

**RICHARDSON CITY COUNCIL  
DECEMBER 12, 2011  
7:30 P.M.  
CIVIC CENTER/CITY HALL, 411 W. ARAPAHO, RICHARDSON, TX**

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1. **INVOCATION – MARK SOLOMON**
  2. **PLEDGE OF ALLEGIANCE: U.S. AND TEXAS FLAGS – MARK SOLOMON**
  3. **MINUTES OF THE NOVEMBER 28, 2011 MEETING**
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4. VISITORS. (THE CITY COUNCIL INVITES CITIZENS TO ADDRESS THE COUNCIL ON ANY TOPIC NOT ALREADY SCHEDULED FOR PUBLIC HEARING. PRIOR TO THE MEETING, PLEASE COMPLETE A “CITY COUNCIL APPEARANCE CARD” AND PRESENT IT TO THE CITY SECRETARY. THE TIME LIMIT IS FIVE MINUTES PER SPEAKER.)
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5. ADMINISTER THE OATH OF OFFICE TO NEWLY APPOINTED MEMBERS OF THE LIBRARY BOARD, PARKS AND RECREATION COMMISSION, AND SIGN CONTROL BOARD.

ACTION TAKEN:

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**PUBLIC HEARING ITEMS:**

6. PUBLIC HEARING, ZONING FILE 11-18: A REQUEST BY HOWARD L. LAWSON, REPRESENTING THE LAWSON CO., FOR A CHANGE IN ZONING FROM C-M COMMERCIAL WITH SPECIAL CONDITIONS TO I-M(1) INDUSTRIAL WITH A SPECIAL PERMIT FOR SELF-SERVICE WAREHOUSE WITH ASSOCIATED OUTDOOR VEHICLE STORAGE FOR A PORTION OF 528 W. ARAPAHO ROAD (NORTH SIDE OF ARAPAHO ROAD, WEST OF CUSTER ROAD).

ACTION TAKEN:

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7. PUBLIC HEARING, ZONING FILE 11-20: A REQUEST BY AUBREY ELLINGTON, A&S ELLINGTON PROPERTIES, LLC, REPRESENTING CHICKEN EXPRESS TO AMEND THE ZONING TO DELETE THE REQUIREMENT FOR A RETAIL BUILDING ON A 1.29-ACRE SITE AND APPROVAL OF A REVISED CONCEPT PLAN AND BUILDING ELEVATIONS FOR A DRIVE-THRU RESTAURANT AT 1240 W. CAMPBELL ROAD (NORTHWEST CORNER OF CAMPBELL ROAD & LAKE PARK WAY). THE PROPERTY IS CURRENTLY ZONED LR-M(1) LOCAL RETAIL.

ACTION TAKEN:

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8. PUBLIC HEARING, ZONING FILE 11-21: A REQUEST BY EYAL AVNON, REPRESENTING DAVID WEEKLEY HOMES, FOR A CHANGE IN ZONING FROM O-M OFFICE ZONING WITH SPECIAL CONDITIONS TO RP-1500-M PATIO HOME ZONING WITH MODIFIED DEVELOPMENT STANDARDS ON A PROPERTY LOCATED AT THE NORTHWEST CORNER OF LAKE PARK WAY AND JONSSON BOULEVARD. THE PROPERTY IS CURRENTLY ZONED O-M OFFICE.

ACTION TAKEN:

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9. PUBLIC HEARING, ZONING FILE 11-26: A REQUEST BY THE CITY OF RICHARDSON TO AMEND THE CODE OF ORDINANCES, APPENDIX A, COMPREHENSIVE ZONING ORDINANCE, ARTICLE I, SECTION 2, DEFINITIONS, BY ADDING THE DEFINITION OF SMOKING ESTABLISHMENT AND BY AMENDING ARTICLE XXII-A, SECTION 2, TO ALLOW SMOKING ESTABLISHMENTS UPON APPROVAL OF A SPECIAL PERMIT IN THE LR-M(1) AND LR-M(2) LOCAL RETAIL DISTRICTS, AND THE C-M COMMERCIAL DISTRICT.

ACTION TAKEN:

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ALL ITEMS LISTED UNDER ITEM 10 OF THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE BY THE CITY COUNCIL AND WILL BE ENACTED BY ONE MOTION IN THE FORM LISTED BELOW. THERE WILL BE NO SEPARATE DISCUSSIONS OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED SEPARATELY:

10. CONSENT AGENDA:

A. CONSIDER THE FOLLOWING RESOLUTIONS:

1. RESOLUTION NO. 11-38, APPROVING THE TERMS AND CONDITIONS OF THE ADVANCE FUNDING AGREEMENT FOR A SAFE ROUTES TO SCHOOL PROJECT FOR PEDESTRIAN WALKWAY IMPROVEMENTS AT YALE ELEMENTARY SCHOOL, BY AND BETWEEN THE CITY OF RICHARDSON, TEXAS, AND THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION; AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER.
2. RESOLUTION NO. 11-39, APPROVING THE TERMS AND CONDITIONS OF THE ADVANCE FUNDING AGREEMENT FOR A SAFE ROUTES TO SCHOOL PROJECT FOR PEDESTRIAN WALKWAY IMPROVEMENTS AT RICHLAND ELEMENTARY SCHOOL, BY AND BETWEEN THE CITY OF RICHARDSON, TEXAS, AND THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION; AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER.
3. RESOLUTION NO. 11-40, ADOPTING THE CITY OF RICHARDSON INVESTMENT POLICY.

B. CONSIDER ADVERTISEMENT OF THE FOLLOWING BIDS:

1. BID #16-12 – 2012 CITY HALL COOLING TOWER REPLACEMENT. BIDS TO BE RECEIVED BY WEDNESDAY, JANUARY 4, 2012 AT 2:00 P.M.
2. BID #17-12 – 2010 SIDEWALK REPAIR PROGRAM PHASE III (REGIONS 5 & 6). BIDS TO BE RECEIVED BY THURSDAY, JANUARY 5, 2012 AT 2:00 P.M.

C. CONSIDER AWARD OF BID #62-11 – WE REQUEST AUTHORIZATION TO ISSUE AN ANNUAL REQUIREMENTS CONTRACT TO NAZTEC, INC. FOR TRAFFIC SIGNAL CABINETS PURSUANT TO UNIT PRICES.

D. CONSIDER AWARD OF COMPETITIVE SEALED PROPOSAL CSP#902-12 – WE RECOMMEND THE AWARD TO DIGITECH COMPUTER, INC., FOR EMS BILLING AND COLLECTION SERVICES AT THE ANNUAL FEE OF 4.95% OF COLLECTIONS PURSUANT TO THE CITY OF PLANO CSP #2011-36-C.

E. CONSIDER CANCELLATION THE MONDAY, DECEMBER 26, 2011 CITY COUNCIL MEETING AND THE JANUARY 2, 2012 WORK SESSION.

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THE RICHARDSON CITY COUNCIL WILL MEET AT 5:30 P.M. ON MONDAY, DECEMBER 12, 2011, IN THE RICHARDSON ROOM OF THE CIVIC CENTER/CITY HALL, 411 W. ARAPAHO, RICHARDSON, TEXAS. AS AUTHORIZED BY SECTION 551.071(2) OF THE TEXAS GOVERNMENT CODE, THIS MEETING MAY BE CONVENED INTO CLOSED EXECUTIVE SESSION FOR THE PURPOSE OF SEEKING CONFIDENTIAL LEGAL ADVICE FROM THE CITY ATTORNEY ON ANY AGENDA ITEM LISTED HEREIN. THIS BUILDING IS WHEELCHAIR ACCESSIBLE. ANY REQUESTS FOR SIGN INTERPRETIVE SERVICES MUST BE MADE 48 HOURS AHEAD OF THE MEETING. TO MAKE ARRANGEMENTS, CALL 972-744-4000 VIA TDD OR CALL 1-800-735-2989 TO REACH 972-744-4000.

WORK SESSION – 6:00 P.M.:

- Call to Order
- A. Review and Discuss Items Listed on the City Council Meeting Agenda
- B. Review and Discuss the Tax Increment Financing – General Update
- C. Review and Discuss Update on Citywide Radio Project
- D. Report on Items of Community Interest

I CERTIFY THE ABOVE AGENDA WAS POSTED ON THE BULLETIN BOARD AT THE CIVIC CENTER/CITY HALL ON FRIDAY, DECEMBER 9, 2011, BY 5:00 P.M.

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CITY SECRETARY

**MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL**  
**November 28, 2011**  
**City of Richardson, Texas**

A Regular Meeting of the City Council was held at 7:30 p.m., Monday, November 28, 2011 with a quorum of said Council present, to-wit:

Bob Townsend	Mayor
Laura Maczka	Mayor Pro Tem
Mark Solomon	Council member
Scott Dunn	Council member
Kendal Hartley	Council member
Steve Mitchell	Council member
Amir Omar	Council member

City staff present:

Bill Keffler ( <i>absent</i> )	City Manager
Dan Johnson	Deputy City Manager
Michelle Thames	Assistant City Manager Administrative Services
David Morgan	Assistant City Manager Community Services
Cliff Miller	Assistant City Manager Development Services
Samantha Woodmancy	Management Analyst
Pamela Schmidt	City Secretary

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1. **INVOCATION – AMIR OMAR**
2. **PLEDGE OF ALLEGIANCE: U.S. AND TEXAS FLAGS – Jack Roberts and Clint Cruise, Troop 1001, Trinity Bible Church**
3. **MINUTES OF THE NOVEMBER 14, 2011 MEETING**

*ACTION TAKEN:* Mr. Omar moved approval of the minutes; second by Ms. Maczka and the motion was approved with a unanimous vote.

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4. **VISITORS.** (*THE CITY COUNCIL INVITES CITIZENS TO ADDRESS THE COUNCIL ON ANY TOPIC NOT ALREADY SCHEDULED FOR PUBLIC HEARING. PRIOR TO THE MEETING, PLEASE COMPLETE A "CITY COUNCIL APPEARANCE CARD" AND PRESENT IT TO THE CITY SECRETARY. THE TIME LIMIT IS FIVE MINUTES PER SPEAKER.*)

Marilyn Frederick, 201 Wooded Canyon Court, spoke in opposition to the proposed rental registration program. She advised that the Texas Association of Realtors oppose rental registration. She felt it penalizes good citizens and investors in the community. She suggested that the City focus on repeat offenders and not penalize those property owners who abide by the laws and do not disregard what is expected. She felt that code enforcement consequences need to be stronger and spoke highly of the work performed by Don Magner and his staff. She felt the proposed scoring system was fair, but vague. She felt the fee was a tax and that it would discourage continued investment in the city and in single family homes.

Maitri Smithhisler, 2201 Victoria Lane, addressed the Council on behalf of the Neighborhood Protection Alliance of Richardson (NPAR), Owens Park Neighborhood and concerned citizens,

about the Lookout Transfer Station. She stated that NPAR interpret the filing of the application to TCEQ by NTMWD as a breach of the approved Memorandum of Understanding (MOU). She stated that the filing does not reflect the MOU. She asked that the Council request a public meeting with TCEQ to take place in Richardson and she provided a letter that Council could submit.

Rick Wilder, 1614 Villanova Drive, addressed the Council with regard to the Lookout Transfer Station and asked for the Council's help to insure that the citizens of Richardson get the best possible Transfer Station that will reflect on the city as a forward looking city.

Ken Robinson, 2507 Springpark, wanted to address the Council with regard to the proposed drainage utility fee and Mayor Townsend asked him to hold his comments until the public hearing items.

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**5. CONSIDER APPOINTMENTS TO THE ENVIRONMENTAL ADVISORY COMMISSION, LIBRARY BOARD, PARKS AND RECREATION COMMISSION, SIGN CONTROL BOARD, AND TAX INCREMENT FINANCE ZONE #2 AND #3 BOARD OF DIRECTORS.**

ACTION TAKEN: Mr. Mitchell moved approval of the following appointments and reappointments; second by Mr. Omar and the motion was approved with a unanimous vote.

**Environmental Advisory Board**

Reappoint Aaron Santos (Dist 1) – term expiring September 22, 2013;  
Reappoint Chuck Riehm (Dist 2) – term expiring September 22, 2013;  
Reappoint Christine Halicki (Dist 3) – term expiring September 22, 2013  
Reappoint Sam Watkins, (Dist 4) – term expiring September 22, 2013  
Appoint Andrew Laska (Dist 3) - term expiring September 22, 2013

**Parks & Recreation Commission**

Reappoint Bob Dubey, Chair (Dist 1) – term expiring December 1, 2013;  
Reappoint Jeff Wright (Dist 4) – term expiring December 1, 2013  
Reappoint Kenan Brandes, Vice Chair (Dist 1) – term expiring December 1 2013  
Appoint Pam Krause (Dist 3) – term expiring December 1, 2013  
Appoint Monica Weinman (Dist 1) – term expiring December 1, 2013

**Sign Control Board**

Reappoint Dorthy McKearin, Chair (Dist 1) – term expiring December 1, 2013  
Reappoint Sandra Moudy, Vice Chair (Dist 2)– term expiring December 1, 2013;  
Appoint Muhammad Ikram (Dist 1) – term expiring December 1, 2013;  
Appoint Alicia Marshall (Dist 1) Alternate – term expiring December 1, 2013  
Appoint Scott Petty (Dist 3) Alternate – term expiring December 1, 2012.

**Library Board**

Appoint Carol Adams (Dist 1) – Chair for remainder of term.  
Reappoint Alyson Murphy (Dist 2) – term expiring January 1, 2014;  
Reappoint Helene Lee (Dist 3) – term expiring January 1, 2014;  
Reappoint Doris Benner (Dist 4) Vice Chair – term expiring January 1, 2014  
Appoint William McCalpin (Dist 3) – term expiring January 1, 2014.

**Hospital Board**

Reappoint John Tanner – term expiring December 2013

Reappoint Joe Snayd – term expiring December 2013

**\*TIF Board #2 and TIF Board #3**

Appoint Richard Ramey, Chair, (PI 1) – term expiring November 28, 2013

Appoint Kimberly Aaron (PI 2) – term expiring November 28, 2013

Appoint Charles Bissell (PI 3) – term expiring November 28, 2013

Appoint Tony Reynolds (PI 4) – term expiring November 28, 2013

Appoint Hank Mulvihill (PI 5) – term expiring November 28, 2013

Appoint Paul Peck (PI 6) – term expiring November 28, 2013

Appoint Erik Wyse (PI 7) – term expiring November 28, 2013

*\* Chair appointment made each calendar year*

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**PUBLIC HEARING ITEMS:**

Mayor Townsend announced that public input for Items 6 and 7 would be held simultaneously but there would be separate action.

**6. PUBLIC HEARING AND CONSIDER ORDINANCE NO. 3843, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 23, TO ADD ARTICLE VIII MUNICIPAL DRAINAGE UTILITY SYSTEM, TO ESTABLISH A MUNICIPAL DRAINAGE UTILITY SYSTEM; PROVIDING FOR DRAINAGE SERVICE, BILLING, EXEMPTIONS, DRAINAGE CHARGES AND APPEALS.**

Mr. Johnson stated the public hearing pertains to the adoption of a Storm Water Drainage Utility and related rate structure for properties in Richardson and follows considerable review since 2008 involving periodic work sessions, news articles, web information and notices. The utility system approach responds to ongoing maintenance and improvement obligations of the City's 12 drainage basins and imposed requirements of the US EPA on cities. He advised that supplemental engineering services have been provided by Freese & Nichols Engineers, which is a recognized consulting service in this field. He provided an overview of the item noting that the drainage utility fee pertains to storm water management and reviewed a variety of terms that are used in the ordinance. He advised that there are 12 drainage basins, 8,500 storm drain inlets, 295 miles of storm drain lines, 1,041 storm drain outfalls and 44.5 miles of creeks in the City of Richardson. He explained that storm water management practices have evolved since the early 1970's and continuously challenge local governments throughout the United States to minimize pollution and other impacts to lakes and streams. More recent attention has now moved to "non-point" sources. He reviewed the regulatory obligations that include things such as pollution prevention, erosion management and construction site management. The initial Richardson compliance period began in 2007-08 and the next permit application must be made in 2012. He advised that the Storm Water Management Plan has impacted the City's operating budgets over the last several years as monitoring, maintenance and enforcement practices were put in place. He noted Richardson's attention to prior drainage support such as General Obligation bond debt and use of general fund operating funds. He noted the four key motivations for action and talked about the utility creation process following guidance from Local Government Code Chapter 552. He stated that storm water utility rates are typically based on runoff contributed by an average residential home and lot size is a typical proxy for residential criteria. Non-residential rates are based on an equivalent residential rate through the use of a scaling factor based on the amount of impervious area for each property. Mr. Johnson reviewed

the objectives and acknowledged that there would still be need for General Obligation debt for very large projects. He reviewed key service and project elements that would be funded with the fee and noted the rate making expense elements. He stated that eleven of the twelve comparison cities have activated a drainage utility fee with varying rates of \$2.00 to \$19.00 per month resulting in an average rate of \$3.82 per month. He noted that the City's proposed rate is \$3.75. He referred to information provided Freese & Nichols and talked about their work particularly in reviewing the rate structure. He noted that 50% of the impervious land in Richardson is residential and 50% is non-residential. He referred to Council's previous direction to exempt RISD and PISD property and church property, and noted that UTD property is already exempt by state statute. He reviewed the proposed rate structure. The monthly charge would be placed on the water/sewer accounts identified with a separate line description on each statement. The average annual impact for residents would be \$45. He explained that a new drainage utility fund would be established at rate adoption and all rate revenue will be deposited in the fund. He stated that all revenue would be tracked and noted the various expenses that would be allocated to the fund. The annual revenue generated by the utility fee is expected to be \$2,500,000 and he provided a list of possible projects. He stated there would be a very active public awareness program and reviewed the notices and briefings that have occurred. Upon adoption, staff would complete the preparation steps for a February 1, 2012 billing start and prepare the TPDES Renewal Permit materials due by August 2012.

Mr. Mitchell voiced a concern that schools and churches would be exempted since those institutions have a lot of impervious land. He said that he was not advocating that it be applied to non-taxable property but was concerned about the burden being shouldered by the residents and commercial property. Mr. Johnson noted that some of the larger churches that have been built more recently have developed onsite detention accommodations. In addition he referred to previous partnerships and allowances provided in State law. Mr. Mitchell underscored the need to communicate to the entities the importance of their cooperation with the City as they develop. Mr. Johnson also explained that the Council could revisit the exemption in the future if there was a need to do so long as State law did not provide for the exemption such as in the case of UT Dallas.

Mr. Omar asked if other cities had any provisions in place that would incent individuals or organizations that have facilities in place to capture water that would minimize the impact of storm water. Mr. Johnson replied that the order of magnitude on residential properties is pretty limited and the topic was studied to be sure the ordinance wasn't in conflict with recent action taken. He stated that commercial property must meet requirements for detention and retention on site. He noted the importance of vegetation management and keeping debris and litter out of storm drains, lakes and streams on the part of the citizens as well as the City. He stated the system includes a heightened responsibility and felt there would be inroads made across a lot of areas as capital work plans are brought to the Council's attention. Mr. Johnson stated staff would continue to explore mitigating factors.

Mr. Dunn asked for confirmation that many of the regulations were implemented by the EPA and Mr. Johnson replied affirmatively and noted that the staff has worked many years to fund the needs through the general fund and the regulations have grown such that it has become important to institute a drainage utility fee as provided for in State law. With regard to a flat fee, he explained in the review of other practices, many cities had just one tier. He stated that staff has tried to find a balance between that and some equitability that would acknowledge various lot types and previous Council provided direction to use a three tier structure.

Mr. Mitchell asked staff to comment about what the City can do to foster more open space that will perhaps lessen the impact of runoff. Mr. Johnson stated the City has become more

aggressive by moving to 100 year storm water requirements, but there are decades of development that adhered to regional practices at the time. He felt it is a balancing act and current regulations include detention and open space requirements.

Mayor Townsend opened the public hearing.

Jake Kons, 710 West Shore Drive, stated he lives on a creek lot and that more than 80% of the drainage water flows into the creek. Therefore he felt his property should not be in the R3 tier. He asked that the Council be fair and equitable.

Mr. Mitchell noted that many people have lost some of their property along the creek and asked how the City would calculate the square footage of their property. He particularly noted that many people have lost property to erosion. Mr. Johnson stated staff would look at property lines regardless of the usefulness of the property as filed with Collin or Dallas County. He stated that if the plat records are wrong, the City would welcome corrections. Mr. Dunn stated that a flat fee would avoid such issues.

Tom Norman, 714 Laguna Drive, read his statement submitted to the Council addressing the fee allocation and stated he felt that the proposed allocation falls short of achieving the objectives. He requested that a special tier be established with an appropriate fee.

David Darling, 2801 Telecom Parkway, representing Fujitsu and Shiloh Business Park, stated he understands there are costs related to maintaining the storm water system and the need to find a way to distribute the costs. He felt there should be a tax rate savings because some of the expenses would be moving from the general fund to the drainage utility fund. He stated he would like to better understand the exemption process. He stated that 85% of Fujitsu's runoff runs through privately owned storm sewer channels into an adjacent piece of property in a drainage basin that is owned by Fujitsu into Garland and therefore he felt it should be predominately exempt. He stated it was also true for the Shiloh Business Park. He also stated they would be happy to build a retention pond if it would result in some exemption.

Mr. Mitchell asked Mr. Johnson to address the use of funds in the General Fund that would no longer be used for drainage utility items. Mr. Johnson reminded Council that without the drainage utility fee being implemented, more cuts in other areas would be required because local governments are not provided with funds by the Federal government to implement the regulations pertaining to storm water management. He further noted that there would be additional services provided with the fee.

Joyce Patton, 1000 Cedar Lane, asked if the fee would be placed only on creek-side properties and Mr. Johnson replied that the fee would be applicable on all properties. Ms. Patton described what occurs during times of bad storms because the inlets are inadequate to handle the runoff. She felt she should not have to pay extra because of the flooding that occurs on her property and also felt it would be good if the City would fix some of the drainage problems with revenue. Mr. Dunn replied that the fees would be used to provide corrective measures.

Ed Bennett, 1003 Cedar Lane, stated that approximately 2/3 of his property is in the floodway easement and felt he should get credit for the square footage because it provides a service to the city by being used for water runoff. He felt that UTD should have to pay a fee because he didn't have a lot of problems until the campus was developed. Mayor Townsend noted that State law exempts UTD.

Kathy Thomas, 300 West Shore Drive, asked if the trees would be removed from the creek-side to provide for the storm water stating she would prefer that the trees not be lost.

Mark Thomas, 300 West Shore Drive, spoke in favor of considering a flat fee in fairness of considering each lot. He felt the articles in the Richardson Today were vague.

Joan Youngblood, 703 Shadywood Lane, asked if the fee would be capped or if it would go up in the future. She advised that she paid an assessment of \$5,000 in 2003 to address erosion on her property and asked if those that did not participate would now have their property repaired without having to pay the assessment. She said that several of her neighbors feel they should not have to pay a fee because the creek has been used and she felt that the fee for those who paid the assessment in the past should be less.

Mr. Johnson replied that the fee does not have a cap but the revisit of the fee is very infrequent and although an adjustment is not expected soon, regulations could cause the City to review the fee. With regard to the gabion projects, he felt that bond programs would continue to be needed to address those larger projects, and he noted that not many cities address these types of private property improvements.

Ken Robinson, 2507 Springpark, felt the fee is a new tax and spoke in opposition to its implementation. He suggested Richardson be the only city that does not implement the tax. He asked the Council to vote it down.

Mr. Omar moved to close the public hearing; second by Mr. Solomon and the motion was approved with a unanimous vote.

Mr. Omar asked about the average cost for a gabion wall and Mr. Johnson responded approximately \$100,000. Mr. Omar noted that even at the \$5,000 assessment, the project was still a highly subsidized project. He also asked Mr. Johnson to address types of work that would occur with the revenue from the fee. Mr. Johnson stated that regardless if water went directly to the creek or was conveyed through a curb and gutter system, the water still gets to the creek and once in the creek, the City still has the obligation of downstream maintenance and repair. He noted the important aspect of addressing and maintaining vegetation and silt from creek lots and noted the property owner's responsibility for maintaining the private property that often goes directly into the creek. He stated that staff is aware of balancing the need to remove vegetation to allow for proper drainage as well as maintaining vegetation for the aesthetic value. Mr. Johnson also talked about the city's responsibility regarding the quality of the water and the impact of fertilizers. With regard to the Cottonwood drainage area, he stated the city is committed to working with the neighborhood to identify vegetation removal and will be one of the first projects that would be accomplished using the revenue from the fee. He emphasized that UTDallas has been very cooperative and are reserving land to provide for retention areas before it makes impact into the lower parts of the creek way. With regard to large properties, he stated the ordinance provides for key measurements and engineered review of hydrology features.

Mr. Mitchell stated that the City has not had a property tax increase for the operational budget in several years, very little growth in sales tax revenue, very little growth in property value and noted the impact of inflation. He felt the Council is very mindful of costs, but will not make cuts at the expense of services desired by the community. Mr. Johnson stated the regulations have been mandated by the Federal government and the State has provided a way to provide for the expense of the regulations with the drainage utility fee. Mr. Mitchell felt that the fee is necessary in order to continue to provide the services the community needs and wants. Mr. Johnson

stated this is a fee structure that better reflects the cost allocation and allows the city to have a more reliable revenue source to take care of increasing external mandated obligations that have been developing over the last several years.

Mr. Townsend asked about the impact of a flat fee of \$3.75. Mr. Johnson replied it would be about the same revenue generation, but the three tiers provides for sensitivity to the extremes of lot sizes. Mr. Mitchell felt a flat rate would eliminate the concern on the lot size.

**ACTION TAKEN:** Mr. Solomon moved approval of Ordinance No. 3843 amending Chapter 23 regarding the drainage utility fee system as presented; second by Ms. Maczka. Mr. Omar asked for an amendment to move to a flat fee. Mr. Solomon felt a flat fee would penalize the really small property owners; felt the three tier structure was more balanced, and stated he was opposed to the request to amend his motion. Discussion was held. Mayor Townsend clarified that the motion is to approve the ordinance creating the system and Item 7, the resolution, establishes the fees. Mr. Johnson agreed that the resolution would be the appropriate mechanism for deciding the fees. The motion was approved with a unanimous vote.

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**7. PUBLIC HEARING AND CONSIDER RESOLUTION NO. 11-33, ADOPTING THE MUNICIPAL DRAINAGE UTILITY SYSTEM SCHEDULE OF CHARGES; AND ESTABLISHING CHARGES FOR MUNICIPAL DRAINAGE UTILITY SYSTEM SERVICES.**

**ACTION TAKEN:** Mr. Omar moved to approve Resolution 11-33 with the adjustment of the fee structure to a flat fee of \$3.75 across the board so as to minimize any confusion or administrative expenses in the future; second by Mr. Dunn. Mr. Mitchell felt a flat fee would reduce the administrative portion and eliminate confusion about usable space. The motion was approved with a unanimous vote.

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ALL ITEMS LISTED UNDER ITEM 8 OF THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE BY THE CITY COUNCIL AND WILL BE ENACTED BY ONE MOTION IN THE FORM LISTED BELOW. THERE WILL BE NO SEPARATE DISCUSSIONS OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED SEPARATELY:

**8. CONSENT AGENDA:**

Ms. Maczka requested that the Rental Registration ordinance be removed for separate discussion.

**ACTION TAKEN:** Ms. Maczka moved to approve the remaining items as presented; second by Mr. Hartley and the motion was approved with a unanimous vote.

A. Consider the following Ordinances:

1. Ordinance No. 3846 amending the Comprehensive Zoning Ordinance and Zoning Map to grant a change in zoning for a 1.41-acre tract of land from LR-M(1) Local Retail with Special Conditions, O-M Office with Special Conditions and A-950-M Apartment to LR-M(1) Local Retail with Special Conditions.

2. Ordinance No. 3847 amending Chapter 6 of the Code of Ordinances by amending Article XI by increasing the annual and renewal registration fee for rental units; providing for a re-inspection fee; and providing for habitability scores for rental units.

Removed for separate discussion and consideration.

- B. Consider advertisement of Competitive Sealed Proposal #901-12 – Floyd Branch Storm Drain Improvements (Greer to Kaufman Outfall & Phillips Bridge Replacement). Competitive Sealed Proposals to be received by Tuesday, January 10, 2012 at 2:00 p.m.
- C. Consider award of Bid #06-12 – award to Jim Bowman Construction Company for the 2012 Annual Requirements Contract for street rehabilitation pursuant to the attached unit prices.

**ITEMS REMOVED FROM THE CONSENT AGENDA:**

**8A2. Ordinance No. 3847 amending Chapter 6 of the Code of Ordinances by amending Article XI by increasing the annual and renewal registration fee for rental units; providing for a re-inspection fee; and providing for habitability scores for rental units.**

Mr. Omar noted that some of the Council's goals are to preserve and increase the value of neighborhoods and doing everything possible to protect the values. He suggested that Richardson look at rental registration as an avenue to build incentives that would create a different attitude in landlords such as an incentive where less than three violations in the course of a year will provide for a discounted registration fee of \$50.

Mr. Solomon stated the existing program is a good program for the City of Richardson. He stated it maintains an inventory of rental property that works and noted that many of the properties are investments by investors who want to make a return on its investment. The program allows staff to know the identity of the property owner and helps staff when problems need to be addressed. He likened it to registering pets. He felt there were other ways to incentivize proper maintenance and stated support for the \$75 fee.

Mr. Mitchell felt there were two issues; code enforcement and rental registration. He felt that the rental registration program ensures health and safety rather than high grass and weeds. He stated he was in favor of moving forward as presented.

Ms. Maczka stated she also would like to look at ways to incentivize property owners who manage their properties well. Mr. Hartley stated he would be in favor of something different than what is proposed.

Mr. Mitchell felt the ordinance takes accountability up to the next level and recognized that the \$75 fee basically covers the cost of the program.

Mr. Omar felt the real question is how to pay for the program and he suggested a tier program be set up to incentivize those property owners and management companies that do the right thing. He reiterated the points made earlier and noted the difference will be the scoring system and the properties will be inspected a little differently than they were before.

Mr. Mitchell asked Mr. Magner to comment on the concerns of basing the fee on violations. Mr. Magner stated to recuperate the amount of funds that were lacking in paying for the program,

the number of violations would have to be set at around 3 or 4, which would result in a lot of “good folks” paying \$200 or \$150 fee versus a \$75 fee. The Council would also have to determine which violations are considered owner violations or tenant violations, because there are a lot of good owners or management companies who cannot control what the tenants do. Violations that are typically thought of as tenant related violations are parking in the grass, junk vehicles or putting trash out early, which trigger more complaints that deteriorated wood on the back of the house. A higher number of violations would not pay for the program. Another issue to determine is the severity of the violation such as lack of working smoke detectors or a makeshift bedroom. He felt it would be harder for residents to understand. He stated the current system has been used with apartment complexes with great success. Lastly he felt that the incentive is maintaining the property so that a re-inspection is not necessary because of the additional expense of the fee and the time involved with a follow-up inspection.

Mr. Omar stated his agreement with everything said but still felt a “good neighbor” incentive was appropriate and spoke in favor of the suggestion. He was in favor of a higher fee for those who have more violations if that was necessary to recuperate the costs of the program.

Mr. Dunn noted that the Council just approved a flat fee for the drainage fee and felt a flat fee in this regard was appropriate as well.

ACTION TAKEN: Mr. Solomon moved to approve Ordinance 3847 amending Chapter 6 of the Code of Ordinance by amending Article XI by increasing the annual and renewal registration fee for rental units; providing for a re-inspection fee and providing for habitability scores for rental units; second by Mr. Dunn and the motion was approved with a 5-2 vote with Mr. Omar and Mr. Hartley voting in opposition.

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Mayor Townsend adjourned the meeting at 10:09 p.m.

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MAYOR

ATTEST:

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CITY SECRETARY



City of Richardson  
City Council Meeting  
Agenda Item Summary



Meeting Date: Monday, December 12, 2011

Agenda Item: *Visitors (The City Council invites citizens to address the Council on any topic not already scheduled for public hearing.)*

Staff Resource: Pamela Schmidt, City Secretary

Summary: Members of the public are welcome to address the City Council on any topic not already scheduled for public hearing. Speaker Appearance Cards should be submitted to the City Secretary prior to the meeting. Speakers are limited to 5 minutes and should avoid personal attacks, accusations, and characterizations.

In accordance with the Texas Open Meetings Act, the City Council cannot take action on items not listed on the agenda. However your concerns will be addressed by City staff, may be placed on a future agenda, or by some other course of resolution.

Board/Commission Action: N/A

Action Proposed: Receive comments by visitors.



# MEMO

**DATE:** December 8, 2011  
**TO:** Honorable Mayor and City Council  
**FROM:** Sam Chavez, Assistant Director of Development Services SC  
**SUBJECT:** Zoning File 11-18 – Self-service warehouse

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## REQUEST

Howard L. Lawson, representing The Lawson Co., is requesting to rezone 3.49 acres of a 4.7-acre lot from C-M Commercial to I-M(1) Industrial and request a Special Permit for a self-service warehouse with associated outdoor vehicle storage on the north side of Arapaho Road, west of Custer Road. The balance of the lot (1.2 acres) along Arapaho Road will retain its C-M Commercial zoning.

## BACKGROUND

The applicant is requesting the I-M(1) Industrial zoning because the Comprehensive Zoning Ordinance only allows a “self-service warehouse” upon approval of a Special Permit in industrial districts. The applicant proposes outdoor vehicle storage to be allowed on the east side of the building including boat, motor home and other recreational vehicle storage. The outdoor storage area would be secured with a screening wall and controlled access gates. The height of the vehicles would be limited based on where they are located within the outdoor storage area to limit visibility from the east. The definition of self-service warehouse in the Comprehensive Zoning Ordinance does not include outdoor storage.

One (1) letter in support of the request has been received.

## PLAN COMMISSION RECOMMENDATION

On November 15, 2011, the City Plan Commission voted 6-1 (Commissioner Hand opposed) to recommend approval of the request as presented.

## ATTACHMENTS

Special Conditions  
CC Public Hearing Notice  
City Plan Commission Minutes 11-15-2011  
Staff Report  
Zoning Map  
Aerial Map  
Oblique Aerial Looking North

Zoning Exhibit (Exhibit “B”)  
Color Renderings (Exhibits “C-1” & “C-2”)  
Site Photos (Exhibits “D-1” through “D-3”)  
Sight Line Exhibit (Exhibit “E”)  
Applicant’s Statement  
Notice of Public Hearing  
Notification List  
Correspondence in Support

## **SPECIAL CONDITIONS ZF 11-18**

1. The 3.49-acre tract of land, described on Exhibit B, shall be zoned to the I-M(1) Industrial District with a Special Permit for a self-service warehouse with associated outdoor vehicular storage.
2. The balance of the 4.71-acre tract of land shall be zoned to the C-M Commercial District.
3. The Special Permit for a self-service warehouse and associated outdoor vehicle storage is limited to the area shown on the attached concept plan, attached as Exhibit "B" and made a part thereof and which is hereby approved.
4. Outdoor vehicle storage shall be allowed on the east side of the building as depicted on the concept plan (Exhibit "B").
5. Lighting for the outdoor storage area shall be limited to wall sconces with shields, mounted at a maximum height of eight (8) feet.
6. The outdoor storage area shall be controlled and secured with access controlled gates as depicted on the concept plan (Exhibit "B").

**City of Richardson  
Public Hearing Notice**

The Richardson City Council will conduct a public hearing at 7:30 p.m. on Monday, December 12, 2011, in the Council Chambers, Richardson Civic Center/City Hall, 411 W. Arapaho Road, to consider the following requests.

**Zoning File 11-18**

A request by Howard L. Lawson, representing the Lawson Co., for a change in zoning from C-M Commercial with special conditions to I-M(1) Industrial with a Special Permit for self-service warehouse with associated outdoor vehicle storage for a portion of 528 W. Arapaho Road (north side of Arapaho Road, west of Custer Road).

**Zoning File 11-20**

A request by Aubrey Ellington, A&S Ellington Properties, LLC, representing Chicken Express to amend the zoning to delete the requirement for a retail building on a 1.29-acre site and approval of a revised concept plan and building elevations for a drive-thru restaurant at 1240 W. Campbell Road (Northwest corner of Campbell Rd. & Lake Park Way). The property is currently zoned LR-M(1) Local Retail.

**Zoning File 11-21**

A request by Eyal Avnon, representing David Weekley Homes, for a change in zoning from O-M Office zoning with special conditions to RP-1500-M Patio Home zoning with modified development standards on a property located at the northwest corner of Lake Park Way and Jonsson Boulevard. The property is currently zoned O-M Office.

**Zoning File 11-26**

A request by the City of Richardson to amend the Code of Ordinances, Appendix A, Comprehensive Zoning Ordinance, Article I, Section 2, Definitions, by adding the definition of smoking establishment and by amending Article XXII-A, Section 2, to allow smoking establishments upon approval of a Special Permit in the LR-M(1) and LR-M(2) Local Retail Districts, and the C-M Commercial District.

If you wish your opinion to be part of the record but are unable to attend, send a written reply prior to the hearing date to City Council, City of Richardson, P.O. Box 830309, Richardson, Texas 75083.

CITY OF RICHARDSON  
Pamela Schmidt, City Secretary

**EXCERPT  
CITY OF RICHARDSON  
CITY PLAN COMMISSION MINUTES – November 15, 2011**

**PUBLIC HEARINGS**

**Zoning File 11-18:** A request by Howard L. Lawson, representing the Lawson Company to rezone a 4.7-acre lot from C-M Commercial with special conditions to C-M with special conditions and I-M(1) Industrial with a Special Permit for self-service warehouse with associated outdoor vehicle storage located at 528 W. Arapaho Road, north side of Arapaho Road, west of Custer Road.

Mr. Shacklett advised the Commission the applicant was requesting to rezone 3.49-acres from C-M Commercial to I-M(1) Industrial, as well as requesting a Special Permit for a self-service warehouse. He stated the reason for the rezoning was to allow the applicant to request a Special Permit which is only allowed under Industrial zoning.

Mr. Shacklett noted that the applicant was proposing to construct 422 indoor units within the 65,000 square foot building, as well as provide 30 outdoor vehicle storage spaces. The outdoor spaces would be divided up with 17 along the eastern property line limiting the height of the vehicle to 8 feet, and 13 along the east side of the building limiting the height to 13 feet. He added that the only change proposed for the building would be the addition of stone elements to the bottom of the columns, a planter box on the south elevation, and an 8-foot wall and metal gate to control access to the outdoor storage area.

In closing his presentation, Shacklett presented a line-of-sight exhibit provided by the applicant showing the visibility from Custer Road and noted that the masonry wall would screen the 8-foot vehicles as well as screen the majority of the 13-foot vehicles (RVs) located adjacent to the building.

Commissioner DePuy asked if the stone was being added as an enhancement to the base of the columns and the planter box, or would it match the masonry wall that will be constructed.

Mr. Shacklett replied that the idea was to add some enhancement to the building and the screening wall will be made of brick.

Commissioner Frederick asked how wide the driveway was at the southeast corner of the site. She expressed concern that it might be too small for RVs to maneuver, and if the driveway was too narrow it might encourage people to use the residential street to access the site.

Mr. Shacklett replied that it appeared to be a 15-foot wide driveway, but suggested the applicant might be able to modify the landscape island to increase the maneuverability.

Commissioner DePuy asked if the property was within one of the City's Redevelopment/Enhancement areas.

Mr. Shacklett replied that it was within the West Arapaho Redevelopment/Enhancement area.

With no further questions for staff, Vice Chair Hammond opened the public hearing.

Mr. Howard Lawson, 7411 Hines Place, Dallas, Texas, stated he owned six self-storage facilities in the metroplex and was proposing to convert the existing vacant building to an interior self-storage facility with exterior RV and boat storage on the east side. He said with the enhancements to the exterior of the building, including additional landscaping, and interior/exterior cameras to make it safer, it would be a viable business for the community.

Commissioner DePuy asked if there had been many incidents of criminal activity in the area.

Mr. Lawson replied he did not have a police report, but the previous evening there had been a brick thrown through the window and graffiti painted on the back of the building. In addition, he had spoken with the neighbor to the north and they seemed to like the idea of having a viable business adjoining their property.

Commissioner Hand asked if Mr. Lawson owned the building, and if his other businesses were all in second generation retail buildings.

Mr. Lawson replied that he did not own the building and it was under contract from Legacy Texas Bank.

