson) – Lt 1 Blk 1, Persimmon Flats Sec 2



45. 321 S. Persimmon St. (Champion Circuits – Hatfield) – Lt 4 Blk 1, Persimmon Flats



46. 215 S. Persimmon St. (Boardroom Environments Inc – Fulbright) – Lt 3 Blk 1, Persimmon Flats



48. 201 S. Persimmon St. (Elliott Electric Supply) – Lt 1, Blk 1, Persimmon Flats



49. 0 FM 2920 (Dominick & Linda Palermo) – Tr 11R-2, Abst 629 J Pruitt



31. 11211 FM 2920, Persimmon Rd S, Hufsmith-Kohrville Rd (BJ Services Co.)— Lt 327, 328, 333, etc, Tomball Outlots



14. 919 S. Persimmon St. (All About Color - Ruiz) — Tr 254A & B, 258A, Tomball Outlots



47. 211 S. Persimmon St. (Judy Wilson) – Lt 2 Blk 1, Persimmon Flats





Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 31, 2010

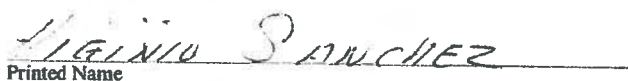
Dear City of Tomball P&Z Commission / City Council:

I am a property owner on/near Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature


Printed Name

Businesses Name


Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 31, 2010

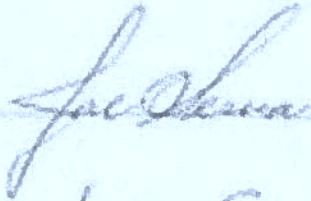
Dear City of Tomball P&Z Commission / City Council:

I am a property owner on/near Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,

Signature



Printed Name

Joe Serna

Business Name

1330 Persimmon

Property Address

Tomball, TX 77375

City, State Zip-Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 24, 2010

Dear City of Tomball P&Z Commission / City Council:

I am the owner of the Mobile Home Park at 1019 Sutton Ln 23 (Outlots 276 & 277), which borders the property in question to the north/northwest. I am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,



Signature

3-25-10

Mike O'Brien

Printed Name

K E Jams Investments Inc

Businesses Name

1019 Sutton Ln 23

Property Address

Tomball, TX 77375

City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

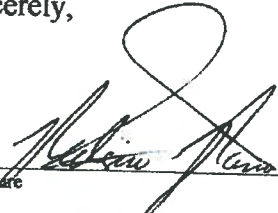
March 23, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

FEDERICO FANO
Printed Name

MCA systems inc
Businesses Name

1100 S. PERSIMMON ST
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 23, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,

Signature E. L. Presberg

CLARENCE LYNN OUSLEY
Printed Name

Businesses Name _____

L+ 267, Tomball Outlots
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

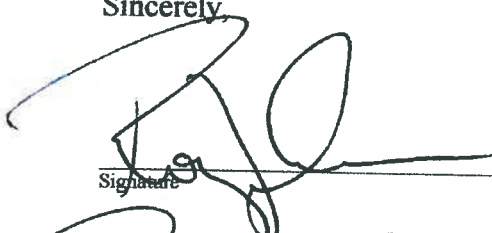
March 23, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

Roy Johnson
Printed Name

B+C Coating
Businesses Name

826 S Persimmon
Property Address

Tomball, TX 77375

City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 30, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on/near Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,

Signature



Printed Name

Adam Ruiz

Businesses Name

All About Color / ALPC

Property Address

OS Pitchford / 919 S Pitchford

Tomball, TX 77375

City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 30, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on/near Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature


Printed Name

Business Name


Property Address

Tomball, TX 77375

City, State Zip Code

Re: Protective Concepts - Rezoning on Persimmon St (Outlot 281)

BJ Services Company
4601 Westway Park Blvd
Houston, TX 77041

March 31, 2010

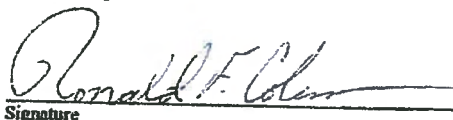
Dear City of Tomball:

BJ Services is a property owner on/near Persimmon Street and we fully support the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

Protective Concepts, Inc (PCI) is a family-owned business employing approximately 25 people and has been in business for 24 years. The proposed project includes a 75'x125' metal building to serve as the headquarters and manufacturing facility for Protective Concepts. As a manufacturer of passive fire protection jackets for oil/gas industry equipment, the manufacturing process is restricted to the inside of the facility, emitting no external noise or air pollution.

I urge you to approve this property for rezoning as it is in the best interest of the community, providing both jobs to local residents and tax revenue for the City of Tomball. Additionally, Persimmon Street has numerous Light Industrial/Commercial businesses located from FM 2920 down to Agg Rd, and the proposed use by PCI is in keeping with this trend.

Sincerely,


Signature

Ronald F. Coleman
Printed Name

VP North America Pressure Pumping Services
Title

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 31, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,

Signature



Printed Name

Jose M. Aguirre, Jr.

Businesses Name

Tower Steel Services, Inc.

Property Address

717 South Persimmons
Tomball, TX 77375

City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 23, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,



Signature

DAVID MITCHELL

Printed Name

PERSIMMON BUSINESS PARK

Businesses Name

701 S. PERSIMMON, STE. 85

Property Address

Tomball, TX 77375

City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

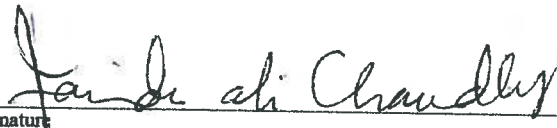
March 23, 2010

Dear City of Tomball P&Z Commission / City Council:

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The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

FARIDA CHAUDHRY
Printed Name

CENTERFIELD, INC.
Businesses Name

611 SOUTH PERSIMMON
Property Address

Tomball, TX 77375
City, State Zip Code

PERSIMMON DEVELOPMENT PARTNERS, LLC
6719 Theall Rd. #D
Houston, Texas 77066

March 31, 2010

City of Tomball Planning Committee
501 James St.
Tomball, Texas 77375

RE: Rezoning of 1201 S. Persimmon St.

To Whom It May Concern:

We would like to express our support of Protective Concepts, Inc. goal of purchasing and developing Outlot 281, aka, 1201 S. Persimmon St., and have it rezoned from residential to commercial property. Tomball needs to bring new business to its city, as well as tax revenue. Bringing in good, clean businesses to the area are a good fit for Tomball, and the surrounding area to this piece of property in question has the potential of becoming light industrial/employment businesses according to the development plan the city has adopted for the future.

Sincerely,



Sam Pisano
Persimmon Development Partners, LLC

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

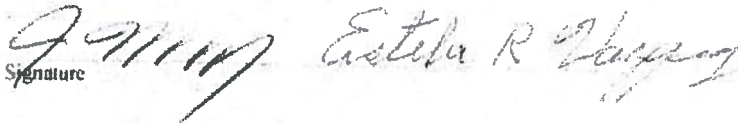
March 23, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

Jose M. & Estela R. Vazquez
Printed Name

1442 Kingwood Dr. #172 Kingwood, Tx 77339
Businesses Name

Lot 1 Blk 1 Vazquez - Phoenix
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

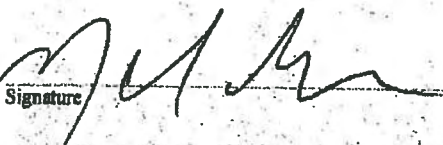
April 6, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

Mark Hanks
Printed Name

WireTel Services LP / MFH Enterprises
Businesses Name

1032 Lizzie Lane
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

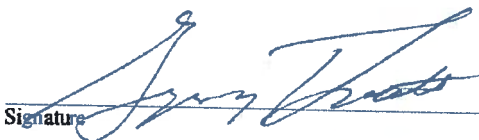
March 31, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,

 3/31/2010
Signature

Gregory T. Smith
Printed Name

MICO GROUP LTD
Businesses Name

1078 LIZZIE LANE
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

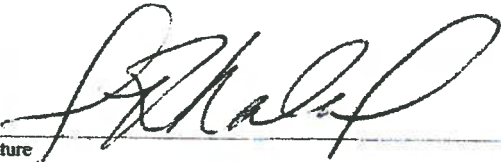
March 31, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature


Printed Name


Businesses Name

Property Address 

Tomball, TX 77375

City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

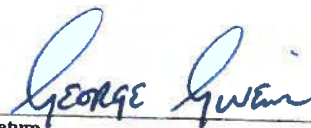
March 31, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on/near Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

GEORGE GIVENS
Printed Name

Businesses Name

600 S. PERSIMMON
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 31, 2010

Dear City of Tomball P&Z Commission / City Council:

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The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,

 prcs
Signature

CLIFFORD PARKER
Printed Name

C'PAR, INC
Businesses Name

535 S PERSIMMON
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 23, 2010

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The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,

Tom Peloski
Signature

TOM PELOSKI
Printed Name

NORAM TEXAS HOLDINGS
Business Name

407 S PERSIMMON
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

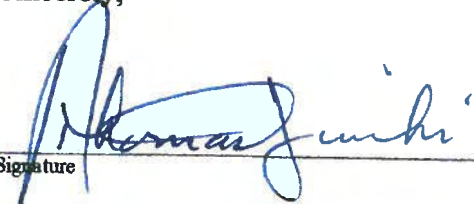
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The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

Thomas Janicki
Printed Name

Shadow Mfg
Businesses Name

483 S Persimmon
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 23, 2010

Dear City of Tomball P&Z Commission / City Council:

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The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

H. MARTIN THOMPSON
Printed Name

TEXSON
Businesses Name

325 S. PERSIMMON
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

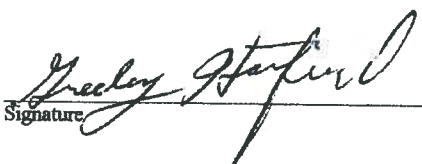
March 23, 2010

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The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

GREELEY HATFIELD
Printed Name

CHAMPION CIRCUITS
Businesses Name

321 S PERSIMMON
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 23, 2010

Dear City of Tomball P&Z Commission / City Council:

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The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,

Signature



Printed Name

Jeff Fulbright

Businesses Name

Fulbright + CO.

Property Address

215. S. Persimmon

Tomball, TX 77375

City, State Zip Code

ELLIOTT ELECTRIC SUPPLY

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 31, 2010

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The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,



Signature

Billy Elliott

Printed Name

Elliott Electric Supply, Inc.

Businesses Name

201 S. Persimmon Street

Property Address

Tomball, TX 77375

City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

April 1, 2010

Dear City of Tomball P&Z Commission / City Council:

I am a property owner on Persimmon Street and am writing to express my full support for the rezoning of 1201 S. Persimmon St (Outlot 281) from Residential to Light Industrial use.

The proposed use as the company headquarters and manufacturing facility for Protective Concepts, Inc is a good fit for the area, with numerous commercial and light industrial businesses already located along Persimmon St. I urge you to approve this property for rezoning.

Sincerely,


Signature

Dominick PALERMO
Printed Name

PALERMO Interests
Businesses Name

Corner lot of FM 2920 + Persimmon St.
Property Address

Tomball, TX 77375
City, State Zip Code

Re: Rezoning of 1201 S. Persimmon St (Outlot 281)

March 31, 2010

Dear City of Tomball P&Z Commission / City Council:

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Sincerely,

Signature



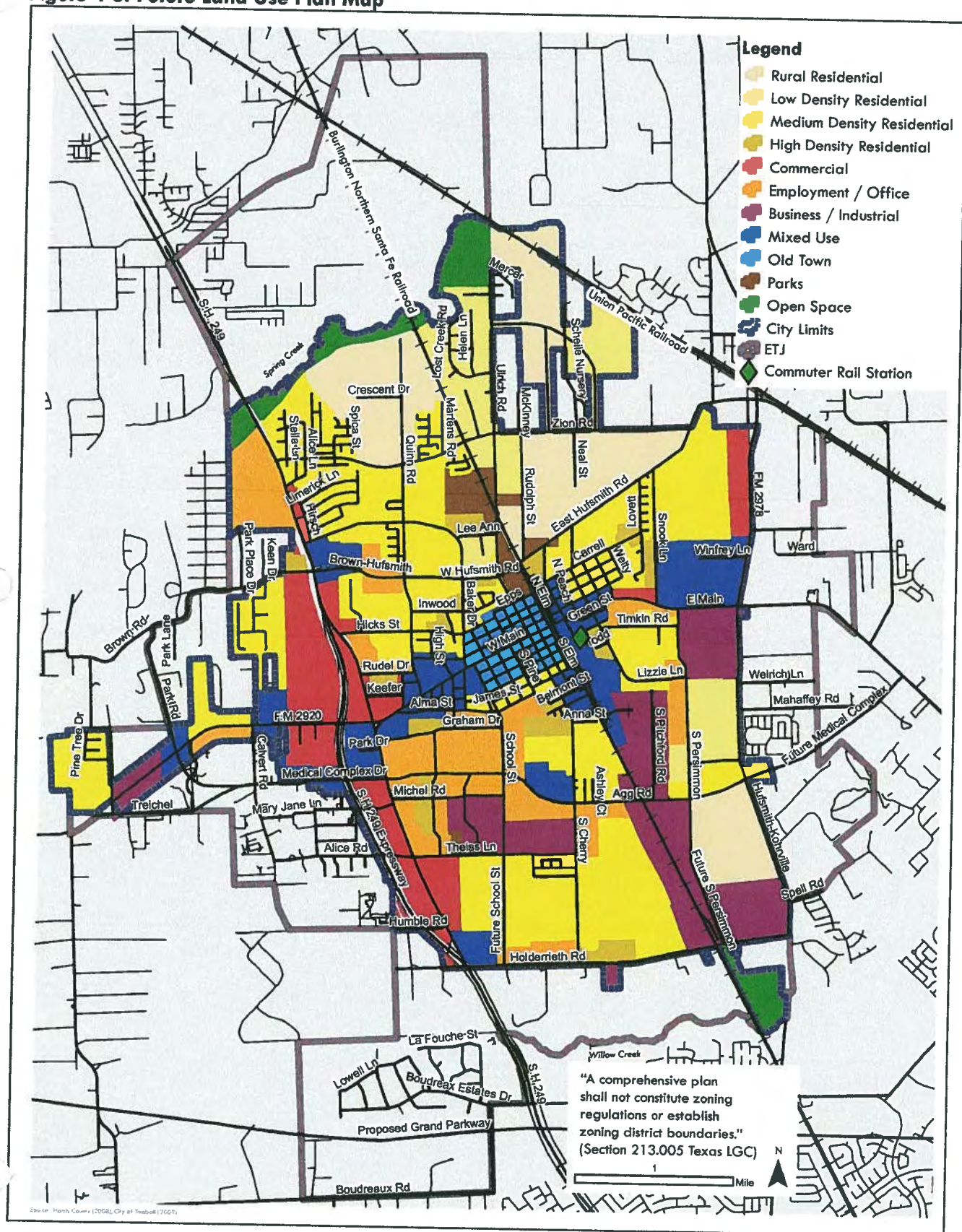
James Juranek/Jerome O. Ejeld (co-owners of tract)
Printed Name