Regarding his other businesses, Lawson said that they were all different and gave an example of a Payless Shoe Store in Irving that had been converted to a self-service storage facility.

Commissioner Maxwell asked for clarification of the traffic flow in the outside storage area. He also expressed concern that a larger vehicle could only enter the site through Jolee Street.

Mr. Lawson replied the traffic would enter through the east side, travel towards the rear of the property and exit in the northwest corner.

Regarding a RV entering the site and the maneuverability, Mr. Lawson said he would defer to the architectural consultant for the answer.

Commissioner Linn asked how successful his other self-storage sites had been.

Mr. Lawson replied that his company had taken buildings that may have had issues and turned them into viable businesses. He added that the feasibility study showed there was a need for this type of business in the City.

Commissioner Bright asked if there would be 24-hour access to the site; did the other facilities have outdoor storage; and would the applicant be willing to go forward with the project without the outside storage.

Mr. Lawson replied that they did not typically have 24-hour access to their sites, but the management could provide access under special circumstances and the standard hours of operation would be 8:00 a.m. to 6:00 p.m.

Regarding outside storage, Lawson said only a few of his other properties had outside storage, but outside vehicle storage was needed in the City and it would make the project more viable.

Commissioner Maxwell asked if there would be staff on site 24 hours; would the entire building be used for storage; and would the glass windows be part of a storage unit.

Mr. Lawson replied that there would not be 24-hour staff; the entire building would be used for storage; and there would be a hallway between the glass windows and the units. He added a security system would be installed and monitored, including cameras on all the doors and windows and the City police department would be contacted if necessary.

Vice Chair Hammond asked for clarification if customers would be able to access the building 24 hours per day.

Mr. Lawson replied that most of the time the customers do not need 24 hour access, but the customer could make arrangements with management to have access outside of normal business hours.

Commissioner DePuy commented that the Commission had expressed concern during the briefing session about the outside storage because of the desire to enhance some of the outdated areas in the City; however, they were happy to have a building occupied and usable as opposed to vacant. She asked if there was a possibility of raising the height of the wall.

Mr. Lawson replied that that line of sight study showed that RVs would be barely visible, plus the gate would be made of a solid metal material.

Mr. Richard Ferrara, 405 N. Waterview, Richardson, Texas, advised that he was a consultant retained by the applicant and the bank to help them understand community issues, and asked the Commission to consider the following three items: 1) the original project had been much larger in scale and was greatly reduced taking into consideration the impact on the surrounding neighborhood; 2) suggested possibly barricading the alley where it dead ends into the back of the business to alleviate any problem with traffic through the residential area; 3) the radii needed for turning larger vehicles would be based on the ability for the City's fire trucks to gain access to the property and would be determined during the development review process.

Another item Mr. Ferrara asked the Commission to keep in mind was the City's regulation of parking RVs on private property and the fact that most walls/fences on private property are 6

feet high, whereas the wall at the proposed site is 8 feet in height. He added that raising the height of the wall would not be an option because it could cause an engineering problem with wind load.

Mr. Ferrara concluded his presentation stating the requested outdoor storage and screening were reasonable and it would provide a needed service for the community.

Commissioner Hand asked for clarification if the applicant was under contract to purchase the property.

Mr. Ferrara replied that Mr. Lawson would be purchasing the property.

Commissioner Maxwell asked about the current fire lane configuration and did it wrap around the building. He also wanted to know the requirement for stacking at the entry gate.

Mr. Shacklett replied the fire lane did not wrap around the structure and was located on the south side of the building. He added that the Fire Department would work with the applicant regarding access to the site during the development process, but as far as required fire lanes, they were already in place.

Regarding stacking at the entry gate, Shacklett said there was no stacking requirements because of the unique nature of the site (residential street crosses an alley and dead ends into a shopping center).

Commissioner Maxwell asked if the traffic flow was reversed, would the outside storage still be usable and suggested that by doing so the access gate could be recessed so there would be no stacking issues.

Mr. Ferrara said he did not see a problem with changing the traffic flow, but suggested a condition should be added stating the entrance into the area should conform to the staff review whether or not the wall would have to be recessed for the back or at a different angle.

Commissioner DePuy said she liked the idea of barricading the entrance off Jolee.

Mr. Richard Ramey, representing Legacy Texas Bank, 707 E. Arapaho Road, Richardson, Texas, said he has known the applicant for over twenty years and had previous favorable business dealings with him. He added that the contract was a "for sale" contract on the property with a contingency that it would be a self-storage business.

Mr. Ramey noted that the property has been owned by the bank for most of the year, and they have looked at other possible uses for the property, but it is not suitable for retail or other uses and seems to fit well with the proposed use. He acknowledged that although the property is within the enhancement area, there are five separate property owners and the possibility of all five pieces being redeveloped as a whole was not very likely.

Mr. Ramey closed his comments stating that barricading the entrance Jolee would not cause a problem for the applicant, but reminded the Commission that the other property owners in the area should be consulted first.

Mr. Shacklett remarked that the driveway was wider than previously stated and would be closer to 35 to 40 feet.

Mr. David Beatty, representing Northrich Baptist Church, 1101 Custer Road, Richardson, Texas, stated the church, which is located and owns land north and west of the subject property, felt that having the property occupied versus vacant would deter problems with criminal mischief for both the church and Mr. Lawson's property.

No other comments were made in favor or opposed and Vice Chair Hammond closed the public hearing.

Commissioner Hand commented that the discussion and questions for the item were well thought out and important, but asked the Commission to take a higher level view of area and the fact that the building was located within an enhancement/redevelopment area. He read from the staff report quoting that the area might be better served by "duplexes, townhomes, or senior housing with a focus on the office and retail needs of the surrounding neighborhood."

Mr. Hand continued stating that the area should be transitioned and redeveloped to a higher use and felt if the item was approved as presented, the opportunity to develop the property to a higher use would be lost. He suggested that the Commission ask the owner to dig deeper and rethink the proposal and felt that the proposed use would only put more stress on the property.

Vice Chair Hammond said that while he respected Commissioner Hand's opinion, he disagreed that the ability to redevelop the property, especially with five separate owners, was not very likely. He added that the property might redevelop in 10-15 years, but in the mean time the proposal was an excellent use for the property.

Commissioner Frederick concurred with Mr. Hammond's comments regarding the time frame for redevelopment of the property and felt the proposal was within the initial goal of the City to take a property that was in need of occupancy and vitality and make good use of it until the property could be repurposed at a later date.

Commissioner Bright said he appreciated the applicant's proposal and felt it might be a needed business in the City, but expressed concern about setting a precedent for allowing outdoor vehicle storage.

Commissioner Maxwell said he was generally in favor of the proposal, but asked the staff if Exhibit B would be attached to the zoning request as it moves forward through the development process and would issue of access be dealt with at that time.

Mr. Chavez replied that the item would come before the Commission again as a development/site plan; however, at the current time it was up to the Commissioners to determine if the request was an appropriate use of the land. He added that the question regarding access would be addressed during the development process.

Commissioner Linn concurred with Mr. Hand's opinion regarding the City looking at distressed or underused properties and establishing better long-range land use planning; however, he felt the proposed development was similar in nature to a previously approved case where a building was repurposed for a dog hotel so it did not remain vacant and was therefore generally in support of the current item.

Vice Chair Hammond suggested that the staff and Commission compare the current proposal with the vehicle storage in the City of Plano that was not screened compared to the current proposal to see the difference a screening wall would make.

Commissioner Hand asked if the Special Permit could be rescinded if the master plan for the area changed.

Mr. Shacklett replied that it could be recalled and reevaluated at any time.

Commissioner DePuy stated that although she had concerns about the area, and concurred that the City should focus on redevelopment, she was realistic and understood the center would most likely not redevelop within the near future. She said she felt comfortable with the fact that the Special Permit could be recalled if there was a change in the development status.

**Motion:** Commissioner Frederick made a motion to recommend approval of Item 3 as presented; second by Commissioner Bright. Motion passed 6-1 with Commissioner Hand opposed.



## Staff Report

**TO:** City Council

**THROUGH:** Sam Chavez, AICP, Assistant Director – Development Services

**FROM:** Chris Shacklett, Planner **CS**

**DATE:** December 8, 2011

**RE:** **Zoning File 11-18:** Self-service warehouse

### REQUEST:

Rezone 3.49 acres of a 4.71-acre lot from C-M Commercial to I-M(1) Industrial with a Special Permit with associated outdoor vehicle storage on the north side of Arapaho Road, west of Custer Road. The balance of the lot (1.2 acres) along Arapaho Road will retain its C-M Commercial zoning.

### APPLICANT:

Howard L. Lawson – The Lawson Co.

### PROPERTY OWNER:

Richard R. Ramey – Legacy Texas Bank

### TRACT SIZE AND LOCATION:

4.7-acre site, 528 W. Arapaho Road, north side of Arapaho Road, west of Custer Road.

### EXISTING DEVELOPMENT:

Vacant 65,000-square foot building.

### ADJACENT ROADWAYS:

**Arapaho Road:** Six-lane, divided arterial; 31,600 vehicles per day on all lanes, eastbound and westbound, east of Custer Rd (May 2011).

**Custer Road:** Four-lane, undivided major collector; 7,100 vehicles per day on all lanes, northbound and southbound, north of Arapaho Rd (May 2011).

**SURROUNDING LAND USE AND ZONING:**

**North:** Public/Institutional/School; D-1400-M Duplex  
**South:** Retail/Commercial; C-M Commercial  
**East:** Single Family; D-1400-M Duplex  
**West:** Retail/Commercial; C-M Commercial

**FUTURE LAND USE PLAN:**

**Enhancement/Redevelopment**

*These are areas where reinvestment and redevelopment is encouraged. Further study may be necessary to understand the full potential for redevelopment. This property is located in the West Arapaho enhancement/redevelopment area. Enhancement/redevelopment should include residential uses such as duplexes, townhomes, or senior housing with a focus on better serving the office and retail needs of the surrounding neighborhoods.*

**Future Land Uses of Surrounding Area:**

North: Neighborhood Residential  
South: Enhancement/Redevelopment  
East: Neighborhood Residential  
West: Enhancement/Redevelopment

**EXISTING ZONING:**

C-M Commercial (Ordinance No. 171-A).

**TRAFFIC/ INFRASTRUCTURE IMPACTS:**

The requested zoning amendment will not have any significant impacts on the surrounding roadway system or the existing utilities in the area.

**APPLICANT'S STATEMENT**

(Please refer to the complete Applicant's Statement.)

**STAFF COMMENTS:**

**Background:**

The site was originally developed in the 1960's and is part of the Northrich Village Shopping Center. The existing 65,000-square foot building was previously occupied with retail and office uses. In January 2011, the site was replatted and site and landscape plans were revised to accommodate the construction of Jack in the Box at the southern end of the shopping center. The

existing building provides adequate parking for office uses. The site also meets the minimum required amount of landscaping (7% of the site).

### **Applicant's Request**

The applicant is requesting the I-M(1) Industrial District because the Comprehensive Zoning Ordinance only allows a "self-service warehouse" upon approval of a Special Permit in industrial districts.

### **Proposed Self-Service Warehouse:**

- Building Size: approximately 65,000 square feet.
- Storage Layout: 422 individual storage units with 30 outdoor vehicle storage spaces.
- Building Materials: The only change being proposed to the exterior of the building is the addition of stone along the bottom of the columns on the south side of the building. The stone will match the columns of the proposed screening wall on the east side of the building.
- Setbacks: No changes to existing setbacks are being requested. An exception noting the rear of the building is within the 60-foot open space and screening area along the northern property line is noted on the Exhibit "B". The building is located approximately 20 feet from the northern property line. The building was constructed prior to the 60-foot requirement.
- Landscaping Percentage: 8.7% proposed / 7% required.
- Number of Parking Spaces: 196 provided (includes all parking on Lot 2B); 25 required (1 space per 20 units and 1 space per 250 square feet of office space).

The applicant has stated the site is ideal since there is a lack of climate controlled self-service warehouses and outdoor vehicular storage in West Richardson. The applicant proposed outdoor vehicular storage area is located on the east side of the building and is intended for the storage of vehicles such as boats, motor homes, and other recreational vehicles. Two (2) access points into the vehicle storage area are proposed, both of which would be secured with 8-foot controlled access metal gates.

An existing 8-foot masonry screening wall is located along the eastern property line, which separates the subject property from the adjacent residential neighborhood. To reduce the visual impact of the stored vehicles, the applicant is proposing the following:

- No vehicles exceeding eight (8) feet in height shall be allowed within thirty-five (35) feet of the screening wall along the eastern property line,
- Vehicles up to thirteen (13) feet in height will be required to be located adjacent to the building, and
- No vehicle over thirteen (13) feet in height will be allowed to be stored at the subject site.

Zoning exhibit (Exhibit "B") and sight line exhibit (Exhibit "D") depict a detail of the expected visibility of the stored vehicles from Custer Road.

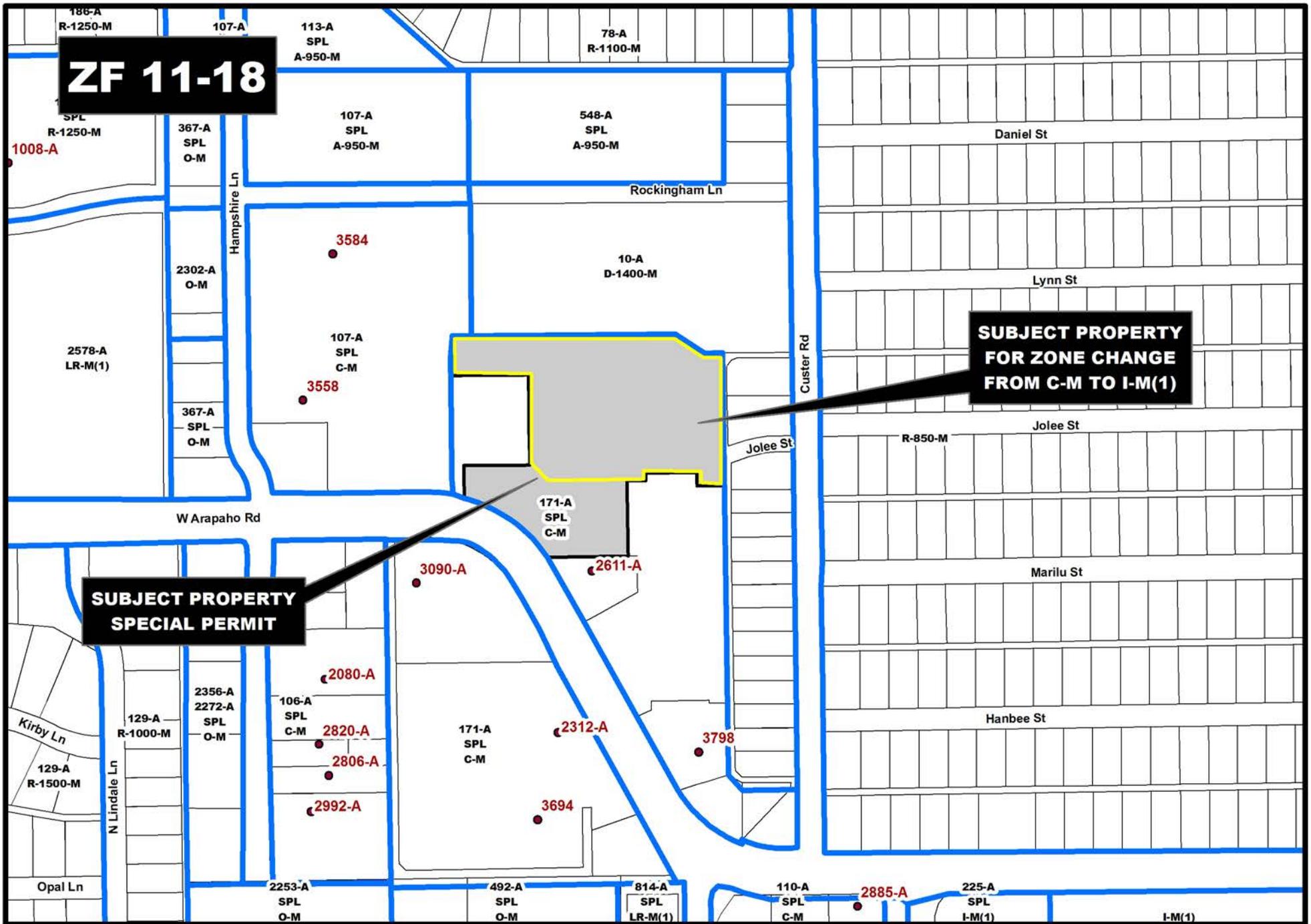
From a land use impact stand-point, a self-service warehouse is considered a benign land use due to the low generation of noise and traffic from the site; however, the proposed outdoor storage of vehicles introduces additional noise and traffic to the adjacent residential neighborhood located

to the east of the subject site. In addition, the definition of a self-service warehouse in the Comprehensive Zoning ordinance does not include outdoor storage.

**Correspondence:** As of this date, one (1) letter in support of the request has been received.

**Motion:** On November 15, 2011, the City Plan Commission recommended approval on a vote of 6-1 (Commissioner Hand opposed) of the request subject to the following conditions:

1. The 3.49-acre tract of land, described on Exhibit B, shall be zoned to the I-M(1) Industrial District with a Special Permit for a self-service warehouse with associated outdoor vehicular storage.
2. The balance of the 4.71-acre tract of land shall be zoned to the C-M Commercial District.
3. The Special Permit for a self-service warehouse and associated outdoor vehicle storage is limited to the area shown on the attached concept plan, attached as Exhibit "B" and made a part thereof and which is hereby approved.
4. Outdoor vehicle storage shall be allowed on the east side of the building as depicted on the concept plan (Exhibit "B").
5. Lighting for the outdoor storage area shall be limited to wall sconces with shields, mounted at a maximum height of eight (8) feet.
6. The outdoor storage area shall be controlled and secured with access controlled gates as depicted on the concept plan (Exhibit "B").

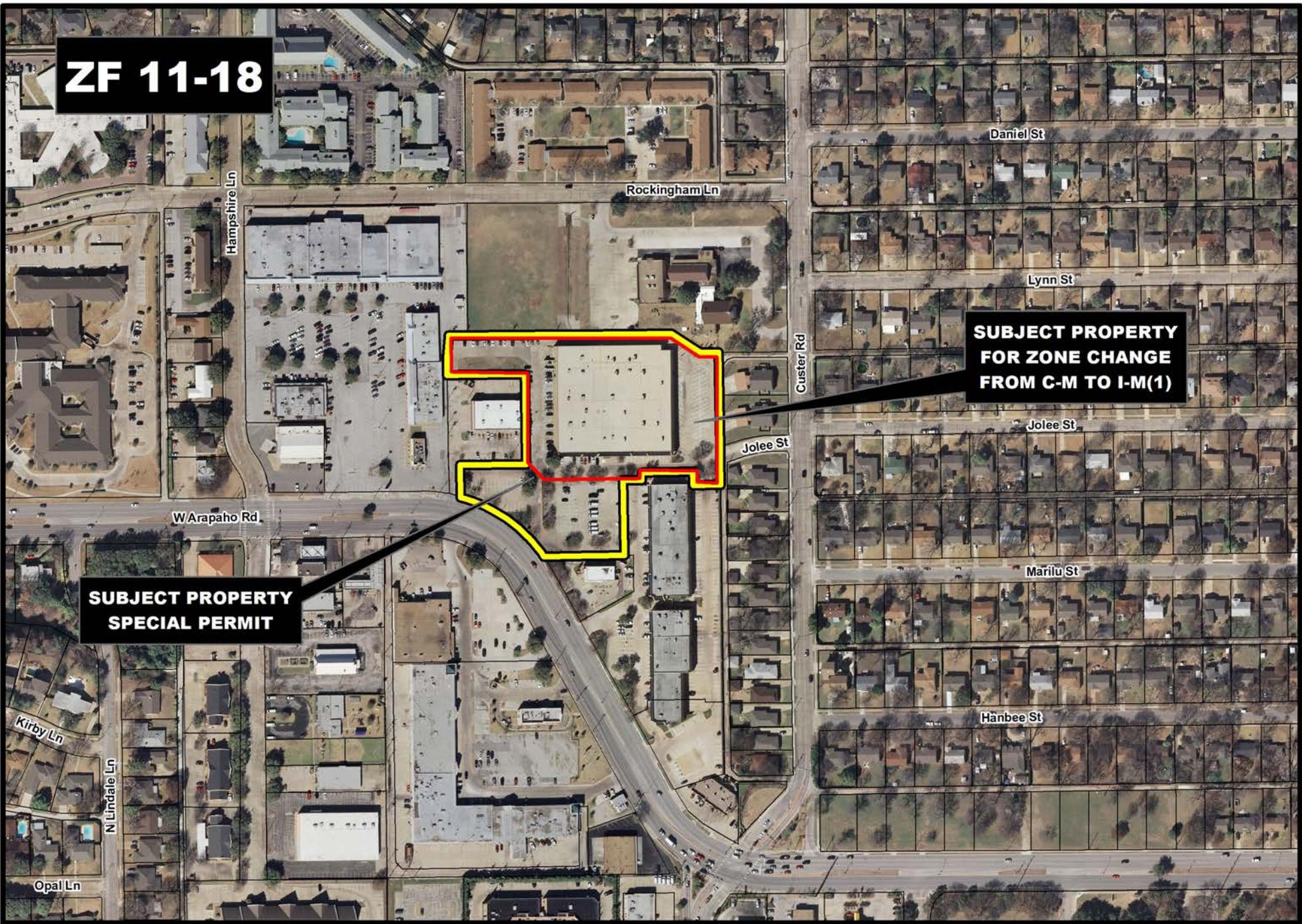


## ZF 11-18 Zoning Map

Updated By: shacklett, Update Date: November 1, 2011  
 File: DSI\mapping\Cases\Z\2011\ZF 1118\ZF 1118 zoning.mxd

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.





**ZF 11-18**

**SUBJECT PROPERTY  
FOR ZONE CHANGE  
FROM C-M TO I-M(1)**

**SUBJECT PROPERTY  
SPECIAL PERMIT**

**ZF 11-18 Aerial Map**

Updated By: shacklett, Update Date: November 1, 2011  
File: DSI\Mapping\Cases\Z\2011\ZF 1118\ZF 1118 ortho.mxd

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.





Jolee St

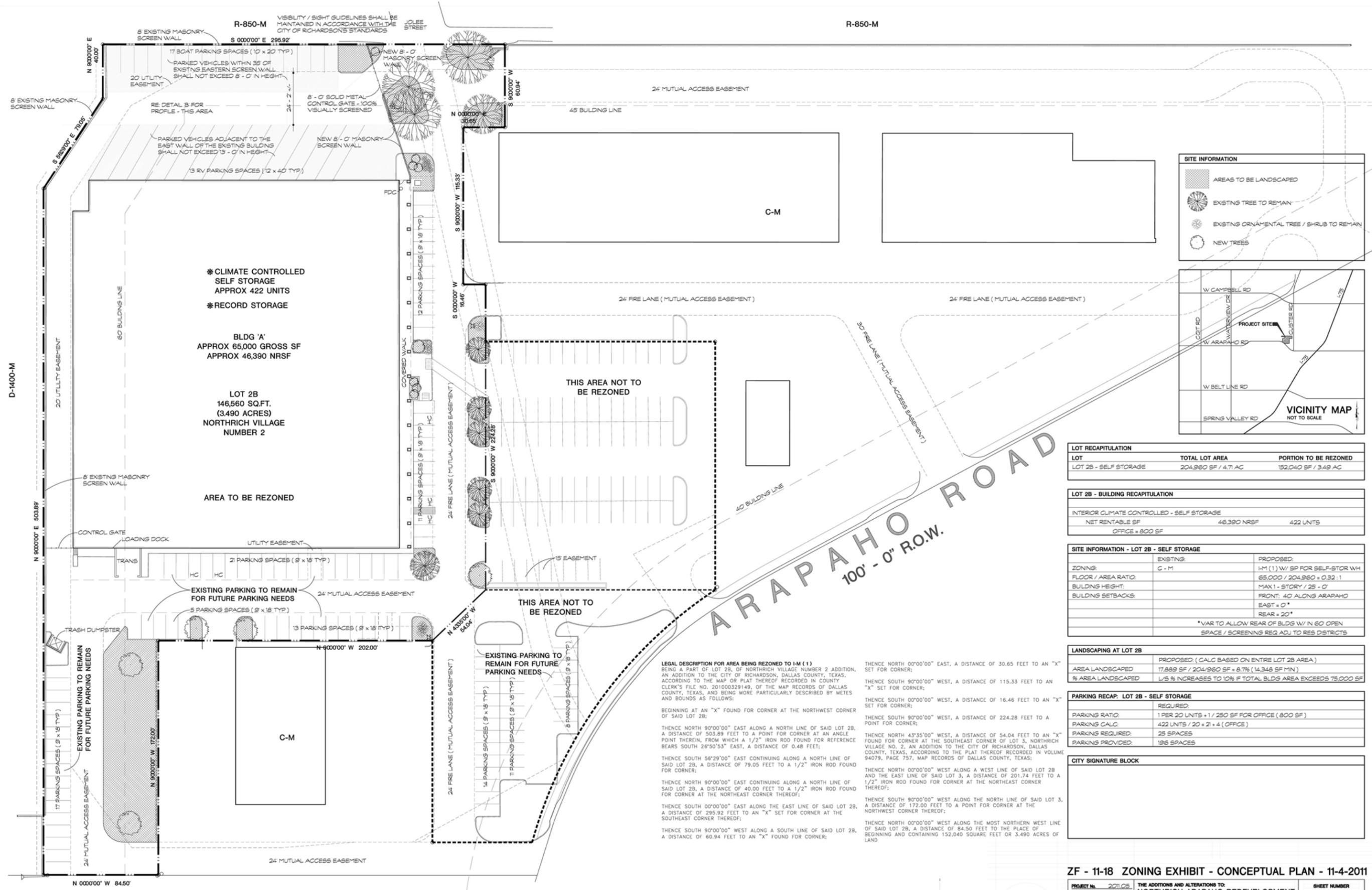
Custer Rd

Arapahoho Rd

	Area to be Rezoned
	Area for Special Permit (Lot 2B)

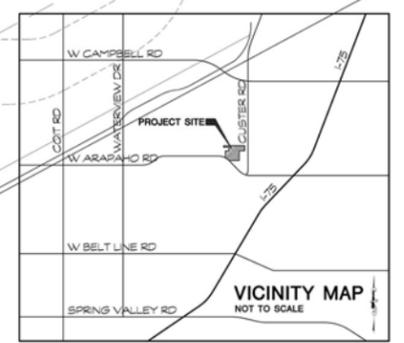
Oblique Aerial Looking North





**SITE INFORMATION**

- AREAS TO BE LANDSCAPED
- EXISTING TREE TO REMAIN
- EXISTING ORNAMENTAL TREE / SHRUB TO REMAIN
- NEW TREES



**LOT RECAPITULATION**

LOT	TOTAL LOT AREA	PORTION TO BE REZONED
LOT 2B - SELF STORAGE	204,960 SF / 4.71 AC	152,040 SF / 3.49 AC

**LOT 2B - BUILDING RECAPITULATION**

INTERIOR CLIMATE CONTROLLED - SELF STORAGE	NET RENTABLE SF	46,390 NRSF	422 UNITS
OFFICE = 800 SF			

**SITE INFORMATION - LOT 2B - SELF STORAGE**

	EXISTING:	PROPOSED:
ZONING:	C - M	I-M (1) W/ SF FOR SELF-STOR WH
FLOOR / AREA RATIO:		65,000 / 204,960 = 0.32:1
BUILDING HEIGHT:		MAX 1 - STORY / 25 - 0'
BUILDING SETBACKS:		FRONT: 40' ALONG ARAPAHO EAST = 0' REAR = 20'

\*VAR TO ALLOW REAR OF BLDG W/ IN 60' OPEN SPACE / SCREENING REQ ADJ TO RES DISTRICTS

**LANDSCAPING AT LOT 2B**

	PROPOSED: (CALC BASED ON ENTIRE LOT 2B AREA)
AREA LANDSCAPED	17,889 SF / 204,960 SF = 8.7% (14,348 SF MIN)
% AREA LANDSCAPED	L/S % INCREASES TO 10% IF TOTAL BLDG AREA EXCEEDS 75,000 SF

**PARKING RECAP: LOT 2B - SELF STORAGE**

	REQUIRED:
PARKING RATIO:	1 PER 20 UNITS + 1/250 SF FOR OFFICE (800 SF)
PARKING CALC:	422 UNITS / 20 = 21 + 4 (OFFICE)
PARKING REQUIRED:	25 SPACES
PARKING PROVIDED:	196 SPACES

**CITY SIGNATURE BLOCK**

**LEGAL DESCRIPTION FOR AREA BEING REZONED TO I-M (1)**  
BEING A PART OF LOT 2B, OF NORTHRICH VILLAGE NUMBER 2 ADDITION, AN ADDITION TO THE CITY OF RICHARDSON, DALLAS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN COUNTY CLERK'S FILE NO. 201000329149, OF THE MAP RECORDS OF DALLAS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:  
BEGINNING AT AN "X" FOUND FOR CORNER AT THE NORTHWEST CORNER OF SAID LOT 2B;  
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 30.65 FEET TO AN "X" SET FOR CORNER;  
THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 115.33 FEET TO AN "X" SET FOR CORNER;  
THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 16.46 FEET TO AN "X" SET FOR CORNER;  
THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 224.28 FEET TO A POINT FOR CORNER;  
THENCE NORTH 43°35'00" WEST, A DISTANCE OF 54.04 FEET TO AN "X" FOUND FOR CORNER AT THE SOUTHEAST CORNER OF LOT 3, NORTHRICH VILLAGE NO. 2, AN ADDITION TO THE CITY OF RICHARDSON, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 94079, PAGE 757, MAP RECORDS OF DALLAS COUNTY, TEXAS;  
THENCE NORTH 00°00'00" WEST ALONG A WEST LINE OF SAID LOT 2B AND THE EAST LINE OF SAID LOT 3, A DISTANCE OF 201.74 FEET TO A 1/2" IRON ROD FOUND FOR CORNER AT THE NORTHEAST CORNER THEREOF;  
THENCE SOUTH 90°00'00" WEST ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 172.00 FEET TO A POINT FOR CORNER AT THE NORTHWEST CORNER THEREOF;  
THENCE SOUTH 90°00'00" WEST ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 84.50 FEET TO THE PLACE OF BEGINNING AND CONTAINING 152,040 SQUARE FEET OR 3.490 ACRES OF LAND

THENCE NORTH 00°00'00" EAST, A DISTANCE OF 30.65 FEET TO AN "X" SET FOR CORNER;  
THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 115.33 FEET TO AN "X" SET FOR CORNER;  
THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 16.46 FEET TO AN "X" SET FOR CORNER;  
THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 224.28 FEET TO A POINT FOR CORNER;  
THENCE NORTH 43°35'00" WEST, A DISTANCE OF 54.04 FEET TO AN "X" FOUND FOR CORNER AT THE SOUTHEAST CORNER OF LOT 3, NORTHRICH VILLAGE NO. 2, AN ADDITION TO THE CITY OF RICHARDSON, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 94079, PAGE 757, MAP RECORDS OF DALLAS COUNTY, TEXAS;  
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**ZONING EXHIBIT - CONCEPT PLAN - CITY OF RICHARDSON, TEXAS**

**Exhibit B - Part of Ordinance**

**ZF - 11-18 ZONING EXHIBIT - CONCEPT PLAN - 11-4-2011**

PROJECT NO:	2011.05	THE ADDITIONS AND ALTERATIONS TO:	<b>NORTHRICH ARAPAHO REDEVELOPMENT</b>	SHEET NUMBER	<b>A1</b>
DRAWN BY:	JWL	638 W. ARAPAHO ROAD	RICHARDSON, TEXAS	1 OF 1	
CHECKED BY:	WBK	<b>FOR: MR. HOWARD LAWSON</b>			
DATE:	07-26-11 / 08-02-2011	741 HINES PLACE, STE. 100	DALLAS, TEXAS 75295		
UPDATED:	08-21-2011 / 08-25-2011	PHONE (214) - 637 - 3608	FAX (214) - 637 - 6363		
REVISED:	10-24-2011	<b>HKI ARCHITECTS</b>			
ISSUED:		PAUL LOUIS HANDELMAN, AIA WILLIAM REYNOLD DONACHUK, AIA			

THIS DOCUMENT IS RELEASED FOR PRELIMINARY REVIEW ONLY. IT IS NOT TO BE USED FOR BIDDING, PERMITS, OR FOR CONSTRUCTION PURPOSES.



**Exhibit C-1**  
**Proposed Front Elevation**



**Exhibit C-2**  
**Proposed Vehicle Storage Entrance**



(1)

**Looking Northeast  
at Proposed Facility**

**NWC Arapaho Rd & Custer Rd - November 2011**



(2)

**Looking East at  
Adjacent Building**



(3)

**Looking Southeast  
at Adjacent Buildings**

**NWC Arapaho Rd & Custer Rd - November 2011**



(4)

**Looking Southwest  
across Arapaho Road**



(5)

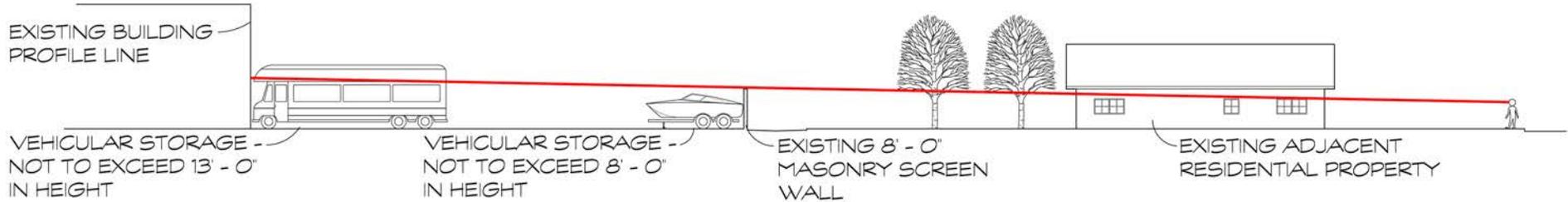
**Looking Northwest at  
East Side of Facility**

**NWC Arapaho Rd & Custer Rd - November 2011**



(6)

**Looking West at Property  
from Custer Road**



**B**

PROFILE THROUGH EAST END OF PROPERTY / ADJACENT RESIDENTIAL

NTS

**Exhibit E**  
**Line of Sight from Custer**

## **NOTIFICATION OF REQUEST FOR ZONING CHANGE**

It has been determined that there exists a need in West Richardson for a climate controlled self-storage facility as well as a facility that provides for outdoor storage of motor homes, water craft, and recreational vehicles.

However, in order to acquire approval of a Special Permit solely for the use of a self-storage facility, the base zoning must be changed from a C-M to an I-M(1) district.

The facility for which this request is being made was originally built as a department store “anchor” for a shopping center. Over several decades, the building has housed several other uses but more recently has stood empty.

As seen in the concept plan and in the two photo-illustrations\*, the applicant proposes to increase the amount of existing landscaping by the addition of large new areas of landscaping and by enhancing the existing areas. The total amount of on-site landscaping shall be approximately 8.7%.

This proposal also includes the construction of an additional masonry screen wall with the entrance gate being a decorative solid metal security gate. Therefore, the vehicle storage area on the east side of the facility will be secured and screened from view.



# Notice of Public Hearing

City Plan Commission • Richardson, Texas

An application has been received by the City of Richardson for a:

## ZONING CHANGE & SPECIAL PERMIT

**File No./Name:** ZF 11-18 / SELF-SERVICE WAREHOUSE  
**Property Owners:** Legacy Texas Bank / Richard R. Ramey  
**Applicant:** Howard L. Lawson / The Lawson Company  
**Location:** 528 W. Arapaho Road (See map on reverse side)  
**Current Zoning:** C-M Commercial  
**Request:** Zoning change from C-M Commercial with special conditions to C-M Commercial with special conditions and I-M(1) Industrial with a Special Permit for a self-service warehouse for a 3.49 acre tract of land.

The City Plan Commission will consider this request at a public hearing on:

**TUESDAY, NOVEMBER 15, 2011**  
**7:00 p.m.**  
**City Council Chambers**  
**Richardson City Hall, 411 W. Arapaho Road**  
**Richardson, Texas**

*This notice has been sent to all owners of real property within 200 feet of the request; as such ownership appears on the last approved city tax roll.*

**Process for Public Input:** A maximum of 15 minutes will be allocated to the applicant and to those in favor of the request for purposes of addressing the City Plan Commission. A maximum of 15 minutes will also be allocated to those in opposition to the request. Time required to respond to questions by the City Plan Commission is excluded from each 15 minute period.

Persons who are unable to attend, but would like their views to be made a part of the public record, may send signed, written comments, referencing the file number above, prior to the date of the hearing to: Dept. of Development Services, PO Box 830309, Richardson, TX 75083.

*The City Plan Commission may recommend approval of the request as presented, recommend approval with additional conditions or recommend denial. Final approval of this application requires action by the City Council.*

**Agenda:** The City Plan Commission agenda for this meeting will be posted on the City of Richardson website the Saturday before the public hearing. For a copy of the agenda, please go to: <http://www.cor.net/DevelopmentServices.aspx?id=13682>.

For additional information, please contact the Dept. of Development Services at 972-744-4240 and reference Zoning File number ZF 11-18.

Date Posted and Mailed: 11/04/11



NORTHRICH BAPTIST CHURCH  
1101 CUSTER RD  
RICHARDSON, TX 75080-4503

HOPPENSTEIN PROPERTIES, INC  
PO BOX 207  
WACO, TX 76703-0207

LEGACY TEXAS BANK  
C/O MIKE JONES  
100 THROCKMORTON ST # 151  
FORT WORTH, TX 76102-2899

SHUFFLER PPTIES LTD  
2907 W OAK ST  
PALESTINE, TX 75801-5403

AUTOZONE INC  
DEPT 8088 # 1483  
PO BOX 2198  
MEMPHIS, TN 38101-2198

GILBERT PRISCILLA  
1100 STRATFORD DR  
RICHARDSON, TX 75080-2915

GILBERT PRISCILLA S & RAY W  
1100 STRATFORD DR  
RICHARDSON, TX 75080-2915

CHANEY TIMOTHY ALAN  
PO BOX 670792  
DALLAS, TX 75367-0792

VESTAL FREDDY TRUSTEE  
2617 ROYAL TROON DR  
PLANO, TX 75025-6467

SOSA MARTHA MONTES &  
JOSE SOSA  
7308 FRANKFORD RD  
DALLAS, TX 75252-6348

CENTURY ARAPAHO LLC  
PO BOX 863975  
PLANO, TX 75086-3975

TRINITY CAR WASH INC  
535 W ARAPAHO RD  
RICHARDSON, TX 75080-4340

**HOWARD L. LAWSON**  
**THE LAWSON CO.**  
**7411 HINES PLACE, SUITE 100**  
**DALLAS, TX 75235-4022**

**RICHARD R. RAMEY**  
**LEGACY TEXAS BANK**  
**707 E. ARAPAHO ROAD**  
**RICHARDSON, TX 75081**

**ZF 11-18**  
**Notification List**



*Changing Lives through Changed Lives*

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December 6, 2011

Richardson City Council  
Richardson, TX

Re: Proposed re-zoning of land and building located at 520 W. Arapaho, Richardson, TX

Dear Council:

This letter is written on behalf of Northrich Baptist Church and its purpose is to express support for the proposed re-zoning of the subject property for its proposed use as a storage facility developed by the proposed purchaser Howard Lawson. We have met with Mr. Lawson to understand his intended plans, and have had a representative attend the City Planning Commission meeting where the project was explained and discussed. Our church property borders the subject property on the north side.

We believe that development of the subject property as proposed will definitely be an improvement over its recent history as a vacant building. Furthermore, the planned area of outdoor storage being a gated/secure area should be beneficial to us as neighbors, because that is the area of the subject property that borders our property. There have been times over the years that we have had mischief and/or break-ins on our property, several of which have been on the south side of our property, which is our border with the subject property. We believe that the fact that the subject property has been vacant, and that perpetrators could easily hide from view behind the screening wall between our property and the subject property have been contributing factors to problems for us. With Mr. Lawson's plans, this area of the subject property will be gated/secured such that only paying patrons can access that area. Furthermore, his plans include having exterior security cameras which should further help reduce criminal mischief.

We are not concerned about the storage of RVs or boats in the outside storage area as the screening wall will block the view of most of such items. For those items that will be visible above the height of the screening wall, the line of sight from our property will provide minimal visibility to those items that are taller than the screening wall.

Finally, our research into Mr. Lawson's background as a property owner/investor has caused us to be comfortable that he will be a good property owner in our neighborhood. We believe his project has merit and meets a demonstrated need for the residents of the city, and we anticipate that he will be someone who "takes care of business".

Sincerely,



Mike Nelson  
Senior Pastor



# MEMO

**DATE:** December 8, 2011  
**TO:** Honorable Mayor and City Council  
**FROM:** Sam Chavez, Assistant Director of Development Services SC  
**SUBJECT:** Zoning File 11-20 – Chicken Express Drive-thru restaurant

## REQUEST

Aubrey Ellington, representing A&S Ellington Properties, LLC, is requesting to amend Ordinance No. 3801 to delete the requirement for a retail building on a 1.29-acre site at the northwest corner of Campbell Road and Lake Park Way and approval of a revised concept plan and building elevations for a 3,182-square foot drive-thru restaurant.

## BACKGROUND

The subject 1.29-acre site is a portion of a 2.45-acre tract of land rezoned in 2008 from O-M Office to LR-M(1) Local Retail per Ordinance No. 3708. The 2.45-acre tract along Campbell Road was rezoned to LR-M(1) Local Retail with special conditions. Ordinance No. 3708 contains a concept plan that depicts the allowable development for the 2.45 acres (See attached Ordinance No. 3708) which allows a maximum of two (2) retail buildings. One (1) of the buildings provided for a single drive-thru window for a grocery store/restaurant. That building is now the Braum's located to the west of the 1.29-acre site. Ordinance No. 3708 contains other special conditions regarding maximum floor area ratios, minimum landscape buffers/setbacks, building height, building elevations, curb cuts, a median diverter and a deceleration lane.

In 2010, Ordinance No. 3801 adopted a revised concept plan and building elevations for the subject site that allowed a 4,550-square foot retail building, which included a 3,000 square foot drive-thru restaurant. The current request is to allow a drive-thru restaurant only with no retail component. The proposed restaurant will be compatible with the architecture of Lake Park, Phase 1 townhome development as required by ordinance and will utilize similar design elements, materials, and color as Braum's which was deemed compatible with Lake Park, Phase 1.

No letters in favor or in opposition have been received.

## PLAN COMMISSION RECOMMENDATION

On November 15, 2011, the City Plan Commission voted 7-0 to recommend approval of the request as presented with an additional condition that a driveway be added for access to Lake Park Way.

## ATTACHMENTS

Special Conditions	Elevations (Exhibit "C")
CC Public Hearing Notice	Color Renderings (Exhibit "D")
City Plan Commission Minutes 11-15-2011	Sight Photos (Exhibits "E-1" through "E-3")
Staff Report	Applicant's Statement
Zoning Map	Notice of Public Hearing
Aerial Map	Notification List
Oblique Aerial Looking North	Ordinance No. 3708
Zoning Exhibit (Exhibit "B")	Ordinance No. 3801

## **SPECIAL CONDITIONS ZF 11-20**

1. A drive-thru restaurant shall be allowed as defined in the Comprehensive Zoning Ordinance and limited to the area shown on the attached concept plan, marked as Exhibit "B" and made a part thereof.
2. In lieu of the faux brick window design proposed along the east and west building elevations, amend the building elevations to depict a single row of soldier brick course with non-vision glazing.
3. The drive-thru restaurant shall be constructed in substantial conformance with the attached concept plan (Exhibit "B") and elevations (Exhibit "C").
4. All special conditions in Ordinance 3708 not in conflict with the conditions listed above shall remain in effect.
5. A driveway providing access to Lake Park Way shall be provided.

**City of Richardson  
Public Hearing Notice**

The Richardson City Council will conduct a public hearing at 7:30 p.m. on Monday, December 12, 2011, in the Council Chambers, Richardson Civic Center/City Hall, 411 W. Arapaho Road, to consider the following requests.

**Zoning File 11-18**

A request by Howard L. Lawson, representing the Lawson Co., for a change in zoning from C-M Commercial with special conditions to I-M(1) Industrial with a Special Permit for self-service warehouse with associated outdoor vehicle storage for a portion of 528 W. Arapaho Road (north side of Arapaho Road, west of Custer Road).

**Zoning File 11-20**

A request by Aubrey Ellington, A&S Ellington Properties, LLC, representing Chicken Express to amend the zoning to delete the requirement for a retail building on a 1.29-acre site and approval of a revised concept plan and building elevations for a drive-thru restaurant at 1240 W. Campbell Road (Northwest corner of Campbell Rd. & Lake Park Way). The property is currently zoned LR-M(1) Local Retail.

**Zoning File 11-21**

A request by Eyal Avnon, representing David Weekley Homes, for a change in zoning from O-M Office zoning with special conditions to RP-1500-M Patio Home zoning with modified development standards on a property located at the northwest corner of Lake Park Way and Jonsson Boulevard. The property is currently zoned O-M Office.

**Zoning File 11-26**

A request by the City of Richardson to amend the Code of Ordinances, Appendix A, Comprehensive Zoning Ordinance, Article I, Section 2, Definitions, by adding the definition of smoking establishment and by amending Article XXII-A, Section 2, to allow smoking establishments upon approval of a Special Permit in the LR-M(1) and LR-M(2) Local Retail Districts, and the C-M Commercial District.

If you wish your opinion to be part of the record but are unable to attend, send a written reply prior to the hearing date to City Council, City of Richardson, P.O. Box 830309, Richardson, Texas 75083.

CITY OF RICHARDSON  
Pamela Schmidt, City Secretary

**EXCERPT  
CITY OF RICHARDSON  
CITY PLAN COMMISSION MINUTES – November 15, 2011**

**PUBLIC HEARINGS**

**Zoning File 11-20:** A request by Aubrey Ellington, A&S Ellington Properties, LLC, representing Chicken Express to amend the zoning, revise the concept plan and building elevations for a drive-thru restaurant on a 1.29-acre lot located at 1240 W. Campbell Road, northwest corner of Campbell Road and Lake Park Way.

Mr. Shacklett stated the applicant was requesting to amend the zoning to delete the requirement for a retail building, and to revise the concept plan and elevations for a 3,182 square foot drive-thru restaurant. He briefly reviewed the history of the property noting that in 2010 a concept plan was approved for a 4,500 square foot building with a drive-thru restaurant and attached retail space.

Mr. Shacklett pointed out that the elevations for the proposed building would be similar to the nearby Lake Park townhomes and the Braum's store utilizing comparable materials. He added that access to the property would be from driveways on Campbell Road and Jonsson Boulevard, as well as a previously agreed upon cross access agreement between the Braum's property and the current property.

Mr. Shacklett noted there would be 50-foot landscape buffer along Campbell Road, and 30-foot landscape buffers along Jonsson and Lake Park. He added that staff had been working with the applicant to modify their elevations to match the roof, brick, and stone architectural features of the adjacent Braum's restaurant, and suggested using non-vision glazing material on the faux brick windows to the rear of the building, which the applicant declined to change.

Commissioner DePuy noted that the staff report stated the proposed restaurant would be the only drive-thru restaurant on the north side of Campbell between Coit and Waterview and thought that Braum's had originally planned to have a drive thru window.

Mr. Chavez replied the staff report was correct and explained that although the Braum's restaurant did have a drive-thru; it also had a retail component so the proposed Chicken Express would be the first "*restaurant*" with a drive-thru element.

Commissioner Bright asked for more details regarding the proposed "soldier course non-vision glazing" at the rear of the restaurant.

Mr. Shacklett replied that soldier brick course would be used as a frame around the non-vision glazing material and would give the appearance of windows on that wall.

Commissioner Hand asked if there was a requirement to have stone above the open patio as opposed to another material.

Mr. Shacklett replied there was no requirement, but the stone was there simply to help the applicant reach the required 85% masonry on the building.

Commissioner Frederick asked if the staff was suggesting that every faux window should be covered in non-vision glazing.

Mr. Shacklett replied that was the staff's suggestion.

Commissioner Maxwell asked if there was a reason in the earlier zoning request to require a retail portion on the lot, and if there was a blanket mutual access agreement exhibit associated with that agreement.

Mr. Shacklett replied that he did not know the specific reasons for the previously required retail and might have been presented that way by the earlier applicant.

Regarding the access agreement, Shacklett said there is an executed agreement with the 2.5-acres that states access shall be provided between the properties.

Commissioner Linn asked if there was a plan to add a side entrance/exit on Lake Park Way to help facilitate traffic flow on the site, and should the Commission amend the proposal to include that as a requirement.

Mr. Shacklett replied that if the Commission wanted a driveway on to Lake Park Way, the request should be added when the motion was made.

Commissioner DePuy asked if there had been any correspondence received regarding the proposed zoning case and Mr. Shacklett replied that no correspondence had been received, but a few phone calls did come in asking general questions about what was happening to the site.

With no further questions, Vice Chair Hammond opened the public hearing.

Mr. Randy Pogue, Pogue Engineering, 1512 Bray Central Drive, McKinney, Texas, thanked the Commission for hearing their request and suggested the possible reason Schlotzsky's did not go forward as planned in the original concept plan was due to some of the constraints on the property (i.e., setbacks and square footage of building), which would limit the amount of parking and access to the site.

In response to question about reciprocal easement agreement, Pogue explained the agreement was not defined by a specific fire lane, but was a blanket agreement over the subject property and the adjoining properties.

Mr. Pogue stated that if the Commission mandated an access to Lake Park Way, the area that would least impact the site by removing parking spaces or hampering traffic flow would be in the area of the south fire lane. He acknowledged that the proposed location might violate the spacing criteria to Campbell Road, but felt this location would minimize the impact to the site as opposed to locating the access mid site which would eliminate eight to nine parking spaces.

Commissioner Bright asked staff if locating an access point along the south fire lane should be added as a special condition, or would that be in violation of the City's driveway spacing requirements.

Mr. Shacklett replied that bringing the access point too far south would violate the spacing requirement, but it could be made part of the motion that a driveway was required along Lake Park Way and between the Commission and Council meetings staff would work with the applicant on the location of the driveway.

Mr. Pogue interjected that if an access point was a violation of the City's spacing requirement, and the Traffic Department did not allow the access at that point, he would not want to be forced to put the access mid-block. He suggested the motion should be worded to allow flexibility.

Mr. Chavez said the City's driveway standards ranged from 50 to 85 feet and pointed out that measuring 85 feet from back of curb, which is the City's standard, would be workable and cause the least impact to the site. He suggested that if the Commission wanted to require the additional access, the motion should be "to show an additional curb cut along Lake Park Way in conformance with the City's driveway standards."

Commissioner DePuy asked if it would be better to access Lake Park Way closer to Jonsson Boulevard as opposed to Campbell Road because Campbell was a busier street.

Mr. Shacklett replied that if a driveway cut was put on Lake Park Way it would not help the ingress to the site and would act only as an exit.

Commissioner Bright asked if the driveway was able to meet the driveway standards, could the staff estimate how many parking spaces would be lost.

Mr. Shacklett and Mr. Pogue estimated that approximately 6 spaces would be lost, but the site would still be sufficiently parked per City regulations.

Commissioner Hand asked if the access could come in off the south drive, cut across the front of the building and bend off to the north and then back to Lake Park.

Mr. Pogue replied that the typical approach is required to come in at 90 degrees to the street and because of the space, and getting the radii back in, there would not be enough room to angle it and still get the 90 degree angle.

Commissioner Hand asked if that would still be the case if it was a “right in” and “right out”.

Mr. Pogue replied that the opening to Lake Park could be a “right out” only and Mr. Hand said that might be a better option.

Mr. Chavez added that he did not think there was a standard for “right in” or “right out,” but noted that the 85 feet would be slightly over the southern most parking space on the east side of the site, which would cause the loss of 1 to 2 parking spaces.

Vice Chair Hammond asked if the Commission recommended approval, could the staff work with the applicant on the access point as long as it fell within the City standards.

Mr. Chavez replied that, based on the material presented, he felt it could be worked out and still stay within City standards.

With no further comments in favor or opposed, Vice Chair Hammond closed the public hearing and called for comments or questions from the Commission or a motion.

**Motion:** Commissioner Bright made a motion to recommend approval of Item 4 as presented with an added condition that a driveway be placed along Lake Park Way in conformance with City standards; second by Commissioner DePuy. Motion passed 7-0.



## Staff Report

**TO:** City Council

**THROUGH:** Sam Chavez, AICP, Assistant Director – Development Services

**FROM:** Chris Shacklett, Planner **CS**

**DATE:** December 8, 2011

**RE:** **Zoning File 11-20:** Chicken Express – Drive-thru Restaurant

### REQUEST:

Amend Ordinance No. 3801 to delete the requirement for a retail building on a 1.29-acre site at the northwest corner of Campbell Road and Lake Park Way and approval of a revised concept plan and building elevations for a 3,182-square foot drive-thru restaurant.

### APPLICANT:

Aubrey Ellington – A&S Ellington Properties, LLC, representing Chicken Express.

### PROPERTY OWNER:

Mark Humphreys, Partner – H-H Retail, LLC

### TRACT SIZE AND LOCATION:

1.29-acre site, 1240 W. Campbell Road, northwest corner of Campbell Road and Lake Park Way.

### EXISTING DEVELOPMENT:

The site is currently vacant.

### ADJACENT ROADWAYS:

**Campbell Road:** Six-lane, divided arterial; 32,500 vehicles per day on all lanes, eastbound and westbound between Coit Road & Mimosa Drive (May 2011).

**Lake Park Way:** Four-lane, divided minor collector; no traffic counts available.

**Jonsson Boulevard:** Four-lane, divided minor collector; no traffic counts available.

**SURROUNDING LAND USE AND ZONING:**

**North:** Vacant; O-M Office  
**South:** Retail/Commercial; LR-M(1) Local Retail  
**East:** Office; O-M Office  
**West:** Retail/Commercial; LR-M(1) Local Retail

**FUTURE LAND USE PLAN:**

**Community Commercial**

*Retail centers with multiple anchors, mid-rise office, entertainment and hospitality uses.*

**Future Land Uses of Surrounding Area:**

North: Neighborhood Residential  
South: Community Commercial  
East: Community Commercial  
West: Community Commercial

**EXISTING ZONING:**

LR-M(1) Local Retail (Ordinance No. 3708 & 3801).

**TRAFFIC/ INFRASTRUCTURE IMPACTS:**

The requested zoning amendment will not have any significant impacts on the surrounding roadway system or the existing utilities in the area.

**APPLICANT'S STATEMENT**

(Please refer to the complete Applicant's Statement.)

**STAFF COMMENTS:**

**Background:**

The site is in the area known as the Lennox Center area. The subject 1.29 acre site is a portion of a 2.45-acre tract of land rezoned in 2008 from O-M Office to LR-M(1) Local Retail per Ordinance No. 3708. The approval of the 2.45-acre tract was part of a larger request for a PD Planned Development district that also included townhomes and condominium development along with the retail portion along Campbell Road. Ultimately, only the 2.45-acre tract along Campbell Road was rezoned to LR-M(1) Local Retail with special conditions.

Ordinance No. 3708 contains a concept plan that depicts the allowable development for the 2.45 acres (See attached Ordinance No. 3708) which allows a maximum of two (2) retail buildings. One (1) of the buildings provided for a single drive-thru window for a grocery store/restaurant. That building is now the Braum's located to the west of the 1.29-acre site. Ordinance No. 3708 contains other special conditions regarding maximum floor area ratios, minimum landscape buffers/setbacks, building height, building elevations, curb cuts, a median diverter and a deceleration lane.

In 2010, Ordinance No. 3801 adopted a revised concept plan and building elevations for the subject site that allowed a 4,550-square foot retail building, which included a 3,000 square foot drive-thru restaurant.

### **Proposed Development:**

- Building Size: 3,182-square foot drive-thru restaurant.
- Building Materials: The building will be constructed with brick and stone and exceeds the City's minimum masonry requirements. The exterior design, materials, color and building elevations are also required to be compatible with the architecture of the Lake Park development, Phase 1 (i.e., the townhome development located north of the intersection of Mimosa Drive and Jonsson Boulevard) per Ordinance No. 3708.
- Setbacks and Landscape Buffer:
  - Front: 50 feet along Campbell Road.
  - Side: 30 feet along Lake Park Way.
  - Rear: 30 feet along Jonsson Boulevard.
- Height: 24'0" (top of tower).
- Floor Area Ratio: 0.06:1 / Maximum 0.50:1 Allowed.
- Landscaping Percentage: 48% proposed, 7% required.
- Building Orientation: The building faces south toward Campbell Road. Access to the site is provided from Campbell Road and Jonsson Boulevard. The drive-thru is located on the north and west sides of the building.
- Number of Parking Spaces: 38 proposed; 32 required.

The site can be accessed from Campbell Road via the adjoining Braum's property and Jonsson Boulevard via the shared driveway as depicted on Exhibit "B". An access agreement between the subject property and the Braum's property to the west was executed in 2008 allowing both properties access to the Campbell Road driveway located on the Braum's site as well as the shared driveway on Jonsson Boulevard.

The drive-thru entrance will be located at the southeast corner of the building and will wrap around the east, north, and west sides of the building where the drive-thru exits (See Exhibit B). Raised pavers will be used to separate the drive-thru from the adjacent driving aisle on the west side of the building and the fire lane and parking areas on the east side of the building.

The exterior design, materials, color and building elevations of the proposed Chicken Express drive-thru restaurant are compatible with the architecture of the Lake Park, Phase 1 townhome development. The building utilizes similar design elements, materials, and color as Braum's

which was deemed compatible with Lake Park, Phase 1. The proposed building will be constructed with the similar brick and stone as Braum's, with the stone used as a wainscot as well as on the tower elements. In addition, a single row of soldier brick course and faux brick windows similar to Braum's will be incorporated into the building; however, a non-vision glazing should be considered as an appropriate alternative to the proposed design element as the brick treatment reads as a solid blank wall.

Although the building's design elements appear to conform with Ordinance No. 3708 and 3801, the proposed use of the site as a drive-thru restaurant does not comply with the original intent for the sites to develop and maintain a retail building character. As proposed, the drive-thru restaurant, if approved, would represent the first and only stand alone drive-thru restaurant along the north side of Campbell Road between Waterview Parkway and Coit Road.

**Correspondence:** As of this date, no correspondence has been received.

**Motion:** On November 15, 2011, the City Plan Commission recommended approval on a vote of 7-0 of the request subject to the following conditions:

1. A drive-thru restaurant shall be allowed as defined in the Comprehensive Zoning Ordinance and limited to the area shown on the attached concept plan, marked as Exhibit "B" and made a part thereof.
2. In lieu of the faux brick window design proposed along the east and west building elevations, amend the building elevations to depict a single row of soldier brick course with non-vision glazing.
3. The drive-thru restaurant shall be constructed in substantial conformance with the attached concept plan (Exhibit "B") and elevations (Exhibit "C").
4. All special conditions in Ordinance 3708 not in conflict with the conditions listed above shall remain in effect.

**The Commission also recommended the following condition stating the additional driveway would lessen the impact of traffic at the Campbell Road driveway which is located on the Braum's property to the west. The attached zoning exhibit (Exhibit "B") depicts the location of the proposed driveway.**

5. A driveway providing access to Lake Park Way shall be provided.





## ZF 11-20 Aerial Map

Updated By: shacklett, Update Date: October 28, 2011  
File: DS\Mapping\Cases\Z\2011\ZF 1120\ZF 1120 ortho.mxd

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



**Jonsson Blvd**

**Lake Park Way**

**Subject  
Property**

**Campbell Rd**

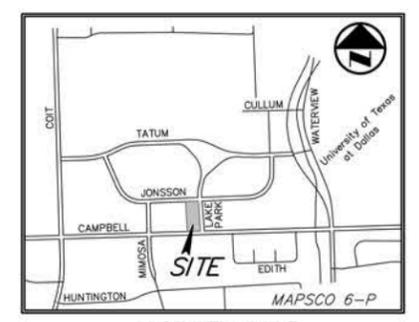
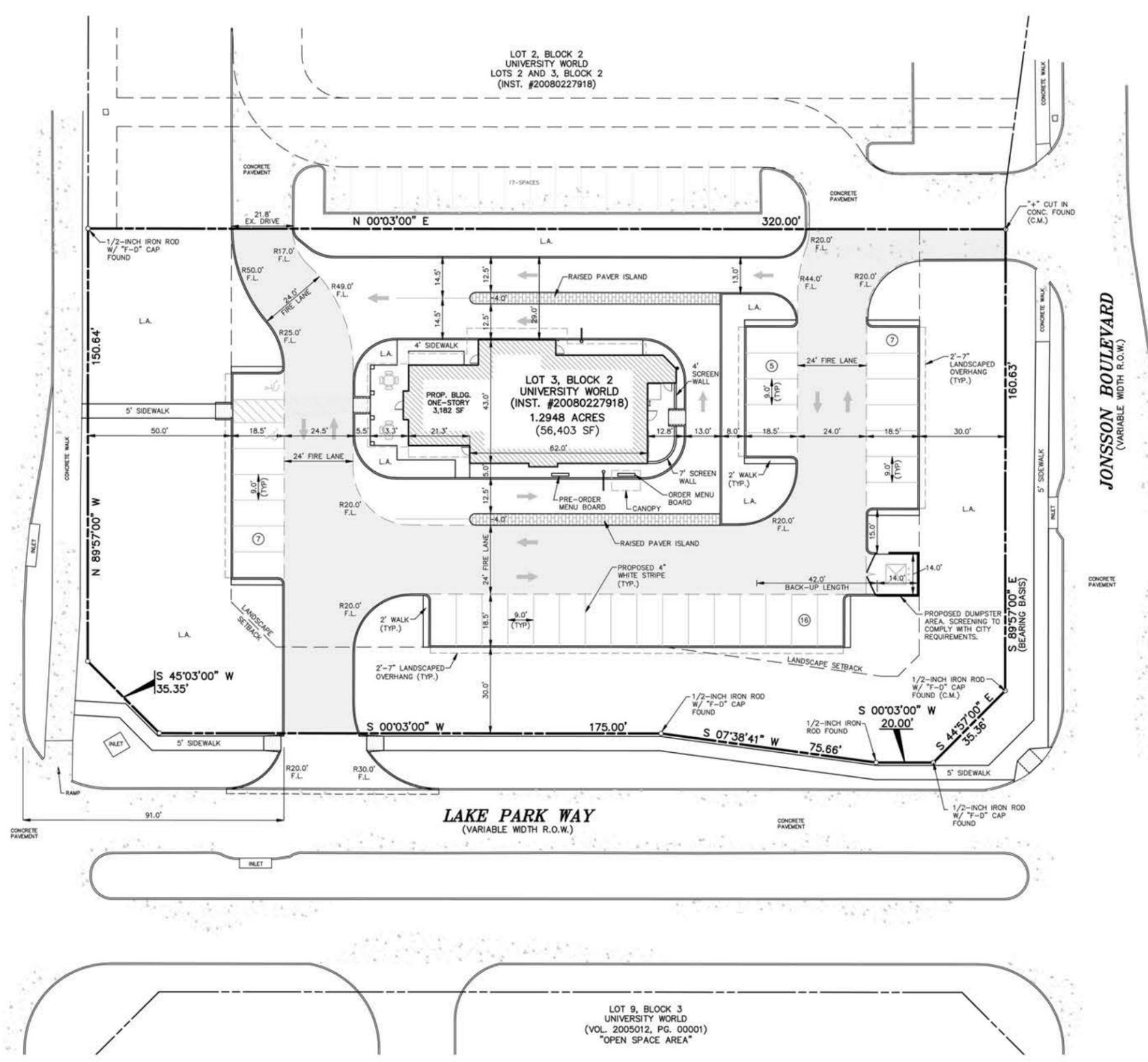


**Oblique Aerial  
Looking North**

ERCS 11/30/2011 - 11:30AM  
 N:\WORKS\1488-11-045-CHICKEN EXPRESS\DWG\1488-11-045-ZONING EXHIBIT.DWG  
 © POGUE ENGINEERING & DEVELOPMENT COMPANY, INC. 2011. ALL RIGHTS RESERVED. THE ENGINEERING, DESIGN, AND CONSTRUCTION DRAWINGS FOR THIS PROJECT AND/OR SCHEDULE PROJECT ARE THE LEGAL PROPERTY OF POGUE ENGINEERING & DEVELOPMENT COMPANY, INC. THEIR USE FOR REPRODUCTION, DISTRIBUTION, OR DISTRIBUTION IS PROHIBITED UNLESS AUTHORIZED IN WRITING BY POGUE ENGINEERING & DEVELOPMENT COMPANY, INC.

CAMPBELL ROAD  
 (140' R.O.W.)

JOHN EDMONDS SURVEY, ABSTRACT NO. 429  
 J.W. CURTIS SURVEY, ABSTRACT NO. 345



VICINITY MAP  
NOT TO SCALE



GRAPHIC SCALE IN FEET  
SCALE: 1" = 20'

**LEGEND**

- BOLLARD
- ELECTRIC METER
- POWER POLE
- LIGHT STANDARD
- WATER METER
- WATER VALVE
- IRRIGATION CONTROL VALVE
- FIRE HYDRANT
- FIRE DEPARTMENT CONNECTION
- CLEAN OUT
- MANHOLE
- GAS METER
- TRAFFIC SIGNAL CONTROL
- TRAFFIC SIGNAL POLE
- TRAFFIC SIGN
- TELEPHONE BOX
- TV BOX
- FLAG POLE
- L.A. LANDSCAPE AREA
- PROPERTY LINE
- O.H. POWER LINES
- U/G TELEPHONE LINES
- U/G WATER LINE
- U/G GAS LINE
- FENCE
- (C.M.) CONTROLLING MONUMENT  
5/8-INCH IRON ROD WITH  
"POGUE ENG & DEV" CAP SET
- SIR

**SITE DATA SUMMARY TABLE**

ITEM	LOT 3
ZONING	LRM(1) ORD. 3708/3801
PROPOSED USE	DRIVE-THRU
SETBACKS AND LANDSCAPE BUFFERS	50': CAMPBELL RD. 30': JONSSON BLVD. & LAKE PAKE WAY
LOT AREA (SF/ACRES)	1,2948/56,403
BUILDING (SF)	3,182
PARKING RATIO	1 SP:100 SF
PARKING REQUIRED	32
PARKING PROVIDED	35
LANDSCAPE (%/SF)	46/25,930
FLOOR AREA RATIO	0.08:1
BUILDING HEIGHT (FT)	24

**NOTE:**  
ALL DIMENSIONS ARE FROM BACK OF CURB TO BACK OF CURB, UNLESS OTHERWISE NOTED.

LOT 9, BLOCK 3  
UNIVERSITY WORLD  
(VOL. 2005012, PG. 00001)  
"OPEN SPACE AREA"

**Exhibit B - Part of Ordinance**  
CASE# ZF11-20

**ZONING EXHIBIT**

CHICKEN EXPRESS-CAMPBELL ROAD  
BLOCK 2, LOT 3, UNIVERSITY WORLD  
J.W. CURTIS SURVEY, ABSTRACT NO. 345  
CITY OF RICHARDSON, TEXAS

SHEET NO.  
**ZE**

NO.	DATE	REVISION / DESCRIPTION
DESIGN	DRAWN	DATE
PI NUMBER		
EMS	WTW	11-07-2011 1488-11-045

**OWNER**  
H-H RETAIL, LLC  
5339 ALPHA ROAD, SUITE 350  
DALLAS, TX 75240  
MR. MARK HUMPHREYS  
(972) 701-9636 PHONE  
(972) 701-9639 FAX

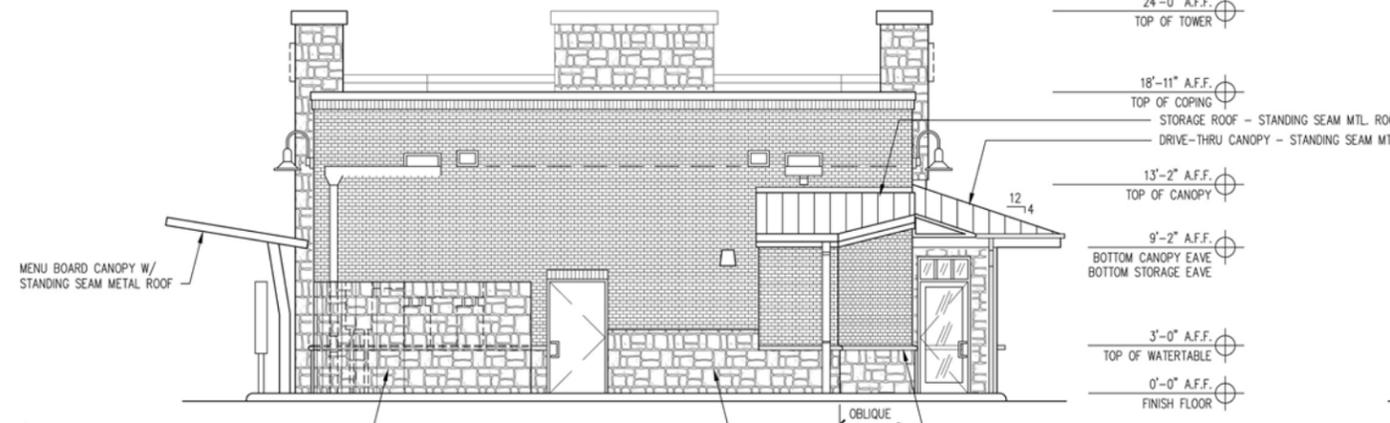
**DEVELOPER**  
A&S ELLINGTON PROPERTIES, LLC  
P.O. BOX 940147  
PLANO, TEXAS 75094  
MR. AUBREY ELLINGTON  
(214) 952-9759 PHONE  
(214) 237-6166 FAX

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF ERIC M. SEELEY, P.E. 10/7/10 ON 11-07-2011. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES.

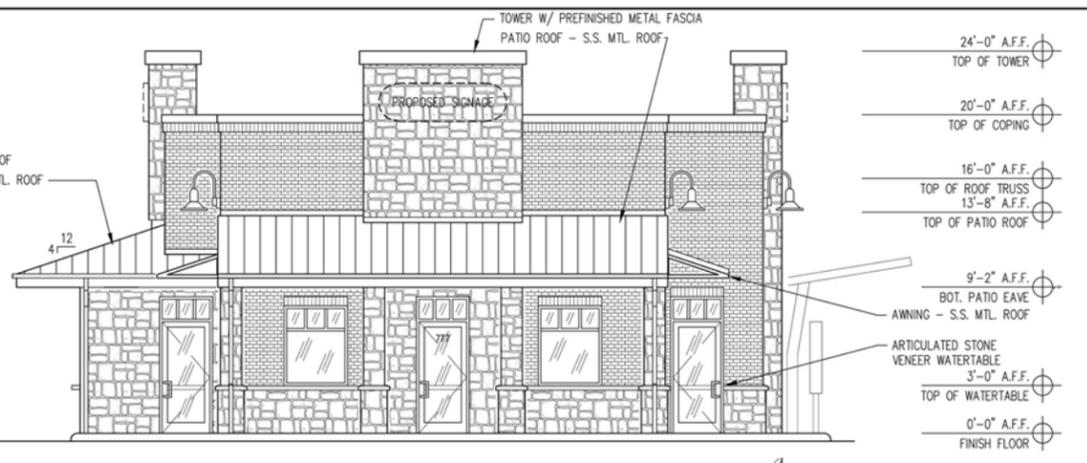
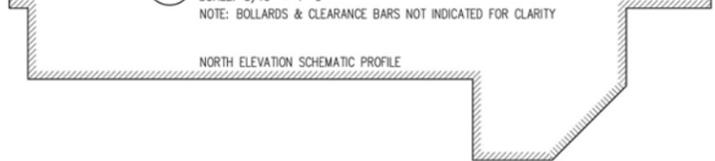
**PRELIMINARY**  
FOR INTERIM REVIEW ONLY  
NOT TO BE USED FOR CONSTRUCTION OR BIDDING PURPOSES.  
Engineer: ERIC M. SEELEY, P.E.  
P.E. No.: 107718  
Date: 11-07-2011  
**POGUE**

**POGUE**  
ENGINEERING & DEVELOPMENT COMPANY, INC.  
1512 BRAY CENTRAL DRIVE  
SUITE 100  
MCKINNEY, TEXAS 75069  
(214) 544-8880 PHONE  
(214) 544-8882 FAX  
www.PogueEngineering.com

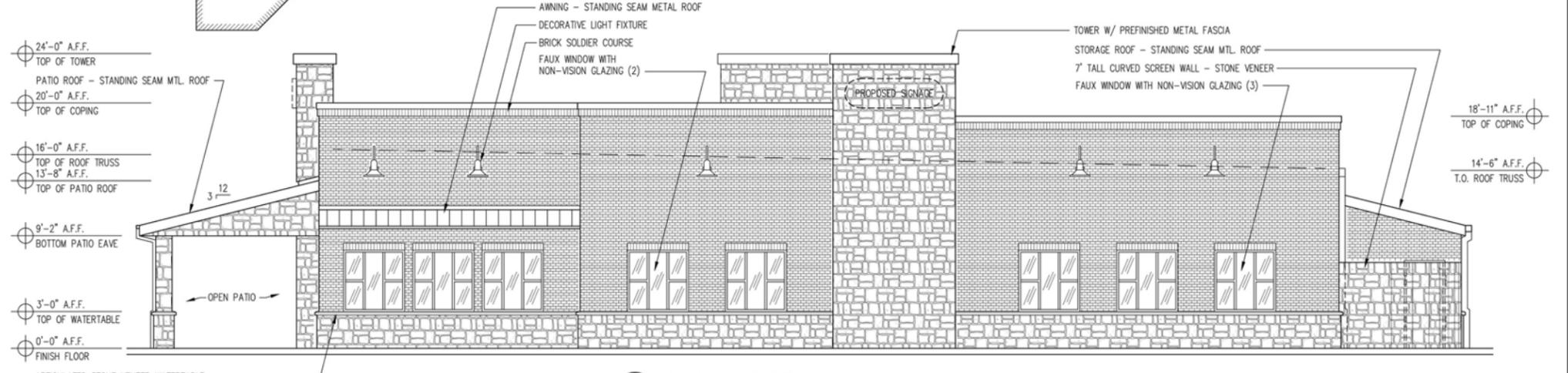
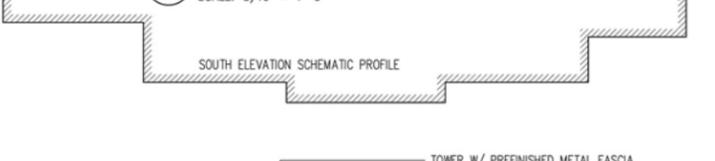
CHICKEN EXPRESS - CAMPBELL ROAD  
 TEXAS BOARD OF PROFESSIONAL ENGINEERS, CERTIFICATE OF REGISTRATION #1488-11-045-ZONING EXHIBIT.DWG



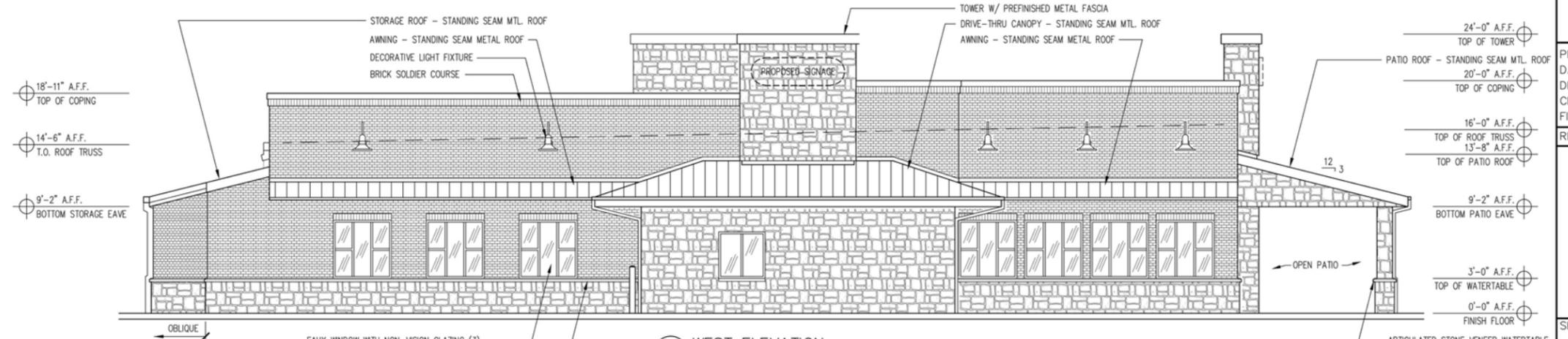
**1 NORTH ELEVATION**  
SCALE: 3/16" = 1'-0"  
NOTE: BOLLARDS & CLEARANCE BARS NOT INDICATED FOR CLARITY



**2 SOUTH ELEVATION - FRONT**  
SCALE: 3/16" = 1'-0"



**3 EAST ELEVATION**  
SCALE: 3/16" = 1'-0"  
NOTE: BOLLARD, PRE-MENU, CLEARANCE BAR, & MENU BOARD WITH CANOPY NOT INDICATED FOR CLARITY



**4 WEST ELEVATION**  
SCALE: 3/16" = 1'-0"  
NOTE: CLEARANCE BAR NOT INDICATED FOR CLARITY



**MATERIAL LEGEND**

- STANDING SEAM ROOFING
- MISC. METALS TO MATCH SHEFFIELD METALS INTERNATIONAL CHARCOAL GREY
- GLAZING - WINDOWS & DOORS
- DOUBLE PANE LOW-E TINTED
- 9% REFLECTANCE
- OLDCASTLE GLASS
- FACE BRICK
- ACME BRICK
- OLD ST. LOUIS OR CLOSEST EQUAL
- APPLIED STONE VENEER
- EAGLE STONE
- GRANBURY OR CLOSEST EQUAL

JAMES W.P. HOWARD  
ARCHITECT N.C.A.R.B. A.I.A.  
2416 STAGECOACH STREET  
FORT WORTH, TEXAS 76133  
(817) 377-3477

LOT 3, BLOCK 2, UNIVERSITY WORLD  
CAMPBELL ROAD & LAKE PARK WAY  
RICHARDSON, TEXAS

PROJECT: CE201122  
DATE: 11/22/11  
DRAWN BY: SS  
CHECKED BY: JH  
FILE: CE1122-ELEVS-II

REVISIONS

SHEET TITLE  
EXTERIOR ELEVATIONS  
III

SHEET

ELEVS

**Exhibit C - Part of Ordinance**  
NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION



**MATERIAL LEGEND**

STANDING SEAM ROOFING	
MISC. METALS TO MATCH	
SHEFFIELD METALS INTERNATIONAL	
CHARCOAL GREY	
GLAZING - WINDOWS & DOORS	
DOUBLE PANE LOW-E TINTED	
9% REFLECTANCE	
OLDCASTLE GLASS	
FACE BRICK	
ACME BRICK	
OLD ST. LOUIS OR CLOSEST EQUAL	
APPLIED STONE VENEER	
EAGLE STONE	
GRANBURY OR CLOSEST EQUAL	

JAMES W.P. HOWARD  
ARCHITECT  
N.C.A.R.B. A.I.A.  
2416 STAGECOACH STREET  
FORT WORTH, TEXAS 76133  
(817) 377-3477

Chicken  
EXTERIORS

LOT 3, BLOCK 2, UNIVERSITY WORLD  
CAMPBELL ROAD & LAKE PARK WAY  
RICHARDSON, TEXAS

PROJECT: CE201122  
DATE: 11/22/11  
DRAWN BY: SS  
CHECKED BY: JH  
FILE: CE1122-ELEVS-II

SHEET TITLE  
EXTERIOR  
ELEVATIONS  
III

SHEET  
ELEVS

NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION

**Exhibit D**



(1)

**Proposed Site  
Looking Northwest**

**NWC Campbell Rd & Lake Park Way - October 2011**



(2)

**Proposed Site  
Looking Northeast**

**Exhibit E-1**



(3)

**Proposed Site  
Looking West**

**NWC Campbell Rd & Lake Park Way - October 2011**



(4)

**Proposed Site  
Looking East**



(5)

Existing Braum's

NWC Campbell Rd & Lake Park Way - October 2011



(6)

Lake Park-Phase 1

Exhibit E-3

THE DEVELOPER WOULD LIKE TO AMEND ZONING ORDINANCE 3801 TO REMOVE THE REQUIREMENT OF RETAIL USE ON LOT 3, BLOCK 2. THE PROPOSED ZONING WOULD BE FOR A RESTAURANT WITH DINE-IN AND DRIVE-THRU USE ONLY, NO RETAIL COMPONENT. THE PROPOSED BUILDING IS APPROXIMATELY 3,100 SQUARE FEET, REQUIRING A TOTAL OF 32 PARKING STALLS.