Juranek Law Firm, PLLC
Business Name

0 Persimmon Street
Property Address

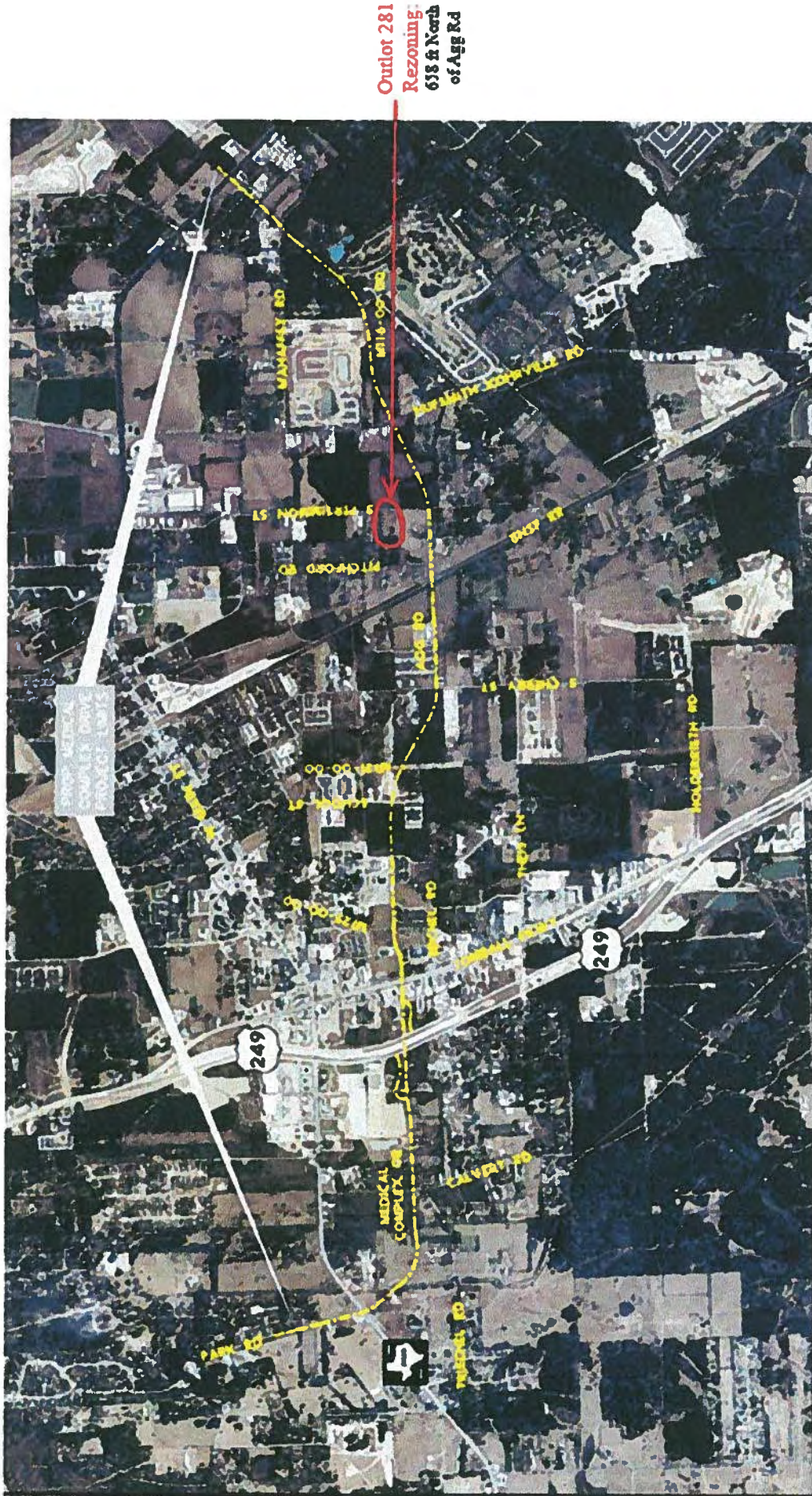
Tomball, TX 77375
City, State Zip Code

Figure 4-6: Future Land Use Plan Map



Adapted from the "Agg Road/Medical Complex Drive Expansion Preliminary Engineering Report"

- Unanimously Accepted by City Council on July 6, 2009



- Discussion – Kelly Violette provided information regarding how the Comprehensive Plan would be applied to Zoning Cases P09-146 and P09-158. Under the Comprehensive Plan, Section G will be applied to rezoning requests.
- Next Steps – Peggy Fiandaca asked for any comments and additional questions.

Discussion was held by Council and P&Z board members regarding the possibility of changing South Persimmon and leaving Timkin as medium-density residential. Land use on Persimmon should be residential and north and south of Timkin should be medium-density residential, with retail on FM 2920. Kelly Violette advised that possible future commuter rail in this area could create a conflict in the area, creating problems for the residences along there.

Peggy Fiandaca advised that proposed developments must meet both the comprehensive plan and the zoning ordinance in order to gain approval to proceed. Kelly Violette advised that safeguards have been built into the comprehensive plan and the zoning ordinance to enable the City to consider projects in light of what is the best use of the property for both the property owner and the community as a whole.

Direction from Council was for PSA to revisit future land uses on both sides of South Persimmon as commercial and Timkin as medium-density residential.

Mayor Fagan called a recess at 6:26 p.m.

Upon reconvening into Special session at 6:36 p.m., the following items were discussed:

- Keeping the area south of Ag Road and east of the Railroad tracks as single-family residential;
- including the museum district in the Old Town District; and
- the area bordered by Moore, Live Oak and Peach Streets.

Direction from Council was for PSA to look at these areas and provide recommendations for future land use.

Consideration was given to Chapter 8, potential land use patterns, annexing property under the Comprehensive Plan, and an update on the 2920 access management study.

Making Findings of Fact; Providing for Severability; and Making Other Provisions Related Thereto. Vote was as follows:

Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Webb	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Driver	<u>Aye</u>

Motion carried unanimously.

9.0 New Business – Consent Agenda:

- 9.1 Doris Speer provided overview of the Greater Tomball Area Chamber of Commerce's requests for Tomball Night and Resolution No. 2009-17, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 37th Annual Tomball Night and Parade, to be Held in Tomball on Friday, August 7, 2009.
- 9.2 Doris Speer provided overview regarding the request by Windcrest Collision to return to the Emergency Wrecker Rotation List.

Request was made by Councilman Townsend to remove item 9.2 from the consent agenda.

Motion was made by Councilman Townsend, second by Councilman Driver, to approve Resolution No. 2009-17, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 37th Annual Tomball Night and Parade, to be Held in Tomball on Friday, August 7, 2009.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the request by Windcrest Collision to return to the Emergency Wrecker Rotation List.

Motion carried unanimously.

10.0 New Business:

- 10.1 Mark McClure and Dale Conger, Cobb, Fendley and Associates, provided overview. Motion was made by Councilman Stoll, second by Councilman Townsend to Accept the Agg Road/Medical Complex Drive Expansion Preliminary Engineering Report as prepared and presented by Cobb, Fendley and Associates.

Motion carried unanimously.

First step taken in Medical Complex Drive expansion

By KIM JACKSON CHRONICLE CORRESPONDENT

July 15, 2009, 1:38PM

The city of Tomball has breathed life into a \$49 million road project that could one day reduce the burden on the crowded east-west FM 2920 corridor that is one of the city's spinal roadways.

On July 13, Tomball City Councilmembers adopted a preliminary engineering report for the Medical Complex Drive project that will expand the existing road to the east and to the west so that it runs a full arc through the middle of Tomball.

Though it could be several years before the Medical Complex Drive expansion project is funded and ready to move forward, this is a crucial first step in the process, city officials said.

"One of the benefits of adopting the preliminary report is that it sets the project alignment, and we can communicate what that alignment is to property owners and future developers," said Jan Belcher, Tomball city manager.

That report shows a preferred pathway for the road that connects several existing road segments with the Medical Complex Drive off Texas 249.

The project would start on the west at a point west of the Park Road/FM 2920 intersection and a new road would be constructed across FM 2920 and undeveloped land to connect with the existing Medical Complex Drive, which starts at Calvert Road.

The existing road would be improved and widened to its dead-end near the Tomball Regional Medical Center complex, and along that route, an overpass would be constructed at Texas 249.

The project path then continues across undeveloped land to Agg Road and follows Agg Road until its dead-end, and then across undeveloped land to FM 2920, which is the eastern end point for the project. Along that segment, a railroad overpass will be constructed and the road will intersect with Huffsmith-Kohrville Road, Mahaffey Road, Brady Lane and Colby Lane.

Dale Conger, a member of the Cobb-Findley engineering team that worked on the new Medical Complex Drive report, said the team considered many scenarios when studying the road project. That included a "no-build" scenario.

"If the project is not built in the next 20 years, traffic through the city would be gridlocked," Conger said.

Because the project has such a large price tag, an estimated \$40 million for construction costs and \$9 million for right-of-way acquisition, it could be divided into five segments. Conger said the road width could range from 100-120 feet across and both could eventually accommodate three lanes in each direction.

As it is mapped out now, the city would need to buy about 60 acres for the road right-of-way, and another 34 acres for detention.

Mark McClure, the city's director of engineering and planning, said the city could explore various types of funding opportunities, including those with other governmental entities, but no money has been pledged toward the project yet. He said it does fall in line with the goals of the Texas Department of

Transportation's FM 2920 access management study, which calls for alternative east-west routes to take traffic off FM 2920.

Belcher said the next step in the process is setting aside funds in the city budget to buy property, conduct appraisals and perform final design work. She said City Council will have the opportunity to discuss those funding options at city budget planning meetings.

Councilmember Derek Townsend said he was impressed with the report and the proposed project.

"I see this as a good thing," Townsend said. "It has huge value for our city in the future. In my opinion, we should not sit back on our laurels and let this one get away from us."

Regular City Council

Agenda Item

Meeting Date: April 19, 2010

Data Sheet

Topic:

Consideration and Possible Action Regarding **ZONING CASE P10-208**: Request by the Tomball Independent School District to amend the Comprehensive Zoning Ordinance to rezone approximately 2.456 acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, within the City of Tomball, Harris County, Texas, from the SF-6 Single-Family Residential-6 District to the OT&MU - Old Town and Mixed Use District; said property being generally located on the westerly side of South Cherry Street, southerly of Fannin Street.

- Conduct a Public Hearing on **ZONING CASE P10-208**
- Adopt on First Reading, Ordinance No. 2010-08, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 2.456 Acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, within the City of Tomball, Harris County, Texas, from the SF-6 Single-Family Residential-6 District to the OT&MU - Old Town and Mixed Use District, said property being generally located on the westerly side of South Cherry Street, southerly of Fannin Street; 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 February 23, 2010, the City received a rezoning application from the Tomball Independent School District (TISD) to rezone approximately 2.456 acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, generally located on the westerly side of South Cherry Street, southerly of Fannin Street, from the SF-6 Single-Family Residential-6 District to the OT&MU - Old Town and Mixed Use District. The 2.456 acres is part of TISD's overall 3.994 acre facility along South Cherry Street. The northern portion of the site is located within the OT&MU - Old Town and Mixed Use District, while the southern portion lies within the SF-6 Single-Family Residential-6 District.

TISD is proposing to rezone the property in order to facilitate the construction of the new administration building on the site. The new administration building will house the staff currently located in the existing administration building at 221 West Main Street.

School facilities are permitted by right within all zoning districts and must comply with the development standards of the district in which the facility is located. The portions of the project in the SF-6 District would be required to develop according to the O-Office District standards. Tomball ISD is requesting to rezone the southern portion of the site to the OT&MU District in order to maintain consistent development standards and setbacks for the overall site.

After reviewing the request, staff prepared a report to the Planning and Zoning Commission recommending approval based on the fact that the proposed zoning and use will be compatible with the land uses in the vicinity and is consistent with the Comprehensive Plan's Future Land Use Plan Map designation of Old Town, which encourages the location of government facility uses in Old Town to strengthen the civic center and diversify day-time activity.

On April 12, 2010, the Planning and Zoning Commission, after conducting a public hearing on this request,

voted unanimously to recommend approval. This request is now being forwarded to City Council for consideration and possible action.

Origination:

Tomball Independent School District

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted unanimously to approve Zoning Case P10-208, as recommended by staff, based on the following: a. The proposed zoning will be compatible with the land uses in the vicinity. b. The proposed zoning is consistent with the Tomball Comprehensive Plan. c. The proposed zoning will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area. d. There are sufficient existing utilities to service the proposed use on this site.

Funding:

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

Kelly Violette, City Planner

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

ATTACHMENTS:

- Staff Report P10-208
- Draft Ordinance No. 2010-08
- Notice of Public Hearing
- Adjacent Property Owner Notification



Rezoning Staff Report

Planning and Zoning Commission Hearing Date: April 12, 2010

Rezoning Case: P10-208

Property Owner(s): Tomball Independent School District

Applicant(s): Gary Hutton, Tomball Independent School District

Legal Description: All of Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, within the City of Tomball, Harris County, Texas

Location: Generally located on the westerly side of South Cherry Street, southerly of Fannin Street

Area: 2.456 acres

Present Zoning and Use: SF-6 Single-Family Residential-6 and OT&MU Old Town and Mixed Use Districts / Vacant land, TISD Facility, and two single-family residences.

Comp Plan Designation: Old Town

Proposed Zoning and Use: Old Town & Mixed Use District (OT&MU) / TISD Administration Building

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: OT&MU / Retail and residential

South: SF-6 / Residential and day care facility

East: OT&MU and SF-6 / Residential, offices, Christian counseling center, City of Tomball community center

West: OT&MU and SF-6 / City of Tomball City Hall and Police Station, residential and undeveloped land

BACKGROUND

The overall subject site is a 3.994 acre tract of land legally described as Lots 1 through 12, Block 12, all of Block 16, and Lots 25 through 36, Block 23, Tomball Townsite, within the City of Tomball, Harris County, Texas. The site is generally located on the westerly side of South Cherry Street, southerly of Fannin Street and is bound on the west and east by Oak and Cherry Streets respectively (Exhibit "C"). The northern portion of the site is located within the OT&MU

District and the southern half of the site is currently within the Sf-6 District. The area to be rezoned is an approximately 2.456 acre section of the overall 3.994 acre tract and is legally described as all of Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, within the City of Tomball, Harris County, Texas (Exhibit "A").

City staff met with Tomball Independent School District (TISD) representatives on February 17, 2010 to discuss the redevelopment of the site for the new TISD administration building. At this meeting, the dual zoning (SF-6 and OT&MU) was discussed and staff informed TISD that the portions of the project in the SF-6 zoning district would be required to develop according to the O-Office District development standards unless rezoned to the OT&MU District because Section 43.4.A.5 states, "Any nonresidential use which may be permitted in a residential zoning district shall conform to the O, Office district standards, unless otherwise stated in this Ordinance or in an ordinance establishing a PD." After consulting with their design team, TISD submitted a rezoning application on February 18, 2010 to rezone the property to the OT&MU District in order to maintain consistent setbacks for the new development.

The overall 3.994 acre site is owned by Tomball Independent School District and is currently used by the Facilities Department. TISD is proposing to rezone the property in order to facilitate the construction of the new administration building on the site. The overall site is approximately 300 feet wide and 580 feet deep. The conceptual site plan submitted with the rezoning application shows the administration building being located generally in the center of the property with vehicular access being taken from South Oak and South Cherry Streets (Exhibit "F"). Additionally, a detention pond is proposed in the approximate location of the two existing residences at the south east corner of the site. As a matter of information, the applicant indicated at the February 17, 2010 meeting that TISD will attempt to preserve and integrate the existing façade from the original Tomball School into the proposed two-story structure. Preserving this façade will help to maintain the historic look of the Old Town area.

ANALYSIS

Old Town Tomball is an area in which many diverse land uses currently exist. The nature of the area is a mixture of retail, commercial, and other nonresidential uses, along with single-family homes and multiple-family uses. The Old Town and Mixed Use District is intended to provide a zoning mechanism for a variety of uses in the original town site and those areas that have a diverse mixture of uses.

School facilities are permitted by right within all zoning districts and must comply with the development standards of the district in which the facility is located. Tomball ISD is requesting to rezone the entire subject site to the OT&MU District in order to maintain consistent development standards and setbacks for the overall site (Exhibit "F"). The administration building will house the staff currently located in the existing administration building at 221 West Main Street.

Currently, there are a number of existing land uses in the vicinity of the subject site. To the north of the subject site are retail and residential uses in the OT&MU district. To the south are residential uses and a day care facility located in the SF-6 district. To the east are residences, offices, a Christian counseling center, and the Tomball community center located in the OT&MU and SF-6 zoning district. To the west are Tomball City Hall and police station, residences, and vacant land located in the OT&MU and SF-6 zoning district. Although there are a number of residential uses in the vicinity of the subject site, staff feels the rezoning and

proposed land use would not be out of character with the existing mix of land uses in the vicinity and would provide for the revitalization of the existing facility on the site.