THE ARCHITECTURAL FEATURES ARE TO PULL FROM THE ADJACENT TOWNHOME AND BRAUM'S DEVELOPMENTS. THE BRICK TO BE USED FOR THE BUILDING WILL BE A CLOSEST MATCH TO THAT OF THE TOWNHOMES. THE MISCELLANEOUS METALS USED ON THE BUILDING WILL BE TONED DOWN FROM REGAL RED (THE STANDARD CHICKEN EXPRESS COLOR) TO CHARCOAL GRAY, WHICH IS SIMILAR TO THAT OF THE BRAUM'S.



# Notice of Public Hearing

## City Plan Commission • Richardson, Texas

An application has been received by the City of Richardson for a:

### ZONING CHANGE

**File No./Name:** ZF 11-20 / Chicken Express  
**Property Owners:** Mark Humphreys, Partner / H-H Retail, LLC  
**Applicant:** A&S Ellington Properties, LLC / Aubrey Ellington  
**Location:** 1240 W. Campbell Road (See map on reverse side)  
**Current Zoning:** LR-M(1) Local Retail  
**Request:** Amend the zoning to revise the concept plan and elevations for a drive-thru restaurant.

The City Plan Commission will consider this request at a public hearing on:

**TUESDAY, NOVEMBER 15, 2011**  
**7:00 p.m.**  
**City Council Chambers**  
**Richardson City Hall, 411 W. Arapaho Road**  
**Richardson, Texas**

*This notice has been sent to all owners of real property within 200 feet of the request; as such ownership appears on the last approved city tax roll.*

**Process for Public Input:** A maximum of 15 minutes will be allocated to the applicant and to those in favor of the request for purposes of addressing the City Plan Commission. A maximum of 15 minutes will also be allocated to those in opposition to the request. Time required to respond to questions by the City Plan Commission is excluded from each 15 minute period.

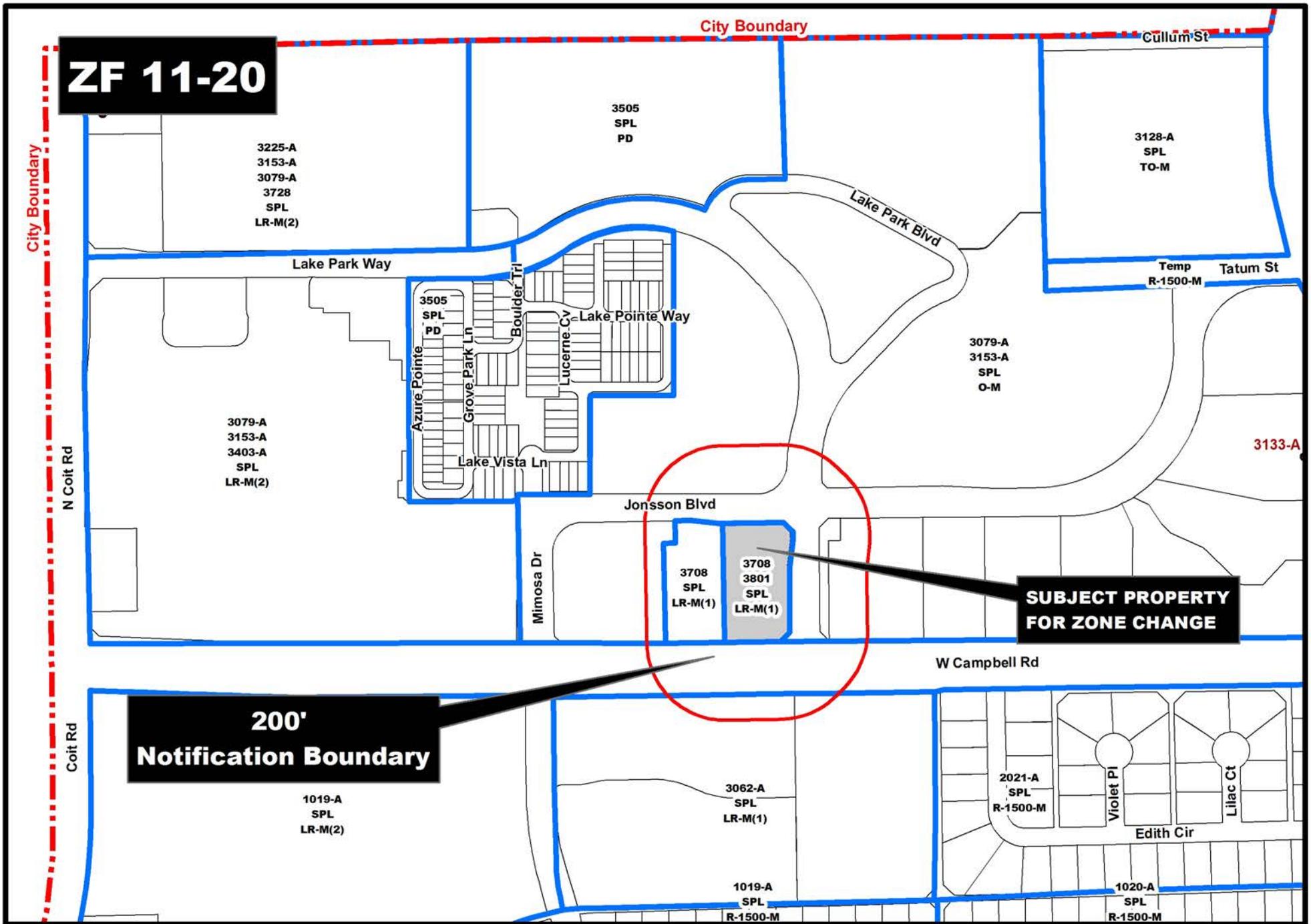
Persons who are unable to attend, but would like their views to be made a part of the public record, may send signed, written comments, referencing the file number above, prior to the date of the hearing to: Dept. of Development Services, PO Box 830309, Richardson, TX 75083.

*The City Plan Commission may recommend approval of the request as presented, recommend approval with additional conditions or recommend denial. Final approval of this application requires action by the City Council.*

**Agenda:** The City Plan Commission agenda for this meeting will be posted on the City of Richardson website the Saturday before the public hearing. For a copy of the agenda, please go to: <http://www.cor.net/DevelopmentServices.aspx?id=13682>.

For additional information, please contact the Dept. of Development Services at 972-744-4240 and reference Zoning File number ZF 11-20.

Date Posted and Mailed: 11/04/11



# ZF 11-20 Notification Map

Updated By: shacklett, Update Date: October 28, 2011  
 File: DSI\mapping\Cases\Z\2011\ZF1120\ZF1120 notification.mxd

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



PAVILLION OFFICE PARK  
7517 CAMPBELL RD # 601  
DALLAS, TX 75248-1762

PAVILLION PARK CENTER  
7517 CAMPBELL RD # 601  
DALLAS, TX 75248-1762

PAVILLION BANK  
1200 W CAMPBELL RD  
RICHARDSON, TX 75080-2945

LENNOX COMMERCIAL  
REALTY INC  
2100 LAKE PARK BLVD  
RICHARDSON, TX 75080-2254

VIEWPOINT BANK  
5400 INDEPENDENCE PKWY  
PLANO, TX 75023-5430

A O C LAND INVESTMENT LLC  
% SOUTHERN WEALTH MGMT  
5005 L B J FWY # 920  
DALLAS, TX 75244-6142

H-H RETAIL LLC  
5339 ALPHA RD STE 300  
DALLAS, TX 75240-7307

RETAIL BUILDINGS INC  
16135 PRESTON RD STE 107  
DALLAS, TX 75248-8511

**AUBREY ELLINGTON  
A&S ELLINGTON, LLC  
P. O. BOX 940147  
PLANO, TX 75094**

**MARK HUMPHREYS, PARTNER  
H-H RETAIL, LLC  
5339 ALPHA ROAD, SUITE 300  
DALLAS, TX 75240**

**ZF 11-20  
Notification List**

**ORDINANCE NO. 3708**

**AN ORDINANCE OF THE CITY OF RICHARDSON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF RICHARDSON, AS HERETOFORE AMENDED, TO GRANT A CHANGE IN ZONING FROM O-M (OFFICE) TO LR-M(1) LOCAL RETAIL DISTRICT WITH SPECIAL CONDITIONS FOR APPROXIMATELY 2.451 ACRES OF PROPERTY LOCATED ON CAMPBELL ROAD IN THE CITY OF RICHARDSON, DALLAS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AND DEPICTED IN EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF; PROVIDING SPECIAL CONDITIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO-THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE. (ZONING FILE 0801)**

**WHEREAS**, the City Plan Commission of the City of Richardson and the governing body of the City of Richardson, in compliance with the laws of the State of Texas and the ordinances of the City of Richardson, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, the governing body, in the exercise of its legislative discretion, has concluded that the Comprehensive Zoning Ordinance and Map should be amended; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS:**

**SECTION 1.** That the Comprehensive Zoning Ordinance and Zoning Map of the City of Richardson, Texas, duly passed by the governing body of the City of Richardson on the 5<sup>th</sup> day of June, 1956, as heretofore amended, be, and the same is hereby amended so as to grant a change of zoning from O-M (Office) to LR-M(1) Local Retail District, with special conditions; on approximately 2.451 acres located on Campbell Road in the City of Richardson, Dallas County, Texas, and being more particularly described in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof for all purposes.

**SECTION 2.** That the LR-M (1) Local Retail District Zoning classification is granted subject to the following Special Conditions:

**Base Zoning:** The property shall be developed and used only in accordance with the LR-M(1) Local Retail District regulations and the concept plan, except as otherwise provided herein.

**Development:** A maximum of two retail buildings shall be allowed. A maximum of one of the two buildings may have a single drive-through window in accordance with the concept plan for a grocery store/restaurant with a minimum of 40% of the square footage of the building devoted to the sale of grocery-related items.

**Concept Plan:** The property shall be developed and used in accordance with the concept plan attached hereto as Exhibit B, and which is hereby approved.

**Land Area of Parcels:** The property may not be subdivided into more than two lots. Each lot shall not be less than 0.80 gross acres in size.

**Maximum Floor Area Ratio (FAR):** 0.5:1

**Minimum Landscape Buffer and Setbacks adjacent to Public Streets (measured from ROW):**

Campbell Road: 50 feet

Lake Park Boulevard: 30 feet

Jonsson Boulevard: 30 feet

**Maximum Building Height:** Single story not to exceed 30 feet in height. Architectural elements and projections such as roofs, towers, and/or cupolas may extend above 30 feet in proportion to the building design and subject to elevation review by the city plan commission.

**Building Elevation Requirements:** The exterior design, materials, color, building elevations and architectural style of the retail buildings shall be consistent and compatible with the architecture of the Lake Park development, Phase 1.

**Perimeter Landscaping:** The landscaping along Campbell Road, Lake Park Boulevard and Jonsson Boulevard shall incorporate trees, shrubs, and ground cover with an automated irrigation system, with a minimum of one canopy tree and one ornamental tree for every 50 linear feet of street frontage.

**Curb Cut, Median Diverter and Deceleration Lane Requirements on Campbell Road:**

**Curb Cut:** A curb cut on Campbell Road to serve the western-most retail shall be permitted as shown on the concept plan.

**Median Diverter and Turn Bays:** A diverter shall be constructed in the median opening serving the driveway of the western-most retail tract. The design and location of the diverter shall prohibit vehicles from making left turns onto eastbound Campbell Road when exiting the site. Turning bays with adequate storage shall be constructed to serve the median opening.

**Deceleration Lane:** A deceleration lane shall be constructed to serve westbound traffic on Campbell Road entering the driveway of the western-most retail tract.

The developer shall be responsible for construction of the curb cut, median diverter, turning bays and deceleration lane, and installation shall be in accordance with City standards, to be constructed prior to the issuance of a certificate of occupancy for any buildings on the property.

**SECTION 3.** That all provisions of the ordinances of the City of Richardson in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Richardson not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 4.** That the above-described tract of land shall be used only in the manner and for the purposes provided for by the Comprehensive Zoning Ordinance of the City of Richardson, Texas, as heretofore amended, and subject to the aforementioned special conditions.

**SECTION 5.** That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

**SECTION 6.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

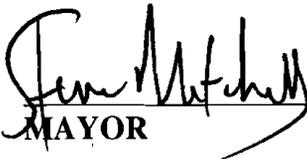
**SECTION 7.** That any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Richardson, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand (\$2,000.00)

Dollars for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

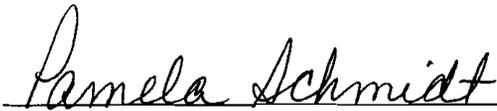
**SECTION 8.** That this Ordinance shall take effect immediately from and after its passage and publication of the caption, as the law and charter in such case provide.

**DULY PASSED** by the City Council of the City of Richardson, Texas, on the 12th day of May, 2008.

**APPROVED:**

  
MAYOR

**CORRECTLY ENROLLED:**

  
CITY SECRETARY

**APPROVED AS TO FORM:**



CITY ATTORNEY

(PGS:tc)(27453)

**Exhibit "A"**  
**BOUNDARY DESCRIPTION**  
**Retail Tract – ZF 0801**

Being part of a tract or parcel of land out of the J.W. Curtis survey Abstract No. 345 in the City of Richardson, Dallas County, Texas and being a portion of that 4.366 acre tract described as Tract 5 in a deed to A.O.C. Land Investment, L.L.C. as recorded in Volume 95147, Page 3387 of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod with a red FD cap found for corner in the intersection of the south line of Jonsson Blvd. (a variable width right-of-way at this point) and the southwest line of Lake Park Blvd. (a variable width right-of-way at this point);

THENCE S44°57'00"E, along the southwest line of said Lake Park Blvd., a distance of 35.36 feet to a 1/2" iron rod with a red FD cap found for corner;

THENCE S00°03'00"W, continuing along the west line of said Lake Park Blvd., a distance of 20.00 feet to a 1/2" iron rod found for corner;

THENCE S07°38'41"W, continuing along the west line of said Lake Park Blvd., a distance of 75.66 feet to a 1/2" iron rod with red FD cap found for corner;

THENCE S00°03'00"W, continuing along the west line of said Lake Park Blvd., a distance of 175.00 feet to a 1/2" iron rod with a red FD cap set for corner;

THENCE S45°03'00"W, continuing along the west line of Lake Park Blvd., a distance of 35.35 feet to a 1/2" iron rod with a red FD cap found for corner in the north line of Campbell Road (a 140.00 foot width right-of-way);

THENCE N89°57'00"W, along the north line of said Campbell Road, a distance of 310.64 feet to a 1/2" iron rod with a red FD cap set for corner, said point also being the southeast corner of Lot 1, Block 2 of University World as recorded in Volume 94034, Page 40, Deed Records of Dallas County, Texas;

THENCE N00°03'00"E, departing the north line of said Campbell Road and along the east line of said Lot 1, Block 2, a distance of 270.00 feet to a 1/2" iron rod with a red FD cap set for corner, said point also being an east corner of said Lot 1, Block 2;

THENCE S89°57'00"E, along a south line of said Lot 1, Block 2, a distance of 32.00 feet to a 1/2" iron rod with a red FD cap set for corner, said point also being an east corner of said Lot 1, Block 2;

THENCE N00°03'00"E, along an east line of said Lot 1, Block 2, a distance of 60.00 feet to an "X" cut in concrete set for corner in the south line of Jonsson Blvd., said point also being the northeast corner of said Lot 1, Block 2;

THENCE S89°57'00"E, along the south line of Jonsson Blvd., a distance of 38.64 feet to a 1/2" iron rod with a red FD cap found for corner;

THENCE S82°21'19"E, continuing along said south line of Jonsson Blvd., a distance of 75.66 feet to a 1/2" iron rod with a red FD cap found for corner;

THENCE S89°57'00"E, continuing along said south line of Jonsson Blvd., a distance of 175.00 feet to the Point of Beginning and containing 106,765 square feet or 2.4510 acres of land. B1100 of land, more or less.



**ORDINANCE NO. 3801**

**AN ORDINANCE OF THE CITY OF RICHARDSON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF RICHARDSON, AS HERETOFORE AMENDED, SO AS TO AMEND ORDINANCE NO. 3708 BY AMENDING THE SPECIAL CONDITIONS FOR “DEVELOPMENT” TO ALLOW A RESTAURANT WITH A DRIVE THROUGH WINDOW; BY APPROVING A CONCEPT PLAN FOR A RESTAURANT WITH A DRIVE THROUGH WINDOW FOR A 1.29-ACRE TRACT ZONED LR-M(1) LOCAL RETAIL WITH SPECIAL CONDITIONS, SAID TRACT BEING DESCRIBED AS LOT 3, BLOCK 2, UNIVERSITY WORLD ADDITION IN DALLAS COUNTY, TEXAS, AND BEING FURTHER DESCRIBED IN EXHIBIT “A”; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO-THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE. (ZONING FILE 10-18).**

**WHEREAS**, the City Plan Commission of the City of Richardson and the governing body of the City of Richardson, in compliance with the laws of the State of Texas and the ordinances of the City of Richardson, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, the governing body, in the exercise of the legislative discretion, has concluded that the Comprehensive Zoning Ordinance and Zoning Map should be amended; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS:**

**SECTION 1.** That the Comprehensive Zoning Ordinance and Zoning Map of the City of Richardson, Texas, duly passed by the governing body of the City of Richardson on the 5<sup>th</sup> day of June, 1956 as heretofore amended, be, and the same is hereby amended by amending Ordinance No. 3708 by amending the special conditions for development as set for the herein, and to approve a concept plan for a restaurant with drive through window service a 1.29-acre tract of land zoned LR-M(1) Local Retail located at 1240 W. Campbell Road, and being more particularly described in Exhibit “A” attached hereto and made a part hereof for all purposes.

**SECTION 2.** That Section 2 of Ordinance No. 3708 is hereby amended by amending the special conditions for “development” to read as follows:

**“Development:** A maximum of two retail buildings shall be allowed. Each of the two buildings may have a single drive through window in accordance with an approved concept plan for a grocery store/restaurant with a minimum of 40% of the square footage of the building devoted to the sale of grocery-related items.”

**SECTION 3.** That Ordinance No. 3708 is hereby amended to allow a restaurant with a drive through window on the 1.29-acre tract of land located at 1240 W. Campbell Road being more particularly described in Exhibit “A” subject to the following special conditions:

1. The drive through restaurant as defined in the Comprehensive Zoning Ordinance is limited to the area shown on the concept plan attached as Exhibit “B” and made a part thereof.
2. The building shall be constructed in substantial conformance with the Exhibit “B” and the building elevations attached as Exhibit “C” and made a part hereof.
3. The drive through restaurant shall be subject to all of the special conditions in Ordinance 3708.

**SECTION 3.** That the above-described tract of land shall be used only in the manner and for the purpose provided for by the Comprehensive Zoning Ordinance of the City of Richardson, Texas, as heretofore amended, and subject to the aforementioned special conditions.

**SECTION 4.** That all provisions of the ordinances of the City of Richardson in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Richardson not in conflict with the provisions of this Ordinance shall remain in full force and effect, provided however Ordinance No. 3708 shall continue in full force and effect, except as amended herein.

**SECTION 5.** That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

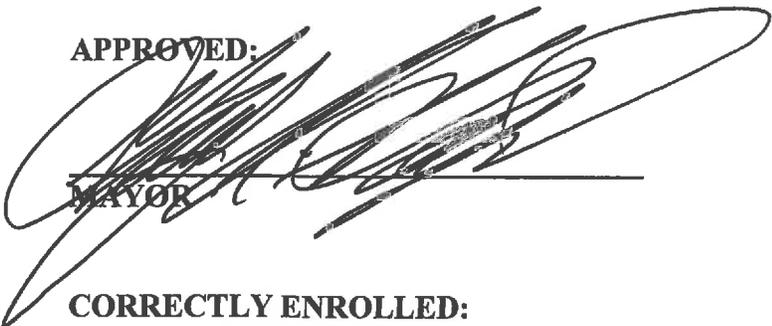
**SECTION 6.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 7.** That any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Richardson, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand dollars (\$2,000) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 8.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

**DULY PASSED** by the City Council of the City of Richardson, Texas, on the 24th day of January, 2011.

**APPROVED:**

  
MAYOR

**APPROVED AS TO FORM:**



**CITY ATTORNEY**

(PGS:01-06-11:47193)

**CORRECTLY ENROLLED:**



**CITY SECRETARY**

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**ZF 10-18**

**BEING** a tract or parcel of land out of the J.W. Curtis Survey, Abstract No. 345 in the City of Richardson, Dallas County, Texas and being all Lot 3, Block 2 of University World, Lots 2 & 3, Block 2, an addition to the City of Richardson as recorded in Instrument No. 20080227918 Official Public Records of Dallas County, Texas as conveyed to H-H Retail, LLC by deed recorded in Instrument No. 20080265006 Official Public Records of Dallas County, Texas and being more particularly described as follows:

**BEGINNING** at a 1/2 inch iron rod with a red F-D cap found for corner in the intersection of the south line of Jonsson Boulevard (a variable width right-of-way at this point) and the southwest line of Lake Park Boulevard (a variable width right-of-way at this point);

**THENCE S 44°57'00" E** along the southwest line of said Lake Park a distance of 35.36 feet to a 1/2 inch iron rod with a red F-D cap found for corner;

**THENCE S 00°03'00" W** continuing along the west line of said Lake Park a distance of 20.00 feet to a 1/2 inch iron rod found for corner;

**THENCE S 07°38'41" W** continuing along the west line of said Lake Park a distance of 75.66 feet to a 1/2 inch iron rod with red F-D cap found for corner;

**THENCE S 00°03'00" W** continuing along the west line of said Lake Park a distance of 175.00 feet to a 1/2 inch iron rod with a red F-D cap found for corner;

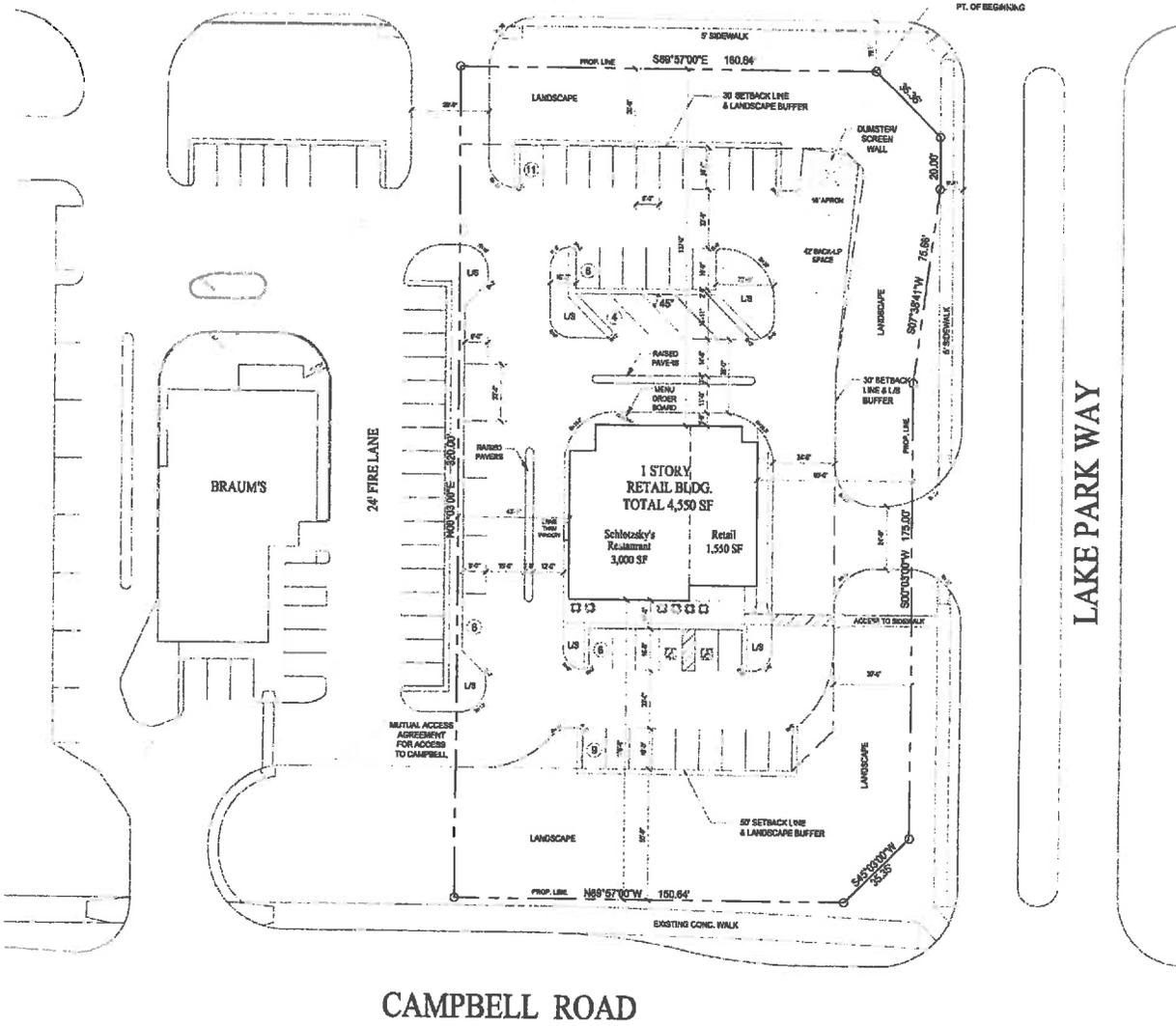
**THENCE S 45°03'00" W** continuing along the west line of Lake Park a distance of 35.35 feet to a 1/2 inch iron rod with a red F-D cap found for corner in the north line of Campbell Road (a 140.00 foot right-of-way);

**THENCE N 89°57'00" W** along the north line of said Campbell a distance of 150.64 feet to a 1/2 inch iron rod with a red F-D cap set for corner, said point also being the southeast corner of Lot 2A, Block 2 of University World as recorded in Instrument No. 200900029124 Official Public Records of Dallas County, Texas;

**THENCE N 00°03'00" E** departing the north line of said Campbell and along the east line of said Lot 2A a distance of 320.00 feet to an "X" set for corner in the south line of said Jonsson and also being the northeast corner of said Lot 2A;

**THENCE S 89°57'00" E** along the south line of said Jonsson a distance of 160.64 feet to the **POINT OF BEGINNING** and containing 56,404 square feet or 1.29486 acres of land.

JONSSON BLVD.



**PROJECT SUMMARY**

LOT AREA: 1.29 ACRES/56,404 SF

ZONING: LR-M(1) LOCAL RETAIL

SETBACKS & LANDSCAPE BUFFER:  
 50' ALONG CAMPBELL ROAD  
 30' ALONG JONSSON BLVD & LAKE PARK WAY

BUILDING SF: 4,550 SF

PARKING REQUIRED: 35 SPACES  
 RESTAURANT: 1 SPACE PER 100 SF  
 RETAIL: 1 SPACE PER 333 SF

PARKING PROVIDED: 42 SPACES

LANDSCAPE: 40.2%

F.A.R.: 0.061 (MAX. 0.5:1 ALLOWED)

BUILDING HEIGHT: 1 STORY/24'-8"

**APPLICANT:**  
 STEVE RUMSEY  
 CROSS DEVELOPMENT  
 420 SOUTH FORK DRIVE  
 LEWISVILLE, TX 75057  
 TEL: 214-614-8252  
 FAX: 214-658-1110  
 EMAIL: srumsey@crossdevelopment.net

**OWNER:**  
 H-H RETAIL, LLC  
 5339 ALPHA ROAD, #350  
 DALLAS, TX 75240  
 TEL: 972-701-9836  
 FAX: 972-701-9839  
 EMAIL: mark@humphreya.com



SCALE: 1" = 20' (24"x36" SHEET)

0 20' 40' 80'

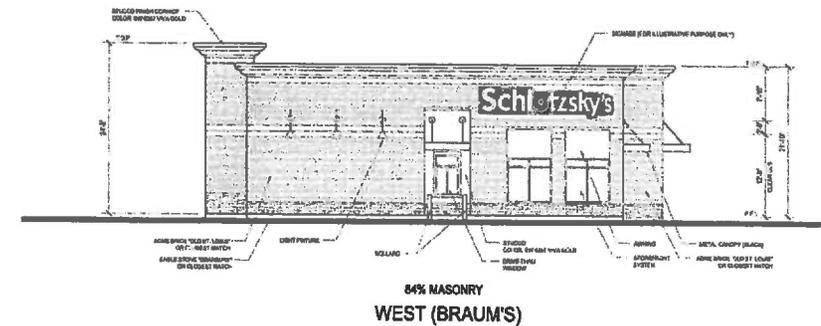
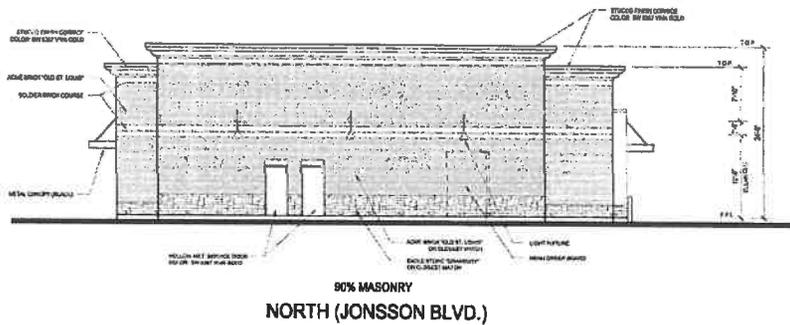
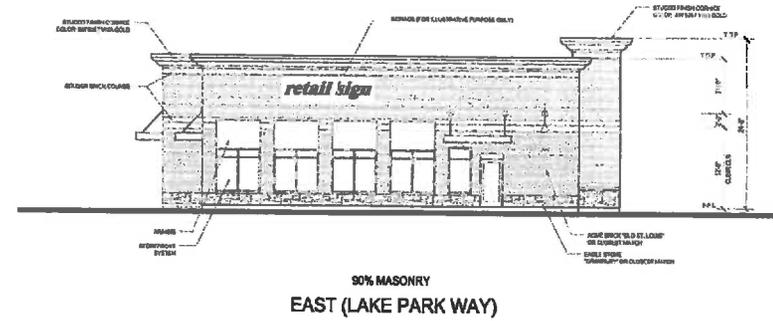
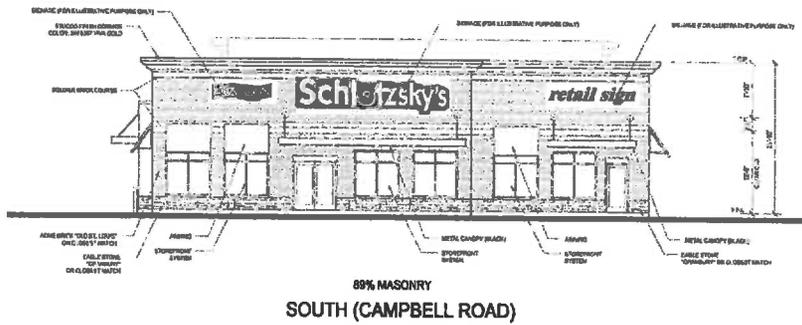
Exhibit B - Part of Ordinance

**ZONING EXHIBIT**

(PROPOSED RETAIL BLDG/SCHLOTZSKY'S DRIVE-THRU)  
 LOT 3, BLK 2, UNIVERSITY WORLD ADDITION

OCTOBER 26, 2010 RICHARDSON, TX HPA# 2010283





RETAIL ELEVATION

NOTE: Signage for Illustrative Purposes Only. Subject to Building Inspection Approval

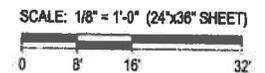


Exhibit C - Part of Ordinance

ZONING EXHIBIT

(PROPOSED RETAIL BLDG SCHLOTZSKY'S DRIVE-THRU)  
LOT 3, BLK 2, UNIVERSITY WORLD ADDITION

OCTOBER 26 2010 RICHARDSON, TX HPA# 2010283



HUMPHREYS & PARTNERS ARCHITECTS, L.P.

HUMPHREYS & PARTNERS

10000 North Central Expressway, Suite 2000, Dallas, TX 75203  
 214.424.4444  
 www.humphreysandpartners.com



# MEMO

**DATE:** December 8, 2011  
**TO:** Honorable Mayor and City Council  
**FROM:** Sam Chavez, Assistant Director of Development Services SC  
**SUBJECT:** Zoning File 11-21 – David Weekley Patio Homes

## REQUEST

Eyal Avnon, representing David Weekley Homes, is requesting to rezone a 5.87-acre tract of land at the northwest corner of Lake Park Way and Jonsson Boulevard from O-M Office to RP-1500-M Patio Home with modified development standards for development of a 37-lot single family private, gated subdivision.

## BACKGROUND

The 5.87-acre tract is located within the area known as the Lennox area which is generally bounded by Campbell Road to the south, Coit Road to the west, Waterview Parkway to the east, and the city limits to the north. The Lennox area is comprised of approximately 118 acres. The proposed development abuts the existing Lake Park Townhomes subdivision located to the west of the subject property.

The request includes several modified zoning standards including reduced lot width/area, increased lot coverage, modified setbacks, and increased density as well as other modified Subdivision and Development Code standards. Other proposed standards include regulations regarding garage door materials, privacy fence construction, landscape buffers, and the landscaping of the storm water control/detention area. Issues discussed with the applicant and presented to the Commission included the visual impact of garage doors on narrow lots and screening options adjacent to Lake Park Way, Jonsson Boulevard as well as adjacent to the townhomes.

No letters in favor or in opposition have been received.

## PLAN COMMISSION RECOMMENDATION

On November 15, 2011, the City Plan Commission voted 7-0 to recommend approval of the request as presented.

## ATTACHMENTS

Special Conditions  
CC Public Hearing Notice  
City Plan Commission Minutes 11-15-2011  
Staff Report  
Zoning Map  
Aerial Map  
Oblique Aerial Looking North  
Zoning Exhibit (Exhibit "B")

Proposed Special Conditions (Exhibit "C")  
Site Photos (Exhibits "D-1" & "D-2")  
Proposed Conceptual Elevations (Exhibits "E-1" through "E-4")  
Applicant's Statement  
Notice of Public Hearing  
Notification List  
Ordinance No. 3079-A

## **SPECIAL CONDITIONS ZF 11-21**

1. The property shall be developed in substantial conformance with attached Concept Plan (Exhibit “B”).
2. The site shall be zoned RP-1500-M Patio Home with modified development standards and shall be developed in accordance with the RP-1500-M development standards, subject to the following conditions as shown on Exhibit “C”.
  - a) A maximum of thirty-seven (37) residential lots shall be allowed.
  - b) The maximum density shall not exceed 6.31 dwelling units per acre.
  - c) The minimum residential lot area shall be 4,000 square feet.
  - d) The maximum residential lot coverage shall be 65%.
  - e) The minimum residential building size shall be 1,800 square feet (exclusive of garages).
  - f) Residential building height shall be two (2) stories, not to exceed forty (40) feet.
  - g) The minimum lot width shall be 40 feet.
  - h) The minimum front setback shall be twenty (20) feet for garages (measured to face of garage door). The required front setback or build to line shall be fifteen (15) feet for remainder of structure, except a minimum setback of twelve (12) feet for a porch shall be allowed (18-inch overhang encroachment allowed for all of the above).
  - i) The minimum interior side setback shall be determined at the time of development plan approval with a minimum required 10-foot building separation (18-inch overhang encroachment allowed).
  - j) The minimum corner lot side setback shall be fifteen (15) feet (18-inch overhang encroachment allowed).
  - k) The minimum rear setback shall be ten (10) feet (18-inch overhang encroachment allowed).
  - l) No accessory structures shall be allowed within public view except for arbors.
  - m) No interior sidewalks shall be required.
  - n) No alleys shall be required.
  - o) Lots shall be allowed to back upon Lake Park Way and Jonsson Boulevard.
  - p) Non-radial lot lines shall be allowed.
  - q) Fences shall be stained, board on board or standard vertical tubular steel. No fence shall exceed six (6) feet in height. No fence shall be permitted parallel to the perimeter screen wall along Lake Park Way or Jonsson Boulevard or parallel to the rear property lines of lots that are adjacent to Lake Park Estates. All fencing shall match the exterior wall/fencing height at tie-in point.
  - r) A landscape buffer shall be provided along the rear lot lines of Lots 16-20 and along the west property lines of Lots 20 & 37. The buffer shall include a single row of evergreen shrubs which shall grow to a minimum six (6) feet in height at maturity.
  - s) Garage doors shall be custom, metal carriage-style (wooden look) doors.
  - t) The storm water control/detention area shall be landscaped and maintained by the HOA. A minimum four (4) canopy trees and four (4) ornamental trees shall be provided. A walking trail and benches shall also be provided.

**City of Richardson  
Public Hearing Notice**

The Richardson City Council will conduct a public hearing at 7:30 p.m. on Monday, December 12, 2011, in the Council Chambers, Richardson Civic Center/City Hall, 411 W. Arapaho Road, to consider the following requests.

**Zoning File 11-18**

A request by Howard L. Lawson, representing the Lawson Co., for a change in zoning from C-M Commercial with special conditions to I-M(1) Industrial with a Special Permit for self-service warehouse with associated outdoor vehicle storage for a portion of 528 W. Arapaho Road (north side of Arapaho Road, west of Custer Road).

**Zoning File 11-20**

A request by Aubrey Ellington, A&S Ellington Properties, LLC, representing Chicken Express to amend the zoning to delete the requirement for a retail building on a 1.29-acre site and approval of a revised concept plan and building elevations for a drive-thru restaurant at 1240 W. Campbell Road (Northwest corner of Campbell Rd. & Lake Park Way). The property is currently zoned LR-M(1) Local Retail.

**Zoning File 11-21**

A request by Eyal Avnon, representing David Weekley Homes, for a change in zoning from O-M Office zoning with special conditions to RP-1500-M Patio Home zoning with modified development standards on a property located at the northwest corner of Lake Park Way and Jonsson Boulevard. The property is currently zoned O-M Office.

**Zoning File 11-26**

A request by the City of Richardson to amend the Code of Ordinances, Appendix A, Comprehensive Zoning Ordinance, Article I, Section 2, Definitions, by adding the definition of smoking establishment and by amending Article XXII-A, Section 2, to allow smoking establishments upon approval of a Special Permit in the LR-M(1) and LR-M(2) Local Retail Districts, and the C-M Commercial District.

If you wish your opinion to be part of the record but are unable to attend, send a written reply prior to the hearing date to City Council, City of Richardson, P.O. Box 830309, Richardson, Texas 75083.

CITY OF RICHARDSON  
Pamela Schmidt, City Secretary

**EXCERPT  
CITY OF RICHARDSON  
CITY PLAN COMMISSION MINUTES – November 15, 2011**

**PUBLIC HEARINGS**

**Zoning File 11-21:** A request by Eyal Avnon, representing David Weekley Homes, to rezone a 5.87-acre tract of land O-M Office with special conditions to RP-1500-M Patio Home zoning with modified development standards located at the northwest corner of Lake Park Way and Jonsson Boulevard.

Mr. Shacklett advised the applicant was requesting a change in zoning on a 5.8-acre vacant tract of land located at the northwest corner of Lake Park Way and Jonsson Boulevard, just east of the Lake Park townhome development. He added that the request would allow the development of a 37-lot, single family, gated subdivision with the main entrance/exit located at a median opening on Lake Park Way and an exit only and emergency services driveway at the southwest corner of the property.

Mr. Shacklett noted that the proposal included a request to reduce the minimum lot width from 50 feet to 40 feet, and the side setback would not be set at time of zoning approval. He pointed out that patio homes are typically required to be built on the lot line on one side with a 10-foot setback from the other lot line. The applicant would be including that 10-foot separation, but was unsure if they would be designing a center-loaded product with a 5-foot setback on either side, or the typical zero lot line configuration.

Regarding minimum lot square footage, Mr. Shacklett stated it would be 4,000 square feet, 100 feet deep by 40 feet wide, and a minimum 1,800 square feet, two-story home. In addition, because the applicant was requesting front-entry garages, staff was recommending that the garage not be allowed any closer than 20 feet from the street and the remainder of the home would be required to be located 15 feet from the street, or 12 feet if the front area included a porch.

In closing his presentation, Mr. Shacklett reviewed some of the special conditions listed on Exhibit C including:

- No interior sidewalks,
- Non-radial lot lines on lots on the cul-de-sac,
- Landscaping along the rear lots 16-20
- Landscaping along the side lots 20 and 37
- Lots to back upon streets with less than 100 feet of right-of-way
- Garage doors shall be custom, metal carriage style doors
- Fences shall be stained, board-on-board with vertical tubular steel posts
- Storm water control/detention area shall be landscaped and maintained by the HOA

Commissioner Bright asked if the subdivision would require a Homeowners Association (HOA), would it be mandatory, and should it be stated as mandatory in the ordinance.

Mr. Shacklett replied that there will be a mandatory HOA, but felt it did not need to be stated in ordinance because the City's Subdivision and Development Code required the HOA.

Commissioner DePuy asked if the applicant had presented elevations, and had they provided any information on price points.

Mr. Shacklett replied the applicant was not required to present elevations for approval, only to meet to the City's masonry ordinance for single family homes.

Regarding the price points, Shacklett said the applicant had not provided staff with any information, but they were available for questions during the public hearing.

Commissioner Linn asked if the zoning was changed to residential would the City require sidewalks.

Mr. Shacklett replied the City did require sidewalks, but felt the removal of the requirement was not as crucial because it would be a gated community as opposed to public streets.

With no further questions, Vice Chair Hammond opened the public hearing.

Mr. Bill Grant, Oakmont Capital Group, 5700 W. Plano Parkway, Plano, Texas, reported that by design or default, the implementation of residential into the Lennox Development has created a mixed-use development and the proposed project would blend in well with the surrounding area allowing residents to walk within the development and to the nearby businesses.

Mr. Grant stated that the development met the City's standards of having two off-street parking spaces in the garage and two in the driveway allowing each residence to accommodate four vehicles. He added that the community would feature quite a bit of green space and 10 extra parking spaces for visitors.

Regarding a question posed in the briefing session about ground floor master bedrooms, Mr. Grant said that most developers would prefer to have ground floor master bedrooms, but with the increase in the cost of land, and the smaller size of the lots, it was something they could not do in a smaller footprint such as the proposed development.

Commissioner Hand asked if there were access points at the end of each cul-de-sac that would allow residents to walk out of the development.

Mr. Grant replied the residents would be able to exit the development at the main entrance/exit on Lake Park Way, and exit only on Jonsson Boulevard. Mr. Shacklett added that there would be separate pedestrian gates at both the exits.

Commissioner Hand said he felt the fact that the only pedestrian exits were so far apart degraded the walkability and purpose of the neighborhood. He also thought it was counterintuitive not to have sidewalks in a walkable community.

Mr. Grant said the walkability of the development pertained to the ability to walk to the restaurants and other services in the area.

Commissioner Linn asked if the street easements were narrower than typical residential streets and what benefit that provided to the project.

Mr. Grant replied that it provided a more close-knit neighborhood and would reduce the speed of vehicles. Mr. Shacklett pointed out that the proposed project had the same pavement width as public streets, but the property lines would be at the curb instead of the setback required in typical residential developments.

Commissioner Frederick said she felt there would always be a high demand for zero lot line garden homes with a master bedroom on the first floor, and noted that some of the lots had a different configuration regarding the rear build-to line and suggested the developer put the best floor plan on the best lot.

Commissioner DePuy concurred with Mr. Frederick's comments and suggested the developer might take out one or two of the lots to make the other lots larger and those lots could accommodate floor plans with master bedrooms on the ground floor, which would be vital for the subdivision to sell quickly.

Mr. Grant said he agreed and felt most builders were in favor of putting master bedrooms on the ground floor, but in order to produce an affordable product the proposed design was the best way to go.

Commissioner DePuy asked what the price point would be on the homes in the subdivision.

Mr. Eyal Avnon, representing David Weekley Homes, 3301 N. I-H 35, Carrollton, Texas, said he could not give the actual price point, but given the purchase price of the real estate, maintaining detention ponds, privatizing the streets, and expenses associated with a gated community, it would be a higher price point, upscale community.

With no further comments in favor or opposed, Vice Chair Hammond closed the public hearing and called for any comments from the Commission. No comments were made and Mr. Hammond called for a motion.

**Motion:** Commissioner Frederick made a motion to recommend approval of Item 5 with the special conditions listed in Exhibit C; second by Commissioner DePuy. Motion passed 7-0.



## Staff Report

**TO:** City Council

**THROUGH:** Sam Chavez, AICP, Assistant Director – Development Services

**FROM:** Chris Shacklett, Planner **CS**

**DATE:** December 8, 2011

**RE:** **Zoning File 11-21:** Patio Homes – Zoning Change

### REQUEST:

Rezone 5.87 acres of land from O-M Office to RP-1500-M Patio Home with modified development standards for development of a 37-lot single family private, gated subdivision.

### APPLICANT/PROPERTY OWNER:

Eyal Avnon, representing David Weekley Homes

### PROPERTY OWNER:

AOC Land Investments, LLC / Thomas W. Booth

### TRACT SIZE AND LOCATION:

5.87-acres, northwest corner of Jonsson Boulevard and Lake Park Way

### EXISTING DEVELOPMENT:

The site is undeveloped.

### ADJACENT ROADWAYS:

**Jonsson Boulevard:** Four-lane, divided minor collector; No traffic counts available. Minor collectors typically carry between 2,500 and 8,000 vehicles per day.

**Lake Park Way:** Four-lane, divided minor collector; No traffic counts available. Minor collectors typically carry between 2,500 and 8,000 vehicles per day.

### SURROUNDING LAND USE AND ZONING:

**North:** Vacant; PD Planned Development

**South:** Vacant, Office and Retail/Commercial; O-M Office and LR-M(1) Local Retail

**East:** Office and Parks/Open Space; O-M Office

**West:** Single Family; Planned Development

**FUTURE LAND USE PLAN:**

**Neighborhood Residential** - *The most prevalent land use classification in Richardson, and includes a variety of single-family housing types available for ownership, from detached single-family homes and patio homes to duplexes and single-family attached homes (townhomes).*

**Future Land Uses of Surrounding Area:**

North: Neighborhood Residential  
South: Community Commercial  
East: Community Commercial  
West: Neighborhood Residential

**EXISTING ZONING:**

O-M Office (Ordinance No. 3079-A and 3153-A) with special conditions.

**TRAFFIC/ INFRASTRUCTURE IMPACTS:**

The proposed zoning change request will not have a significant impact on the surrounding roadway system nor impact existing utilities in the area.

**APPLICANT'S STATEMENT**

(Please refer to the complete Applicant's Statement.)

**STAFF COMMENTS:**

The 5.87-acre site is located within the area known as the Lennox area, which is generally bounded by Campbell Road to the south, Coit Road to the west, Waterview Parkway to the east, and the city limits to the north. The Lennox area is comprised of approximately 118 acres.

**Background:**

- 1983: The 118-acre Lennox area was rezoned from R-2000-M Residential to O-M Office (Ordinance No. 2386-A). The ordinance provided deed restrictions and protective covenants which were in effect for twenty-five (25) years and prohibited single-family, detached residential dwellings.
- 1996: Seventy-three (73) acres of the Lennox area, which included the 5.87 acre site, were rezoned from O-M Office to O-M Office with special conditions (Ordinance No. 3079-A). The ordinance required amended and restated deed restrictions, which were to be approved by 66.7% of the Lennox area property owners, the City of Richardson and the JJ Pearce Homeowner's Association. The amended restrictions continued to prohibit single-family, detached residential dwellings; however, they were set to expire on June 17, 2011.
- 2011: On June 17, 2011, the deed restrictions prohibiting single-family, detached residential dwellings on the subject site expired; however, the protective covenants were still in effect, which also prohibited single-family, detached

residential dwellings. The protective covenants have been amended to remove the restriction on single-family, detached residential dwellings on the subject site.

**Applicant’s Request:**

The applicant’s concept plan depicts the general layout of the subdivision, including lot layout, proposed streets, screening walls, and common areas. The proposed community will be gated; therefore the streets are required to be private streets. Along with the concept plan, a list of modified development standards for the proposed development is attached (See Exhibit “C”).

Proposed Development Regulations: With the exception of the development regulations listed below, the site will be developed in accordance with the RP-1500-M Patio Home District regulations:

	<b>RP-1500-M Residential District Development Regulations</b>	<b>Proposed Amendments</b>
<b>Dwelling Unit Size</b>	Minimum 1,500 square feet	Minimum: 1,800 square feet
<b>Building Height</b>	Minimum 1-story/Maximum 2-story	All structures shall be 2 stories
<b>Area Regulations</b>	Lot Area: Minimum 5,000 square feet.  Lot Width: Minimum 50 feet.  Lot Depth: Minimum 100 feet.	Lot Area: Minimum 4,000 square feet.  Lot Width: 40 feet.  Lot Depth: No change proposed.
<b>Lot Coverage</b>	Maximum Lot Coverage: 50%	Maximum Lot Coverage: 65%
<b>Setbacks</b>	Front: Minimum 15 feet.          Side: 0 feet and 10 feet/15 feet for side property line adjacent to a street.          Rear: Minimum 20 feet.	Front: Minimum 20 feet to garage door.   Required front setback/build-to-line of 15 feet for remainder of structure, except minimum shall be 12 feet for a porch. (18-inch overhang encroachment allowed for all of the above.)   Side: TBD at time of development plans. Minimum 10-foot building separation required. 15 feet for side property line adjacent to a street. (18-inch overhang encroachment allowed).   Rear: Minimum 10 feet. (18-inch overhang shall be allowed).
<b>Density</b>	Maximum 5.5 dwelling units / acre.	Maximum 6.31 dwelling units / acre.

Although, the applicant has requested modified development regulations, the RP-1500-M zoning regulations pertaining to minimum building size and height have been made more restrictive. Below is an explanation of the request to modify several of the development regulations:

- Reduced Minimum Lot Width and Area – The applicant is requesting to reduce the minimum lot width from fifty (50) feet to forty (40) feet and the minimum lot size from 5,000 square feet to 4,000 square feet, stating the site would not be financially viable with 50-foot lots. The average lot size of the residential lots would be approximately 4,500 square feet. The applicant desires to use 40-foot lots to maximize the number of lots on the property. Conceptual building elevations (Exhibits E-1 – E- 4) are attached which display the type of product being proposed by the applicant.
- Increased Lot Coverage – The applicant is requesting an increase in lot coverage from 50% to 65%. This would allow the developer to fully utilize the smaller lots. As proposed, this will be a more compact neighborhood; therefore, lot coverage is typically higher than in a traditional patio home subdivision.
- Modified Setbacks
  - Front – The required front setback in the RP-1500-M Patio Home District is fifteen (15) feet; however, the applicant’s proposal would require a 20-foot setback to the garage door and a front setback or build-to-line of fifteen (15) feet for the remainder of the structure and a 12-foot setback for a porch. With the exception of the setback allowance for a porch, the proposed setbacks meet the criteria in the RP-1500-M Patio Home district and reduce the visual impact of the garage with its proposed 20 foot setback.
  - Side – The side setback in the RP-1500-M Patio Home District is zero (0) feet on one side and ten (10) feet on the other side. A minimum 10-foot separation between the homes is met since the adjacent home would be set back ten (10) feet from the common side lot line. The applicant is requesting to defer the side setback until development plans are processed to allow them the option of going with the typical RP-1500-M zero lot line requirements or some other setback such as a 5-foot setback on either side. The minimum 10-foot building separation would be required regardless of which setback is chosen.
  - Rear – The rear setback in the RP-1500-M Patio Home District is twenty (20) feet. The applicant is requesting a 10-foot rear yard since a large portion of the home (the garage) will be subject to a 20-foot front setback in lieu of the typical fifteen (15) feet. The rear yard will serve as the primary yard for the home.
- Increased Density – The applicant has requested an increase in density from 5.5 dwelling units per acre to 6.31 dwelling units per acre. Based on the proposed concept plan, the density would be 6.303 dwelling units per acre thereby reflecting the proposed nature of a compact neighborhood.

In addition to the proposed modified zoning standards listed above, the applicant has also requested additional modified standards with regard to Chapter 21-Subdivision and Development Code. Below is a list of the proposed standards:

- Alley Waiver – The RP-1500-M Patio Home District requires alleys to be provided. The applicant has stated that if alleys were required, they would not be able to create enough lots for the project to be financially viable. They are proposing front entry garages that will be governed by the front setback regulations stated in the table above. The garages will be required to be set back further than the rest of the house to mitigate the visual effect of the garage doors along the street.
- Sidewalk Waiver - The applicant has requested that interior sidewalks not be required. Since the community will be gated and the streets will be private, the applicant does not believe sidewalks will be necessary. Other patio home subdivisions in Richardson that are private, gated communities have been approved with this same exception.
- Lots to Back Upon Streets with Less Than 100 Feet of Right-Of-Way - The applicant has requested that lots be allowed to back upon Lake Park Way and Jonsson Boulevard. Chapter 21 prohibits lots backing upon streets that are less than one-hundred (100) feet in width. It also requires that where lots back upon a right-of-way, alleys shall be required. Due to the size and shape of the tract, and the widths of the adjacent rights-of-way, the lots lay out in a manner where they back to these streets.
- Non-Radial Lot Lines - The applicant has requested that non-radial lot lines be allowed for the development. This requirement applies to the lots located along cul-de-sacs and curvilinear streets. This exception is typically granted at the time of preliminary platting; however, since the applicant knows there will be lots with non-radial lot lines, they are requesting the exception at the time of zoning.

The following are a list of other development standards that staff suggests should be part of the regulations if approved:

- Garage doors shall custom, metal carriage-style (wooden look) garage doors.
- Fences shall be stained, board-on-board or standard vertical tubular steel. No fence shall exceed six (6) feet in height. No fence shall be permitted parallel to the perimeter screen wall along Lake Park Way or Jonsson Blvd or parallel to the rear property lines of lots that are adjacent to Lake Park Estates. All fencing shall match the exterior wall/fencing height at tie-in point.
- A landscape buffer shall be provided along the rear lot lines of Lots 16-20 and the side lot lines of Lots 20 and 37. The buffer shall include a single row of evergreen shrubs which shall grow to a minimum six (6) feet in height at maturity. (The applicant has not noted this on the plan since they want the option to deal with this issue at the time of construction; however, staff is suggesting the regulation be part of the conditions).
- The storm water control/detention area shall be landscaped and maintained by the HOA. A minimum 4 canopy trees and 4 ornamental trees shall be provided. A walking trail and benches shall also be provided.

The proposed subdivision will be required to create a Homeowners' Association (HOA). The HOA will be responsible for maintenance of all landscaping within the subdivision including individual lot lawn care, as well as maintenance of the landscape buffer required adjacent to the

Lake Park Townhomes development and the screening on the outside of the screening wall along Lake Park Way and Jonsson Boulevard. The HOA will also be responsible for maintenance of the private streets within the subdivision.

**Other Elements Related to the Request:**

Front Entry Garages/40-foot Wide Lots: The proposed zoning change would allow reduced width lots which require the width of the homes not to exceed thirty (30) feet. The reduced width coupled with front entry garages creates a front elevation that is dominated by a garage door. To mitigate the visual impact of the garage door on the front elevation, staff worked with the applicant to create the front setback conditions stated above that would not allow the garage door to project in front of the rest of the home. Rather, the garage door will be set back between 5-8 feet from the remainder of the home depending on whether the home has a porch. The proposed conceptual elevations (Exhibits E-1 – E-4) display possible elevations for the homes.

Screening: Two different screening issues have been discussed with the applicant. The first relates to how screening would be provided along the western property line of the subdivision adjacent to the Lake Park Townhomes. The townhome development constructed a wrought iron fence with masonry columns along their eastern property line to screen their property from the subject site, which was required with their approved zoning for the townhome development. Although screening between two (2) residential uses is not required, the proposed development will have lots that back or side to the wrought iron fence (Lots 16-20 and 37). Staff is therefore suggesting a row of evergreen shrubs be planted along the wrought iron fence to provide privacy for the rear yards, since fencing will not be allowed to be constructed parallel to the existing wrought iron fence as reflected in the proposed development standards.

The second issue relates to the screening along Lake Park Way and Jonsson Boulevard. The applicant is proposing to place a 7-foot sidewalk at the back of curb along Lake Park Way and Jonsson Boulevard and to provide a 3-foot landscape area behind the sidewalk for landscaping along the screening wall. The applicant plans to provide wider landscape areas and trees where possible along Lake Park Way; however, a TXU easement is located along the southern property line of the development and the screening wall cannot be moved north to provide additional landscaping and sidewalk area along Jonsson Boulevard.

**Correspondence:** As of this date, no written correspondence has been received.

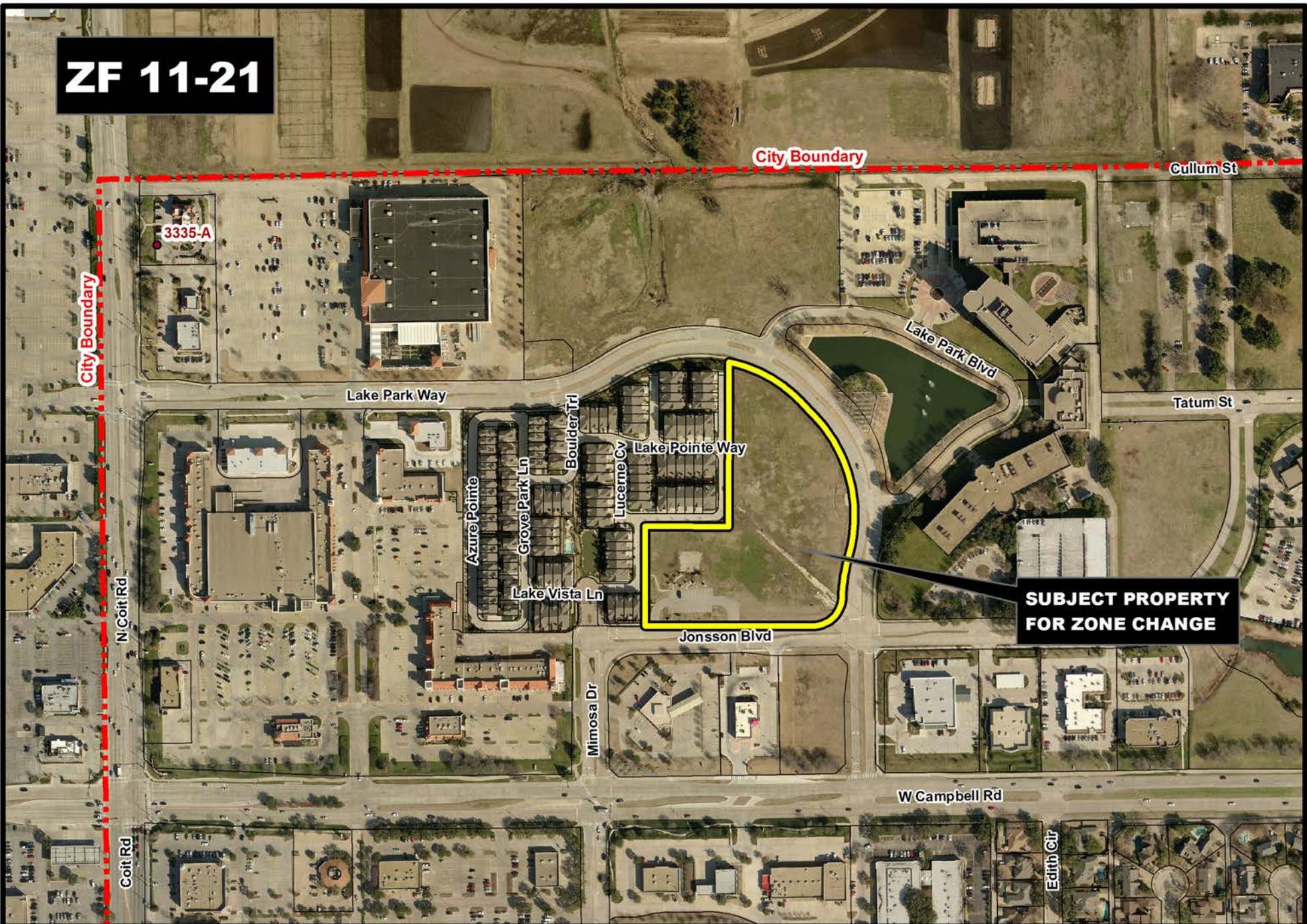
**Motion:** On November 15, 2011, the City Plan Commission recommended approval on a vote of 7-0 of the request subject to the following conditions:

1. The property shall be developed in substantial conformance with attached Concept Plan (Exhibit “B”).
2. The site shall be zoned RP-1500-M Patio Home with modified development standards and shall be developed in accordance with the RP-1500-M development standards, subject to the following conditions:
  - a) A maximum of thirty-seven (37) residential lots shall be allowed.
  - b) The maximum density shall not exceed 6.31 dwelling units per acre.

- c) The minimum residential lot area shall be 4,000 square feet.
- d) The maximum residential lot coverage shall be 65%.
- e) The minimum residential building size shall be 1,800 square feet (exclusive of garages).
- f) Residential building height shall be two (2) stories, not to exceed forty (40) feet.
- g) The minimum lot width shall be 40 feet.
- h) The minimum front setback shall be twenty (20) feet for garages (measured to face of garage door). The required front setback or build to line shall be fifteen (15) feet for remainder of structure, except a minimum setback of twelve (12) feet for a porch shall be allowed (18-inch overhang encroachment allowed for all of the above).
- i) The minimum interior side setback shall be determined at the time of development plan approval with a minimum required 10-foot building separation (18-inch overhang encroachment allowed).
- j) The minimum corner lot side setback shall be fifteen (15) feet (18-inch overhang encroachment allowed).
- k) The minimum rear setback shall be ten (10) feet (18-inch overhang encroachment allowed).
- l) No accessory structures shall be allowed within public view except for arbors.
- m) No interior sidewalks shall be required.
- n) No alleys shall be required.
- o) Lots shall be allowed to back upon Lake Park Way and Jonsson Boulevard.
- p) Non-radial lot lines shall be allowed.
- q) Fences shall be stained, board on board or standard vertical tubular steel. No fence shall exceed six (6) feet in height. No fence shall be permitted parallel to the perimeter screen wall along Lake Park Way or Jonsson Boulevard or parallel to the rear property lines of lots that are adjacent to Lake Park Estates. All fencing shall match the exterior wall/fencing height at tie-in point.
- r) A landscape buffer shall be provided along the rear lot lines of Lots 16-20 and along the west property lines of Lots 20 & 37. The buffer shall include a single row of evergreen shrubs which shall grow to a minimum six (6) feet in height at maturity.
- s) Garage doors shall be custom, metal carriage-style (wooden look) doors.
- t) The storm water control/detention area shall be landscaped and maintained by the HOA. A minimum four (4) canopy trees and four (4) ornamental trees shall be provided. A walking trail and benches shall also be provided.



**ZF 11-21**



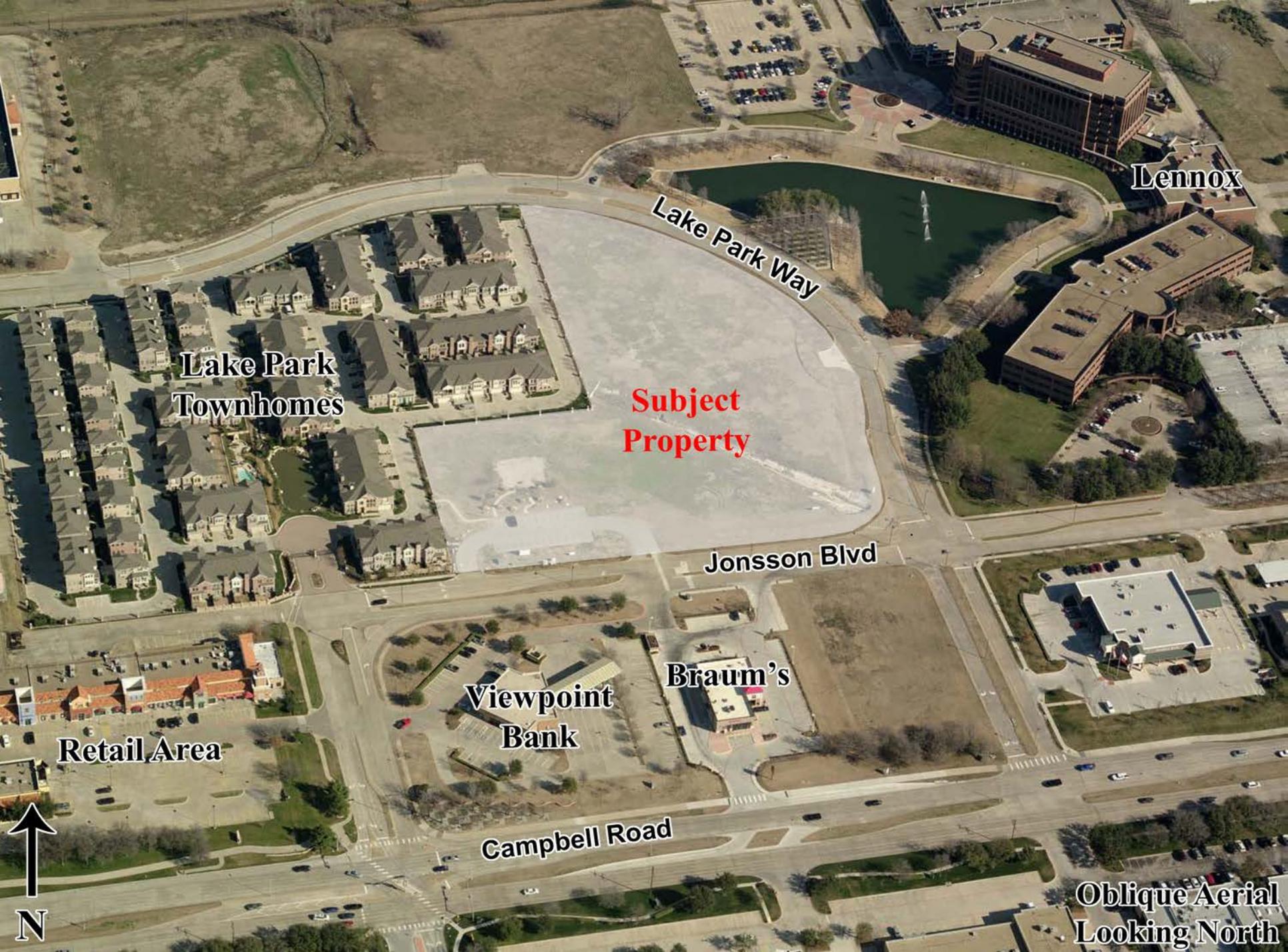
**SUBJECT PROPERTY FOR ZONE CHANGE**

**ZF 11-21 Aerial Map**

Updated By: shacklett, Update Date: October 28, 2011  
File: DSI\Mapping\Cases\Z\2011\ZF 1121\ZF 1121 ortho.mxd

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.





Lennox

Lake Park Way

Lake Park  
Townhomes

Subject  
Property

Jonsson Blvd

Viewpoint  
Bank

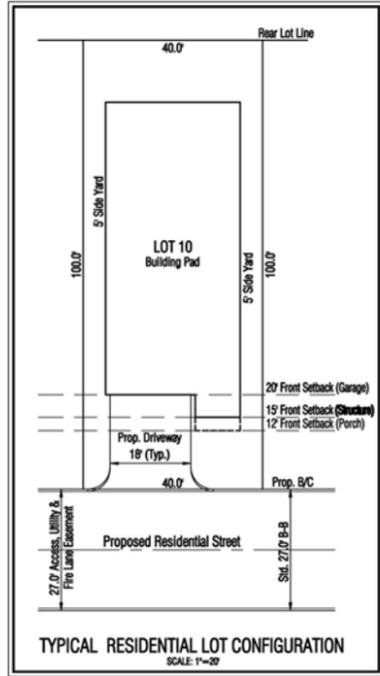
Braum's

Retail Area

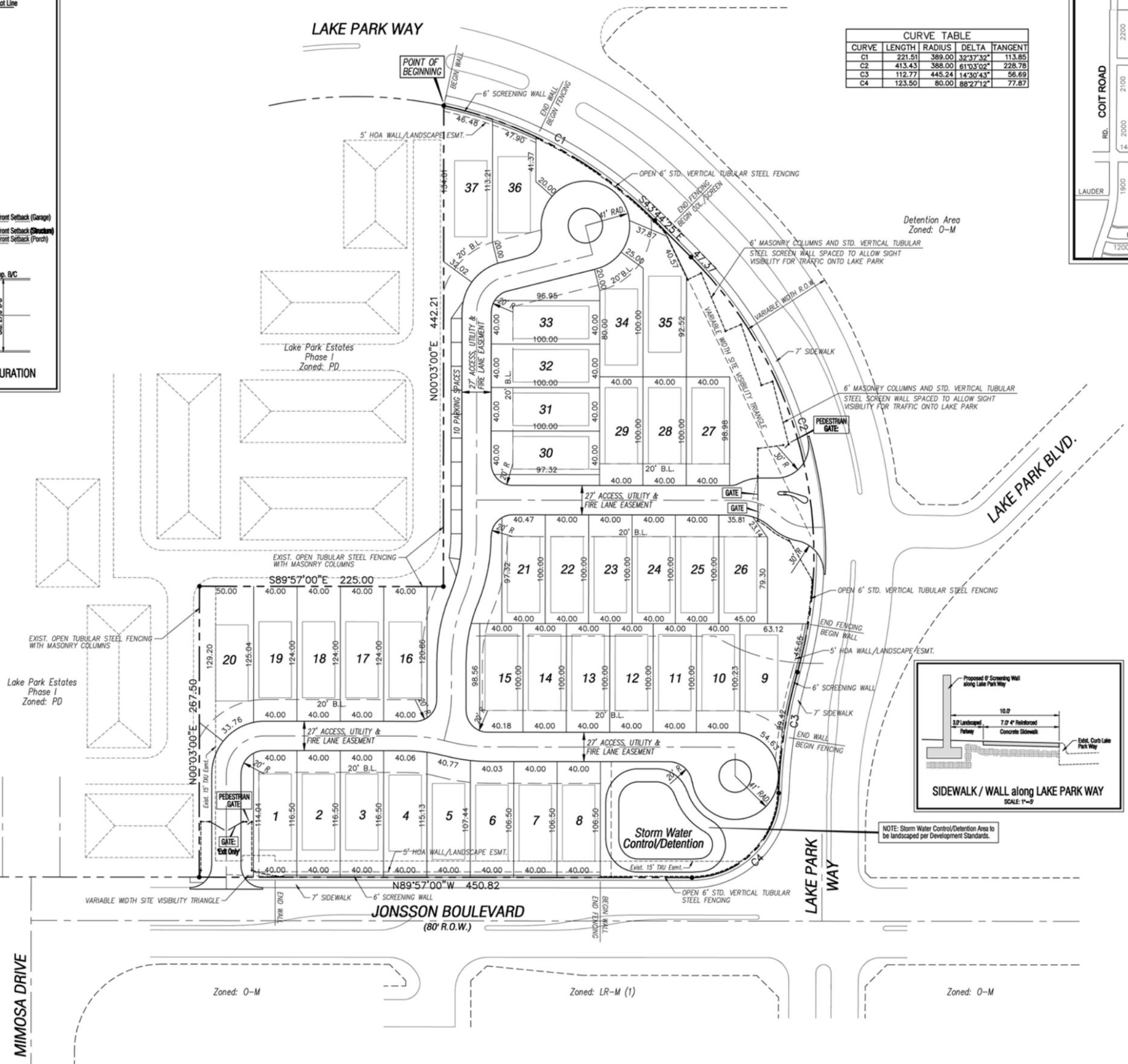
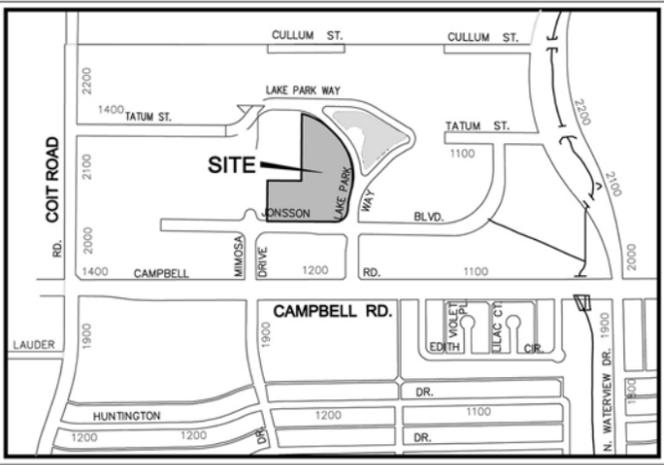
Campbell Road



Oblique Aerial  
Looking North



CURVE	LENGTH	RADIUS	DELTA	TANGENT
C1	221.51	389.00	32°37'32"	113.85
C2	413.43	388.00	61°03'02"	228.78
C3	112.77	445.24	14°30'43"	56.69
C4	123.50	80.00	88°27'12"	77.87



**David Weekley Homes**  
 Re-Zoning for a 5.87 Acre Tract  
 Richardson, Texas

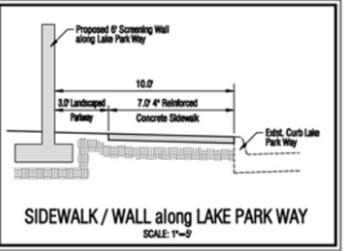
**Project Summary:**

Subject Tract Area: 5.87 Acres/255,564 square feet  
 Current Zoning: OM Office  
 Proposed Zoning: RP-1500-M with Special Conditions as Follows:

- Maximum Density: 6.31 Lots/Acre
- Maximum Residential Lots: 37
- Minimum Lot Area: 4,000 square feet
- Maximum Lot Coverage: 65%
- Minimum Building Size: 1,800 square feet (exclusive of Garages)
- Building Height: 2 Stories not to exceed 40 feet (As measured from F.F.)
- Minimum Lot Width: 40 feet
- Minimum Lot Depth: 100 feet
- Minimum Front Setback:
  - 20 feet for garage (face of garage door)\*
  - 15 feet for remainder of structure\*
  - 12 feet for a porch\*
  - \* 18 inch overhang encroachment allowed
- Minimum Interior Side:
  - To be determined at development plans with a minimum 10 feet of building separation \*
  - \* 18 inch overhang encroachment allowed for option utilized
- Minimum Corner Lot Side Setback: 15 feet (18 inch overhang encroachment allowed)
- Minimum Rear setback: 10 feet (18 inch overhang encroachment allowed)
- No accessory structures shall be allowed within public view except for arbors.

**Additional Development Standards:**

- No interior sidewalks shall be required
- No alleys shall be required
- Lots shall be allowed to back upon Lake Park Way and Jonsson Blvd.
- Non-radial lot lines shall be allowed
- Fences shall be board on board or standard vertical tubular steel. No fence shall be permitted parallel to the perimeter screen wall along Lake Park Way or Jonsson Blvd. or parallel to the rear property lines of lots that are parallel and adjacent to Lake Park Estates. All fencing shall match the exterior wall/fencing height at tie-in point
- Garage doors shall be custom metal carriage-style (wooden look) or better (2-Car)
- The storm water control/detention area shall, at a minimum, contain 4 canopy trees, 4 ornamental trees, a walking trail and benches



**dietz engineering**

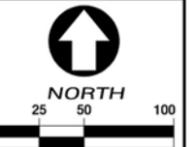


Signing Date:  
**dietz engineering**  
 1761 international parkway  
 suite 115  
 richardson, texas 75081  
 voice: 972 889-9977  
 fax: 972 889-9993

Drawn By: LL  
 Checked By: ROD  
 Revisions:  

No.	Date	Description

**Zoning Exhibit**  
**5.87 ACRE RESIDENTIAL TRACT**  
**37 LOTS - RP-1500-M w/Special Conditions**  
 Richardson, Dallas County, Texas



24"x36" Scale: 1"=50'  
 Vertical Scale: na  
 11"x17" Scale: 1"=100'  
 Vertical Scale: na

Project No.: E-DWH-001  
 Issue Date: October 17, 2011  
 Sheet Title:  
**ZONING EXHIBIT**  
 Sheet No.:

**Exhibit B - Part of Ordinance**

**OWNER / DEVELOPER:**  
 David Weekley Homes  
 Attn: Eyal Avnon  
 3301 North I-35  
 Carrollton, Texas 75007  
 (972) 323-7504

**PREPARED BY:**  
**dietz engineering**  
 1761 international parkway  
 suite 115  
 richardson . texas . 75081  
 (972) 889.9977

**C1.01**

### **Exhibit C - ZF 11-21 Special Conditions**

The property shall be developed in conformance with the RP-1500-M Patio Home District regulations and Chapter 21 Subdivision and Development Code except as listed below:

1. A maximum of thirty-seven (37) residential lots shall be allowed.
2. The maximum density shall not exceed 6.31 dwelling units per acre.
3. The minimum residential lot area shall be 4,000 square feet.
4. The maximum residential lot coverage shall be 65%.
5. The minimum residential building size shall be 1,800 square feet (exclusive of garages).
6. Residential building height shall be two (2) stories, not to exceed forty (40) feet.
7. The minimum lot width shall be 40 feet.
8. The minimum front setback shall be twenty (20) feet for garages (measured to face of garage door). The required front setback or build to line shall be fifteen (15) feet for remainder of structure, except a minimum setback of twelve (12) feet for a porch shall be allowed (18-inch overhang encroachment allowed for all of the above).
9. The minimum interior side setback shall be determined at the time of development plan approval with a minimum required 10-foot building separation (18-inch overhang encroachment allowed).
10. The minimum corner lot side setback shall be fifteen (15) feet (18-inch overhang encroachment allowed).
11. The minimum rear setback shall be ten (10) feet (18-inch overhang encroachment allowed).
12. No accessory structures shall be allowed within public view except for arbors.
13. No interior sidewalks shall be required.
14. No alleys shall be required.
15. Lots shall be allowed to back upon Lake Park Way and Jonsson Boulevard.
16. Non-radial lot lines shall be allowed.
17. Fences shall be stained, board on board or standard vertical tubular steel. No fence shall exceed six (6) feet in height. No fence shall be permitted parallel to the perimeter screen wall along Lake Park Way or Jonsson Boulevard or parallel to the rear property lines of lots that are adjacent to Lake Park Estates. All fencing shall match the exterior wall/fencing height at tie-in point.
18. A landscape buffer shall be provided along the rear lot lines of Lots 16-20 and along the west property lines of Lots 20 & 37. The buffer shall include a single row of evergreen shrubs which shall grow to a minimum six (6) feet in height at maturity.
19. Garage doors shall be custom, metal carriage-style (wooden look) doors.
20. The storm water control/detention area shall be landscaped and maintained by the HOA. A minimum four (4) canopy trees and four (4) ornamental trees shall be provided. A walking trail and benches shall also be provided.