Additionally, the proposed rezoning to OT&MU is consistent with the “Old Town” Comprehensive Plan land use designation (Exhibit “B”). The Comprehensive Plan states that the “Old Town includes the historic hub and heart of the community. Old Town land uses include mature single family neighborhoods, dense commercial uses, a civic core, and high density residential.” Staff recognizes the importance of maintaining and enhancing the civic core in the Old Town area and feels the new TISD administration building would enhance the civic core and be an asset to the area. The Comprehensive Plan’s “Old Town Planning Guidelines” also “Encourage the assembly of land into parcels that meet minimum standards and are sufficient for development/redevelopment.” The redevelopment of this site and the platting process will create a unified parcel of land that is much more sufficient for future development and will strengthen the Old Town area.

Development of this site will require the applicant to comply with all platting requirements, including dedication of utility easements and ROW, abandonments of appropriate rights-of-way, 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, drainage and utility plans, building elevations and landscape plans, will be required to be submitted and approved by the Engineering & Planning and Fire Departments 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 are a number of existing land uses in the vicinity of the subject site. To the north of the subject site are retail and residential uses in the OT&MU district. To the south are residential uses and a day care facility located in the SF-6 district. To the east are residences, offices, a Christian counseling center, and the Tomball community center located in the OT&MU and SF-6 zoning district. To the west are Tomball City Hall and police station, residences, and vacant land located in the OT&MU and SF-6 zoning district. Although there are a number of residential uses in the vicinity of the subject site, staff feels the rezoning and proposed land use would not be out of character with the eclectic mix of land uses in the immediate area.

The redevelopment of this site will require compliance with the City’s screening, buffering and fencing requirements to protect any adjacent residential uses. The applicant will also be required to shield and position all on-site lighting such that lights do not adversely impact adjacent residential areas.

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 are currently sufficient utilities in the area to service this site (Exhibit “H”).

South Cherry Street is a two lane road and is designated as a Minor Arterial on the adopted Major Thoroughfare Plan (MTP), with an ultimate right-of-way width of 80 feet. This right-of-way has not been acquired in the vicinity and right-of-way dedication would be required when the property is replatted. Minor Arterials distribute traffic from state highway/farm-to-market roadways and major arterials to the collector system and to adjacent land uses and are found in areas of significant traffic movement. South Oak Street is a two lane road and is designated as a Minor Street on the adopted MTP. The City has no plans to widen South Oak Street and no right-of-way dedication would be required at the time of replatting.

The development of the new administration building 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 impermeable area, thereby altering absorption rates and increasing surface runoff. Drainage improvements shall comply with the requirements of the City’s Engineering and Public Works Departments.

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.

Public school facilities are permitted by right within all zoning districts and thus would be permitted upon any property of sufficient size to support the proposed use. Because school facilities tend to require a large amount of property there is currently not sufficient vacant land elsewhere within the Old Town area that would support such a facility.

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 have been a number of nonresidential projects in the OT&MU district within the last several years including (but not limited to) the Tomball Intermediate School renovation, Tomball ISD Technology Center expansion, Northwest EMS facility expansion, and First Baptist Church outdoor pavilion construction. There has been little recent nonresidential development within the OT&MU district in the immediate vicinity of the subject, mainly because the area is fairly well built out.

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 (Exhibit “B”). The Comprehensive Plan states that the “Old Town includes the historic hub and heart of the community. Old Town land uses include mature single family neighborhoods, dense commercial uses, a civic core, and high density residential.” The Old Town planning guidelines encourage the location of government facility uses in Old Town to strengthen the civic center and diversify day-time activity. Staff recognizes the importance of maintaining and enhancing the civic core in the Old Town area and feels the rezoning and redevelopment of this site would 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 March 31, 2010 and, as of the writing of this report, no public comment forms were received. During the public comment period, staff did receive two phone calls regarding the project; both callers indicated support of the proposed redevelopment of the site and did not indicate any opposition to the rezoning request.

RECOMMENDATION

That the Planning and Zoning Commission recommend:

1. APPROVAL of Zoning Case P10-208 based on the following:
 - a. The proposed zoning of OT&MU District will be compatible with the land uses in the vicinity.
 - b. The proposed zoning of OT&MU District is compatible with the Tomball Comprehensive Plan.
 - c. The proposed zoning of OT&MU District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.
 - d. There are sufficient existing utilities to service the proposed use on this site.

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

EXHIBITS

- A. Location/Zoning Map
- B. Comp Plan Future Land Use Map
- C. Aerial Photo
- D. Rezoning Application
- E. Rezoning Request Letter
- F. Conceptual Site Plans
- G. Legal Description of Property
- H. Utility Block Map
- I. Site Photos

Exhibit “A” Location/Zoning Map

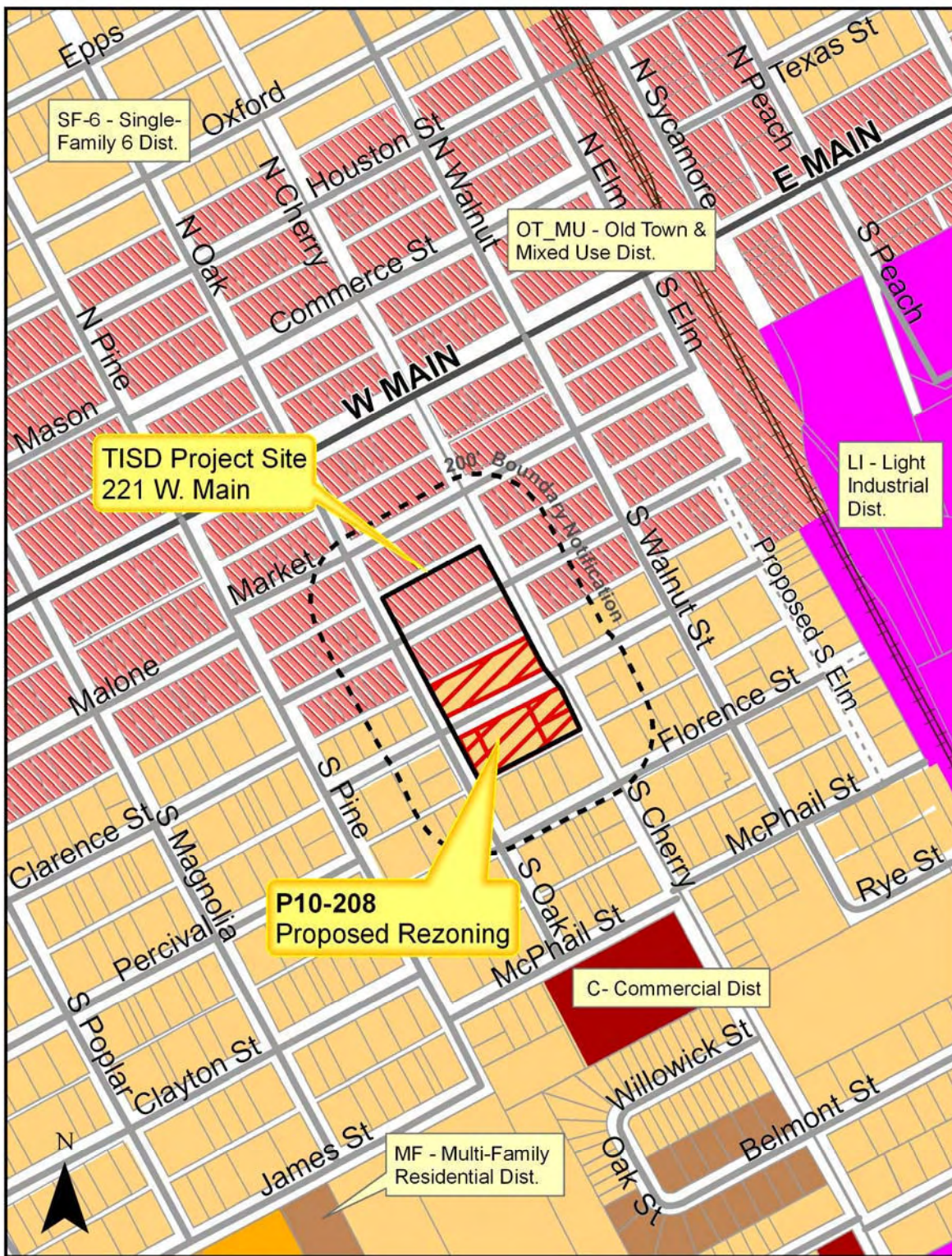


Exhibit "B"
Comp Plan Future Land Use Map



Exhibit "C"
Aerial Photo

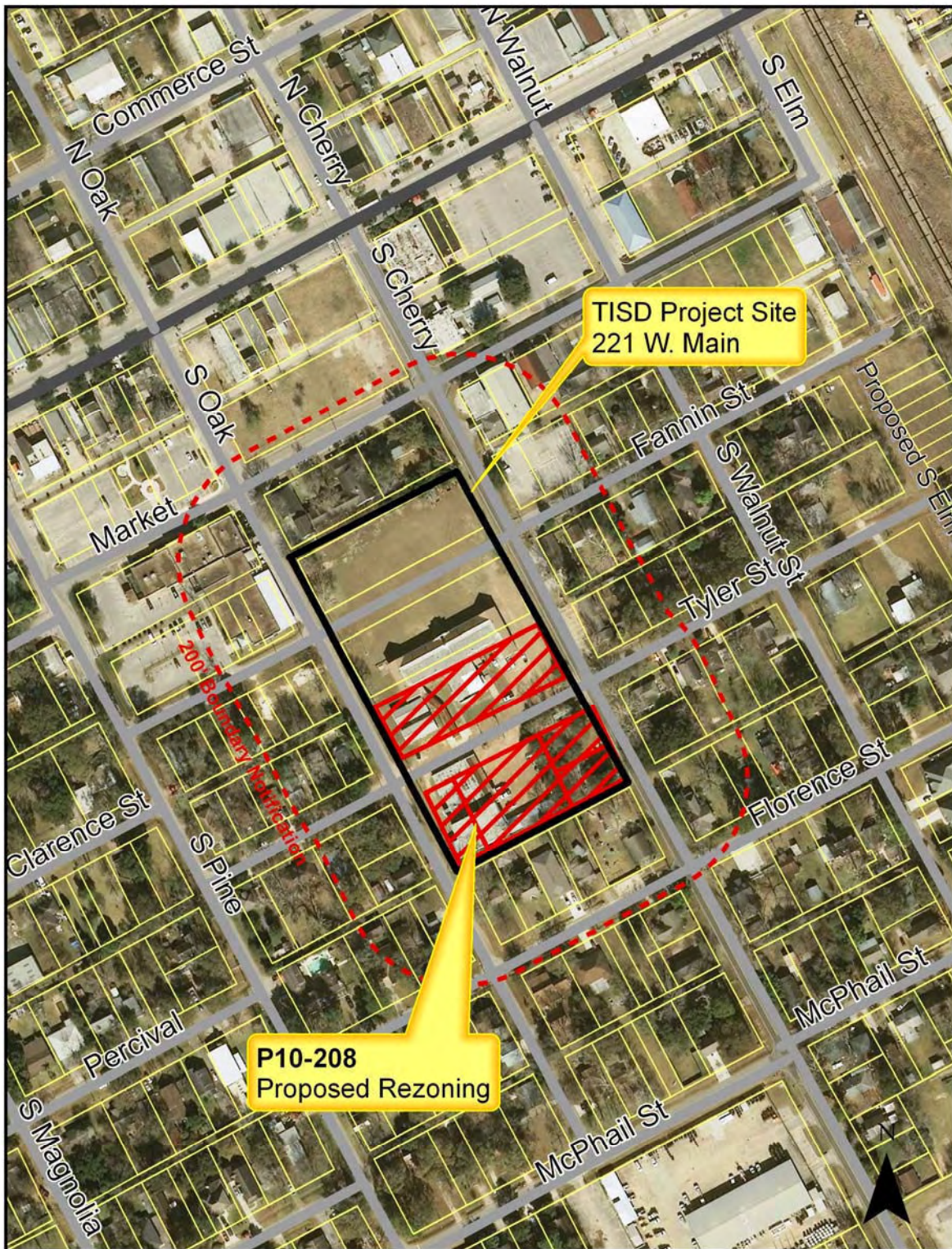


Exhibit "D"
Rezoning Application

Revised 1/20/09



APPLICATION FOR REZONING
Engineering & Planning Department

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

Applicant

Name: Gary Hutton Title: Director of Construction
Mailing Address: 310 S. Cherry Street City: Tomball State: TX
Zip: 77375
Phone: (281) 357-3170 Fax: (281) 357-3180 Email: garyhutton@tomballisd.net

Owner

Name: Tomball Independent School District Title: _____
Mailing Address: 221 Main Street W City: Tomball State: TX
Zip: 77375
Phone: (281) 357-3100 Fax: (281) 357-3128 Email: _____

Engineer/Surveyor (if applicable)

Name: Westbelt Surveying, Inc. Title: _____
Mailing Address: 21020 Park Row City: Katy State: TX
Zip: 77449
Phone: (281) 599-8288 Fax: (281) 492-6026 Email: _____

Description of Proposed Project: 40,000 sq.ft. Administration Building

Physical Location of Property: 310 S. Cherry Street; Tomball, TX 77375
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: W. Hudd Survey, Abstract Number 371
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: Dual Zoned - (Old Town Mixed Use & Single Family Residential)

Current Use of Property: Tomball ISD - Facilities Department

Proposed Zoning District: Old Town Mixed Use

Proposed Use of Property: Tomball ISD - Administration Building

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

www.ci.tomball.tx.us

0352590150029; 0352590160001
0352610230025; 0352610230045
0352610230033; 0352610230047
HCAD Identification Number: _____ Acreage: 3.994 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.

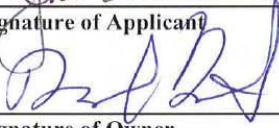
X		2/18/2010
	Signature of Applicant	Date
X		2/18/2010
	Signature of Owner	Date

Exhibit "E"

Rezoning Request Letter

11 Greenway Plaza, 22nd Floor
Houston, Texas 77046-1104
Phone: 713.965.0608
Fax: 713.961.4571



Architecture
Engineering
Planning
Roof Consulting

March 19, 2010

VIA: Email

City of Tomball
501 James Street
Tomball, TX 77375

RE: Application for Rezoning Letter
New Tomball Administration Building
Tomball Independent School District
PBK Project No.: 0989

On behalf of the Tomball Independent School District, we are submitting this letter to notify the City of Tomball, of the district's request to rezone their property located at 310 S. Cherry Street; Tomball, Texas 77375. Currently the property is zoned partly as Old Town Mixed Use, and partly as Single Family Residential. The district is planning to construct a new Administration Building on this existing site, and is asking the site be rezoned to Old Town Mixed Use. The legal description of the property is a 3.994 acre tract of land located in the W. Hudd Survey, Abstract Number 371, City of Tomball, Harris County, Texas and being out of the Revised Map of Tomball recorded under Volume 04, Page 25, Harris County Map Records (H.C.M.R.)

Please contact me if any additional information is required.

Sincerely,

A handwritten signature in black ink that reads 'Jesse Garcia'.

Jesse Garcia
Project Executive

cc: David Schuelke, TISD
Gary Hutton, TISD
Irene Nigaglioni, PBK
Eric Smith, PBK

Houston • Dallas / Fort Worth • San Antonio • League City • Austin • McAllen

Exhibit "F"

Conceptual Site Plans

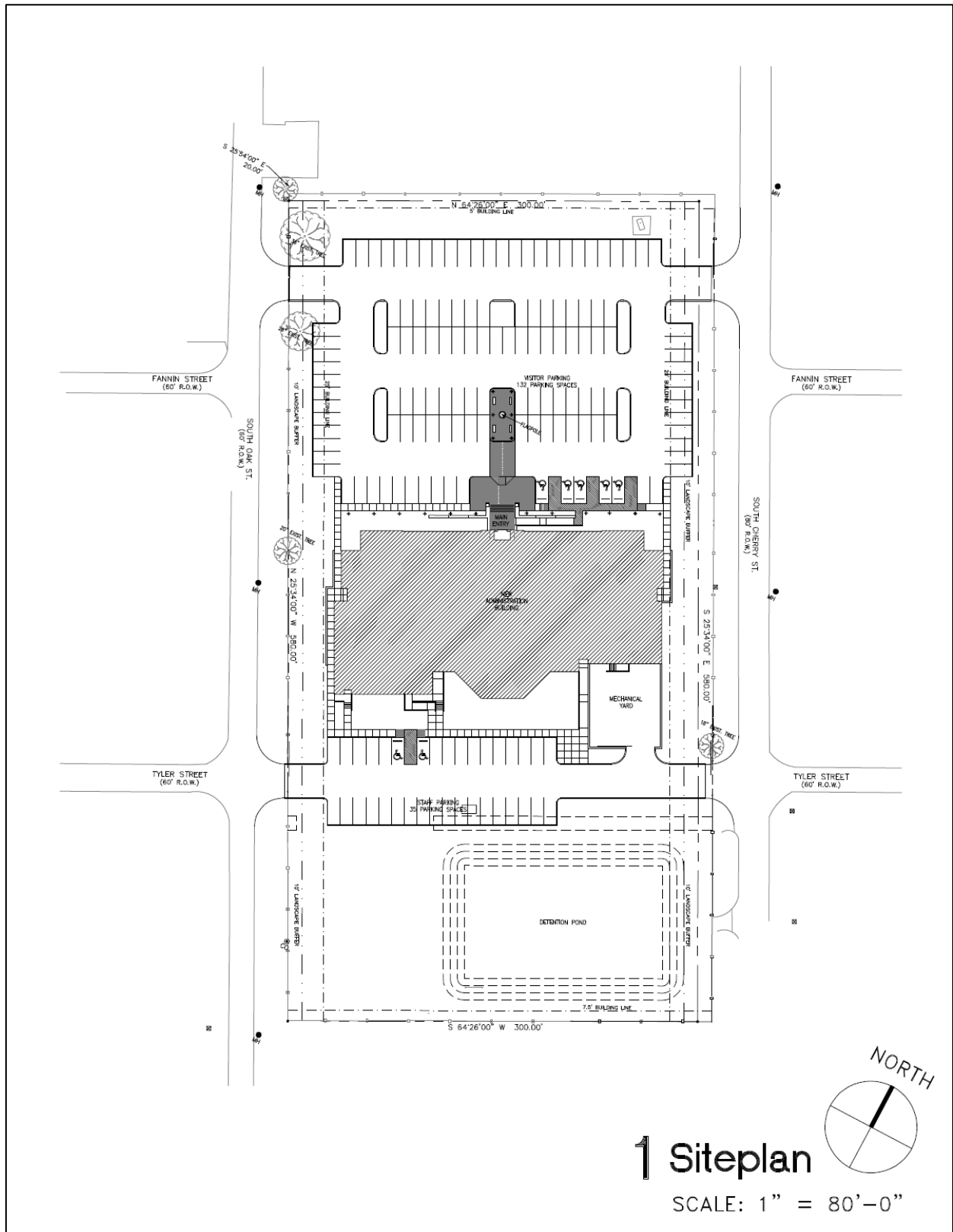


Exhibit "G"
Legal Description of Property

3.994 ACRES
174,000 SQUARE FEET
W. HUDD SURVEY
ABSTRACT No. 371
CITY OF TOMBALL
HARRIS COUNTY, TEXAS

FIELD NOTE DESCRIPTION of a 3.994 acre tract of land located in the W. Hudd Survey, Abstract Number 371, City of Tomball, Harris County, Texas and being out of the Revised Map of Tomball recorded under Volume 04, Page 25, Harris County Map Records (H.C.M.R.), said 3.994 acres tract being more particularly described by metes and bounds as follows: (The bearings described herein are oriented to the Texas State Plane Coordinate System, South Central Zone, NAD 1983.):

COMMENCING at the northwesterly corner of Lot 13, Block 15 of the subdivision plat of New Lot 19 recorded under Film Code No. 437069 of the H.C.M.R. being at the intersection of the southerly Right-of-Way (R.O.W.) line of Market Street (60 feet wide), and the easterly R.O.W. line of South Oak Street (60.00 feet wide), from which a 5/8-inch iron rod with cap stamped "EIC Surveying" found bears, North 64°26'00" East, 0.12 feet;

THENCE, South 25°30'00" East, departing the southerly R.O.W. line of said Market Street and along the easterly R.O.W. line of said South Oak Street, a distance of 100.00 feet, to the southwesterly corner of said Lot 13, Block 15 of the New Lot 19 and the northerly line of a 20 feet wide alley;

THENCE, South 25°54'00" East, departing the northerly line of said 20 feet wide alley and along the easterly R.O.W. line of said South Oak Street, a distance of 20.00 feet, to a 5/8-inch iron rod with orange plastic cap stamped "West Belt Surveying Inc" set marking the southerly line of said 20 feet wide alley the northwesterly corner of Lot 12, of said Block 15 of the Revised Map of Tomball, the POINT OF BEGINNING and northwesterly corner of the herein described tract;

THENCE, North 64°26'00" East, departing the easterly R.O.W. line of said South Oak Street and along the southerly line of said 20 feet wide alley, a distance of 300.00 feet, to a 5/8-inch iron rod with plastic cap stamped "West Belt Surveying Inc." set in the westerly line of South Cherry Street (60.00 feet wide) and marking the northeasterly corner of Lot 1, Block 15 of the Revised Map of Tomball, and the northeasterly corner of the herein described tract;

THENCE, South 25°34'00" East, along the westerly right-of-way line of said South Cherry Street, a distance of 580.00 feet, to a 5/8-inch iron rod with plastic cap stamped "West Belt Surveying inc" set at the southeasterly corner of Lot 36, Block 23 of the Revised Map of Tomball described in the deed to Ernest Grandinetti recorded under H.C.C.F. No. G674531, and the southeasterly corner of the herein described tract;

THENCE, South 64°26'00" West, along the northerly line of said 15 feet wide alley, a distance of 300.00 feet, to a 5/8-inch iron rod with orange plastic cap stamped "West Belt Surveying Inc" set in the easterly R.O.W. line of aforesaid South Oak Street and marking the southwesterly corner of Lot 25, Block 23 of the Revised Map of Tomball and the most southwesterly corner of the herein described tract;

THENCE, North 25°34'00" West, along the easterly R.O.W. line of said South Oak Street, a distance of 580.00 feet, to the POINT OF BEGINNING and containing a computed area of 3.994 acres (174,000 square feet) of land as depicted on the ALTA\ACSM Land Title Survey dated: June 16, 2009, prepared by West Belt Surveying, Inc., Project No. S8660020A.

West Belt Surveying, Inc.
21020 Park Row.
Katy, Texas 77449
(281) 599-8288

Hugh W. Clarkson Date: 03/19/10
Texas Registration No. 4113

Exhibit "H"
Utility Block Map



**Exhibit “I”
Site Photos**



Figure 1: Southeasterly view of TISD facilities departments.



Figure 2: Southeasterly view of TISD facilities departments.



Figure 3: Existing single-family residence on southeast corner of subject site.



Figure 4: Existing single-family residence on southeast corner of subject site.



Figure 5: Shops to the north of subject site. Single-family residence to the left of photo. Tomball City Hall/police station to the right of photo.



Figure 6: Offices and Christian counseling center to the east of subject site.



Figure 7: Typical single-family residence along South Cherry Street.



Figure 8: Day care facility to the south of subject site along Florence Street.



Figure 9: Typical single-family residence along Florence Street to the south of subject site.



Figure 10: Residence to the south of subject site. Existing TISD facilities department building on left of photo.



Figure 11: Single-family residence to the west of subject site along South Oak Street.



Figure 12: Tomball City Hall and Police Station buildings to the west of subject site. Vacant lot on left of photo.

ORDINANCE NO. 2010-08

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 2.456 ACRES OF LAND, LEGALLY DESCRIBED AS BLOCK 16 AND LOTS 25 THROUGH 36, BLOCK 23, TOMBALL TOWNSITE, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE SF-6-SINGLE-FAMILY RESIDENTIAL-6 DISTRICT TO THE OT&MU - OLD TOWN AND MIXED USE DISTRICT, SAID PROPERTY BEING GENERALLY LOCATED ON THE WESTERLY SIDE OF SOUTH CHERRY STREET, SOUTHERLY OF FANNIN STREET; 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 2.456 acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, generally located on the westerly side of South Cherry Street, southerly of Fannin Street, in the City of Tomball, Harris County, Texas, (the "Property"), have requested that the Property be rezoned; 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 to the OT&MU - Old Town and Mixed Use 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 SF-6- Single-Family Residential-6 District to the OT&MU - Old Town and Mixed Use 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 2.456 acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, generally located on the westerly side of South Cherry Street, southerly of Fannin Street, in the City of Tomball, Harris County, Texas, (the "Property"), is hereby changed from SF-6- Single-Family Residential-6 District to the OT&MU- Old Town and Mixed Use 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 2.456 acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, generally located on the westerly side of South Cherry Street, southerly of Fannin Street, as OT&MU- Old Town and Mixed Use 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 2.456 acres of land, legally described as Block 16 and Lots 25 through 36, Block 23, Tomball Townsite, generally located on the westerly side of South Cherry Street, southerly of Fannin Street, to OT&MU- Old Town and Mixed Use 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 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 APRIL 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN WEBB	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

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 MAY 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN WEBB	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

ATTEST:

Gretchen Fagan, Mayor

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
APRIL 12, 2010
&
CITY COUNCIL
APRIL 19, 2010**



Notice is Hereby Given that a Public Hearing will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, April 12, 2010, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, April 19, 2010, at 7:00 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 P10-206: Request by Brian Matthews, on behalf of Crescent Directional Drilling, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.006 acres of land, legally described as Tract 281 Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the westerly side of South Persimmon Street, northerly of Agg Road from the SF-20-E Single-Family Estate Residential-20 District to the LI - Light Industrial District.

ZONING CASE P10-208: Request by Tomball Independent School District to amend the Comprehensive Zoning Ordinance to rezone approximately 2.456 acres of land, legally described as all of Block 16, Tomball Townsite, from the SF-6 Single-Family Residential-6 and OT&MU Old Town and Mixed Use Districts to the OT&MU Old Town and Mixed Use District and Lots 25 through 36, Block 23, Tomball Townsite, from the SF-6 Single-Family Residential-6 District to the OT&MU Old Town and Mixed Use District within the City of Tomball, Harris County, Texas, both tracts of property being generally located on the westerly side of South Cherry Street, southerly of Fannin Street.

ZONING CASE P10-218: Request by Russ Brown, on behalf of PCOT Investments, Inc., to amend Section 38 (Use Regulations) of the City's Comprehensive Zoning Ordinance to establish a Model Home and Temporary Real Estate Sales Office use in all zoning districts that permit Residential Use either by right or conditionally, to amend Section 43 (Supplemental Regulations) to add standards for development related to model home and temporary real estate sales office use, and to amend Section 45 (Definitions) to amend and add the definitions related thereto.

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 City Planner** Kelly Violette, (281) 290-1491, kviolette@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 **April** 2010 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: P10-208

APPLICANT: Tomball Independent School District

LOCATION: Westerly side of South Cherry Street, southerly of Fannin Street.

PROPOSAL: Request to amend the Comprehensive Zoning Ordinance to rezone approximately 2.456 acres of land, legally described as all of Block 16, Tomball Townsite, from the SF-6 Single-Family Residential-6 and OT&MU Old Town and Mixed Use Districts to the OT&MU Old Town and Mixed Use District and Lots 25 through 36, Block 23, Tomball Townsite, from the SF-6 Single-Family Residential-6 District to the OT&MU Old Town and Mixed Use District within the City of Tomball, Harris County, Texas.

* * *

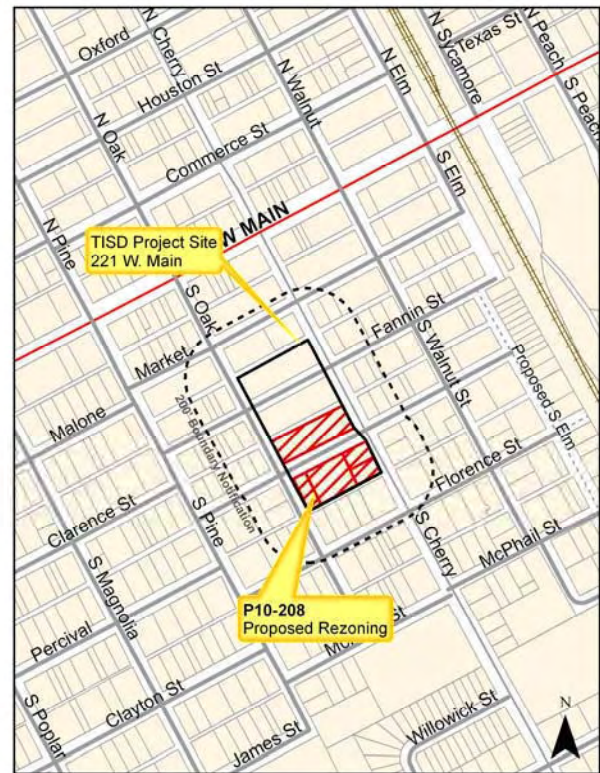
CONTACT PLANNER: Kelly Violette

PHONE: (281) 290-1491

E-MAIL: kviolette@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, April 12, 2010, 6:00 PM**

**City Council Public Hearing:
*Monday, April 19, 2010, 7:00 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.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: April 19, 2010

Topic:

Consideration and Possible Action Regarding **ZONING CASE P10-218**: Request by Russ Brown, on behalf of PCOT Investments, Inc., to amend Section 38 (Use Regulations) of the City's Comprehensive Zoning Ordinance to establish a Model Home and Temporary Real Estate Sales Office use in all zoning districts that permit Residential Use either by right or conditionally, to amend Section 43 (Supplemental Regulations) to add standards for development related to model home and temporary real estate sales office use, and to amend Section 45 (Definitions) to amend and add the definitions related thereto.

- Conduct a Public Hearing on **ZONING CASE P10-218**
- Adopt on First Reading, Ordinance No. 2010-09, an Ordinance of the City of Tomball, Texas, Amending Its Comprehensive Zoning Ordinance by Amending Section 38, Use Regulations, to add "Temporary Real Estate Field Office" and "Model Home" as Listed Uses; Amending Section 43.8, Temporary Buildings, to Rename the Section "Temporary Structures and Uses" and add Development Regulations for Such; Amending Section 45, Definitions, to add a New Definition for "Temporary Real Estate Field Office;" 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:

The property owner of the Pine Country Subdivision, located off Tomball Cemetery Road, northerly of FM 2920, met with City staff on March 8, 2010 to discuss the development regulations for a proposed construction trailer/sales office for the subdivision (68 residential lots).

At that meeting, the property owner indicated that the intent was to have a temporary construction trailer and sales office while construction of a model home was taking place. Upon review of the Zoning Ordinance staff observed that the ordinance does not provide for temporary sales office uses in residential districts where such a use would be needed as part of the construction and sales process for residential developments. Furthermore, the Ordinance does not provide for a model home/sales office use for residential developments.

Staff worked with the property owner to permit a temporary construction office in order to meet his time constraints and the property owner subsequently submitted a Zoning Text Amendment application requesting that the Zoning Ordinance be amended to allow a model home/sales office use.

After reviewing the request, staff prepared a report to the Planning and Zoning Commission recommending an amendment to the Zoning Ordinance to include a definition for "Temporary Real Estate Field Office" in Section 45, "Definitions," include "Temporary Real Estate Field Office" and "Model Home" uses in Section 38, "Use Regulations," and to amend and add development regulations for such uses in Section 43, "Supplemental Regulations."

On April 12, 2010, the Planning and Zoning Commission, after conducting a public hearing on this request, voted unanimously to recommend approval. This request is now being forwarded to City Council for consideration and possible action.

Origination:

Russ Brown, on behalf of PCOT Investments, Inc.