(1)

Looking West along  
Lake Park Way toward Home Depot

**NWC Lake Park Way & Jonsson Blvd - August 2011**



(2)

Looking North  
along Lake Park Way



(3)

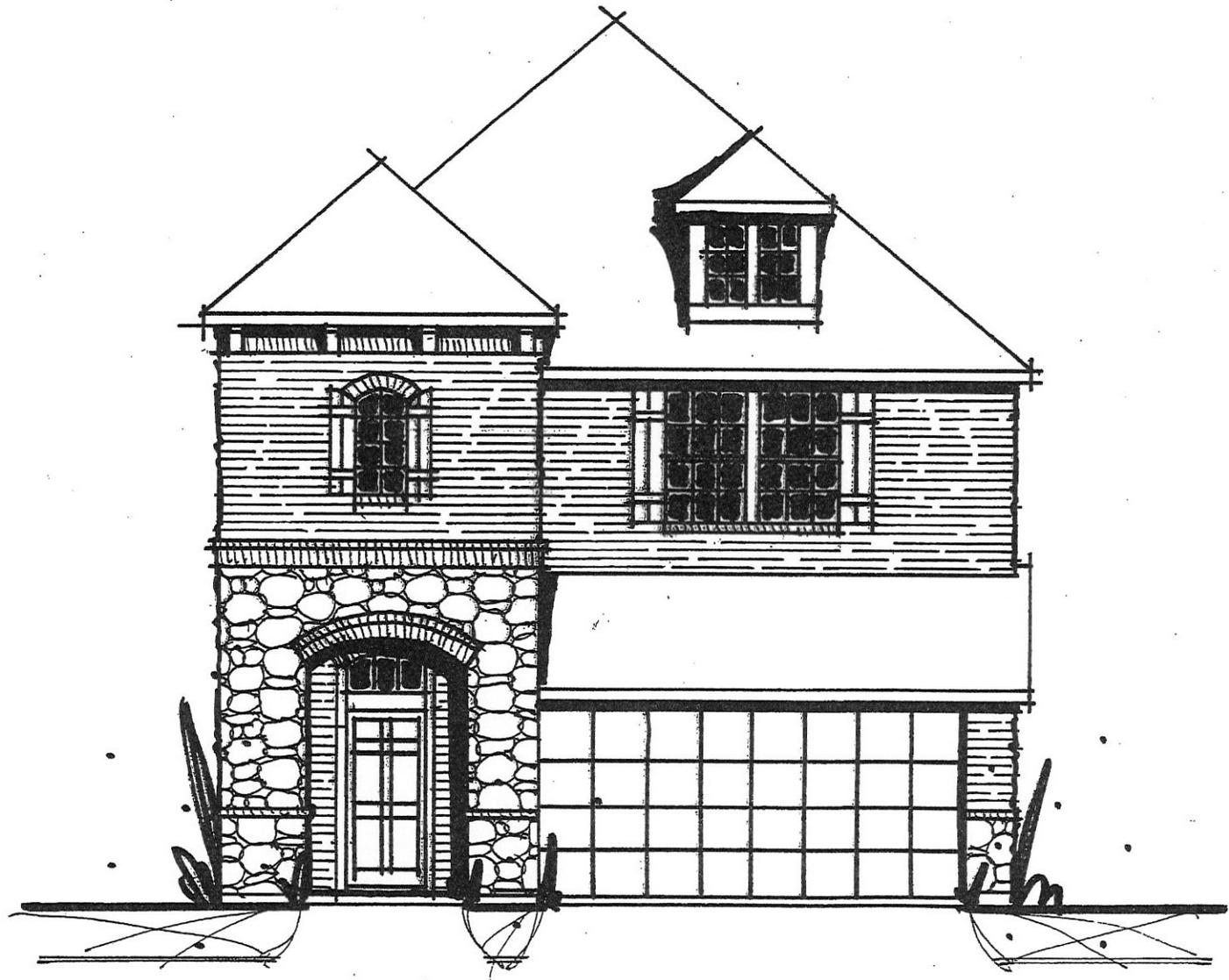
Looking South  
across Jonsson Blvd

**NWC Lake Park Way & Jonsson Blvd - August 2011**



(4)

Looking West  
at Lake Park Townhomes



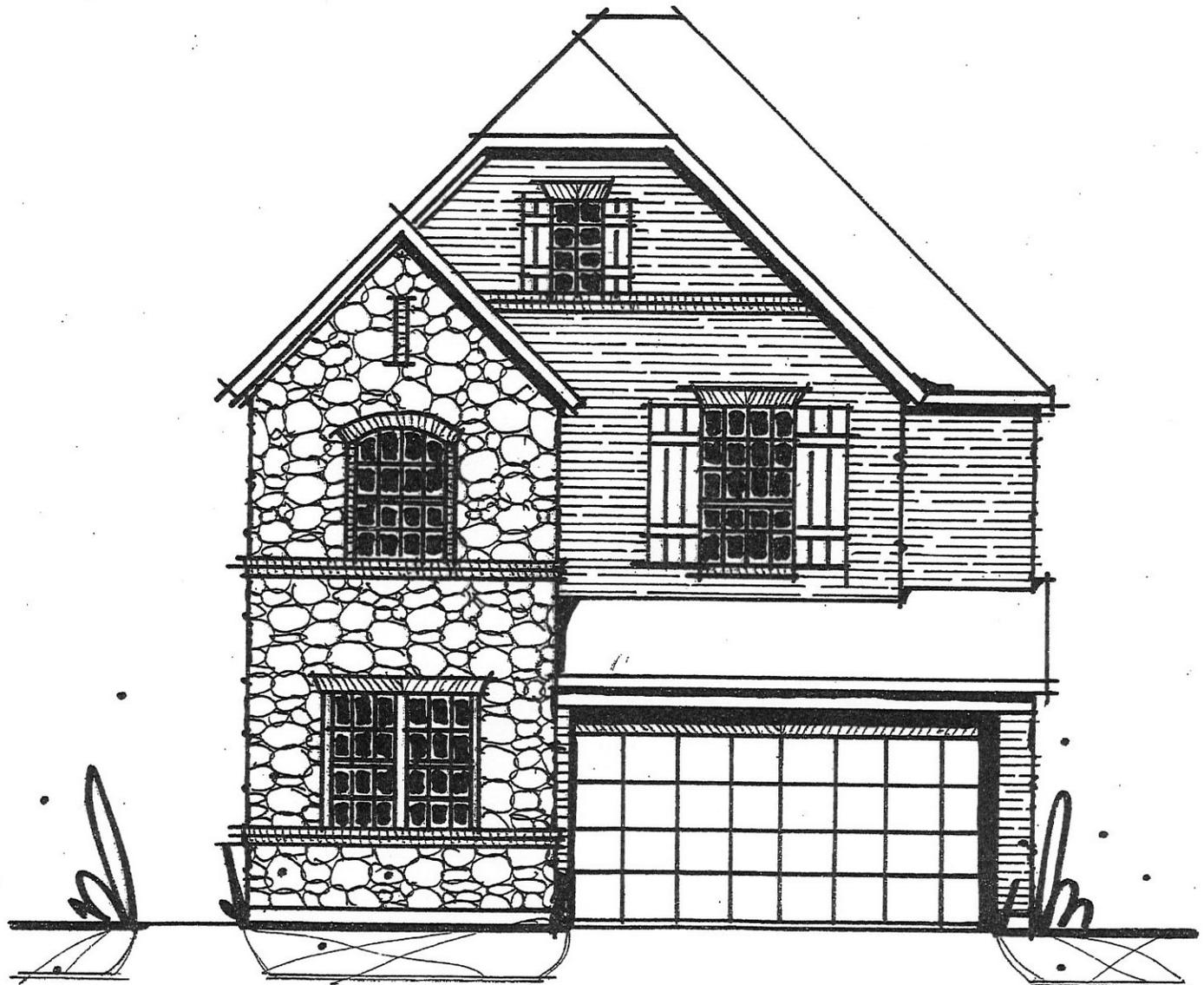
**Exhibit E-1**  
**Conceptual Elevation**



**Exhibit E-2**  
**Conceptual Elevation**



**Exhibit E-3**  
**Conceptual Elevation**



**Exhibit E-4**  
**Conceptual Elevation**

# David Weekley Homes

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3301 North 1-35, Carrollton, TX 75007  
972/245-5959 Dallas Division fax: 972/446-9290  
972/242-9611 New Home Center fax: 972/242-4822

November 3, 2011

RE: Applicant's Statement for Zoning Change Request concerning a 5.87 +/- acre tract of real property located at the northwest corner of Jonsson and Lake Park Boulevards in Richardson, Texas.

To Whom It May Concern:

The purpose of this zoning change request is to convert the above described property from its current designation (O-M Office) to single family residential (RP-1500-M w/ special conditions). The site lies within a mixed use area and ties into surrounding office, retail and housing uses, conditions which make it ideal for the type of development being contemplated. It is the vision of the applicant, David Weekley Homes, to entitle and develop the site to allow a gated, private subdivision containing thirty seven (37) single family dwellings.

All construction materials used within the project will comply with City code. Each residence will have a private, 2-car concrete driveway and will have parking for, at minimum, 2 standard sized vehicles in an enclosed garage attached to the home. Garage doors will be constructed with a custom, "carriage style" metal door which have the appearance of wooden doors. These doors are insulated, durable, entirely maintenance free and have a great, lasting look to them. The community will contain a water quality pond to ensure that onsite run-off is improved before entering public storm-water system. The detention area will be amply landscaped with canopy and ornamental trees and will contain a walking trail and seating areas for residents as well as their visitors. We aim to promote connectivity to the neighboring retail and conveniences by providing pedestrian access gates to be installed at various points. However, being that this is contemplated as a private subdivision with (a) a limited number of residences, (b) no cut-through traffic and (c) reduced speed limits (ie. 20 mph), no sidewalks are necessary.

After careful market research, including interaction with the Richardson brokerage community we believe the primary target market for the contemplated project is (a) the empty nester population, (b) young professionals purchasing for location and proximity to employment, and (c) dual income young families seeking housing within the highly sought after Richardson school district. The neighborhood will have a great deal of appeal to prospective buyers seeking a low maintenance, "lock and leave" lifestyle; currently there is little of this product available in Richardson, particularly in west Richardson. This parcel has great visibility from Campbell Road, is well located to major transportation corridors (190, 75 & DNT) and is within walking distance to many neighborhood conveniences – attributes which lend themselves to successful, mixed use opportunities and a great addition to the City of Richardson.

Respectfully,



Eyal Avnon  
David Weekley Homes



# Notice of Public Hearing

## City Plan Commission • Richardson, Texas

An application has been received by the City of Richardson for a:

### ZONING CHANGE

**File No./Name:** ZF 11-21 / Patio Home Development  
**Property Owners:** Thomas W. Booth / AOC Land Investment, LLC  
**Applicant:** Eyal Avnon / David Weekley Homes  
**Location:** NW Corner of Jonsson Blvd and Lake Park Way.  
(See map on reverse side)  
**Current Zoning:** O-M Office District  
**Request:** Zoning change from O-M Office District with special conditions to RP-1500-M Patio Homes with modified development standards.

The City Plan Commission will consider this request at a public hearing on:

**TUESDAY, NOVEMBER 15, 2011**  
**7:00 p.m.**  
**City Council Chambers**  
**Richardson City Hall, 411 W. Arapaho Road**  
**Richardson, Texas**

*This notice has been sent to all owners of real property within 200 feet of the request; as such ownership appears on the last approved city tax roll.*

**Process for Public Input:** A maximum of 15 minutes will be allocated to the applicant and to those in favor of the request for purposes of addressing the City Plan Commission. A maximum of 15 minutes will also be allocated to those in opposition to the request. Time required to respond to questions by the City Plan Commission is excluded from each 15 minute period.

Persons who are unable to attend, but would like their views to be made a part of the public record, may send signed, written comments, referencing the file number above, prior to the date of the hearing to: Dept. of Development Services, PO Box 830309, Richardson, TX 75083.

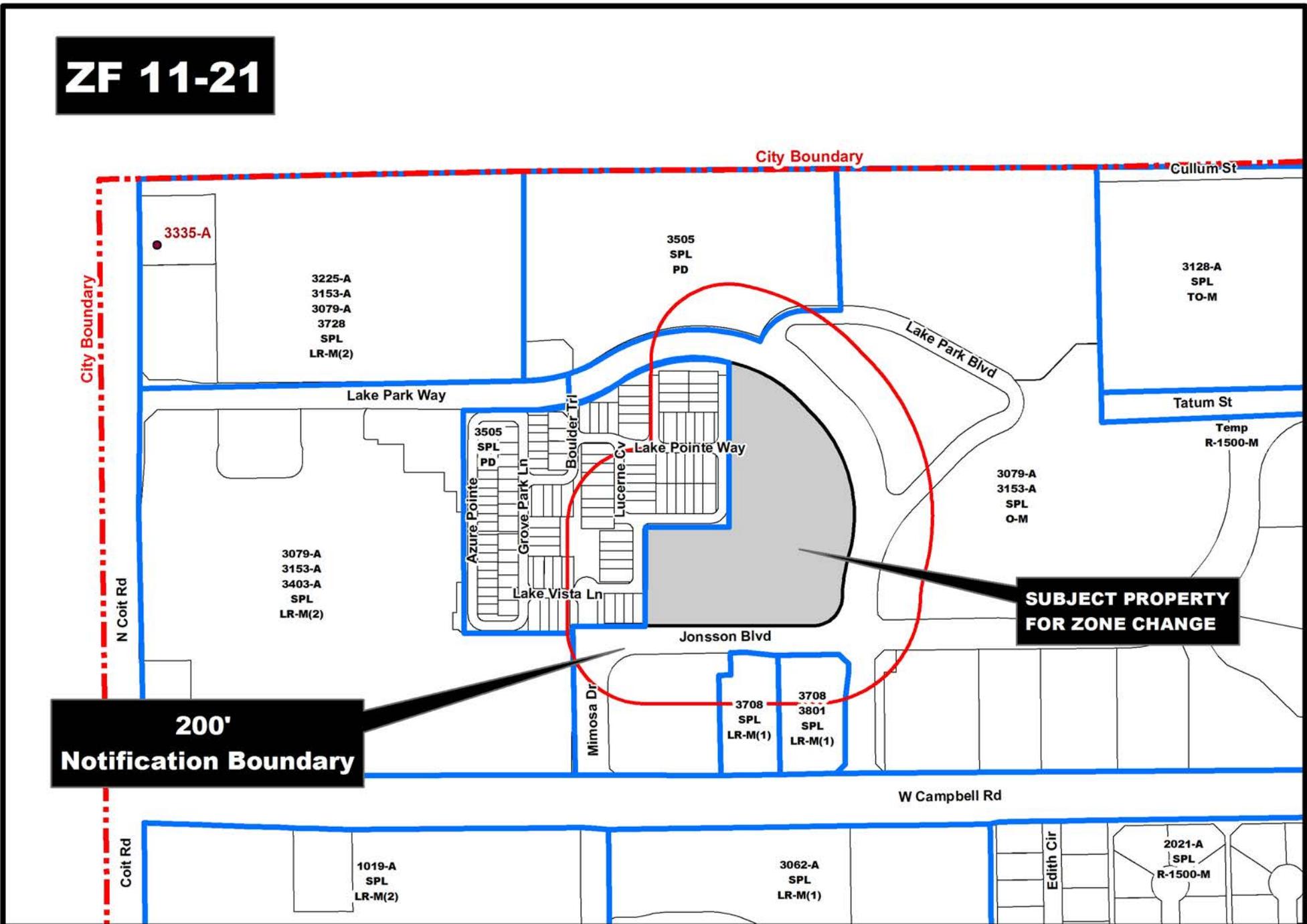
*The City Plan Commission may recommend approval of the request as presented, recommend approval with additional conditions or recommend denial. Final approval of this application requires action by the City Council.*

**Agenda:** The City Plan Commission agenda for this meeting will be posted on the City of Richardson website the Saturday before the public hearing. For a copy of the agenda, please go to: <http://www.cor.net/DevelopmentServices.aspx?id=13682>.

For additional information, please contact the Dept. of Development Services at 972-744-4240 and reference Zoning File number ZF 11-21.

Date Posted and Mailed: 11/04/11

# ZF 11-21



## ZF 11-21 Notification Map

Updated By: shacklett, Update Date: October 28, 2011  
 File: DSIMapping\Cases\Z\2011\ZF1121\ZF1121 notification.mxd

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



PAVILLION BANK  
1200 W CAMPBELL RD  
RICHARDSON, TX 75080-2945

LENNOX COMMERCIAL  
REALTY INC  
2100 LAKE PARK BLVD  
RICHARDSON, TX 75080-2254

UNIVERSITY WORLD OWNERS OC  
% EXCEL ASSOC MGMT INC  
PO BOX 941169  
PLANO, TX 75094-1169

VIEWPOINT BANK  
5400 INDEPENDENCE PKWY  
PLANO, TX 75023-5430

TSCA 234 LTD PARTNERSHIP OC  
301 S SHERMAN ST STE 100  
RICHARDSON, TX 75081-4176

A O C LAND INVESTMENT LLC  
% SOUTHERN WEALTH MGMT  
5005 L B J FWY STE 920  
DALLAS, TX 75244-6142

LAKE PARK TOWNHOMES LTD  
1100 PROVIDENCE TOWERS  
5001 SPRING VALLEY RD  
DALLAS, TX 75244-3946

JENNINGS AMY R  
1203 LAKE POINTE WAY  
RICHARDSON, TX 75080-8410

KREBS WILLIAM J & MARY K  
1205 LAKE POINTE WAY  
RICHARDSON, TX 75080-8410

BOATRIGHT KATHERINE P  
1207 LAKE POINTE WAY  
RICHARDSON, TX 75080-8410

RETAIL BUILDINGS INC  
16135 PRESTON RD STE 107  
DALLAS, TX 75248-8511

WALLACE KYLE  
2107 REFLECTION POINTE  
RICHARDSON, TX 75080-8416

PONTHIER MARK J  
1202 EMERALD GLEN TRL  
RICHARDSON, TX 75080-8414

CLARK COLLEEN E  
1204 EMERALD GLEN TRL  
RICHARDSON, TX 75080-8414

CHANG KEVIN  
1206 EMERALD GLEN TRL  
RICHARDSON, TX 75080-8414

COOPER ARTHUR W & JULIA  
1804 YALE PL  
RICHARDSON, TX 75081-2129

CEPON SUSANNE J  
1210 EMERALD GLEN TRL  
RICHARDSON, TX 75080-8414

FISHER SUSAN L  
1216 EMERALD GLEN TRL  
RICHARDSON, TX 75080-8414

H-H RETAIL LLC  
5339 ALPHA RD STE 300  
DALLAS, TX 75240-7307

SIMMONS DANIEL SUPPLEMENTAL  
NEEDS TRUST  
805 LADY OF THE LAKE BLVD  
THE COLONY, TX 75056-5720

NEWSTROM RODERICK A &  
CAROLYN J  
648 DEL NORTE  
SANTA MARIA, CA 93455-1336

PARNELLRISDALL MOLLY E  
6907 HICKORY CREEK LN  
DALLAS, TX 75252-2730

FERGERSON SHIRLEY A & JOE H  
1211 LAKE POINTE WAY  
RICHARDSON, TX 75080-8410

PURCELI DANNY A &  
SHELLEY D BAKER  
2115 LUCERNE CV  
RICHARDSON, TX 75080-2299

MARTINEZ FAUSTO SR & MAYRA  
2113 LUCERNE CV  
RICHARDSON, TX 75080-2299

BALLANTYNE GARY L &  
JENNIFER H  
2105 LUCERNE CV  
RICHARDSON, TX 75080-2299

SAAD NAJI  
2013 LUCERNE COVE  
RICHARDSON, TX 75080

HENRY ALYSHA D & ROBERT J  
2009 GARDEN VIEW LN  
RICHARDSON, TX 75080-2298

RUSSELL JACK KOYTE JR  
417 PLEASANT VALLEY LN  
RICHARDSON, TX 75080-1871

LUZZATTO DAVID  
2005 GARDEN VIEW LN  
RICHARDSON, TX 75080-2298

KHELAS MEHDI  
2003 GARDEN VIEW LN  
RICHARDSON, TX 75080-2298

CHARD CHARLES A  
2413 CUSTER CV  
RICHARDSON, TX 75080-2101

OCKELMANN GREGORY A & REGIN  
1203 LAKE VISTA LN  
RICHARDSON, TX 75080-8415

GUVELIOGLU ILYAS B & MAKILE  
1205 LAKE VISTA LN  
RICHARDSON, TX 75080-8415

HAI SILVI S & SHAOUL S  
2210 SHADY VIS  
RICHARDSON, TX 75080-8412

GAMLIEL GILA  
2209 REFLECTION POINTE  
RICHARDSON, TX 75080-8413

LOWER STEPHEN L &  
KATHERINE G  
2206 SHADY VIS  
RICHARDSON, TX 75080-8412

VINZANT JENNIFER SHAY  
2207 REFLECTION POINTE  
RICHARDSON, TX 75080-8413

LIVELY PAUL L & NANCY D  
2204 SHADY VIS  
RICHARDSON, TX 75080-8412

LAI ZEN YOUNG  
2205 REFLECTION POINTE  
RICHARDSON, TX 75080-8413

RODRIGUEZ GEORGE E &  
YARITAZ  
2711 DA VINCI DR  
DALLAS, TX 75287-3332

HAMEL EVAN  
1204 LAKE POINTE WAY  
RICHARDSON, TX 75080-8409

WHITTINGTON JOSH A &  
ROBIN D  
2203 REFLECTION POINTE  
RICHARDSON, TX 75080-8413

CICERO EDUARDO HORI &  
ESPINOSA PAOLA DEL VALLE  
2111 LUCERNE CV  
RICHARDSON, TX 75080-2299

LUXEN LELA M & JOHN W  
1301 BOULDER TRL  
RICHARDSON, TX 75080-8418

CHAO NANCY  
1303 LAKE VISTA LN  
RICHARDSON, TX 75080-2291

SELMAN MICHAEL C & SACHIKO  
2101 LUCERNE CV  
RICHARDSON, TX 75080-2299

M HUMPREYS FAMILY LIMITED P  
5339 ALPHA RD STE 300  
DALLAS, TX 75240-7307

GILSON JON  
1207 NEW HAVEN CT  
ROSWELL, GA 30075-8246

BOOTH THOMAS W  
2107 LUCERNE CV  
RICHARDSON, TX 75080-2299

BERMAN EVELYN S  
12508 SUNLIGHT DR  
DALLAS, TX 75230-1854

**BOOTH THOMAS W  
AOC LAND INCVESTMENT, LLC  
5005 LBJ FREEWAY, STE 920  
DALLAS, TX 75244**

**EYAL AVNON  
DAVID WEEKLY HOMES  
3301 NORTH I-35  
CARROLLTON, TX 75007**

**ZF 11-21  
Notification List**

Note: Also refer to Ord.  
#3153-A, 3403-A.

ORDINANCE NO. 3079-A

**AN ORDINANCE OF THE CITY OF RICHARDSON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF RICHARDSON, TEXAS, AS HERETOFORE AMENDED, SO AS GRANT A CHANGE OF ZONING FROM O-M OFFICE DISTRICT ZONING, WITH SPECIAL CONDITIONS TO LR-M(2) LOCAL RETAIL DISTRICT ZONING, WITH SPECIAL CONDITIONS, ON A 45.146 ACRE TRACT OF LAND DESCRIBED AS TRACT "A" IN EXHIBIT "D" ATTACHED HERETO; TO REVISE THE SPECIAL CONDITIONS ON A 72.896 ACRE TRACT OF LAND DESCRIBED AS TRACT "B" IN EXHIBIT "D", ATTACHED HERETO, WHICH IS ZONED O-M OFFICE DISTRICT ZONING, WITH SPECIAL CONDITIONS. THE PROPERTY IS LOCATED ON THE NORTH SIDE OF CAMPBELL ROAD BETWEEN COIT ROAD AND WATERVIEW PARKWAY AND IS DESCRIBED AS TRACTS "A" AND "B" IN EXHIBIT "D", ATTACHED HERETO; PROVIDING SPECIAL CONDITIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Planning Commission of the City of Richardson and the governing body of the City of Richardson in compliance with the laws of the State of Texas and the ordinances of the City of Richardson, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and in the exercise of its legislative discretion have concluded that the Comprehensive Zoning Ordinance should be amended; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS:**

**SECTION 1.** That the Comprehensive Zoning Ordinance of the City of Richardson, Texas, duly passed by the governing body of the City of Richardson on the 5th day of June, 1956, as heretofore amended, be, and the same is hereby amended, so as to grant a change of zoning from O- M Office District Zoning, with special conditions, to LR-M(2) Local Retail District Zoning, with special conditions, on a 45.146 acre tract of land described as tract "A" in Exhibit "D" attached hereto and made a part hereof; and to revise the special conditions on a 72.896 acre tract of land described as tract "B" in Exhibit "D", attached hereto and made a part hereof, which is zoned O-M Office District Zoning, with special conditions. The property is located on the north side of Campbell Road between Coit Road and Water-view Parkway and is described as tracts "A" and "B" in Exhibit "D", attached hereto and made a part hereof for all purposes.

**SECTION 2.** That the above change in zoning is hereby approved subject to the following conditions, on tract "A", and subject to the revised conditions on tract "B", and subject to conditions on both tracts "A" and "B" as follows, to wit:

**TRACT A: LR-M(2) Local Retail with the following special conditions:**

1. Uses. Tract A may be developed for any of the following uses:

1.1 Retail as authorized in Sec. 1, Article XVI-B (LR-M(2) Local Retail District) except that the following uses shall be prohibited:

Motor vehicle repair shop	Motor vehicle upholstery shop
Bowling alley	Exterminating company, retail
Frozen food lockers	Laundry, automatic
Motor vehicle service station	Car wash
Plumbing shop	Rug cleaning shop

1.2 Full service hotel. Limited service hotel or suite hotel, subject to the approval of a special permit. No more than one hotel of any type shall be permitted on the LR-M(2) tract.

2. Building Heights. No building shall exceed thirty-two (32) feet in height, except that architectural features, such as embellishments, decorative motifs, and bell towers may exceed thirty-two (32) feet in height, but in no event will they exceed fifty (50) feet in height. A hotel may be constructed with a height of up to 130 feet when within 550' feet of the north property line of Tract A.

3. Building Coverage/Intensity. The maximum building coverage, including parking structures, shall be twenty-five percent (25%), and the maximum Floor Area Ratio (FAR) shall be 0.35:1, excluding parking structures.

4. Setback Requirements.

4.1 Front Yard: All buildings fronting on Coit Road or Campbell Road shall have a front yard setback and landscape easement of not less than 50 feet. The setback from all other streets shall be 30 feet.

~~4.2~~ Side Yard: All buildings shall be set back 25 feet from the side property line. In the case of a lot which has a side yard abutting a dedicated street, the front yard setback shall be observed along the side yard abutting the street.

~~4.3~~ Rear Yard: All buildings shall set back 25 feet from the rear property line.

INTERIOR SIDE & REAR SETBACKS DELETED BY ORD.  
#3403-A.

The following improvements are excluded from the above referenced setback requirements: (1) structures below and covered by the ground where such structures will not interfere with provisions for underground utilities; (2) steps, walks, driveways and curbing; and (3) planters, walls, fences or hedges, not to exceed four (4) feet in height, and landscaping, including earthen berms, except that within any visibility easement, a maximum height of 2.5 feet shall apply.

5. Ingress and Egress. Ingress and egress from Tract A shall be limited to the extension of Cullum Street to Coit Road, one (1) driveway on Coit Road and one (1) driveway on Campbell Road. The driveway on Campbell Road is to be aligned with the existing driveway and median opening serving Pavilion One Center located on the south side of Campbell Road. The intersection of Campbell Road and Mimosa Drive is to be controlled by traffic signals and median diverter so as to prohibit direct north/south access across Campbell Road. Access to the extension of Mimosa Drive (north of Campbell) and Cullum Street shall not be limited

6. Building Area Limits. Not more than 400,000 square feet of gross building area, in the aggregate, exclusive of parking structures, may be constructed.

ref. Ord. # 3153-A for Revised Concept Plan

7. Development Requirements. The street and open areas within this property shall be developed essentially in accordance with the conceptual plan in a retail "village" style on Tract A. A retail village may consist of one or more structures of a size or sizes as deemed appropriate by the applicable owner, and may include landscaped walkways, seating areas, and other outdoor common areas for pedestrian use.

8. Landscape Requirements. Not less than fifteen percent (15%) of the retail sites shall be provided as landscaped areas, said landscaped area to include street medians, parkways and required setbacks in addition to other landscaped areas.

9. Parking Requirements. Parking for each use in a development shall be provided at the ratio for office, hotel, retail and related uses that is in effect as of the date such use is developed.

10. Exhibits. The following exhibits will be attached to and become a part of the Ordinance zoning the herein described property:

10.1 Tract Map (Exhibit A) defining the limits of Tract A.

10.2 Conceptual Plan (Exhibit B) for purposes of showing circulation, major landscape features and the general character of development, as described above in Item No.

7, Development Requirements. ← ref. Ord. # 3153-A for Revised Concept Plan

- 10.3 Architectural Image Studies (Exhibit C) indicating the general character of development to be expected within Tract A.
11. Deed Restrictions. Amended and Restated Deed Restrictions reflecting the matters set forth herein shall be submitted to the City Secretary of the City of Richardson, Texas.
12. Thoroughfare Improvements:
  - 12.1 A street easement will be granted within the required 50' landscape buffer area, to allow for a minimum of 10 feet of pavement for the construction of a continuous right turn lane (auxiliary lane) along the north side of Campbell Road between Mimosa and Coit within the existing right-of-way. This auxiliary lane will be constructed by the landowners prior to the issuance of a building permit for more than 200,000 square feet of retail development. This right turn lane will be the extension of the existing right turn lane on Mimosa Drive.

**TRACT B: O-M Office with the following special conditions:**

**1. Uses.**

- 1.1 Tract B may be used for any of the following uses:
  - (a) Business and professional offices.
  - (b) Banks and financial institutions.
  - (c) Radio and television studio, but not including transmittal stations or broadcasting towers.
  - (d) Public buildings erected or used by city government.
  - (e) Full service hotel. Limited service hotel or suite hotel, subject to the approval of a special permit. No more than one hotel of any type shall be permitted on the O-M tract.
  - (f) Incidental retail and service activities including specialty shops such as florists, men's and women's clothing stores, cleaners, card and camera shops, gift shops and jewelry stores, but such incidental retail and services may not exceed five percent (5%) of the total gross square footage allowed on Tract B.
2. Building Heights. On Tract B-1, no building shall exceed two (2) standard stories. On Tract B-2, no building shall exceed four (4) standard stories; however, a hotel, with a maximum height of up to 70 feet may be constructed. On Tract B-3 no building shall exceed eight (8) standard stories,; however, a hotel, with a maximum height of up to 130 feet may be constructed when within 550 feet of the north property line of Tract B-3.

3. Building Coverage/Intensity. On Tract B-1, the maximum building coverage, including parking structures, shall be twenty-five percent (25%), and the maximum Floor Area Ratio (FAR) shall be 0.35:1, excluding parking structures. On Tracts B-2 and B-3, the maximum building coverage, including parking structures, shall be forty percent (40%). The maximum FAR on Tract B-2 shall be 0.55:1, excluding parking structures, and the maximum FAR on Tract B-3 shall be 0.60:1, excluding parking structures.
4. Setback Requirements.
  - 4.1 Front Yard: All buildings fronting on Campbell Road or Waterview Drive shall have a front yard setback and landscape easement of not less than 50 feet. The setback from all other streets shall be 30 feet.
  - 4.2 Side Yard: All buildings shall be set back 25 feet from the side property line. In the case of a lot which has a side yard abutting a dedicated street, the front yard setback shall be observed along the side yard abutting the street.
  - 4.3 Rear Yard: All buildings shall set back 25 feet from the rear property line.

The following improvements are excluded from the above referenced setback requirements: (1) structures below and covered by the ground where such structures will not interfere with provisions for underground utilities; (2) steps, walks, driveways and curbing; and (3) planters, walls, fences or hedges, not to exceed four (4) feet in height, and landscaping, including earthen berms, except that within any visibility easement, a maximum height of 2.5 feet shall apply.

5. Ingress and Egress. Ingress and egress from Tract B, shall be limited to the extension of Lake Park Blvd. to Campbell Road and to one (1) driveway on Waterview Drive. The intersection of Campbell Road and Mimosa Drive is to be retained and is to be controlled by traffic signals and median diverters so as to prohibit direct north/south access across Campbell Road. Access to Cullum Street, Jonsson Street, Lake Park Blvd. and Tatum Street shall not be limited.

6. Building Area Limits. Not more than 1,045,000 square feet of gross building area, in the aggregate, exclusive of parking structures, the existing Lennox headquarters (132,000 square feet) building and the existing Credit Union building (5,500 square feet), may be constructed.
7. Development Requirements. The street and open areas within this property shall be developed essentially in accordance with the conceptual plan, in a campus fashion over the entire Tract B.   
↖ ref. Ord. #3153-A for revised  
Concept Plan
8. Landscape Requirements. Not less than twenty-five percent (25%) of the office sites shall be provided as landscaped areas, said landscaped area to include street medians, parkways and required setbacks in addition to other landscaped areas.
9. Parking Requirements. Parking for each use in the development shall be provided at the ratio for office, hotel, retail and related uses that is in effect as of the date such use is developed.
10. Exhibits. The following exhibits will be attached to and become a part of the Ordinance zoning the herein described property:
  - 10.1 The Tract Map (Exhibit A) defining the limits of Tract B-1, B-2 and B-3 as referenced in this Ordinance.
  - 10.2 Conceptual Plan (Exhibit B) for purposes of showing circulation, major landscape features and the general character of development, as described above in Item No. 7, Development Requirements. ← ref. Ord. # 3153-A for revised Concept Plan
11. Deed Restrictions. Amended and Restated Deed Restrictions reflecting the matters set forth herein shall be submitted to the City Secretary of the City of Richardson, Texas.

**OVERALL (Tracts A and B)**

- I. Thoroughfare Improvements. Development of this property will include the abandonment of portions of the existing rights-of-way in exchange for the dedication of rights-of-way necessary to support changes to the Master Thoroughfare Plan relative to Cullum, Tatum and Mimosa Drive. These thoroughfare changes will occur as the adjacent property develops; however, east/west access through the site shall be maintained at all times from Coit Road to Waterview.
2. Drainage. The development of the entire 119 acre site shall comply with the City's Storm Drainage Design Manual and the retention pond in the southeast corner of the property shall be sized accordingly.

3. Amendments to Concept Plan. Minor amendments to the Concept Plan as determined by the Planning Director or his/her designee (no substantial change in building location, lot coverage, floor area ratio, no decrease in building setback or parking ratios, no substantial changes to access or site circulation) are subject to approval by the City Plan Commission only, without additional public hearings. Major amendments shall be subject to further public hearings in the same manner as a zoning change. Staff shall not be authorized to vary from the conditions of the ordinance governing this property in the determination of a minor amendment to the concept plan. ← ref. Ord. #3153-A for Revised Concept Plan

**SECTION 3.** That all provisions of the ordinances of the City of Richardson in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Richardson not in conflict with the provisions of this ordinance shall remain in full force and effect.

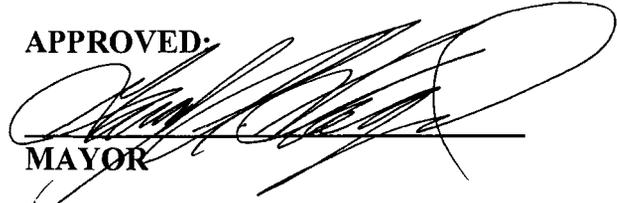
**SECTION 4.** That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided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

**SECTION 5.** That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Richardson, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand (\$2,000.00) Dollars for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 6.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

**DULY PASSED** by the City Council of the City of Richardson, Texas, on the  
8th day of July, 1996.

**APPROVED:**



A large, stylized handwritten signature in black ink, written over a horizontal line.

**MAYOR**

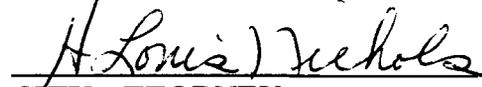
**CORRECTLY ENROLLED:**



A handwritten signature in black ink, written over a horizontal line.

**CITY SECRETARY**

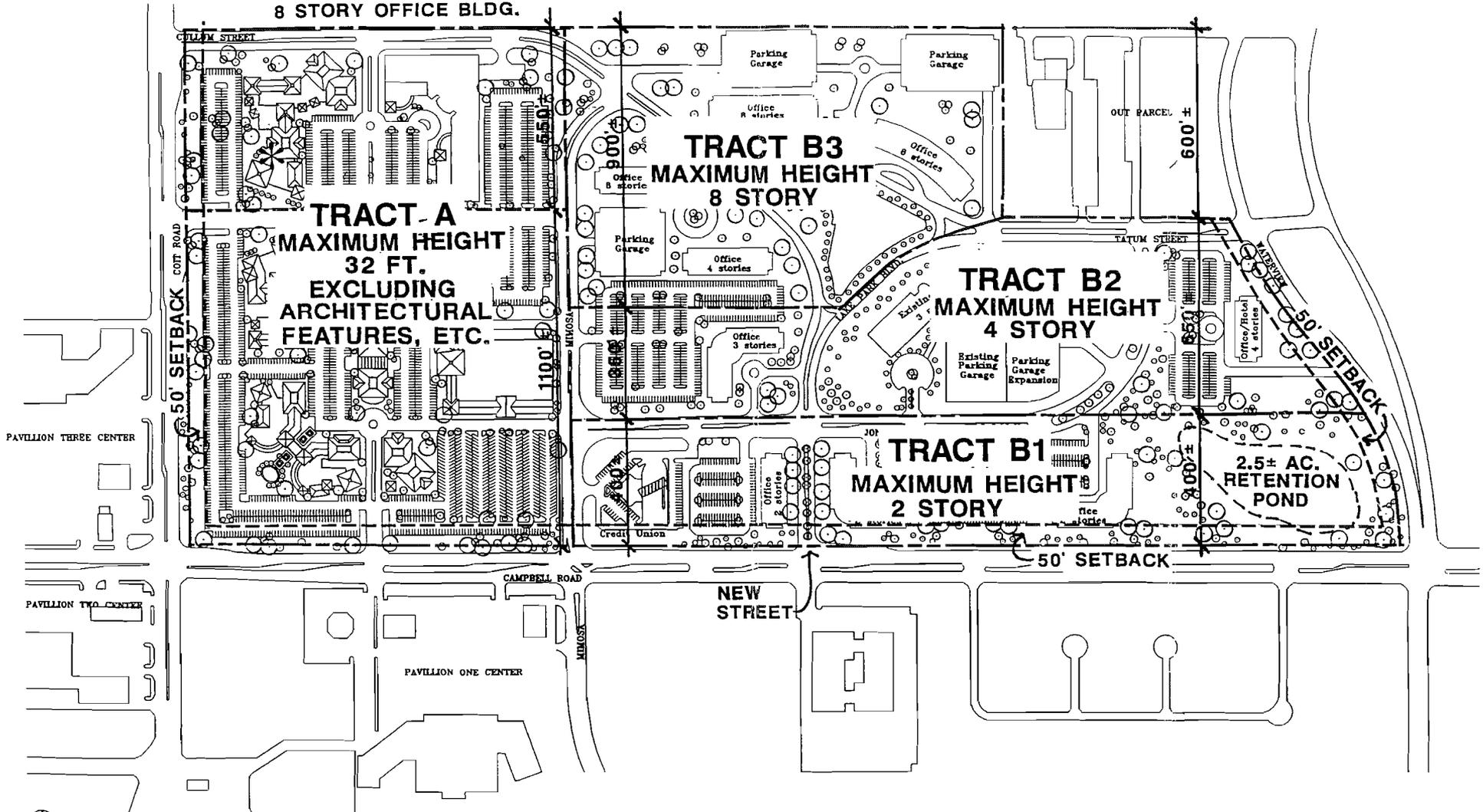
**APPROVED AS TO FORM:**



A handwritten signature in black ink, written over a horizontal line.

**CITY ATTORNEY**  
**(HLN/sb 6-26-96)**

\* POTENTIAL HOTEL SITE  
 MAXIMUM HEIGHT = TO  
 8 STORY OFFICE BLDG.