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted unanimously to approve Zoning Case P10-218 and the proposed Zoning Ordinance amendments, as recommended by staff.

Funding:

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

Kelly Violette, City Planner

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

ATTACHMENTS:

- P10-218 Staff Report
- Notice of Public Hearing
- Draft Ordinance No. 2010-09, Zoning Case P10-218



Text Amendment Staff Report

Planning and Zoning Commission Hearing Date: April 12, 2010

ZONING CASE P10-218: Request by Russ Brown, on behalf of PCOT Investments, Inc., to amend Section 38 (Use Regulations) of the City's Comprehensive Zoning Ordinance to establish a Model Home and Temporary Real Estate Sales Office use in all zoning districts that permit Residential Use either by right or conditionally, to amend Section 43 (Supplemental Regulations) to add standards for development related to model home and temporary real estate sales office use, and to amend Section 45 (Definitions) to amend and add the definitions related thereto.

BACKGROUND

The property owner of the Pine Country Subdivision, located off Tomball Cemetery Road, northerly of FM 2920, met with City staff on March 8, 2010 to discuss the development regulations for a proposed construction trailer/sales office for the subdivision (68 residential lots). At that meeting, the property owner indicated that the intent was to have a temporary construction trailer and sales office while construction of a model home was taking place. Upon review of the Zoning Ordinance staff observed that the ordinance does not provide for temporary sales office uses in residential districts where such a use would be needed as part of the construction and sales process for residential developments. Furthermore, the Ordinance does not provide for a model home/sales office use for residential developments.

Staff worked with the property owner to permit a temporary construction office in order to meet his time constraints and the property owner subsequently submitted a Zoning Text Amendment application requesting that the Zoning Ordinance be amended to allow a model home/sales office use. The letter submitted with the application requests the following: "1) a permitted sales office in the model home (Note: in the model itself and not in the rear detached garage), 2) street parking. 3) appropriate signage in the yard (to include two temporary flag poles) to advertise the new home products and 4) to insure that when the model home sales [sic] it will be converted in all ways to conform to a single family residence."

ANALYSIS

The ordinance currently allows for a Contractor's Temporary On-Site Construction Office, which is permitted in all districts for general construction purposes, but does not include the use of a temporary building or trailer for a residential sales office. Section 43 "Supplemental Regulations" includes standards for Temporary Buildings (Section 43.8) including temporary construction buildings and temporary real estate field offices;

however a temporary real estate field office is not included in either Section 38 “Use Regulations” or Section 45 “Definitions.”

Additionally, the Zoning Ordinance does not currently provide for a temporary sales office within a model home for residential developments. Ironically, the Ordinance includes a definition for model homes, which reads, “A dwelling in a developing subdivision, located on a legal lot of record, that is limited to temporary use as a sales office for the subdivision and to provide an example of the dwellings which have been built or which are proposed to be built within the same subdivision.” However, it is not listed in Section 38 “Use Regulations” as a permitted use. Model homes/sales offices are a basic necessity for any developer to market residential units when a residential project is approved by the City and the building process starts. This is the case throughout the region and the country.

Because the structural form used by developers to sell homes can include both temporary sales trailers and model homes with or without temporary sales offices, staff recommends that the Zoning Ordinance be amended to allow for both uses in all zoning districts with a residential use component. It is reasonable that all zoning districts that currently permit a “Residential Use,” as defined by the Zoning Ordinance, either by right or subject to the granting of a conditional use permit should also permit temporary sales in the types of structures that are most commonly used by builders and developers. It serves the City’s economic planning objectives to allow such uses on residential sites that facilitate sales in that project.

As such, staff recommends that the Zoning Ordinance be amended to include a definition for Temporary Real Estate Field Office in Section 45 “Definitions,” include Temporary Real Estate Field Office and Model Home uses in Section 38 “Use Regulations,” and amend and add development regulations for such uses in Section 43 “Supplemental Regulations.”

PROPOSED AMENDMENTS

- **Section 45 “Definitions”:** A new definition is proposed for the following:

Temporary Real Estate Field Office: A building, structure, or portable trailer used temporarily for sales of residential units in a recorded subdivision or development with a residential use component and in which sales and construction of residential units is planned and underway.

- **Section 38 “Use Regulations”:** The Use Chart is proposed to be amended to include provisions for Temporary Real Estate Field Office and Model Home uses as indicated below. “P” designates that the use is permitted in the zoning district indicated, blank indicates that the use is prohibited, and “C” designates that the use may be permitted in the zoning district subject to the granting of a conditional use permit.

Types of Land Uses	Residential Zoning Districts							Non-Residential Zoning Districts				OT & MU	Parking Ratio
	AG	SF-20-E	SF-9	SF-6	D	MF	MHP	O	GR	C	LI		
Office													
Temporary Real Estate Field Office	P	P	P	P	P	P	P		P	P		P	4 spaces
Model Home (including Sales Office)	P	P	P	P	P	P	P		C	C		P	2 spaces per model

- **Section 43 “Supplemental Regulations”:** staff proposes to amend Section 43.8 “Temporary Buildings” as indicated below:

43.8 ~~TEMPORARY BUILDINGS~~ **STRUCTURES & USES:**

~~A. A temporary building for construction purposes shall be removed upon completion or abandonment of construction work. A real estate field office shall be removed upon sale of the last lot in the subdivision.~~

~~B. There shall be no permanent use of temporary buildings or structures.~~

Any Temporary Use, Structure or Building permitted under this ordinance shall comply with all applicable Development Standards and Setback requirements in the District in which the Temporary Use, Structure or Building is located, unless otherwise specified herein.

1. Temporary Construction Office - Temporary construction offices, including trailers and modular offices, are permitted on or adjacent to any site during which construction is undertaken pursuant to a valid building permit. Temporary construction offices may be occupied for office or security purposes, or may be used for storage of equipment and material used during construction of the site. Upon completion or abandonment of construction or expiration of the building permit, the temporary construction office shall be removed at the owner's expense.
2. Temporary Real Estate Field Office - Temporary real estate sales offices, including trailers and modular offices, shall be permitted in accordance with Section 38 “Use Regulations” when incidental to a residential development. Temporary sales offices shall be located and developed in compliance with the following standards:
 - a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold or leased; and on a property whereon a recorded plat exists and a valid permit for construction has been issued;

- b. Parking shall be on the lot in which the office is located or on an adjacent lot;
 - c. Permitted temporary real estate sales offices shall not be used as any type of dwelling;
 - d. Use of the temporary real estate sales office for the sale or lease of residential sites or projects located off-site is prohibited; and
 - e. All temporary real estate sales offices shall be removed within thirty (30) days after the sale of the last dwelling unit in the development, even if the temporary use permit is still valid.
- 3. Model Home (including Sales Office)- Model homes with or without a sales office shall be permitted in accordance with Section 38 “Use Regulations” when incidental to a residential development. Model Homes shall be located and developed in compliance with the following standards:
 - a. The model home shall be located within the boundaries of the subdivision or tract of land where the real property to be sold or leased is situated;
 - b. Parking shall be on the lot in which the model home is located, on an adjacent lot, or on-street. For on-street parking, one parking space credit shall be allowed for every 22 feet of development frontage less five feet reserve on either side of driveways and ten-foot reserve on street intersections.
 - c. The model home shall be designed as a permanent structure and shall comply with the provisions of this Ordinance, all applicable Building Codes of the City of Tomball, and State law;
 - d. All exterior lighting shall be limited to typical household exterior lighting. The use of ground mounted floodlights and search lights are prohibited; and
 - e. The model home shall cease operation within thirty (30) days after the sale of the last dwelling unit in the development, at which time the model home shall be vacated and a building permit issued to return the model home to its intended residential use only.
- 4. There shall be no permanent use of temporary buildings or temporary structures.
- 5. Temporary signage and flagpoles advertising the sale of property within the residential development shall not be prohibited provided they comply with the sign ordinance, are permitted, and are maintained at least ten feet away from all lot lines.
- 6. Designated parking must comply with the Americans with Disabilities Act (ADA).

PUBLIC COMMENT

A public hearing notice was published in the Tomball Tribune on Wednesday, March 31, 2010 and, as of the writing of this staff report, no public comments were received regarding this request.

RECOMMENDATION

That the Planning and Zoning Commission:

1. Open the public hearing and receive comments, and
2. Recommend approval of the proposed amendments as recommended by staff.

EXHIBITS

- A. Zoning Text Amendment Application

Exhibit "A"
Zoning Text Amendment Application

Revised 1/20/09



Zoning Text Amendment
Engineering & Planning Department

APPLICATION REQUIREMENTS: 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 request may be delayed until corrections or additions are received. There is a \$500.00 application fee that must be paid at time of submission or the application will not be processed.

Applicant Russ Brown
Name: PCOT INVESTMENTS, INC Title: PRES.
Mailing Address: 22529 Tomball CEM. RD. City: Tomball State: TX
Zip: 77377
Phone: (832) 688-1659 Fax: (281) 255-3238 Email: REBrown43@hotmail.com

Property Owner
Name: PCOT INVESTMENTS, INC Title: OWNER
Mailing Address: SAME ABOVE City: _____ State: _____
Zip: _____
Phone: () SAME Fax: () SAME Email: _____

Statement of Purpose- Identify the existing section(s) of the Zoning Ordinance for which the Text Amendment is proposed, the proposed revised language and the reason(s) for the requested text Amendment (attach additional sheets as necessary):

General Description of Property Affected by Amendment (attach additional sheets as necessary):

Statement of Facts Which the Applicant Believes Justify the Amendment (attach additional sheets as necessary):

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 Russell E. Brown, Pres. 3/11/10
Signature of Applicant Date

X Russell E. Brown, Pres. 3/11/10
Signature of Owner Date

PCOT Investments, Inc.
Owner – Pine Country – Section II
22529 Tomball Cemetery Rd.
Tomball, Texas 77377

March 10, 2010

Mr. Mark McClure, P.E.
Director of Engineering and Planning
City of Tomball
501 James Street
Tomball, Texas 77377

Reference: Discussions in our meeting March 8, 2010 regarding City of
Tomball zoning ordinances and a model home sales office

Dear Mr. McClure,

In referenced meeting we discussed in detail my need, as owner of Pine Country of Tomball subdivision, for an **in the model home** sales office. Apparently, when Tomball zoning was instituted in February, 2008, this need was not addressed. Without a sales office authorization in the model home it will be very difficult to market new homes in this beautiful new subdivision.

This letter is being submitted to request, through the proper City authorities, a change to the City of Tomball zoning ordinances to allow 1) a permitted sales office in the model home (Note: **in the model home itself** and not the in the rear detached garage), 2) street parking, 3) appropriate signage in the yard (to include two temporary flag poles) to advertise the new home products and 4) to insure that when the model home sales it will be converted in all ways to conform to a single family residence.

This zoning ordinance change is needed as soon as possible to take advantage of the spring market potential. Thank you and your staff in advance for expeditious handling of this situation. If you require anything further from me, please call on my cell 830-688-1659.

Sincerely,



Russ Brown, President

Bo & Country model Home Detached Garage

COMPASS  POINTE
homes

The Navarro

Square Feet: 2826
Bedrooms: 4
Bathrooms: 3.5
of Stories: 2



Elevation A

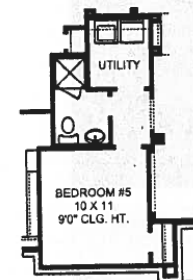
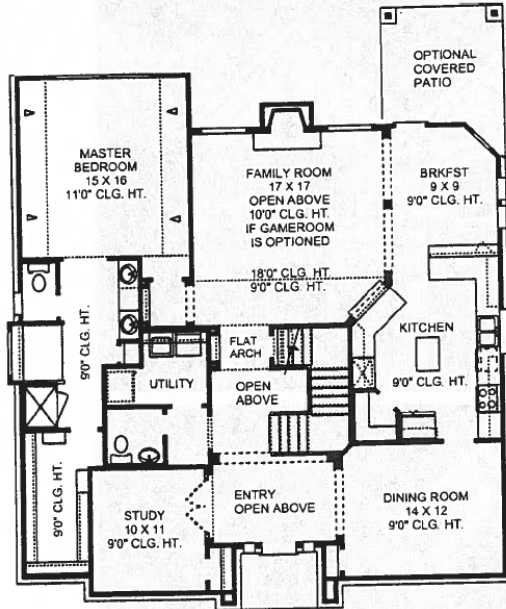


Elevation B

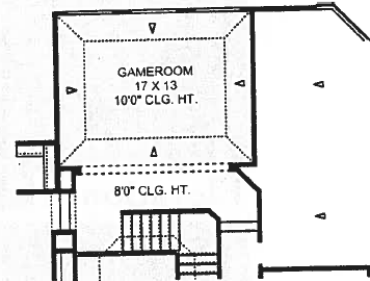


Elevation C

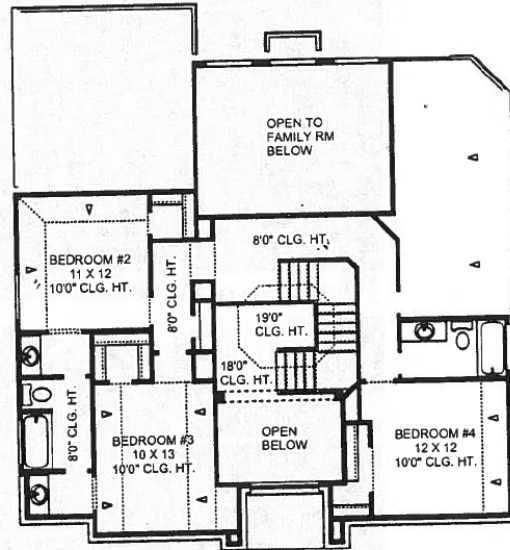
CompassPointeHomes.com



OPTIONAL BEDROOM #5
IN PLACE OF STUDY



OPTIONAL GAMEROOM
OVER FAMILY ROOM



Architectural dimensions shown are nominal exterior dimensions; room sizes, window placement and other dimensions may vary from these drawings. This brochure is for illustration purposes. It is not part of a legal contract. Compass Pointe Homes reserves the right to change product features, brand names, architectural design and details without notice. © 2009 Compass Pointe Homes. 6/9/09

CompassPointeHomes.com

GREEN
NAPIS

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
APRIL 12, 2010
&
CITY COUNCIL
APRIL 19, 2010**



Notice is Hereby Given that a Public Hearing will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, April 12, 2010, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, April 19, 2010, at 7:00 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 P10-206: Request by Brian Matthews, on behalf of Crescent Directional Drilling, to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.006 acres of land, legally described as Tract 281 Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the westerly side of South Persimmon Street, northerly of Agg Road from the SF-20-E Single-Family Estate Residential-20 District to the LI - Light Industrial District.

ZONING CASE P10-208: Request by Tomball Independent School District to amend the Comprehensive Zoning Ordinance to rezone approximately 2.456 acres of land, legally described as all of Block 16, Tomball Townsite, from the SF-6 Single-Family Residential-6 and OT&MU Old Town and Mixed Use Districts to the OT&MU Old Town and Mixed Use District and Lots 25 through 36, Block 23, Tomball Townsite, from the SF-6 Single-Family Residential-6 District to the OT&MU Old Town and Mixed Use District within the City of Tomball, Harris County, Texas, both tracts of property being generally located on the westerly side of South Cherry Street, southerly of Fannin Street.

ZONING CASE P10-218: Request by Russ Brown, on behalf of PCOT Investments, Inc., to amend Section 38 (Use Regulations) of the City's Comprehensive Zoning Ordinance to establish a Model Home and Temporary Real Estate Sales Office use in all zoning districts that permit Residential Use either by right or conditionally, to amend Section 43 (Supplemental Regulations) to add standards for development related to model home and temporary real estate sales office use, and to amend Section 45 (Definitions) to amend and add the definitions related thereto.

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 City Planner** Kelly Violette, (281) 290-1491, kviolette@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 **April** 2010 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.