**EXHIBIT A - HEIGHT LIMITATIONS**

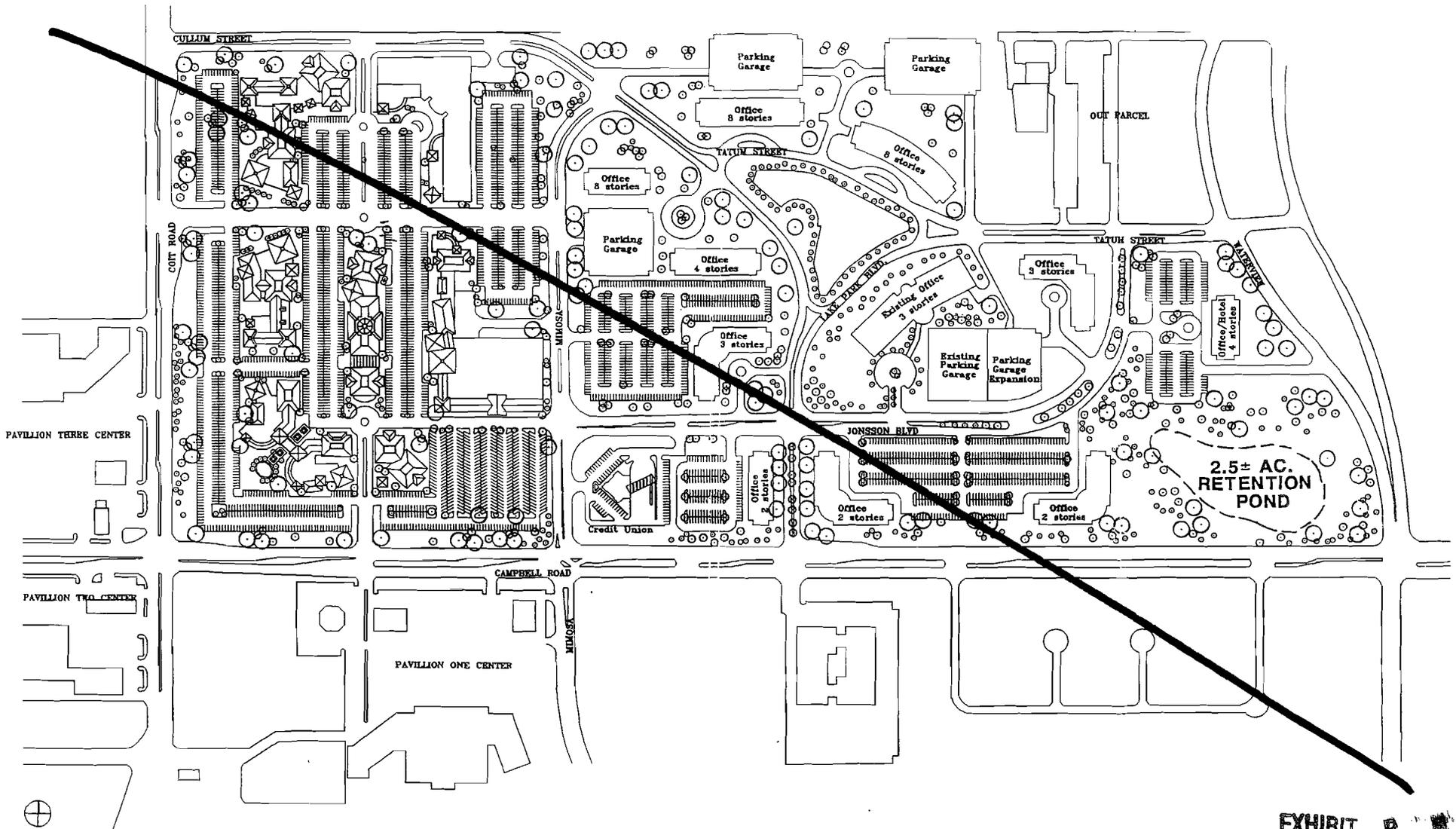
**EXHIBIT A**

LENNOX CENTER  
 Richardson, Texas

Henson-Williams Realty, Inc.  
 URBAN DESIGN GROUP, INC.

0 150' 300' 450' 600'

22 APRIL 1996



**EXHIBIT B - CONCEPTUAL PLAN**

LENNOX CENTER  
Richardson, Texas

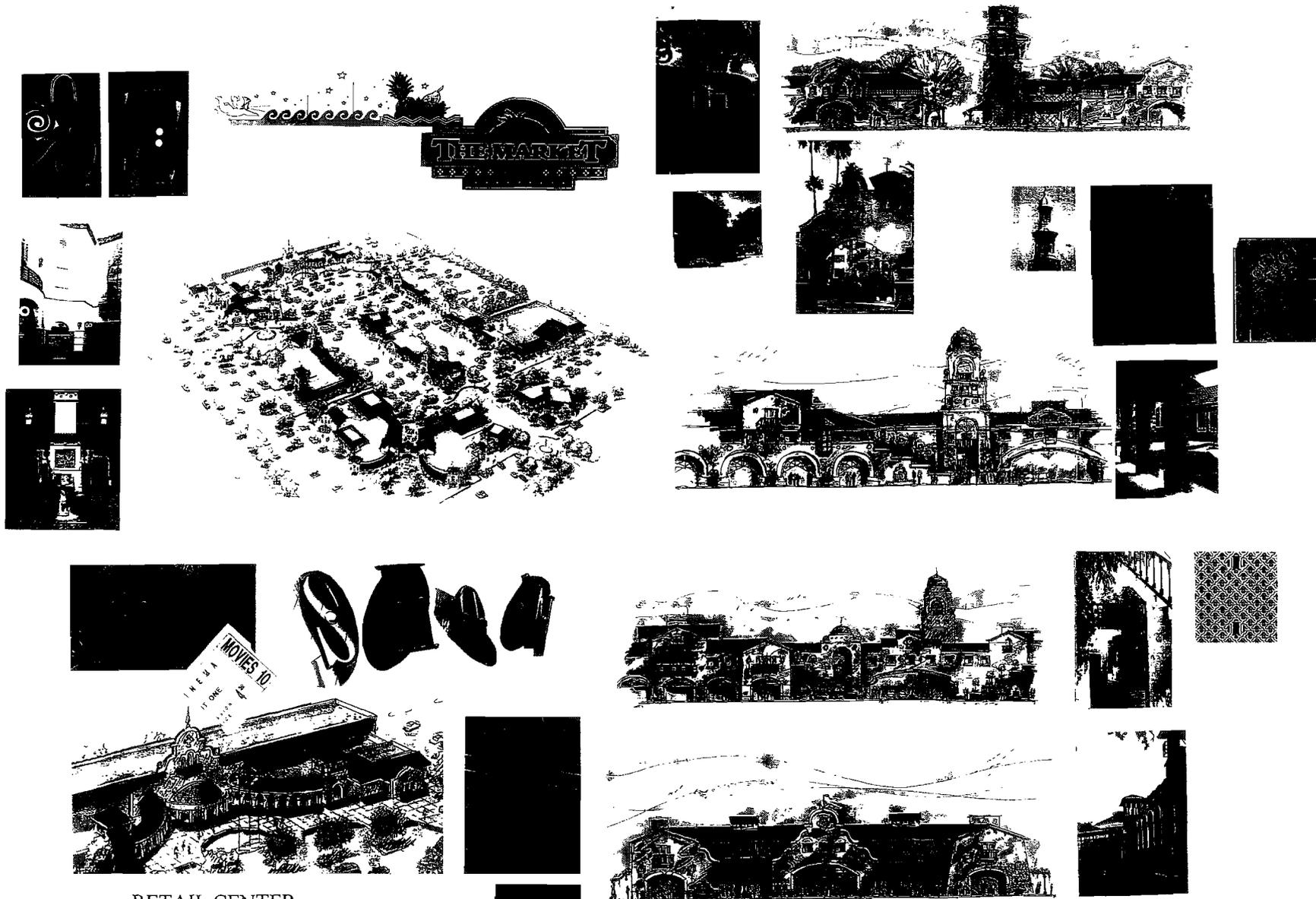
**EXHIBIT B**

Henson-Williams Realty, Inc.  
URBAN DESIGN GROUP, INC.

22 APRIL 1996

3019

REF. ORD. #3153-A FOR REVISED CONCEPT PLAN.



RETAIL CENTER  
 RICHARDSON, TEXAS  
 HENSON-WILLIAMS REALTY, INC.

EXHIBIT C – ARCHITECTURAL IMAGE STUDY

TRACT A

*Being a tract of land situated in the J. W. Curtis Survey, Abstract No. 345, Dallas County, Texas, and being located in the City of Richardson, Texas, and being more particularly described as follows:*

*BEGINNING at the most northerly corner of a corner-clip at the intersection of the north line of Campbell Road ( variable width A.O.W. ) and the east line of Coit Road ( 100 foot width A.O.W. );*

*TNENCE N00°24'00"E along said east line, 1597.46 feet to a point for corner;*

*THENCE S89°57'00"E, 1203.81 feet to a point for corner;*

*THENCE S00°03'00"W, 1627.28 feet to a point for corner in the north line of Campbell Road;*

*THENCE N89°57'00"W along said north line, 1183.75 feet to a point for corner;*

*THENCE N44°55'18"W continuing along the street right-of-way, 42.19 feet to a point for corner and the place of beginning and containing 45.146 acres ( 1,966,574 square feet ) of land.*

EXHIBIT D

3019

TRACT B

Being a tract of land situated in the J. W. Curtis Survey, Abstract No. 345, Dallas County, Texas, and being located in the City of Richardson, Texas, and being more particularly described as follows:

BEGINNING at a point in the north line of Campbell Road (variable width R.O.W. ), said point being  $S89^{\circ}57'00''E$  along said north line, 1183.78 feet from its intersection with the most easterly corner of a corner-clip at the east line of Coit Road (100 foot width R.O.W. );

THENCE  $N00^{\circ}03'00''E$ , 1627.28 feet to a point for corner;

THENCE  $S89^{\circ}57'00''E$ , 1378.67 feet to a point for corner;

THENCE  $S00^{\circ}03'00''W$ , 647.28 feet to a point for corner in the centerline of Tatum Street (80 foot width R.O.W. );

THENCE  $S89^{\circ}57'00''E$  along said centerline, 674.15 feet to a point for corner in west line of Waterview Parkway (variable width R.O.W. );

THENCE in a southeasterly direction along said west line with a curve to the left, Chord Bearing  $S30^{\circ}01'29''E$ , said curve having a central angle of  $19^{\circ}50'57''$  and a radius of 1227.00 feet, an arc distance of 425.07 feet to a point for corner;

THENCE in a southeasterly direction continuing along said west line with a curve to the right, Chord Bearing  $S36^{\circ}39'37''E$ , said curve having a central angle of  $06^{\circ}34'41''$  and a radius of 1173.00 feet, an arc distance of 134.67 feet to a point for corner;

THENCE  $S45^{\circ}45'18''E$  continuing along said west line, 17.13 feet to a point for corner;

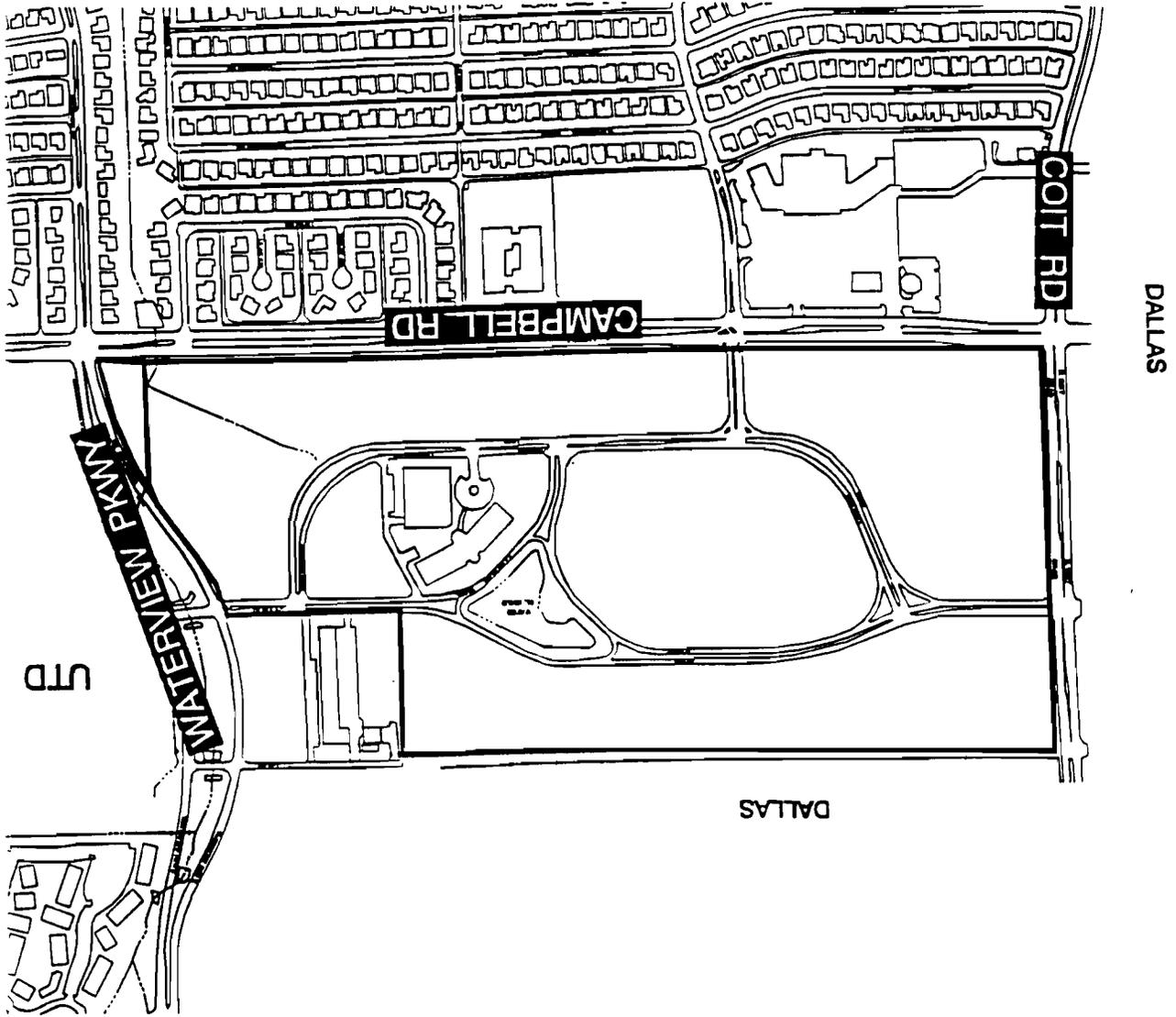
THENCE in a southeasterly direction continuing along said east line with a curve to the right, Chord Bearing  $S20^{\circ}22'54''E$ , said curve having a central angle of  $25^{\circ}58'45''$  and a radius of 1173.00 feet, an arc distance of 531.86 feet to a point for corner in the north line of Campbell Road;

THENCE  $N89^{\circ}57'00''W$  along said north line, 2541.60 feet to a point for corner and the place of beginning and containing 72.896 acres (3,175,328 square feet) of land.

EXHIBIT D

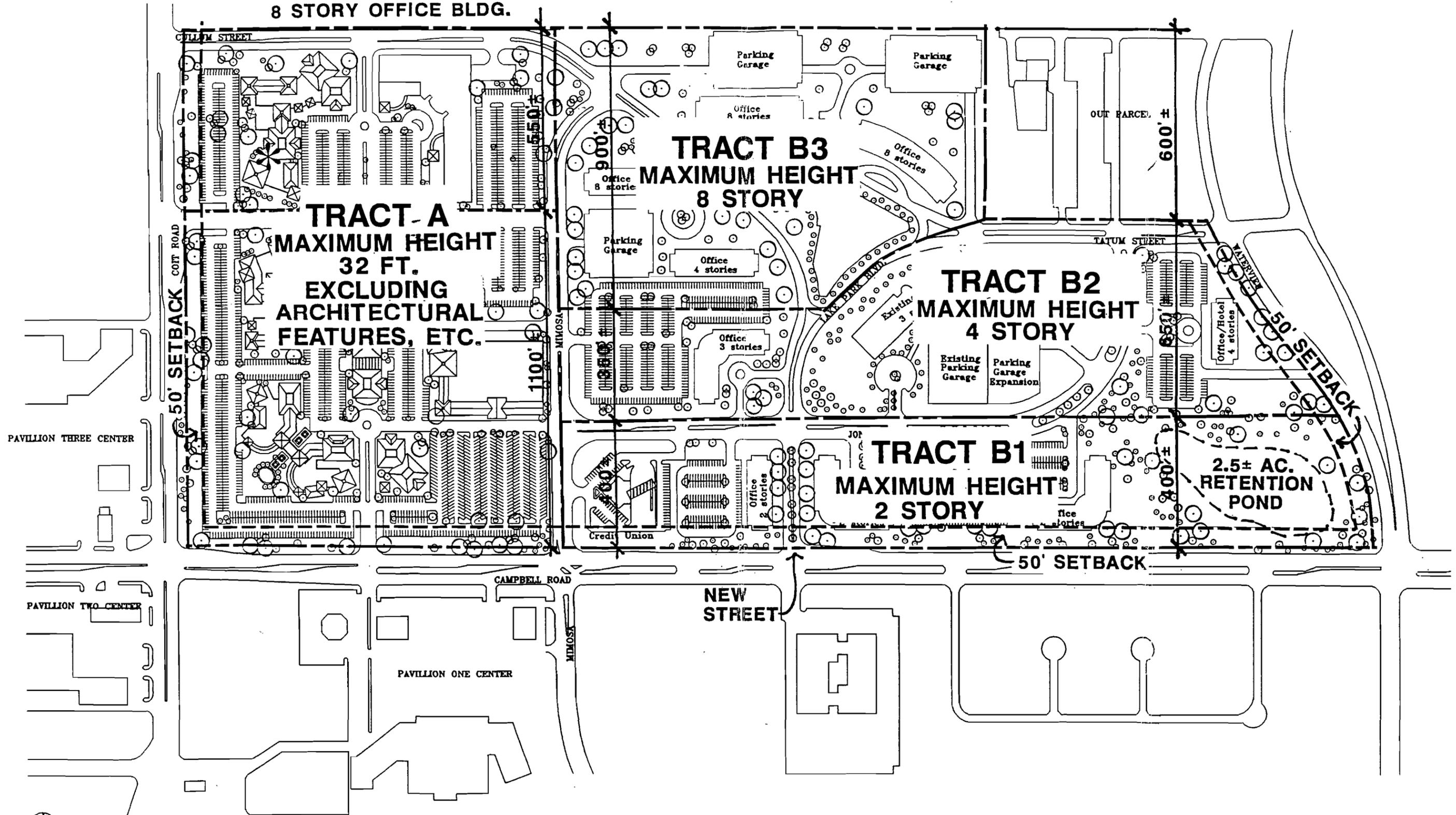
3079

ZF 9617



FOR INFORMATION ONLY

\* POTENTIAL HOTEL SITE  
 MAXIMUM HEIGHT = TO  
 8 STORY OFFICE BLDG.



**EXHIBIT A - HEIGHT LIMITATIONS**

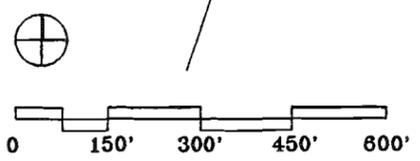
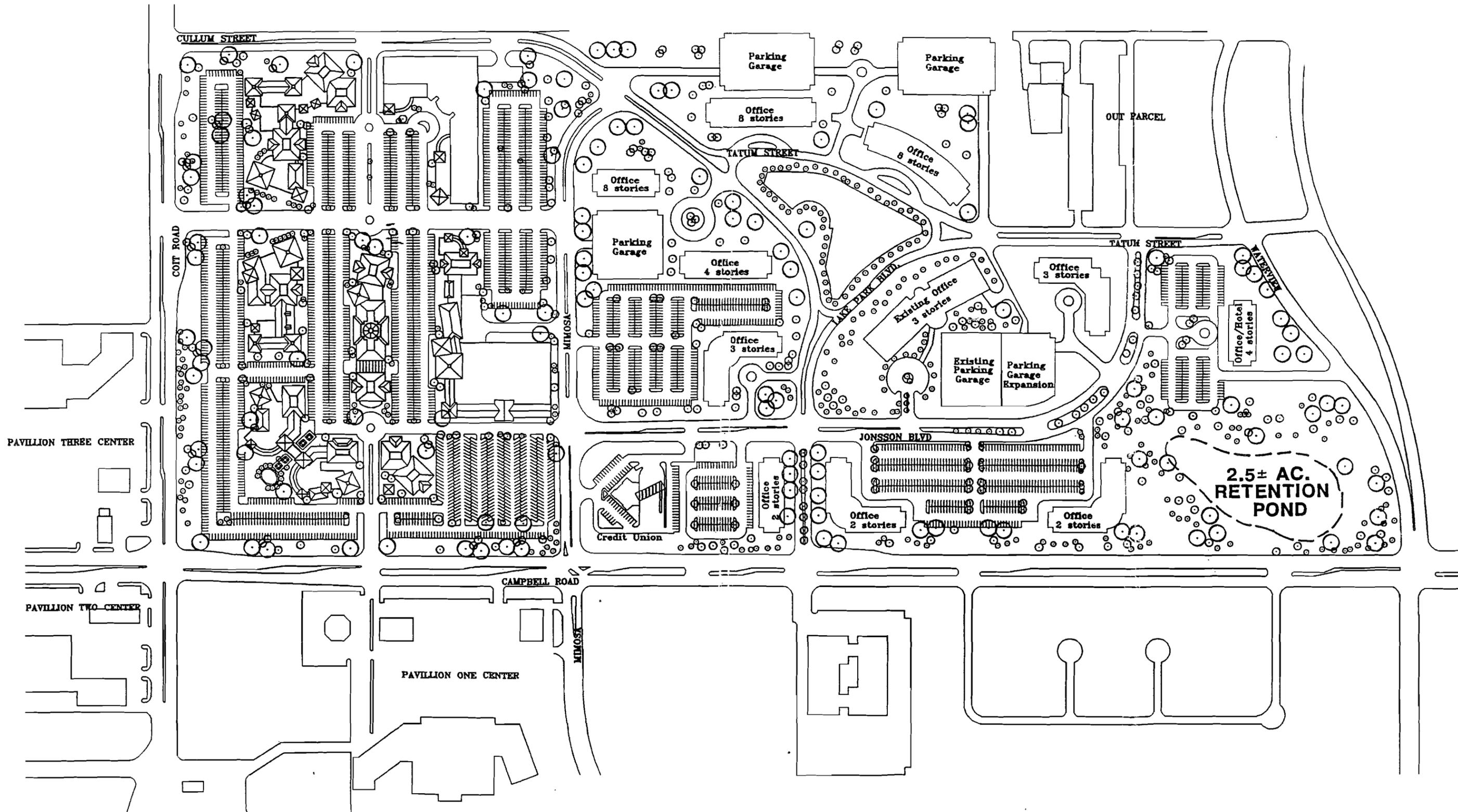
**EXHIBIT A**

LENNOX CENTER  
 Richardson, Texas

Henson-Williams Realty, Inc.  
 URBAN DESIGN GROUP, INC.

0 150' 300' 450' 600'

22 APRIL 1996



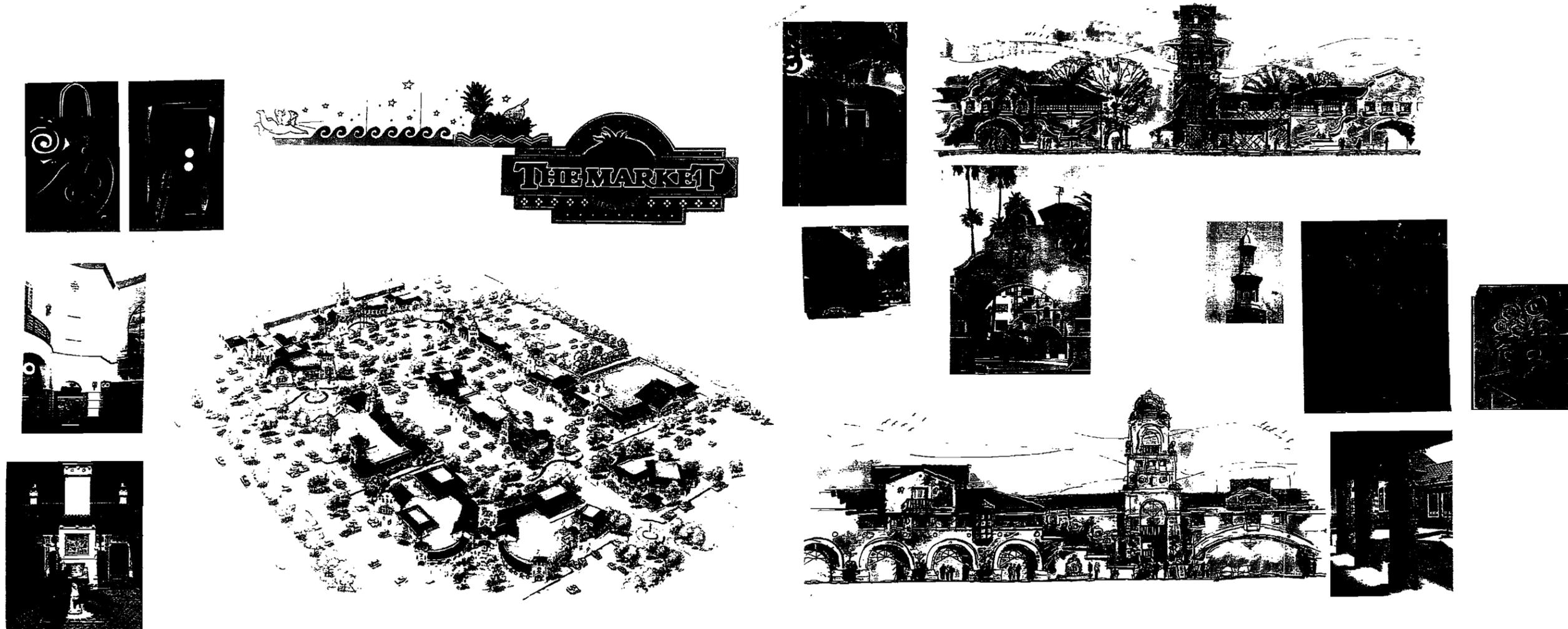
# EXHIBIT B - CONCEPTUAL PLAN

LENNOX CENTER  
Richardson, Texas

EXHIBIT B

Henson-Williams Realty, Inc.  
URBAN DESIGN GROUP, INC

22 APRIL 1996



RETAIL CENTER  
 RICHARDSON, TEXAS  
 HENSON-WILLIAMS REALTY, INC.



EXHIBIT C – ARCHITECTUAL IMAGE STUDY



# MEMO

**DATE:** December 08, 2011  
**TO:** Honorable Mayor and City Council  
**FROM:** Michael Spicer, Director of Development Services  
**SUBJECT:** ZF 11-26 Amend Comprehensive Zoning Ordinance  
re: Smoking Establishments

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## REQUEST

Amend the Comprehensive Zoning Ordinance to establish a definition for “smoking establishment” and allow smoking establishments in LR-M (1), LR-M (2), and C-M zoning districts subject to approval of a Special Permit.

## BACKGROUND

As a result of discussion with City Council at its November 21, 2011 Work Session, staff was directed to prepare an amendment to the Comprehensive Zoning Ordinance that would define smoking establishments and require approval of a Special Permit for smoking establishments in retail and commercial zoning districts. The proposed amendment would apply to the full range of smoking establishments, including cigar lounges, hookah cafes, retail tobacco stores that allow smoking on-site and similar uses. The proposed amendment would not apply to bars, nor would it affect restaurants that may allow smoking on patios in accordance with existing smoking regulations set forth in Chapter 10, Article 4 of the Code of Ordinances, provided such restaurants do not also sell smoking products or accessories. All existing smoking establishments would become legal non-conforming uses, and as such, would be permitted to continue to operate without obtaining a Special Permit.

On December 6, 2011 the City Plan Commission held a public hearing to consider the proposed amendment. One Richardson citizen was present to speak. The citizen, an owner of an existing smoking establishment, spoke in opposition to the proposed amendment. He stated that the proposed amendment would impede his ability to re-locate his business and that it unfairly includes his business with other smoking establishments that are significantly different in character. The Commission discussed at length the various types of smoking establishments, similarities and differences, businesses hours, and land use compatibility considerations.

## PLAN COMMISSION RECOMMENDATION

By a vote of 5-2 (Commissioners Bright and Hammond opposing) the Commission recommended approval of the request to establish the definition of a smoking establishment as proposed, but altered the Special Permit requirement to apply exclusively to smoking establishments in LR-M (1), LR-M (2) and C-M zoning districts that would remain open for business after 9:00 PM.

## **ATTACHMENTS**

CC Public Hearing Notice  
CPC Minutes 12-06-2011(DRAFT)  
Staff Report  
Existing Smoking Establishments Location Map  
Retail & Commercial Zoning Map  
Ordinance No. 3848

**City of Richardson  
Public Hearing Notice  
Zoning File 11-26**

The Richardson City Plan Commission will conduct a public hearing at 7:00 p.m. on Tuesday, December 6, 2011, in the Council Chambers, Richardson Civic Center/City Hall, 411 W. Arapaho Road, to consider a request by the City of Richardson to amend the Code of Ordinances, Appendix A, Comprehensive Zoning Ordinance, Article I, Section 2, Definitions, by adding the definition of smoking establishment and by amending Article XXII-A, Section 2, to allow smoking establishments upon approval of a Special Permit in the LR-M(1) and LR-M(2) Local Retail Districts, and the C-M Commercial District.

If you wish your opinion to be part of the record but are unable to attend the hearing, send a written reply prior to the hearing date to the Dept. of Development Services, City of Richardson, P.O. Box 830309, Richardson, Texas 75083-0309. For more information call 972-744-4240.

*Published in the Dallas Morning News on Friday, November 25, 2011*

DRAFT - EXCERPT FROM CITY PLAN COMMISSION MEETING  
December 6, 2011

7. **Zoning File 11-26:** A request A request by the City of Richardson to amend the Code of Ordinances, Appendix A, Comprehensive Zoning Ordinance, Article I, Section 2, Definitions, adding the definition of smoking establishments and Article XXII-A, Section 2 allowing smoking establishments upon approval of a Special Permit in the LR-M(1) and LR-M(2) Local Retail Districts, and the C-M Commercial District.

Mr. Spicer advised that one of the City Council's near term action items was to evaluate the possibility of creating an ordinance pertaining to the placement of hookah lounges. After researching the Council's request, and consulting with the City's legal counsel, it became evident that specific regulation of the hookah lounges could only be equitably managed within a broader context that included comparable regulation of all businesses that provided for on-premise smoking of tobacco and tobacco like products. Consequently, an amendment to the Comprehensive Zoning Ordinance (CZO) was prepared that would provide a means for the City to exercise greater control over the location of smoking establishments of all types. He added that City Council was generally satisfied with the proposed amendment as presented at the November 21<sup>st</sup> work session and directed staff to proceed with amending the CZO.

Mr. Spicer pointed out that City does have regulations in place in Chapter 10, Article 4 of the *Code of Ordinances* to cover smoking, but only to the extent of identifying what businesses are allowed and how the environment is managed in terms of access and ventilation; it does not regulate location. He added that the CZO would be the appropriate instrument to regulate land use and currently it is silent regarding smoking establishments including hookah lounges, cigar lounges, and retail tobacco stores.

Mr. Spicer noted that the proposed amendment would define what a smoking establishment is, and then would add the requirement for a Special Permit to Article 22A limiting the eligible districts to LR-M(1), LR-M(2), and C-M districts. He read the proposed definition into the record and said the definition would include establishments known as cigar lounges, hookah cafes, tobacco clubs, tobacco bars, retail tobacco stores that allow on-premise smoking and similar establishments.

Regarding the mechanism that would be used to manage the regulations, Mr. Spicer said a Special Permit would allow the City to administer and maintain a level playing field for all retail and commercial zoning districts; give the City Council and City Plan Commission the ability to evaluate each case on its own merit; provide flexibility to determine whether special conditions might be necessary to insure the use was compatible with the surrounding neighborhood; and any interested party would be afforded the opportunity to express their views during a public hearing.

Mr. Spicer closed his presentation by saying that all existing smoking businesses would become legal nonconforming uses if the amendment was approved and, as such, would be allowed to continue to operate without obtaining a Special Permit. He added that if one of the existing smoking establishments wished to expand, or should a legal nonconforming

business cease operation for six consecutive months and then wish to reopen, the need for a Special Permit would be required.

Mr. Spicer stated the amendment would not affect retail tobacco stores that do not allow on-site smoking, and would not affect bars or restaurants with patios where smoking is permitted under Chapter 10, Article 4 as long as they did not sell smoking products or accessories.

Chairman Gantt asked to confirm if the smoking establishments would fall under both the proposed ordinance and the existing ordinance. He also wanted to know if the tobacco business located in the area of the Shire would become legal nonconforming and what type of zoning is currently in place.

Mr. Spicer replied that those businesses would fall under both.

Regarding the business at the Shire, there is a Planned Development (PD) in place that makes reference to local retail zoning districts and the business is allowed but subject to a Special Permit.

Commissioner Maxwell asked for clarification on the language in Article 22A and how it would exclude the allowable use in any other district.

Mr. Spicer replied that the CZO specifically states which districts a permitted use is allowed in and therefore the other districts are excluded. He added that the proposed amendment would be included within the larger context of Article 22A, entitled Special Permits, and this article outlines every use that requires a Special Permit.

Vice Chair Hammond asked why smoking was allowed at all in the City.

Mr. Spicer replied that in the past the City went through a process to determine whether to allow smoking and consequently regulations were put in place to prohibit smoking in a large number of businesses, but some very specific circumstances were set aside under which smoking would be permitted.

Vice Chair Hammond asked if there were any cities within the metroplex that banned smoking entirely under any circumstances.

Mr. Spicer replied that in doing research the City of Dallas had banned smoking, but there were existing businesses that were legal nonconforming. In other cities such as Arlington, Fort Worth, Addison, Farmers Branch, Plano, Carrollton, Garland, McKinney had regulations in place that are generally consistent with the City of Richardson's regulations. In addition, the City of Allen only allows smoking in a smoking establishment and that establishment can only be found within a Planned Development zoning district.

Vice Chair Hammond expressed concern with the wording of the amendment, in particular, the section that read "in whole or in part."

Mr. Spicer replied that section of the amendment was structured to capture retail tobacco stores that allow pre-purchase sampling.

Vice Chair Hammond said he was not pleased with making any type of accommodations for smoking in the City and was opposed to doing anything until the entire subject was revisited.

Chairman Gantt said he saw the amendment as a tool to control the influx of smoking establishments, and if the amendment is not passed, there is nothing to prevent or restrict more establishments coming into the City. He added the amendment would accomplish, in part, Mr. Hammond's goal of restricting smoking in the City.

Vice Chair Hammond said he did not disagree that it might help accomplish his desired goal, but felt it did not go far enough and felt the subject should be addressed at the very root of the problem.

Commissioner Frederick asked if the existing businesses would be allowed to continue operating without obtaining a Special Permit, and wondered why all tobacco retailers were being "lumped" in with hookah lounges. She expressed concern that other retailers, such as cigar lounges who operated under retail hours as opposed to hookah lounges who operated later into the evening, would be considered under the same regulations.

Mr. Spicer said existing businesses would be able to continue without the Special Permit as long as they were operating in a lawful manner. Also, as long as a tobacco retailer did not allow on-site smoking, they would not be included under the proposed amendment.

Chairman Gantt replied that the amendment states that a business would have to sell tobacco, tobacco products and allow on-site smoking to be covered under the proposed regulations. If someone was only selling tobacco and/or products and not allowing the on-site smoking the amendment would not apply to them.

Commissioner Linn asked what would be the effective date if the amendment was passed by both the Commission and City Council. He also expressed concern that there might be some establishments that have yet to open who would open their doors in order to pre-empt the ordinance.

Mr. Spicer replied that based on Council direction, if the item was approved by the Commission it would be fast tracked and before the Council on Monday, December 12, 2011, and include the ordinance and would become effective upon publication of the caption as required by state law. In addition, if any smoking establishment had already filed for a building permit or certificate of occupancy it would have a vested right and not be covered under the proposed amendment.

Commissioner DePuy stated she agreed with Ms. Frederick's comment and felt the Commission would not be discussing the item if not for the proliferation of hookah lounges in the City. She also agreed that the amendment should be equitably managed, but felt there

was a definite difference between cigar stores that offered samples as opposed to a late night lounge and feared the higher end tobacco shops would pay a price.

Commissioner Hand asked about earlier comments regarding the City of Dallas businesses that are smoking establishments but are still allowed to operate.

Mr. Spicer replied to the best he could determine the regulations for the City of Dallas did prohibit smoking across the board, but there are a number of legal nonconforming establishments in the city.

With no further questions for the staff, Chairman Gantt opened the public hearing and stated that as the applicant, the City would be allowed to make a statement.

Mr. Spicer stated that the item was being presented at the direction of the City Council and was in response to one of their near term action items they wished to accomplish in the next two years.

No further comments were made in favor and Mr. Gantt called for comments in opposition.

Mr. Matthew Bedosky, representing Calypso Products, Inc., 1401 E. Arapaho Road, Richardson, Texas, was opposed to the amendment because it joined his cigar lounge with other establishments that he felt were entirely different. He added that if the amendment passed, it would lock him in to his existing location just at the time they were looking to move and keep his business in the City.

Mr. Bedosky highlighted some of the differences between cigar lounges and hookah lounges including hours of operation, clientele, and noted that although he does allow on-site smoking, his business is more like a retail store whereas hookah lounges are late night operations.

No further comments were made in opposition and Chairman Gantt asked staff if they had any rebuttal comments.

Mr. Spicer stated the amendment was constructed to cover all businesses that permitted on-site smoking and provide for the sale of tobacco and tobacco products. All such businesses were grouped together because they are fundamentally the same. Also, in discussion with legal counsel, the direction was clear that if the City Council wanted to act upon its near term action items, they would need to view these businesses in the stated context.

With no further comments in favor or opposed, Chairman Gantt closed the public hearing.

Vice Chair Hammond said he wanted to go on record that he was in favor of limiting the expansion of smoking establishments and understood the Council's goals, but felt the proposed amendment did not go far enough and that was why he would be voting in opposition.

Commissioner Hand said he did not think the Commission needed to debate the public health issues of smoking because it had been covered before, but thought the question of land use was more within their purview. He also felt the Council was not trying to limit retail growth within the City because there are many high-end tobacco retailers who would be welcome, but pointed out that hookah lounges, which tend to have late night hours of operation, may not be a compatible use in certain areas of the City and suggested if a lounge wanted to stay open past 9:00 p.m. they should be subject to a Special Permit.

Chairman Gantt stated he liked the idea of including a time frame that would add a third level to further limit the number of businesses the amendment would affect: selling tobacco, allowing on-site smoking, and open past 9:00 p.m.

Commissioner DePuy said she agreed with Mr. Hand's comments regarding the late night operation of some lounges, and was opposed to the proliferation of the hookah lounges, but was not opposed to higher-end tobacco retailers. She added the increase in the number of lounges degraded the quality of life and appearance of the City and was in favor of limiting their activity without jeopardizing other businesses.

Commissioner Bright thought the idea of a 9:00 time frame was interesting and the amendment could control the problem in an appropriate manner, but felt hookah bars could not be singled out without considering other like establishments. He thought the time frame Mr. Hand mentioned addressed a different issue, but thought the Commission should put the item on hold rather than approve it with the suggested condition until further information from staff and the City Attorney could be obtained. He said he could approve the item in its present form, but was opposed to the 9:00 p.m. element being attached.

Commissioner Frederick said she concurred with Ms. DePuy and thought the Council wanted the Commission to address a certain type of smoking establishment and not include all tobacco retailers in the amendment. She added that she would be in favor of putting the hour of operations limitation in the amendment.

Chairman Gantt asked if staff thought the element of restrictive hours would pass legal review.

Mr. Spicer replied that he could not give legal advice, but stated that if the time restriction was applied universally to all smoking establishments it might work; however, he expressed the desire to further consult with the City's legal counsel.

Mr. Spicer stated that the direction from Council was to focus on location as opposed to operational aspects, which was the reason why the amendment was constructed in its current form. He added a Special Permit would provide a means to control hours of operation, proximity, and allows the Commission to review multiple aspects of an applicant's request.

Mr. Spicer noted that if the Commission went forward with the amendment as currently being discussed, it would allow the full range of smoking establishments in any district where it was permitted by right without further review and did not address certain unique

aspects of different locations such as proximity to schools. The only time a review would be required was if the applicant requested to operate beyond the 9:00 p.m. time frame.

Chairman Gantt asked which zoning districts currently allowed smoking establishments.

Mr. Spicer replied that the CZO was silent to the use all together; however, historically the use has been reviewed as retail and the majority are located in retail areas. Retail uses are allowed in LR-M(1) Local Retail, LR-M(2) Local Retail, C-M Commercial, with limited amount of retail in I-M Industrial, and TO-M Technical Office.

Commissioner Hand said that because of the way the amendment was written, he was trying to strike a balance and did not think there was a perfect solution, but from a retail/commerce perspective, the time frame would be least intrusive on high-end retail. He acknowledged that under his proposal a hookah lounge could operate during lunch, but felt that the compatibility issue was with late night operations.

Chairman Gantt said the Commission was trying to strike a balance and not put an unnecessary burden on high-end retailers to spend money to go through the Special Permit process when the Commission would probably approve it any way. He acknowledged that Council was hoping to fast track the issue and suggested the Commission could forward it “as is,” include the time frame, or delay and let staff go back to legal counsel to see if the time frame accomplishes the Council’s goal.

**Motion:** Commissioner Hand made a motion to recommend approval of Item 7 as presented with the qualification that the Special Permit apply only to establishments intending to be open beyond 9:00 p.m.; second by Commissioner DePuy.

Commissioner Bright said he would oppose the motion because he felt it did not address the location issue.

Chairman Gantt asked for clarification if the time frame aspect of the motion was intended to be added to the definition as read by staff.

Commissioner Hand said he did not think the motion was redefining smoking establishments, but was only asking that a Special Permit be required for smoking establishments wanting to stay open beyond 9:00 p.m.