ORDINANCE NO. 2010-09

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY AMENDING SECTION 38, USE REGULATIONS, TO ADD “TEMPORARY REAL ESTATE FIELD OFFICE” AND “MODEL HOME” AS LISTED USES; AMENDING SECTION 43.8, TEMPORARY BUILDINGS, TO RENAME THE SECTION “TEMPORARY STRUCTURES AND USES” AND ADD DEVELOPMENT REGULATIONS FOR SUCH; AMENDING SECTION 45, DEFINITIONS, TO ADD A NEW DEFINITION FOR “TEMPORARY REAL ESTATE FIELD OFFICE;” 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, Russ Brown, on behalf of PCOT Investments, has requested that the City amend its Zoning Ordinance to permit model homes and temporary real estate field offices; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Tomball, Texas, have published notice and conducted hearings regarding the request to amend Section 38, Use Regulations, Section 43.8, Temporary Buildings, and Section 45, Definitions, of the City’s Comprehensive Zoning Ordinance; and

WHEREAS, the Planning and Zoning Commission recommended in its final report that the City Council approve the addition of model homes and temporary real estate field offices and definitions and development regulations to govern such; and

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

WHEREAS, after consideration of all testimony given at the public hearing and after considering the input of the City staff, the Planning Commission recommended the changes set forth in this ordinance, and

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

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

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

Section 2. The Comprehensive Zoning Ordinance of the City of Tomball, Texas, is hereby amended by amending Section 38 thereof to read as follows:

SECTION 38: USE REGULATIONS

38.2 USE CHARTS:

Types of Land Uses	Residential Zoning Districts								Non-Residential Zoning Districts				OT & MU	Parking Ratio
	AG	SF-20-E	SF-9	SF-6	D	MF	MHP		O	GR	C	LI		
Office														
Temporary Real Estate Field Office	P	P	P	P	P	P	P			P	P		P	4 spaces
Model Home (including Sales Office)	P	P	P	P	P	P	P			C	C		P	2 spaces per model

Section 3. The Comprehensive Zoning Ordinance of the City of Tomball, Texas, is hereby amended by amending Section 43.8 thereof to read as follows:

“SECTION 43: SUPPLEMENTAL REGULATIONS

43.8 TEMPORARY BUILDINGS STRUCTURES & USES:

~~A. A temporary building for construction purposes shall be removed upon completion or abandonment of construction work. A real estate field office shall be removed upon sale of the last lot in the subdivision.~~

~~B. There shall be no permanent use of temporary buildings or structures.~~

Any Temporary Use, Structure or Building permitted under this ordinance shall comply with all applicable Development Standards and Setback requirements in the District in which the Temporary Use, Structure or Building is located, unless otherwise specified herein.

1. Temporary Construction Office - Temporary construction offices, including trailers and modular offices, are permitted on or adjacent to any site during which construction is undertaken pursuant to a valid building permit.

Temporary construction offices may be occupied for office or security purposes, or may be used for storage of equipment and material used during construction of the site. Upon completion or abandonment of construction or expiration of the building permit, the temporary construction office shall be removed at the owner's expense.

2. Temporary Real Estate Field Office - Temporary real estate sales offices, including trailers and modular offices, shall be permitted in accordance with Section 38 "Use Regulations" when incidental to a residential development. Temporary sales offices shall be located and developed in compliance with the following standards:

- a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold or leased; and on a property whereon a recorded plat exists and a valid permit for construction has been issued;
- b. Parking shall be permitted on the lot in which the office is located or on an adjacent lot;
- c. Permitted temporary real estate sales offices shall not be used as any type of dwelling;
- d. Use of the temporary real estate sales office for the sale or lease of residential sites or projects located off-site is prohibited; and
- e. All temporary real estate sales offices shall be removed within thirty (30) days after the sale of the last dwelling unit in the development, even if the temporary use permit is still valid.

3. Model Home (including Sales Office)- Model homes with or without a sales office shall be permitted in accordance with Section 38 "Use Regulations" when incidental to a residential development. Model Homes shall be located and developed in compliance with the following standards:

- a. The model home shall be located within the boundaries of the subdivision or tract of land where the real property to be sold or leased is situated;
- b. Parking shall be permitted on the lot in which the model home is located or on an adjacent lot;
- c. The model home shall be designed as a permanent structure and shall comply with the provisions of this Ordinance, all applicable Building Codes of the City of Tomball, and State law;

- d. All exterior lighting shall be limited to typical household exterior lighting. The use of ground mounted floodlights and search lights are prohibited; and.
 - e. The model home shall cease operation within thirty (30) days after the sale of the last dwelling unit in the development, at which time the model home shall be vacated and a building permit issued to return the model home to its intended residential use only.
4. There shall be no permanent use of temporary buildings or temporary structures.
5. Temporary signage and flagpoles advertising the sale of property within the residential development shall not be prohibited provided they comply with the sign ordinance, are permitted, and are maintained at least ten feet away from all lot lines.”

Section 4. The Comprehensive Zoning Ordinance of the City of Tomball, Texas, is hereby amended by amending Section 45 thereof to read as follows:

“SECTION 45: DEFINITIONS

45.2 DEFINITIONS:

TEMPORARY REAL ESTATE FIELD OFFICE: A building, structure, or portable trailer used temporarily for sales of residential units in a recorded subdivision or development with a residential use component and in which sales and construction of residential units is planned and underway.”

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

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF APRIL 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN WEBB	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

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 MAY 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN WEBB	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

Regular City Council Agenda Item Data Sheet

Meeting Date: April 19, 2010

Topic:

Approve Contract between the City of Tomball and TXU Energy for the Purchase of Electrical Energy.

Background:

On April 16, 2007, the City of Tomball entered into a Contract with TXU for the purchasing of electricity. The contract was for a period of 36 months, and will expire on April 30, 2010. The City is currently charged \$.0854344 per kWh.

On March 5, 2010, Council approved Resolution 2010-05 authorizing the City Manager or their designee to negotiate with energy providers. Based on this resolution, staff has negotiated a contract with TXU for the purchase of electrical energy.

At this time, we do not have a set price per kWh, but prices have been tracking considerably lower than our current contract price, between \$0.050 and \$0.060. Pricing will not officially be locked in until the contract is accepted and signed.

Origination:

Finance Department

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

Glenn Windsor, Finance Director

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

ATTACHMENTS:

Sample Contract

Base Contract

TXU Energy Retail Company LLC
REP Certification No. 10004
6555 Sierra Drive 3-S-24
Irving, TX 75039



DATE April 15, 2010
SELLER: TXU Energy Retail Company LLC
BUYER: City of Tomball SAMPLE CONTRACT

PRICE REQUEST #:

ESI ID REGISTRATION ACKNOWLEDGEMENT

By signing this acknowledgement, Buyer represents and warrants that all information referenced and shown in Exhibit A to the subject Transaction Confirmation for the Supply of Electricity ("Agreement") is correct for all of the ESI IDs and Premises listed in such Exhibit A and contracted under such Transaction Confirmation. Buyer agrees to bear all responsibility, liability, and associated costs, and shall indemnify and hold Seller harmless, with regard to missing ESI IDs not listed in Exhibit A, and/or ESI IDs erroneously listed on Exhibit A.

AGREED AND ACCEPTED BY:

Signature: _____

Printed Name: _____

Title: _____

Date: _____



Transaction Confirmation for Supply of Electricity

Quote Number:		Product:	Fixed	
Business Partner #:				
Buyer:	City of Tomball SAMPLE CONTRACT	Seller:	TXU Energy Retail Company LLC REP Certification No. 10004 6555 Sierra Drive 3-S-24 Irving, Texas 75039 Attn: Retail Contract Administration	
Phone:		Fax:		
		Phone:	(866) 576-6745	Fax: (972) 556-6108

I. Agreement Term	Primary Term: The Primary Term for each Premise will begin on the first meter read, and end on the first regularly scheduled meter read, for each Premise occurring on or after the dates listed below in compliance with the Base Contract for Supply of Electricity.			
	Primary Term Start Date:	Primary Term End Date:		
	Extended Term: Seller has the unilateral right, but not the obligation, to extend the Term of this Agreement for an additional period. If any of the Charges are to change for the Extended Term, it shall be so stated in Article II hereof. Buyer acknowledges that it has no right to exercise the Extended Term option. If Seller elects to exercise the Extended Term option, Seller shall give Buyer at least ninety (90) calendar days written notice prior to the end of the Primary Term and the Extended Term will begin immediately following the Primary Term End Date and end for the Premises listed on the attached Exhibit A on the first regularly scheduled meter read for each Premise occurring on or after the date listed below in compliance with the Terms and Conditions.			
	Extended Term End Date:			

II. Charges	Charge Type	Amount (Monthly Charges will be the total of the items listed in this Article II.)		
	(i) All kWh Charge (The per kWh "Contract Price")	\$_____ per kWh The All kWh Charge includes: Prior to the implementation of a Nodal Market in ERCOT: charges for the commodity, Energy (shaped), Ancillary Services, Qualified Scheduling Entity Charges, Renewable Energy Credit Charges, Zonal Congestion (intrazonal and interzonal), Line Losses (TDSP), Market Clearing Price for Capacity, ERCOT Administration Fee/ISO Fees, and Unaccounted for Energy ("UFE") as defined and specified in the ERCOT Protocols and the applicable TDSP's Tariff in effect as of the date of this Agreement. Upon implementation of a Nodal Market in ERCOT: charges for the commodity, Energy (shaped), Ancillary Services, Qualified Scheduling Entity Charges, Renewable Energy Credit Charges, Congestion, Line Losses (TDSP), Market Clearing Price for Capacity, ERCOT Administration Fee/ISO Fees, and Unaccounted for Energy ("UFE") as defined and specified in the ERCOT Protocols and the applicable TDSP's Tariff in effect as of the date of this Agreement. It will also include the settlement charges to the applicable Load Zone.		
	ii. Excess Usage	If Buyer's total consumption of Power for all Premises in a calendar month exceeds the total amount listed in Exhibit A-1 for such month by more than the Excess Usage Tolerance percentage specified below, then Seller may charge Buyer 105% of the then current Market Price (as defined below) as the "Contract Price" for such excess quantities. Prior to nodal market implementation, the " Market Price " for purposes of this Excess Usage paragraph and the Under Usage paragraph below shall be the weighted average of the ERCOT market clearing price for energy for the applicable congestion zone(s) in the applicable month; plus all charges associated with Ancillary Services, Qualified Scheduling Entity Charges, ERCOT Administration Fee/ISO Fees, Renewable Energy Credit Charge, Market Clearing Price for Capacity, Zonal Congestion (intrazonal and interzonal), Lines Losses (TDSP), and UFE. After nodal market implementation, the "Market Price", for purposes of this Excess Usage and the Under Usage paragraph below, shall be the weighted average of the locational marginal		

		price(s) for the applicable load zone(s) in the applicable month; plus all charges associated with Ancillary Services, Qualified Scheduling Entity Charges, ISO Fees, Renewable Energy Credit Charge, Market Clearing Price for Capacity, Congestion, Line Losses (transmission and distribution provider), and UFE. Excess Usage Tolerance: %
	iii. Under Usage	Except to the extent caused by a Force Majeure event or Seller's breach, if Buyer's total consumption of Power for all Premises in a calendar month is less than the total amount listed in Exhibit A-1 for such month by more than the Under Usage Tolerance percentage specified below, then, in addition to paying for the Power actually consumed, Buyer agrees to pay Seller for the cost of liquidating the Shortfall Quantity. The "Shortfall Quantity" shall mean (((100% minus the Under Usage Tolerance specified below) multiplied by (the aggregated monthly contract usage quantities listed on Exhibit A-1 for the applicable month)) minus (the aggregated quantities consumed by Buyer during the month)). The cost of liquidating the Shortfall Quantity shall be the positive amount, if any, calculated as follows: [(the Shortfall Quantity) multiplied by (the Contract Price minus 95% of the then current Market Price for the Shortfall Quantity)]. Under Usage Tolerance: %
	iv. Standing Charge	The sum of the Monthly Standing Charges for all ESI IDs as listed in Exhibit A.
	v. Other Charges	Varies by ESI ID throughout the Term. All charges, other than those listed above or below, imposed upon Seller or Buyer by the TDSP or another Party that are allowed or required by the PUCT, ERCOT, or any other governmental or regulatory authority, on or with respect to the acquisition, sale, delivery, and purchase of the Power.
	vi. Taxes	Varies by ESI ID throughout the Term. All taxes imposed by any governmental or regulatory authority on the acquisition, sale, delivery, and purchase of the Power. Includes Seller's Texas Gross Receipts Tax and Public Utility Commission Assessment on the acquisition, sales, delivery, or purchase of the Power.
	vii. Aggregator/Third Party Fee	\$0.0000000 per kWh. Buyer represents that it has not entered into any contract, arrangement or understanding with any person that may result in the obligation of Buyer or Seller to pay any finders fees, broker or agent commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby. If any such fees, commissions or payments are alleged to exist or be owing, Buyer shall be responsible for all such fees, commissions and payments, and shall indemnify and hold harmless Seller from and against all costs, expenses, damages, liabilities and other charges incurred by Seller in connection with disputing and resolving any such claims.
III. BILLING		Net days via
IV. SPECIAL PROVISIONS	Energy Efficiency Rebate Program. As a result of executing this Agreement, Buyer is eligible to participate in Seller's Energy Efficiency Rebate Program and receive up to a total of \$0.00 in rebates for qualifying energy efficiency work performed, completed, and submitted to Seller by April 15, 2010 (i.e., Buyer must provide appropriate documentation to Seller, in the form of invoices and/or contracts for all completed qualifying energy efficiency work, on or before such date or the rebates will expire). Seller shall have the right to audit Buyer's facilities to verify any energy efficiency work submitted for the payment of rebates.	
V. BASE CONTRACT	Buyer acknowledges that it has previously been furnished with a Base Contract for Supply of Electricity ("Base Contract"), which is an integral part of the Agreement to which this Transaction Confirmation applies. In the event that Buyer has not executed the Base Contract as of the time of Buyer's execution of this Transaction Confirmation, then Buyer's execution of this Transaction Confirmation shall be deemed to be Buyer's ratification, adoption and acceptance of the Base Contract as last provided by Seller. Exhibits A & A-1 and other attachments, as applicable, are incorporated herein by reference.	

Buyer Legal Name: City of Tomball SAMPLE CONTRACT a Texas Political Subdivision	Seller Legal Name: TXU Energy Retail Company LLC, a Texas limited liability company
By (Name of General Partner or Agent if applicable): its General Partner	
Buyer Signature:	Seller Signature:
Officer's Printed Name:	Officer's Printed Name: Gabriel R. Castro

Title:	Title: Vice President
Date:	Date:

SAMPLE

Exhibit A – Point of Delivery Listing

Legal Name: City of Tomball SAMPLE CONTRACT

Estimated Load Factor:

Total Contract kWh:

Primary Term:

Quote:

Price Type:

Contract Start Date:

Contract End Date:

TDSP	Delivery Voltage	ESI ID	ESI ID Address	Congestion Zone	Meter Cycle	Meter Cycle Start	Meter Cycle End	Profile	IDR or Non-IDR	Standing Charge	ESI Peak KW
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Total Number of Points of Delivery =

Contracted kW =

Monthly Standing Charges =

In the event this Exhibit “A” contains temporary placeholder ESI ID numbers (typically denoted by “TPH” at the beginning of the ESI ID number) for contracted future Buyer ESI IDs, then (i) Buyer shall give Seller at least thirty (30) days prior written notice of the date that each such ESI ID will be energized as a Buyer ESI ID (i.e., when Buyer will begin utilizing the applicable facility located at Buyer’s Premise), (ii) Seller will not be obligated to serve any such ESI ID under the Agreement until, at the earliest, after the expiration of at least thirty (30) days after Buyer’s written notice has been given to Seller, and (iii), in any event, Buyer’s giving, or failure to give, timely notice to Seller shall not affect Buyer’s obligation, under the Agreement, to be responsible for all volumes contracted for under the Agreement as reflected on Exhibit “A-1”.

Exhibit A1 – Monthly Contract Usage

Legal Name: City of Tomball

Estimated Load Factor:

Total Contract kWh:

Quote:

Price Type:

Contract Start Date:

Contract End Date:

Period	Usage 1	Usage 2	Usage 3	Usage 4	Total Usage
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Total Number of Periods =

BASE CONTRACT FOR SUPPLY OF ELECTRICITY

This Base Contract for the Supply of Electricity ("**Base Contract**") (including any addendums thereto), together with any Transaction Confirmation for Supply of Electricity ("**Transaction Confirmation**") (including any attachments thereto, such as Exhibits A and A-1) as may be hereafter agreed to (each such combination of this Base Contract and a single Transaction Confirmation, collectively, an "**Agreement**"), is entered into by and between **TXU ENERGY RETAIL COMPANY LLC**, a Texas limited liability company ("**Seller**"), and **K E JAMS Investment Inc.**, a Texas corporation ("**Buyer**"), and shall constitute the agreement for the supply of electricity to each TDSP Point of Delivery of Buyer set forth in Exhibit "A" of the applicable Transaction Confirmation. A condition precedent for the effectiveness of an Agreement shall be the execution of (i) this Base Contract and (ii) a separate Transaction Confirmation, including Exhibits A and A-1. Seller and Buyer may hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**".

I. DEFINITIONS

"Agreement Term" means the time period during which an Agreement is effective as specified in Article I of the applicable Transaction Confirmation.

"Charges" means the amount due to Seller under a Transaction Confirmation.

"Contract Price" has the meaning set forth in a Transaction Confirmation.

"ERCOT" means the Electric Reliability Council of Texas, Inc.

"ESI ID" means an Electric Service Identifier designation for a particular TDSP Point of Delivery.

"POLR" means the provider of last resort as designated by the PUCT.

"Power" means all of Buyer's non-residential electricity requirements for each of the Premise(s).

"Premise" means individually, and **"Premises"** means collectively, each parcel of real property and improvements identified on Exhibit A to the applicable Transaction Confirmation.

"PUCT" means the Public Utility Commission of Texas.

"REP" means a retail electric provider that is certified by the PUCT.

"Seller Point of Delivery" means the point where Seller's suppliers' conductors are connected to the applicable TDSP's conductors.

"TDSP" means a transmission and/or distribution provider under the jurisdiction of the PUCT that owns and maintains a transmission or distribution system for the delivery of energy.

"TDSP Point of Delivery" means the point where the applicable TDSP's conductors are connected to Buyer's conductors at or near Buyer's Premise(s).

II. SUBJECT MATTER AND QUANTITY. During an Agreement Term, Seller shall sell to Buyer and Buyer shall purchase from Seller all of Buyer's Power for the Premise(s) listed in Exhibit A to the applicable Transaction Confirmation. Seller shall cause delivery of the Power to the applicable Seller Point(s) of Delivery and Buyer shall receive the Power at the ESI ID(s) at the applicable TDSP Point(s) of Delivery. Buyer shall use the Power only at the listed Premise(s). A Premise may have one or more TDSP Points of Delivery.

III. SECURITY AND CREDIT REQUIREMENTS. If applicable, on or before the date stated in the section entitled "Initial Security" of Article IV of the applicable Transaction Confirmation, Buyer shall provide the amount of security, if any, stated in Article IV of the applicable Transaction Confirmation(s). Additionally, if during an Agreement Term Seller determines in good faith that there has been a material adverse change in Buyer's credit status or financial condition and/or in electricity market conditions and/or Buyer fails to pay all Charges when due, Seller may demand security (or additional security if initial security was previously provided) from Buyer in an amount and form reasonably acceptable to Seller. Buyer shall provide security to Seller within five business days of such request. Seller shall return the security, less any amounts owed by Buyer under the applicable Agreement, when Seller reasonably determines that such security is no longer necessary.

IV. CALCULATION AND PAYMENT OF CHARGES.

4.1 Seller will invoice Buyer for the Charges listed in the applicable Transaction Confirmation for Power delivered to the Premise(s) during each monthly billing cycle of the Agreement Term. Buyer shall pay Seller the Charges identified on each invoice by the due date listed in Article III of the applicable Transaction Confirmation. All past due amounts owing by Buyer under an Agreement shall accrue interest from the date the payment was originally due until paid (including accrued interest) at a rate equal to the lesser of (a) three percent (3%) above the "Prime Rate" as published from time to time in The Wall Street Journal under "Money Rates" or an appropriate substitute should such rate cease to be published, or (b) the highest rate allowed by law.

4.2 (a) Seller reserves the right to allocate measured consumption to the applicable calendar month for any ESI IDs not installed with an interval data recorder ("**IDR**"), or for IDRs for which IDR information was not received by Seller in a usable format.

(b) If, for whatever reason, the proper meter readings are not communicated to Seller by the TDSP in time for Seller to prepare the invoice for the Charges for a monthly billing cycle, Seller shall have the right to invoice Buyer for a reasonable estimate of the quantity of the electricity consumed, and Buyer shall pay the Charges for the estimated amounts subject to any adjustments which may be necessary following the reading.

4.3 Except as may be prohibited by law, if upon expiration or termination of an Agreement for any reason, Buyer fails either to switch to another retail electric provider or execute a replacement agreement with Seller, then until Buyer either executes a replacement agreement with Seller or switches to another provider for the applicable Premise(s), (i) Seller, in its sole discretion and at whatever time chosen by Seller, may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) under such Agreement, and/or (ii) Seller may charge Buyer, as the contract pricing for Power utilized at such Premise(s) after expiration or termination of the Agreement, a price per kWh equivalent to Seller's then current "standard list price offer."

4.4 (a) If (i) Buyer changes any TDSP Point of Delivery for a Premise to a delivery service voltage level that is different than the voltage level in place for such TDSP Point of Delivery at the time the Agreement covering such Premise became effective, (ii) Buyer changes the existing electric meter at any TDSP Point(s) of Delivery for a Premise to a different size/capacity than the size/capacity in place at the time the Agreement covering such Premise became effective, (iii) Buyer causes the ERCOT Deemed Load Profile Type for any of its Premise(s) to change, or (iv) Seller's cost to serve Buyer under an Agreement is otherwise increased as a result of judicial, governmental, quasi-governmental (e.g., ERCOT) or regulatory action (including, but not limited to, actions with regard to congestion zones, nodal congestion, carbon cap/tax/trade/remediation, renewable energy sources or standards, etc.), then Seller may adjust the Contract Price under the affected Agreements in order to reflect the increased cost to Seller of serving Buyer thereunder as a result of any such change(s). Seller shall provide Buyer with written notice of the adjustment to the Contract Price pursuant to this Section 4.4, along with a written explanation of the change that includes the effective date of the adjustment and the circumstances giving rise to the increased cost to Seller. Provided, however, in the event that Seller ever does so adjust the Contract Price under an Agreement pursuant to this Section 4.4, Buyer shall have the right, within thirty (30) calendar days after Seller's notice of such increase in the Contract Price, to terminate such Agreement upon thirty (30) calendar days prior written notice to Seller; provided further, however, in the event that Seller should sustain a loss in liquidating the remaining Power quantities under the Agreement as a result of Buyer exercising such right to terminate the Agreement, Buyer agrees to reimburse Seller the amount equal to the product of (I) the remaining quantities of electricity reflected on Exhibit A-1 after such termination multiplied by (II) the Contract Price minus the then current market value as reasonably determined by Seller. Such amount shall be due and payable on or before the date of Buyer's termination.

(b) During an Agreement Term, Buyer shall not consume electricity at any Premise(s) from any source (including self-generation) except for Power sold by Seller under an Agreement; however, Buyer may consume electricity from emergency generation during power outages at the Premise(s) and for purposes of testing such emergency generation.

V. ADDITION AND REMOVAL OF PREMISES.

5.1 Buyer shall be entitled to add one or more Premise(s) (and associated electricity quantities as reasonably determined by Seller) to an existing Agreement by submitting a written request to add the Premise(s) on Seller's then current standard form for such a request and by agreeing to pay Seller an additional lump sum amount under such existing Agreement, the positive amount, if any, calculated as follows: the sum of (i) the product of (A) the kWh amount of electricity attributable to the additional Premise(s) for the remainder of the Agreement Term as reasonably determined by Seller (the "**Premise Addition Quantities**") multiplied by (B) the then current market based price of a kWh as reasonably determined by Seller minus the Contract Price under such existing Agreement plus (ii) Seller's reasonable costs incurred to perform the addition (such sum, the "**Premise Addition Payment**"). In such event, the additional Premise(s) and associated electricity quantities shall be added to the Agreement and thereafter shall be subject to the Charges, monthly usage tolerances, and other terms of such existing Agreement for the balance of the Agreement Term. Buyer shall pay Seller each Premise Addition Payment within 20 days of Seller's invoice for same. In the alternative, Buyer shall have the option to enter into a new separate Agreement with Seller covering the additional Premise(s) at Seller's then-current market based prices. Buyer also shall have the right to contract for such additional Premise(s) with another REP, in lieu of adding the Premise(s) to an existing Agreement with Seller or covering the Premise(s) under a new Agreement with Seller.

5.2 Buyer may remove one or more, but not all, Premise(s) (and associated electricity quantities as reasonably determined by Seller) from an Agreement only if Buyer either (a) sells or leases such Premise(s) or (b) closes such Premise(s) for the remainder of the Agreement Term. Buyer shall provide Seller with thirty calendar days prior written notice (specifying each applicable Premise and the date of removal) if it intends to remove one or more Premise(s) from an Agreement. Unless Buyer sells or leases a removed Premise, as of the date of removal, to a purchaser or lessee who (x) first executes a new contract with Seller upon the same terms as Buyer's contract and (y) is creditworthy as determined by Seller in Seller's reasonable discretion, Buyer shall pay to Seller in respect of each such removed Premise the positive amount, if any, as follows: the product of (i) the kWh amount of electricity attributable to such Premise for the remainder of the Agreement Term as reasonably determined by Seller (the "**Premise Liquidated Quantities**") multiplied by (ii) the Contract Price under such Agreement minus ninety-five percent (95.0%) of the then-current market value of a kWh as reasonably determined by Seller (such product, the "**Premise Liquidation Payment**"). Buyer shall pay Seller each Premise Liquidation Payment within 20 days of Seller's invoice for same.

VI. REMEDIES UPON TERMINATION.

6.1 A "**Material Breach**" of an Agreement means: (a) the failure of either Party to make any payment due to the other Party pursuant to the terms of such Agreement when such failure is not cured within 10 calendar days following written notice of such failure describing the breach in reasonable detail; (b) the failure of a Party to comply with any other material term of such Agreement when such failure is not cured within 30 calendar days following written notice of such failure describing the breach in reasonable detail; (c) a Party becomes or declares that it is bankrupt, or becomes or declares that it is the subject of any proceedings, or takes any action whatsoever, relating to its bankruptcy or liquidation, or is not generally paying its debts as they become due; (d) Buyer enters into another electricity supply agreement, with another party, that covers any Premise(s) during a time when such Premise(s) is covered by such Agreement; (e) Buyer sells, leases, closes or otherwise conveys or assigns any of the Premise(s) under such Agreement, except as allowed under Article IV of the applicable Transaction Confirmation, or Article V or Section 12.2 hereof; (f) any representation of a Party hereunder is not true and correct in all material respects as of the date an Agreement is entered into; or (g) the failure of Buyer to timely pay security to Seller as may be required hereunder. In the event of a Material Breach of an Agreement by either Party, the non-breaching Party may, in its sole discretion, and without prejudice to any other rights under such Agreement, at law or in equity, immediately terminate the Agreement.

6.2 (a) If Seller terminates an Agreement due to a Material Breach by Buyer, (i) Seller may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) covered thereunder, except as may be prohibited by law, and (ii) within 30 calendar days following such termination, Buyer shall pay Seller, in addition to all reasonable direct costs and expenses incurred by Seller as a result of such Material Breach and termination, and all amounts Buyer owes Seller with respect to time periods prior to the termination, the positive amount, if any, calculated as follows as of the date of termination: the sum of (A) the product of (I) the remaining quantities of electricity for the remainder of the Agreement Term as reflected on Exhibit A-1 (the "**Remaining Quantities**")

multiplied by (II) the Contract Price under such Agreement minus the then-current market value of a kWh as reasonably determined by Seller plus (B) the value of any term extension option rights, if any, that Seller may have under the Agreement.

(b) If Buyer terminates an Agreement due to a Material Breach by Seller, (i) Buyer shall have the right to select any other REP as its electricity provider, and (ii) within thirty (30) calendar days following such termination, Seller shall pay Buyer, in addition to all reasonable direct costs and expenses incurred by Buyer as a result of such Material Breach and termination, the positive amount, if any, calculated as follows: the product of (A) the Remaining Quantities multiplied by (B) the sum of (I) the lesser of (1) the then current market value of a kWh as reasonably determined by Seller, (2) the price offered by the POLR, or (3) any REP's standard list price offer (or equivalent or similar pricing), minus (II) the Contract Price.

VII. FORCE MAJEURE. If either Party is unable to perform its obligations, in whole or in part, due to an event of Force Majeure as defined herein, then the obligations of the claiming Party (other than the obligations to pay any amounts arising prior to the Force Majeure event) shall be suspended, for the duration of such Force Majeure event, to the extent made necessary by such Force Majeure event. The term "**Force Majeure**" shall mean any act or event that is beyond the claiming Party's control (and which could not be reasonably anticipated and prevented through the use of reasonable measures), including, without limitation, the failure of the TDSP to receive, transport or deliver, or otherwise perform, unless due to the failure of the Party claiming Force Majeure to perform such Party's obligations hereunder, and an event of Force Majeure that affects Seller's suppliers. The Party suffering the event of Force Majeure shall give written notice of such event of Force Majeure in reasonably full particulars to the other Party, as soon as reasonably possible, and shall take all reasonable measures to reduce as much as practicable the duration of such Force Majeure event. Force Majeure shall not include (a) the opportunity for Seller to sell the electricity to be sold under the Agreement to another party at a higher price than that set forth in the Agreement, (b) the opportunity for Buyer to purchase electricity for its Premise(s) from another party at a lower price than that set forth in the Agreement, or (c) the inability of either Party to pay its obligations under the Agreement or any other of its obligations or debts as they become due.

VIII. WARRANTIES AND LIMITATIONS OF LIABILITIES.

8.1 SELLER HEREBY WARRANTS TO BUYER THAT AT THE TIME OF DELIVERY OF ELECTRICITY HEREUNDER IT WILL HAVE GOOD TITLE AND/OR THE RIGHT TO SELL SUCH ELECTRICITY, AND THAT SUCH ELECTRICITY WILL BE FREE AND CLEAR OF ALL LIENS AND ADVERSE CLAIMS. TITLE WILL PASS TO BUYER AT THE TDSP POINT OF DELIVERY. **EXCEPT AS PROVIDED FOR IN THE FIRST SENTENCE OF THIS SECTION 8.1, SELLER EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, WHETHER WRITTEN OR VERBAL, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND BUYER WAIVES ALL SUCH WARRANTIES.**

8.2 **UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY LIABILITY OF A PARTY TO THE OTHER PARTY UNDER AN AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT OR OTHERWISE IN CONNECTION WITH THE AGREEMENT. THE LIMITATIONS IMPOSED IN THIS PARAGRAPH ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE OF THE DAMAGES, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE; PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES RESULTING FROM THE WILLFUL AND INTENTIONAL MISCONDUCT OF ANY PARTY, OR TO DAMAGES COVERED BY ANY INDEMNIFICATION UNDER ARTICLE XI BELOW.**

IX. NOTICES. All notices required or permitted under an Agreement shall be in writing and shall be deemed to be delivered (a) when (i) deposited in the United States mail (first class as to all notices other than disconnection, termination and/or material breach notices, and registered or certified as to all disconnection, termination and/or material breach notices), postage prepaid or (ii) deposited with an overnight delivery service, prepaid, to Buyer's address or Seller's address as shown in the applicable Transaction Confirmation, or to such address as either Party may from time to time designate as its address for notices hereunder, or (b) in the case of hand delivery, when delivered to a representative of either Party by or on behalf of the other Party.

X. APPLICABLE LAW AND REGULATIONS.

10.1 The applicable Tariff(s) for Retail Delivery Service of the appropriate TDSP(s) serving Buyer's Premise(s) is incorporated herein to the same extent as if fully set forth herein.

10.2 All Agreements are subject to, and both Parties agree to obey and comply with, all applicable laws, regulations, rules and orders. However, notwithstanding the foregoing, both Parties agree that, to the fullest extent allowed by law, (a) it is their intention to agree to terms and conditions different from those set forth in the PUCT's "Customer Protection Rules for Retail Electric Service" as amended, or as may be amended in the future (the "**Customer Rules**"), currently beginning with Section 25.471 of the PUCT's Substantive Rules Applicable to Electric Service Providers; (b) in the event that there is any conflict between the terms contained in an Agreement and the Customer Rules, the Agreement shall control; and (c) each Party has expressly acknowledged that certain terms and conditions addressed in the Customer Rules may not be provided for or referred to in an Agreement, and, in such event, it is the intent of the Parties that such terms and conditions are not applicable to the Parties.

10.3 In the event a judicial, governmental, regulatory, or quasi-governmental decision or order, a new law or regulation, or a change in law or regulation (i) renders illegal or unenforceable the pricing (or components thereof) under an Agreement, or (ii) materially and directly adversely affects a Party's ability to perform its material obligations under an Agreement to the extent that the performance of such obligations would be illegal or unenforceable, then (except as to those events covered by Section 4.4 (a) hereof) the Party that is adversely affected shall have the right to notify the other Party, within forty-five (45) calendar days after becoming aware of such detrimental change. Upon any such notification, the Parties shall use commercially reasonable efforts to negotiate a modification of the

Agreement so as to mitigate the impact of the event. If, after thirty (30) calendar days beyond the date of notice, the Parties have been unable to negotiate a mutually satisfactory modification to the terms of the Agreement, the adversely affected Party shall have the right to terminate the Agreement upon ten (10) calendar days prior written notice to the other Party, given within sixty (60) calendar days after the date of the original notice hereunder. In the event of such a termination, the Parties agree to settle as follows: (a) if Seller is the terminating Party, then if the then current market value per kWh (as reasonably determined by Seller) of the Remaining Quantities (as defined in Section 6.2(a) above) is greater than the Contract Price, Seller shall pay to Buyer the product of (i) the Remaining Quantities multiplied by (ii) such market value minus the Contract Price; (b) if Buyer is the terminating Party, then if the Contract Price is more than the then current market value per kWh (as reasonably determined by Seller) of the Remaining Quantities, then Buyer shall pay to Seller the product of (i) the Remaining Quantities multiplied by (ii) the Contract Price minus such market value; provided, however, if the detrimental change results in both Parties being an adversely affected Party entitled to terminate the Agreement pursuant to this Section 10.3, then in the event of a termination under this Section 10.3, there shall be no settlement payment from one Party to the other with regard to the remaining unused Power quantities.

XI. INDEMNIFICATION.

11.1 As between the Parties, Buyer assumes full responsibility for electric energy on Buyer's side (downstream) of the TDSP Point of Delivery, and agrees to and shall indemnify, defend, and hold harmless Seller, its parent company and all of its affiliates (except any which may be the TDSP serving Buyer's Premise(s)), and all of their respective officers, directors, shareholders, associates, employees, servants, and agents (hereinafter collectively referred to as "**Seller Group**"), from and against all claims, losses, expenses, damages, demands, judgments, causes of action, and suits of any kind (hereinafter collectively referred to as "**Claims**"), including Claims for personal injury, death, or damages to property, occurring on Buyer's side of the TDSP Point of Delivery, arising out of or related to electric power and energy and/or Buyer's performance under an Agreement.

11.2 As between the Parties, Seller assumes full responsibility for electric energy on Seller's side (upstream) of the Seller Point of Delivery, and agrees to and shall indemnify, defend, and hold harmless Buyer, its parent company and all of its affiliates, and all of their respective officers, directors, shareholders, associates, employees, servants, and agents (hereinafter collectively referred to as "**Buyer Group**"), from and against all Claims, including Claims for personal injury, death, or damages to property occurring on Seller's side of the Seller Point of Delivery, arising out of or related to electric power and energy and/or Seller's performance under an Agreement.

XII. MISCELLANEOUS.

12.1 **UCC. THE PARTIES AGREE THAT THE PROVISIONS OF ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE (AS CONTAINED IN THE TEXAS BUSINESS AND COMMERCE CODE) SHALL APPLY TO ALL AGREEMENTS HEREUNDER, IRRESPECTIVE OF WHETHER SUCH TRANSACTIONS ARE DEEMED TO BE A SALE OF GOODS OR THE PROVIDING OF A SERVICE; HOWEVER, IN THE EVENT OF A CONFLICT, THE TERMS AND PROVISIONS OF AN AGREEMENT SHALL CONTROL OVER THOSE CONTAINED IN THE UCC. NOTWITHSTANDING THE FOREGOING, THE PARTIES ACKNOWLEDGE AND AGREE THAT ALL IMPLIED RIGHTS RELATING TO FINANCIAL ASSURANCES ARISING FROM SECTION 2-609 OF THE UNIFORM COMMERCIAL CODE (AS CONTAINED IN THE TEXAS BUSINESS AND COMMERCE CODE) OR APPLICABLE CASE LAW APPLYING SIMILAR DOCTRINES, ARE HEREBY WAIVED.**

12.2 **Assignment.** Neither Party may assign an Agreement in whole or in part without first obtaining the other Party's prior written consent, which consent shall not be unreasonably withheld; provided that (a) Seller may assign an Agreement to any REP without obtaining Buyer's prior consent and (b) Seller will not withhold its consent if Buyer makes assignment to a party who in Seller's reasonable opinion is creditworthy. Any assignment of an Agreement by Buyer must be in conjunction with a conveyance of legal title (fee or leasehold, as the case may be) to all of the Premises to a single entity. Each Agreement shall inure to and be binding upon the Parties hereto, and their respective successors and assigns; provided that, if a Party makes an assignment of an Agreement in accordance herewith, the other Party hereby agrees that the assigning party is released from its future obligations under the Agreement.

12.3 **Entirety of Agreement.** It is the intention of the Parties that each Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the electricity, and supersedes all prior discussions and agreements between the Parties hereto, whether written or oral, as to the subject Premise(s). Both Parties have agreed to the wording of each Agreement and any ambiguities therein shall not be interpreted to the detriment of either Party merely by the fact that such Party is the author of the Agreement. An Agreement may not be modified or amended except in writing, duly executed by the Parties hereto.

12.4 **Waiver of Rights.** A waiver by either Party of any breach of an Agreement, or the failure of either Party to enforce any of the terms and provisions of an Agreement, will not in any way affect, limit or waive that Party's right to subsequently enforce and compel strict compliance with the same or other terms or provisions of the Agreement.

12.5 **Third Party Beneficiary/Rights.** Nothing in an Agreement shall create, or be construed as creating, any express or implied benefits or rights in any person or entity other than the Parties.

12.6 **Survival.** No termination or cancellation of an Agreement, and/or this Base Contract, will relieve either Party of any obligations under an Agreement that by their nature survive such termination or cancellation, including, but not limited to, all warranties, obligations to pay for Power consumed, obligations for any breaches of contract, and obligations of indemnity.

12.7 **Confidentiality.** Seller and Buyer agree to keep all terms and provisions of each Agreement confidential and not to disclose the terms of the same to any third parties without the prior written consent of the other Party; provided, however, each Party shall have the right to make such disclosures, if any, to governmental agencies and to its own agents, attorneys, auditors, accountants and shareholders as may be

reasonably necessary. If disclosure is sought through process of a court, or a state or federal regulatory agency, the Party from whom the disclosure is sought shall resist disclosure through all reasonable means and shall immediately notify the other Party to allow it the opportunity to participate in such proceedings.

12.8 Forward Contract. Each Agreement constitutes a "forward contract" as defined in Section 101(25) of the U.S. Bankruptcy Code ("**Bankruptcy Code**"). The Parties agree that (a) Seller is a "forward contract merchant" as defined in Section 101(26) of the Bankruptcy Code, (b) the termination rights of the Parties will constitute contractual rights to liquidate transactions, (c) any payment related hereto will constitute a "settlement payment" as defined in Section 101 (51A) of the Bankruptcy Code, and (d) Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code shall apply to the Parties.

12.9 Representations and Warranties. Buyer hereby represents and warrants to Seller as follows: (a) Buyer is legally authorized to change the REP for all of the Premises, (b) Buyer's execution and delivery of an Agreement does not, and the performance by Buyer of its obligations thereunder will not, violate any contract or agreement to which Buyer is a party or pursuant to which its assets are bound, and (c) each Agreement is a valid and binding obligation of Buyer, enforceable against it in accordance with its terms. Upon execution of each Agreement, Buyer authorizes Seller to become Buyer's REP for the Agreement Term as to the Premise(s) covered by such Agreement and to act as Buyer's agent for the sole purpose of effecting any such change in REP, if necessary. If any of Buyer's representations or warranties hereinabove are untrue when made or fail to be true at all times during the Agreement Term, Buyer shall indemnify, defend, and hold Seller harmless from and against any third party claims (and related costs and expenses) arising out of or relating thereto.

12.10 Further Assurances. Buyer and Seller agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party, which are not inconsistent with the provisions of an Agreement and which do not involve the assumption of obligations other than those provided for in the Agreement, in order to give full effect to the Agreement and to carry out the intent of the Agreement.

12.11 Headings. The headings included throughout this Base Contract are inserted solely for convenience and reference purposes only and shall not be construed or considered in interpreting any terms or provisions of an Agreement.

12.12 Severability. If any provision in an Agreement is determined to be invalid, void, or unenforceable by any governmental authority having jurisdiction, then such determination will not invalidate, void, or make unenforceable any other provision or covenant in the Agreement.

12.13 Applicable Law. ALL AGREEMENTS SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPLES WHICH OTHERWISE MIGHT BE APPLICABLE. THE PARTIES RECOGNIZE THAT THE AGREEMENTS ARE PERFORMABLE IN PART IN DALLAS COUNTY.

12.14 Dispute Resolution. PURSUANT TO THE FEDERAL ARBITRATION ACT, THE PARTIES HEREBY AGREE THAT ANY CONTROVERSY, CLAIM OR ALLEGED BREACH, INCLUDING BUT NOT LIMITED TO TORTS AND STATUTORY CLAIMS, ARISING OUT OF OR RELATED TO AN AGREEMENT OR THE NEGOTIATION OF AN AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION CONDUCTED UNDER THE AMERICAN ARBITRATION ASSOCIATION ("AAA") COMMERCIAL ARBITRATION RULES. DEMAND FOR ARBITRATION MUST BE MADE NO LATER THAN THE TIME THAT SUCH ACTION WOULD BE PERMITTED UNDER THE APPLICABLE TEXAS STATUTE OF LIMITATION. ANY DISPUTES REGARDING THE TIMELINESS OF THE DEMAND FOR ARBITRATION SHALL BE DECIDED BY THE ARBITRATOR(S). JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF IN ORDER TO OBTAIN COMPLIANCE THEREWITH. ANY CASE IN WHICH ANY CLAIM, OR COMBINATION OF CLAIMS, EXCEEDS \$500,000 WILL BE DECIDED BY THE MAJORITY OF A PANEL OF THREE (3) NEUTRAL ARBITRATORS. IN RENDERING THE AWARD, THE ARBITRATOR(S) WILL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES ACCORDING TO THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO ANY CONFLICT OF LAW PRINCIPLES). ANY DISCOVERY IN ADVANCE OF THE ARBITRATION HEARINGS SHALL BE CONDUCTED CONSISTENT WITH THE DISCOVERY PERMITTED UNDER THE FEDERAL RULES OF CIVIL PROCEDURE; PROVIDED, HOWEVER, EACH PARTY SHALL BE ENTITLED TO: NO MORE THAN 5 DEPOSITIONS OF NO MORE THAN 5 HOURS EACH PER SIDE, NO MORE THAN 1 WRITTEN SET OF NO MORE THAN THIRTY (30) INTERROGATORIES, AND NO MORE THAN FIFTY (50) REQUESTS FOR PRODUCTION, UNLESS THE MAJORITY OF THE ARBITRATORS GRANT THE PARTIES THE RIGHT TO ADDITIONAL DISCOVERY. THE ARBITRATION PROCEEDINGS AND HEARINGS WILL BE CONDUCTED IN DALLAS, TEXAS OR AT SUCH OTHER PLACE AS MAY BE SELECTED BY MUTUAL AGREEMENT. EACH PARTY SHALL BEAR ITS OWN COSTS AND EXPENSES (INCLUDING ATTORNEY FEES), AS WELL AS AN EQUAL SHARE OF THE ARBITRATORS' FEES AND ADMINISTRATIVE FEES OF ARBITRATION. NO PARTY OR ARBITRATOR(S) MAY DISCLOSE THE EXISTENCE, CONTENT OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES.

12.15 Contract Execution; Counterparts; Original Documents. Each Party agrees that each Agreement, as well as any amendments thereto, may be executed in multiple counterparts and by facsimile or other electronic transfer of an originally signed document, each of which will be as binding on the Party or Parties as an original document. Each Party understands and agrees that such facsimiles or other electronic transmissions shall be deemed to constitute the original of such documents, and that any objections that they do not constitute the "best evidence" of the documents, or that they do not comply with the "Statute of Frauds," as well as any other similar objections to the validity or admissibility of the document, are hereby expressly waived by the Parties.

12.16 Telephonic Recording of Transactions. Buyer and Seller agree that they may enter into a Transaction Confirmation, or any price conversion (if applicable) thereunder, through their oral or written agreement. Buyer and Seller hereby consent to the creation of an audio tape or other electromagnetic recording (each, a "**Recording**") of all telephone conversations between the Parties. Buyer and Seller agree that Recordings shall be retained in confidence, secured from improper access, and may be introduced in any proceeding

relating to such transaction hereunder as evidence of the terms of such transaction. Buyer and Seller agree and hereby waive any further notice of Recordings. Without limiting the foregoing, Buyer and Seller further waive any objections to the validity or enforceability of such Recordings for the purposes recited above, based upon: (a) whether certain agreements are to be in writing or signed by the Party bound thereby, or (b) the admissibility of the terms of a transaction into evidence in any dispute between the Parties under the applicable rules of evidence. Seller will provide Buyer written terms for each such transaction confirmed via a Recording. Buyer agrees to promptly review such written terms and notify Seller of disagreement therewith. If there is a conflict between the terms as quoted and agreed upon in the Recording and such written terms, the Recording shall control.

12.17 Termination of Base Contract. Either Party may terminate this Base Contract at any time by providing at least 30 days prior written notice to the other Party; provided, however, in no event shall any such termination take effect until the termination or expiration of all Agreements hereunder.

The Parties have signed this Base Contract for Supply of Electricity document, acknowledging their agreement to its provisions as of April 1, 2010.

K E JAMS Investment Inc.

TXU ENERGY RETAIL COMPANY LLC

By: _____
Name: _____
Title: _____

"Buyer"

By: _____
Name: **Gabriel R. Castro**
Title: Vice President

"Seller"

Regular City Council Agenda Item Data Sheet

Meeting Date: April 19, 2010

Topic:

Discuss and Possibly Take Action Regarding a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court

Background:

Council directed this item be placed on the agenda for further consideration.

Origination:

Gary Smith

Recommendation:

N/A

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

City Council

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

Regular City Council Agenda Item Data Sheet

Meeting Date: April 19, 2010

Topic:

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

- Section 551.071 – Consultation with Attorney regarding a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court
- Section 551.074 – Personnel Matters – To Deliberate the Hiring/Employment, Duties and Responsibilities of a City Manager

Background:

Origination:

Recommendation:

Funding:

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

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

Regular City Council Agenda Item Data Sheet

Meeting Date: April 19, 2010

Topic:

Possible Action Regarding a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court

Background:

Council directed this item be placed on the agenda for further consideration.

Origination:

City Council

Recommendation:

N/A

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

City Council

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