Chairman Gantt then asked if item 2 in Article 21A would say “smoking establishments as a use allowed subject to Special Permit under Article A when open past 9:00 p.m.”

Commissioner Hand replied that it should say “add smoking establishments when intending to stay open beyond 9:00 p.m. as a use allowed subject to approval of a Special Permit.”

Mr. Spicer suggested the language should be added to Article 22A under “Special Permits” where it would not affect the definition. He also wanted to clarify that the motion would limit the opportunities to the three listed zoning districts.

Commissioner Hand said that was his intent and Commissioner DePuy concurred.

Motion passed 5-2 with Vice Chair Hammond and Commissioner Bright opposed.



## Staff Report

**TO:** City Council

**FROM:** Michael Spicer, Director of Development Services

**DATE:** December 8, 2011

**RE:** **Zoning File 11-26:** Amend the Comprehensive Zoning Ordinance to establish a definition for “Smoking Establishment” and require a Special Permit in retail and commercial zoning districts.

### BACKGROUND:

The City Council identified as one of its 2011-2013 Near Term Action Items, evaluation of an ordinance regulating the location of smoking establishments. The matter was discussed by City Council at its November 21, 2011 Work Session. Staff was directed to proceed with initiating the process to amend the Comprehensive Zoning Ordinance as presented herein.

Although Chapter 10, Article 4 of the Code of Ordinances i.e., “Ordinance No. 3710 – the Smoking Ordinance” defines a retail tobacco store in manner that includes smoking establishments, it *does not regulate the location* of such establishments.

The Comprehensive Zoning Ordinance is presently silent to the use, that is, there is no listing of smoking establishment, cigar lounge, hookah café or similar use identified anywhere in the Comprehensive Zoning Ordinance.

Currently there are fourteen (14) existing smoking establishments operating in Richardson, including cigar lounges, hookah cafes, and retailers of tobacco that allow on-site smoking. Two additional smoking establishments are in varying stages of the process to obtain Certificates of Occupancy, one at the northwest corner of the intersection of Plano Road and Beltline Road and another at 207 E. Main Street.

### PROPOSED AMENDMENT:

The proposed amendment is a text amendment that entails:

- adding a definition for “smoking establishment” to Article I, Section 2, *Definitions*; and
- including “smoking establishment” under Article XXII-A, Section 2, *Use Regulations*, to require a Special Permit in LR-M (1), LR-M (2) and C-M districts exclusively (draft ordinance attached).

As proposed, the definition would include cigar lounges, hookah cafes, retail tobacco stores that allow smoking on-site and similar uses. It would exempt bars (i.e., establishments where alcohol sales for on-premise consumption comprise more than 50% of its gross revenue) that may allow on-site smoking subject to Chapter 10, Article 4 “*Smoking*” of the Code of Ordinances.

The proposed amendment would require approval of a Special Permit in retail and commercial zoning districts for any use that would qualify under the proposed definition of a smoking establishment. Smoking establishments would be prohibited in all other zoning districts.

## **CONSIDERATIONS:**

Regardless of whether a smoking establishment is a cigar lounge, hookah café or retail tobacco store that allows on-site smoking, all must be regulated in the same manner as they are fundamentally the same type of use. The proposed amendment provides for equal oversight of all smoking establishments on a case-by-case basis.

Bars are exempt from the proposed ordinance because the location of bars is already regulated by Chapter 4 “*Alcoholic Beverages*” of the Code of Ordinances.

The requirement of a Special Permit is proposed in order to:

- maintain a “level playing field” for all retail and commercial property owners by not preemptively prohibiting a business without due consideration;
- afford the CPC and City Council the opportunity to consider all factors deemed important in deciding whether to approve or deny such a use at a given location on a case-by-case basis;
- provide flexibility to determine whether special conditions might be necessary to make the use sufficiently compatible with the surrounding neighborhood in which it is to be located – due to unique site features, neighborhood context, proximity to “sensitive” uses, or other factors; and
- provide the opportunity for applicants, property owners, business operators and residents to express their views and have them taken into consideration by the CPC and City Council.

### **Uses Requiring Special Permits**

The Comprehensive Zoning Ordinance presently regulates seventy-six (76) uses by Special Permit. The range of uses requiring a Special Permit is diverse, as the following examples illustrate: amusement arcades and commercial amusement centers; antennas; assisted living, convalescent and independent living facilities; beer and wine package sales; boarding kennels; check cashing/payday advance loan or car title loan businesses; child care centers; heavy manufacturing; helipads; limited service hotels; motor vehicle –related uses; restaurants with drive-through service; private & parochial schools; sexually-oriented businesses.

### **Effect on Existing Smoking Establishments**

- Upon enactment of the Comprehensive Zoning Ordinance amendment, all existing smoking establishments would become legal, non-conforming uses.
- Legal, non-conforming status does not affect current operations and does not require owners or operators to obtain a Special Permit.
- Should expansion of a legal, nonconforming smoking establishment be desired, the owner would first have to obtain approval of a Special Permit from City Council.
- Should a legal, non-conforming smoking establishment cease operations for a minimum period of six consecutive months, the right to re-establish the use without approval of a Special Permit would be forfeited.

### **The proposed amendment WOULD NOT:**

- affect retail tobacco stores that do not allow on-site smoking;

- affect bars where smoking is otherwise allowed under Chapter 10, Article 4 of the Code of Ordinances “Smoking”;
- affect restaurants that allow smoking on patios in accordance with Chapter 10, Article 4, *provided such restaurants do not also sell smoking products or accessories*; or
- require amendment of Chapter 10, Article 4 of the Code of Ordinances “Smoking”.

## **MOTION:**

Should the Commission choose to recommend approval of the amendment as presented, the motion should include the following:

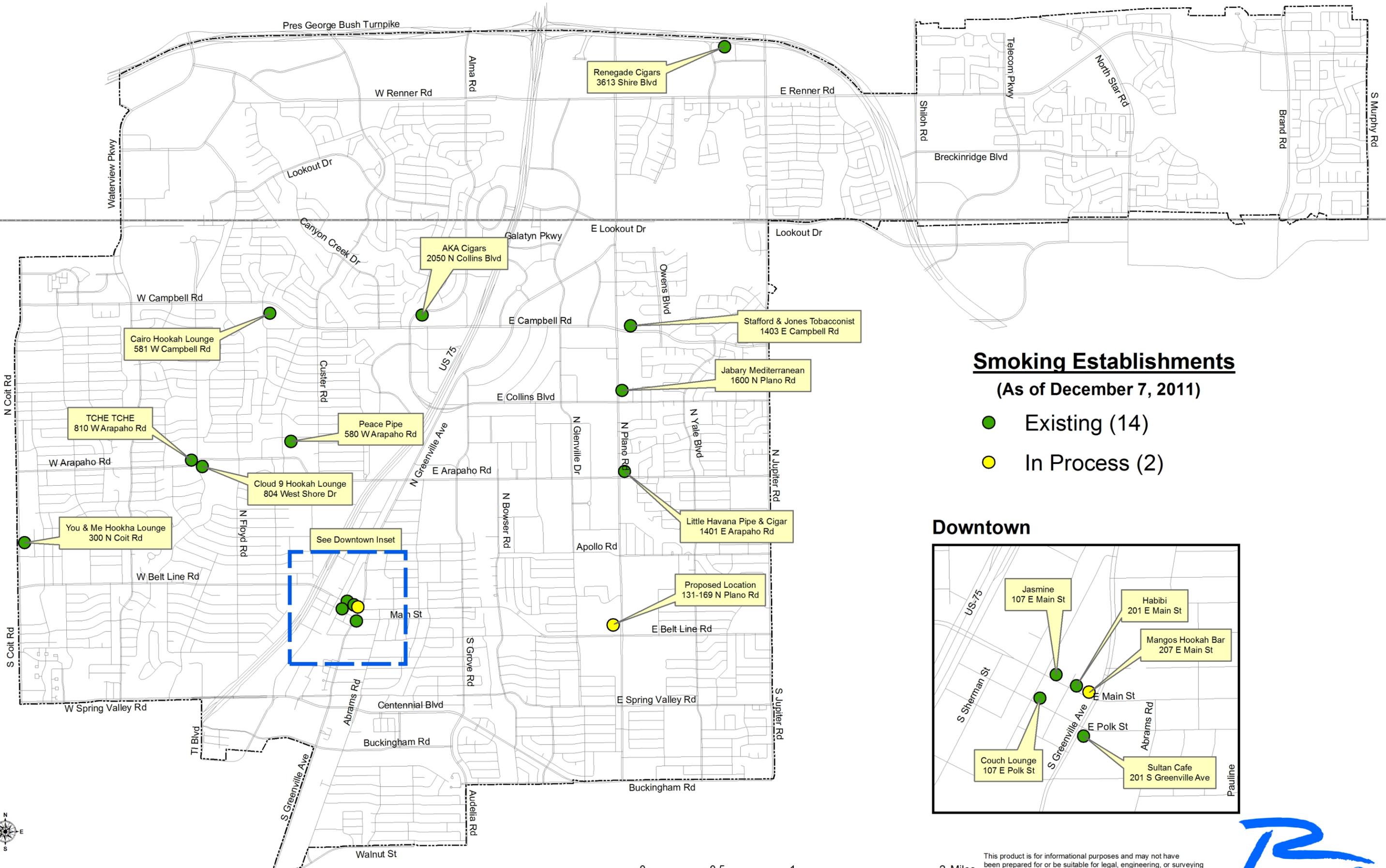
- (1) Add the definition of “smoking establishment” to Article I, Section 2, Definitions of Appendix A of the Code of Ordinances (Comprehensive Zoning Ordinance):

*“Smoking establishment means a business establishment that is dedicated, in whole or in part, to the smoking of tobacco or other substances and includes any establishment that allows both (1) the onsite purchase of tobacco, tobacco accessories or similar substances and products; and (2) the onsite smoking of tobacco or other substances. This definition shall be construed to include establishments known variously as retail tobacco stores, cigar lounges, hookah cafes, tobacco clubs, tobacco bars, and similar establishments, but shall not include an establishment that derives 50 percent or more of its gross revenue on a quarterly basis (i.e., three months) from the sale of alcoholic beverages for on-premise consumption.”*

- (2) Add smoking establishment as a use allowed subject to approval of a Special Permit under Article XXII-A, Section 2 in the LR-M (1), LR-M (2) and C-M zoning districts.

### **Action Taken:**

On December 6, 2011, the City Plan Commission, by a vote of 5-2 (Commissioners Bright and Hammond opposing) recommended approval of the request to establish the definition of a smoking establishment as proposed, but altered the Special Permit requirement to apply exclusively to smoking establishments in LR-M (1), LR-M (2) and C-M zoning districts that would remain open for business after 9:00 PM.

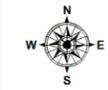
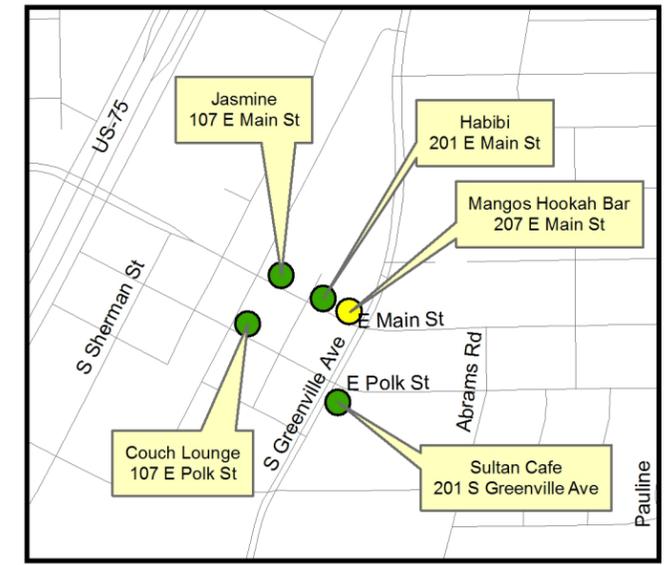


### Smoking Establishments

(As of December 7, 2011)

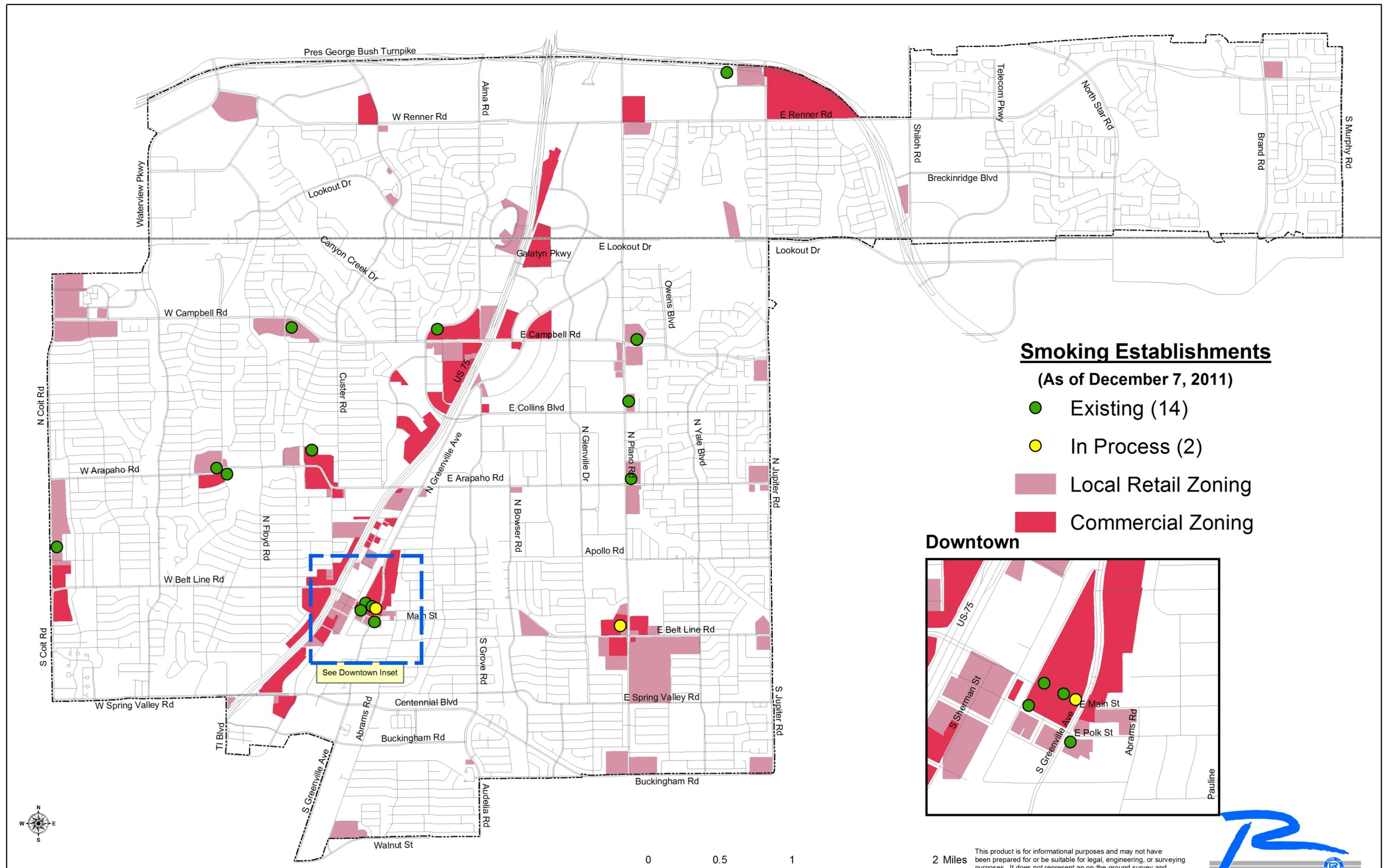
- Existing (14)
- In Process (2)

### Downtown



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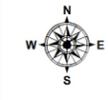
### Smoking Establishments

(As of December 7, 2011)

- Existing (14)
- In Process (2)

- Local Retail Zoning
- Commercial Zoning

### Downtown



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**ORDINANCE NO. 3848**

**AN ORDINANCE OF THE CITY OF RICHARDSON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF RICHARDSON, AS HERETOFORE AMENDED, BY AMENDING ARTICLE I, SECTION 2, “DEFINITIONS”, BY ADDING THE DEFINITION OF “SMOKING ESTABLISHMENT”; BY AMENDING ARTICLE XVI-A, SECTION 1, “USE REGULATIONS” TO ALLOW SMOKING ESTABLISHMENTS AS A PERMITTED USE DURING CERTAIN HOURS IN THE LR-M(1) LOCAL RETAIL DISTRICT; BY AMENDING SUBSECTION (B) OF ARTICLE XXII-A, SECTION 2, “USE REGULATIONS” TO ALLOW SMOKING ESTABLISHMENTS BY SPECIAL PERMIT; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO-THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE. (ZONING FILE 11-26).**

**WHEREAS**, the City Plan Commission of the City of Richardson and the governing body of the City of Richardson, in compliance with the laws of the State of Texas and the ordinances of the City of Richardson, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, the governing body, in the exercise of the legislative discretion, has concluded that the Comprehensive Zoning Ordinance should be amended; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS:**

**SECTION 1.** That the Comprehensive Zoning Ordinance of the City of Richardson, Texas, duly passed by the governing body of the City of Richardson on the 5<sup>th</sup> day of June, 1956, as heretofore amended, be, and the same is hereby amended by amending Article 1, Section 2, in part, by adding a definition for “smoking establishment”, to read as follows:

**“ARTICLE I. TITLE, DEFINITIONS, GENERAL PROVISIONS,  
AUTO WRECKING YARDS AND SWIMMING POOLS**

...

**Sec. 2. Definitions.**

...

ADD

*“Smoking establishment means a business establishment that is dedicated, in whole or in part, to the smoking of tobacco or other substances and includes any establishment that allows both (1) the payment of consideration by a customer to the establishment in exchange for on-site delivery of tobacco, tobacco accessories or similar substances and products to the customer; and (2) the onsite smoking of tobacco or other substances. This definition shall be construed to include establishments known variously as retail tobacco stores, cigar lounges, hookah cafes, tobacco clubs, tobacco bars, and similar establishments, but shall not include an establishment that derives 50 percent or more of its gross revenue on a quarterly basis (i.e., three months) from the sale of alcoholic beverages for on-premise consumption.”*

**SECTION 2.** That the Comprehensive Zoning Ordinance of the City of Richardson, Texas, duly passed by the governing body of the City of Richardson on the 5<sup>th</sup> day of June, 1956, as heretofore amended, be, and the same is hereby amended by amending Article XVI-A, Section 1, in part, to allow smoking establishments as a permitted use during certain times, to read as follows:

**“ARTICLE XVI-A. LR-M(1) LOCAL RETAIL DISTRICT REGULATIONS.**

**Sec. 1. Use Regulations.**

...

ADD

**(38)** Smoking establishments, but only if operating between the hours of 7:00 AM and 9:00 PM.”

**SECTION 3.** That the Comprehensive Zoning Ordinance of the City of Richardson, Texas, duly passed by the governing body of the City of Richardson on the 5<sup>th</sup> day of June, 1956, as heretofore amended, be, and the same is hereby amended by amending Article XXII-A, Section 2, subsection (b), in part, to allow smoking establishments by special permit, to read as follows:

**“ARTICLE XXII-A. SPECIAL PERMITS.**

...

**Sec. 2. Use Regulations.**

...

ADD TO SUBSECTION (b)

“Smoking establishment operating before 7:00 AM and/or after 9:00 PM in any LR-M (1), LR-M (2) or C-M District.”

**SECTION 4.** That all other provisions of the ordinances of the City of Richardson in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Richardson not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 5.** That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

**SECTION 6.** That an offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 7.** That any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Richardson, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars

(\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 8.** That this Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such case provide.

**DULY PASSED** by the City Council of the City of Richardson, Texas, on the \_\_\_\_\_ day of December, 2011.

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**APPROVED AS TO FORM:**

**CORRECTLY ENROLLED:**

\_\_\_\_\_  
**CITY ATTORNEY**  
(PGS:12-08-11:TM 52277)

\_\_\_\_\_  
**CITY SECRETARY**

**RESOLUTION NO. 11-38**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE ADVANCE FUNDING AGREEMENT (HEREIN “AGREEMENT”) FOR A SAFE ROUTES TO SCHOOL PROJECT FOR PEDESTRIAN WALKWAY IMPROVEMENTS AT YALE ELEMENTARY SCHOOL, BY AND BETWEEN THE CITY OF RICHARDSON, TEXAS, AND THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has been presented a proposed Advance Funding Agreement by and between the City of Richardson, Texas, and the State of Texas, acting through the Texas Department of Transportation, which provides for the construction of sidewalks, installation of crosswalks, and installation of school zone signs in the vicinity of Yale Elementary School in the City of Richardson, attached as Exhibit “A” and incorporated herein by reference; and

**WHEREAS**, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the Advance Funding Agreement on behalf of the City of Richardson, Texas;

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

**SECTION 1.** That the Advance Funding Agreement for a Safe Routes to School Project, which provides for the construction of sidewalks, installation of crosswalks, and installation of school zone signs in the vicinity of Yale Elementary School in the City of Richardson, attached hereto as Exhibit “A”, having been reviewed by the City Council of the City of Richardson, Texas, and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved, and the City Manager is hereby authorized to execute the Advance Funding Agreement (and any amendments thereto, including any related instruments) on behalf of the City of Richardson, Texas.

**SECTION 2.** That this Resolution shall become effective immediately from and after its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Richardson,  
Texas, on this the \_\_\_\_\_ day of November, 2011.

CITY OF RICHARDSON, TEXAS

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY  
(PGS:11-07-11:TM 52275)

**Exhibit "A"**

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
FOR A SAFE ROUTES TO SCHOOL PROJECT**

**This Local Project Advance Funding Agreement for a safe routes to school project (LPAFA)** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of Richardson, acting by and through its duly authorized officials, hereinafter called the "Local Government"

**WITNESSETH**

**WHEREAS**, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

**WHEREAS**, the Local Government prepared and submitted to the State an application for consideration under the Safe Routes to School Program for the project which is briefly described as the construction of sidewalks, installation of crosswalks, and installation of school zone signs in the vicinity of Yale Elementary School in the City of Richardson, hereinafter called the Project; and

**WHEREAS**, federal law establishes federally funded programs for transportation improvements, including safe routes to school programs, to implement its public purposes; and

**WHEREAS**, Title 23 U.S.C. §134 requires that Metropolitan Planning Organizations and the States' Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and

**WHEREAS**, the Texas Transportation Code, §201.614 directs the State to establish the Safe Routes to School Program to enhance safety in and around school areas through a construction program designed to improve the bicycle and the pedestrian safety of school age children; and

**WHEREAS**, Texas Administrative Code Title 43, Part 1, Chapter 25, Subchapter I, §25.500 – 25.505 directs the State to implement the Safe Routes to School Program to enhance safety in and around school areas through a comprehensive program designed to improve the bicycle and pedestrian safety of school age children; encourage a healthy and active lifestyle from an early age; enable and encourage children, including those with disabilities, to walk and bicycle to school; and to facilitate projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools; and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of state and federal funds; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order 112268 awarding funding for projects in the 2009 Program Call, including the Project; and

## Exhibit "A"

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

**WHEREAS**, the rules and procedures for the selection and administration of the Safe Routes to School Program are established in 43 Texas Administrative Code (TAC) §§25.500 et seq.; and

**WHEREAS**, the governing body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated \_\_\_\_\_, which is attached hereto and made a part hereof as Attachment A;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### AGREEMENT

1. The period of this LPAFA is as stated in the Master Agreement without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the Master Agreement or for the conditions, and in the manner, described herein:
  - A. The termination of this LPAFA shall extinguish all rights, duties, obligations and liabilities of the State under this agreement. If the potential termination of the agreement is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
  - B. If the Local Government withdraws from the Project after the agreement is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.
  - C. A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this LPAFA will be appropriately terminated. A Project may be eliminated from the program if:
    - i. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §25.500 et seq.
    - ii. The implementation of the Project would involve significant deviation from the activities as proposed in the application.
    - iii. The Local Government withdraws from participation in the Project.
    - iv. The Project is not let to contract or if utilizing local forces, construction has not begun by a date three (3) years from project award notification.
    - v. The State determines that federal funding may be lost due to the Project not being implemented and completed.
3. Amendments of this LPAFA shall be made as described in the Master Agreement, without exception.
4. Scope of Work. The scope of work for the Project, which is at the location shown in Attachment B, Project Location Map, as described in the application and as approved by the Texas Transportation Commission, consists of the construction of sidewalks, installation of

## Exhibit "A"

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

crosswalks, and installation of school zone signs in the vicinity of Yale Elementary School in the City of Richardson.

5. Right of Way and Real Property Acquisition shall be the responsibility of the Local Government, as stated in the Master Agreement with the following additional requirements:
  - A. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
  - B. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the State's issuance of a letter of funding authority.
  - C. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
  - D. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.
  - E. Condemnation shall not be used to acquire real property for this Project. However, real property that was acquired prior to 1991 through eminent domain and in accordance with applicable state and federal laws, may be used for project purposes.
  - F. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed one hundred percent (100%) of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed one hundred percent (100%) of the State's predetermined value of each parcel, or the net cost thereof, whichever is less. In

## Exhibit "A"

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.

- G. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this LPAFA. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than ten (10) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. This agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.
6. The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.
  7. Environmental assessment and mitigation will be carried out as stated in the Master Agreement without exception unless otherwise specified in the application for the Project and approved by the State. These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the application and approved by the State.
  8. Certification. Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired, all environmental problems have been remediated, and all conflicting utilities have been adjusted.
  9. Engineering services will be provided by the Local Government. Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement, without exception.
    - A. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. All roadway improvement designs for on-system highways must comply with the latest version of TxDOT manuals, including but not limited to, the Roadway Design Manual, the Pavement Design Manual, the Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas Accessibility Standards (TAS).

All roadway improvement designs for off-system roads must comply with the minimum standards of the latest version of AASHTO Policy on Geometric Design of the Highways and Streets, the Texas Manual on Uniform Traffic Control Devices, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas

## Exhibit "A"

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

- Accessibility Standards (TAS). All bicycle path and bicycle lane designs must comply with the latest version of the AASHTO Guide for the Development of Bicycle Facilities, the Texas Manual on Uniform Traffic Control Devices, the Hydraulic Design Manual, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas Accessibility Standards (TAS). For new shared bicycle lanes on a signed, designated bicycle route, the minimum lane width must be 14 feet, measured from the existing center stripe to the curb or shoulder, where applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.
- B. The Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.
- C. The Local Government shall submit to the State all documentation relating to actual costs incurred for providing architectural and engineering services. Reasonable, allowable, and allocable costs incurred by the Local Government, after the Local Government has obtained written authorization from the State to incur costs, will be eligible for reimbursement at an amount not to exceed one hundred percent (100%) of the eligible actual costs.
10. Construction. Construction will be carried out as stated in the Master Agreement. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Any field changes, supplemental agreements or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.
11. Project Maintenance. Upon completion of the Project the Local Government will be responsible for maintaining the completed facility for public use for a period of at least ten (10) years. Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this agreement.
12. Local Project Sources and Uses of Funds
- A. Project Cost Estimate: A Project Cost Estimate and Payment Schedule is provided in Attachment C, showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, environmental assessments and remediation, engineering activities, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the application approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work

## Exhibit "A"

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- B. A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amounts to be contributed to the Project by federal and local sources.
- C. If the project is not on the State Highway, the Local Government may be responsible for all non-federal and non-state participation costs associated with the Project. Overrun funding of up to fifteen percent (15%) in excess of the approved project construction cost may be approved by the State. The Local Government is responsible for any overruns not approved by the State and any operating or maintenance expenses.
- D. The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed one hundred percent (100%) of the actual cost of the work up to the amount of construction funds approved for the Project by the Texas Transportation Commission and one hundred percent (100%) of the project development cost. Federal funds will be reimbursed on a cost basis. Project cost incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.
- E. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- F. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Until the final project accounting, funds in the escrow account may only be applied by the State to the Project.
- G. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.

## Exhibit "A"

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

- H. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- I. The State will not pay interest on any funds provided by the Local Government.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. If any existing or future local ordinances, including, but not limited to, outdoor advertising billboards or storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or any other locally proposed changes, including, but not limited to plats or replats, result in increased costs, then, any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing such right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including expenses related to relocation, removal, or adjustment of eligible utilities.
- L. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- M. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- N. Whenever American Recovery and Reinvestment Act of 2009 ARRA funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is receiving ARRA funds, but is not performing any work, the following provisions apply, if appropriate, and to the extent necessary to comply with ARRA regulations.

In accordance with Section 902 of the ARRA, should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

- a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general

## Exhibit "A"

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- b. to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

- N. Whenever funds from the American Recovery and Reinvestment Act of 2009 (ARRA) are distributed to a Local Government, the Local Government must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.
  - O. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
13. **Lobbying Certification.** The parties to this LPAFA reaffirm that no federal funds were used to lobby for Project funds, but that if any lobbying occurred, it has been reported to the State, pursuant to the requirements of the Master Agreement.
  14. **Document and Information Exchange.** The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State,

## Exhibit "A"

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

15. Incorporation. The Master Agreement is incorporated into this agreement as if fully set forth herein.
16. Insurance. If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.
17. Debarment Certification. The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.
18. Signatory Warranty. The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

**Exhibit "A"**

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

**IN TESTIMONY HEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE LOCAL GOVERNMENT**

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Carol T. Rawson, P.E., Director  
Traffic Operations Division

Date: \_\_\_\_\_

**Exhibit "A"**

CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

**ATTACHMENT A  
RESOLUTION OF LOCAL GOVERNMENT**

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CSJ # 0918-47-013  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Yale  
Elementary School  
Federal Highway Administration  
CFDA #20.205

**ATTACHMENT B  
PROJECT LOCATION MAP**



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CSJ # 0918-47-013  
 District # 18-Dallas  
 Code Chart 64 #35200  
 Pedestrian Walkway Improvements At Yale  
 Elementary School  
 Federal Highway Administration  
 CFDA #20.205

**ATTACHMENT C  
 PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

This is an estimate only; final participation amounts will be based on actual charges to the project.

Description	Total Estimate Cost	Federal Participation	Local Participation
Preliminary Engineering (PS&E Development)	50,000	0	50,000
Environmental documents -TxDOT	0	0	0
Right of Way (ROW)	0	0	0
Construction (Federal Participation can not exceed amount approved by Texas Transportation Commission)	479,000	479,000	0
<b>SUBTOTAL</b>	<b>529,000</b>	<b>479,000</b>	<b>50,000</b>
Direct State Costs (including plan review, inspection and oversight) estimated (1%)	4,790	4,790	0
Construction Contingencies	20,000	20,000	0
<b>TOTAL</b>	<b>553,790</b>	<b>503,790</b>	<b>50,000</b>

**Total participation required from the Local Government = \$50,000**

**RESOLUTION NO. 11-39**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE ADVANCE FUNDING AGREEMENT (HEREIN “AGREEMENT”) FOR A SAFE ROUTES TO SCHOOL PROJECT FOR PEDESTRIAN WALKWAY IMPROVEMENTS AT RICHLAND ELEMENTARY SCHOOL, BY AND BETWEEN THE CITY OF RICHARDSON, TEXAS, AND THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has been presented a proposed Advance Funding Agreement by and between the City of Richardson, Texas, and the State of Texas, acting through the Texas Department of Transportation, which provides for the construction of sidewalks, installation of crosswalks, and installation of school zone signs in the vicinity of Richland Elementary School in the City of Richardson, attached as Exhibit “A” and incorporated herein by reference; and

**WHEREAS**, upon full review and consideration of the Agreement, and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager should be authorized to execute the Advance Funding Agreement on behalf of the City of Richardson, Texas;

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

**SECTION 1.** That the Advance Funding Agreement for a Safe Routes to School Project, which provides for the construction of sidewalks, installation of crosswalks, and installation of school zone signs in the vicinity of Richland Elementary School in the City of Richardson, attached hereto as Exhibit “A”, having been reviewed by the City Council of the City of Richardson, Texas, and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved, and the City Manager is hereby authorized to execute the Advance Funding Agreement (and any amendments thereto, including any related instruments) on behalf of the City of Richardson, Texas.

**SECTION 2.** That this Resolution shall become effective immediately from and after its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Richardson,  
Texas, on this the \_\_\_\_\_ day of November, 2011.

CITY OF RICHARDSON, TEXAS

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY  
(PGS:11-07-11:TM 52204)

**Exhibit "A"**

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

**STATE OF TEXAS           §**

**COUNTY OF TRAVIS       §**

**LOCAL TRANSPORTATION PROJECT  
ADVANCE FUNDING AGREEMENT  
FOR A SAFE ROUTES TO SCHOOL PROJECT**

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**WITNESSETH**

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**WHEREAS**, federal law establishes federally funded programs for transportation improvements, including safe routes to school programs, to implement its public purposes; and

**WHEREAS**, Title 23 U.S.C. §134 requires that Metropolitan Planning Organizations and the States' Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and

**WHEREAS**, the Texas Transportation Code, §201.614 directs the State to establish the Safe Routes to School Program to enhance safety in and around school areas through a construction program designed to improve the bicycle and the pedestrian safety of school age children; and

**WHEREAS**, Texas Administrative Code Title 43, Part 1, Chapter 25, Subchapter I, §25.500 – 25.505 directs the State to implement the Safe Routes to School Program to enhance safety in and around school areas through a comprehensive program designed to improve the bicycle and pedestrian safety of school age children; encourage a healthy and active lifestyle from an early age; enable and encourage children, including those with disabilities, to walk and bicycle to school; and to facilitate projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools; and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of state and federal funds; and

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CSJ # 0918-47-012  
District # 18-Dallas  
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Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

**WHEREAS**, the Texas Transportation Commission passed Minute Order 112268 awarding funding for projects in the 2009 Program Call, including the Project; and

**WHEREAS**, the rules and procedures for the selection and administration of the Safe Routes to School Program are established in 43 Texas Administrative Code (TAC) §§25.500 et seq.; and

**WHEREAS**, the governing body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated \_\_\_\_\_, which is attached hereto and made a part hereof as Attachment A;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### AGREEMENT

1. The period of this LPAFA is as stated in the Master Agreement without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the Master Agreement or for the conditions, and in the manner, described herein:
  - A. The termination of this LPAFA shall extinguish all rights, duties, obligations and liabilities of the State under this agreement. If the potential termination of the agreement is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
  - B. If the Local Government withdraws from the Project after the agreement is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.
  - C. A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this LPAFA will be appropriately terminated. A Project may be eliminated from the program if:
    - i. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §25.500 et seq.
    - ii. The implementation of the Project would involve significant deviation from the activities as proposed in the application.
    - iii. The Local Government withdraws from participation in the Project.
    - iv. The Project is not let to contract or if utilizing local forces, construction has not begun by a date three (3) years from project award notification.
    - v. The State determines that federal funding may be lost due to the Project not being implemented and completed.
3. Amendments of this LPAFA shall be made as described in the Master Agreement, without exception.

## Exhibit "A"

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

4. Scope of Work. The scope of work for the Project, which is at the location shown in Attachment B, Project Location Map, as described in the application and as approved by the Texas Transportation Commission, consists of the construction of sidewalks, installation of crosswalks, and installation of school zone signs in the vicinity of Richland Elementary School in the City of Richardson.
5. Right of Way and Real Property Acquisition shall be the responsibility of the Local Government, as stated in the Master Agreement with the following additional requirements:
  - A. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
  - B. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the State's issuance of a letter of funding authority.
  - C. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
  - D. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.
  - E. Condemnation shall not be used to acquire real property for this Project. However, real property that was acquired prior to 1991 through eminent domain and in accordance with applicable state and federal laws, may be used for project purposes.
  - F. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed one hundred percent (100%) of the cost of

## Exhibit "A"

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed one hundred percent (100%) of the State's predetermined value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.

- G. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this LPAFA. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than ten (10) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. This agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.
6. The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.
7. Environmental assessment and mitigation will be carried out as stated in the Master Agreement without exception unless otherwise specified in the application for the Project and approved by the State. These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the application and approved by the State.
8. Certification. Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired, all environmental problems have been remediated, and all conflicting utilities have been adjusted.
9. Engineering services will be provided by the Local Government. Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement, without exception.
- A. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. All roadway improvement designs for on-system highways must comply with the latest version of TxDOT manuals, including but not limited to, the Roadway Design Manual, the Pavement Design Manual, the Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas Accessibility Standards (TAS).

## Exhibit "A"

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

All roadway improvement designs for off-system roads must comply with the minimum standards of the latest version of AASHTO Policy on Geometric Design of the Highways and Streets, the Texas Manual on Uniform Traffic Control Devices, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas Accessibility Standards (TAS). All bicycle path and bicycle lane designs must comply with the latest version of the AASHTO Guide for the Development of Bicycle Facilities, the Texas Manual on Uniform Traffic Control Devices, the Hydraulic Design Manual, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas Accessibility Standards (TAS). For new shared bicycle lanes on a signed, designated bicycle route, the minimum lane width must be 14 feet, measured from the existing center stripe to the curb or shoulder, where applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.

- B. The Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.
  - C. The Local Government shall submit to the State all documentation relating to actual costs incurred for providing architectural and engineering services. Reasonable, allowable, and allocable costs incurred by the Local Government, after the Local Government has obtained written authorization from the State to incur costs, will be eligible for reimbursement at an amount not to exceed one hundred percent (100%) of the eligible actual costs.
10. **Construction.** Construction will be carried out as stated in the Master Agreement. The Local Government shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Any field changes, supplemental agreements or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.
11. **Project Maintenance.** Upon completion of the Project the Local Government will be responsible for maintaining the completed facility for public use for a period of at least ten (10) years. Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this agreement.
12. **Local Project Sources and Uses of Funds**
- A. **Project Cost Estimate:** A Project Cost Estimate and Payment Schedule is provided in Attachment C, showing the total estimated development cost of the Project.

## Exhibit "A"

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

This estimate shows the itemized cost of real property, environmental assessments and remediation, engineering activities, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the application approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- B. A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amounts to be contributed to the Project by federal and local sources.
- C. If the project is not on the State Highway, the Local Government may be responsible for all non-federal and non-state participation costs associated with the Project. Overrun funding of up to fifteen percent (15%) in excess of the approved project construction costs may be approved by the State. The Local Government is responsible for any overruns not approved by the State and any operating or maintenance expenses.
- D. The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed one hundred percent (100%) of the actual cost of the work up to the amount of construction funds approved for the Project by the Texas Transportation Commission and one hundred percent (100%) of the project development cost. Federal funds will be reimbursed on a cost basis. Project cost incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.
- E. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- F. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Until the final project accounting, funds in the escrow account may only be applied by the State to the Project.

## Exhibit "A"

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

- G. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.
- H. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- I. The State will not pay interest on any funds provided by the Local Government.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. If any existing or future local ordinances, including, but not limited to, outdoor advertising billboards or storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or any other locally proposed changes, including, but not limited to plats or replats, result in increased costs, then, any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing such right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including expenses related to relocation, removal, or adjustment of eligible utilities.
- L. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- M. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- N. Whenever American Recovery and Reinvestment Act of 2009 ARRA funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is receiving ARRA funds, but is not performing any work, the following provisions apply, if appropriate, and to the extent necessary to comply with ARRA regulations.

In accordance with Section 902 of the ARRA, should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

- a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

## Exhibit "A"

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- b. to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

- N. Whenever funds from the American Recovery and Reinvestment Act of 2009 (ARRA) are distributed to a Local Government, the Local Government must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.
- O. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

## Exhibit "A"

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

13. **Lobbying Certification.** The parties to this LPAFA reaffirm that no federal funds were used to lobby for Project funds, but that if any lobbying occurred, it has been reported to the State, pursuant to the requirements of the Master Agreement.
14. **Document and Information Exchange.** The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.
15. **Incorporation.** The Master Agreement is incorporated into this agreement as if fully set forth herein.
16. **Insurance.** If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.
17. **Debarment Certification.** The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.
18. **Signatory Warranty.** The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

**Exhibit "A"**

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

**IN TESTIMONY HEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE LOCAL GOVERNMENT**

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Carol T. Rawson, P.E., Director  
Traffic Operations Division

Date: \_\_\_\_\_

**Exhibit "A"**

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

**ATTACHMENT A  
RESOLUTION OF LOCAL GOVERNMENT**

## Exhibit "A"

CSJ # 0918-47-012  
District # 18-Dallas  
Code Chart 64 #35200  
Pedestrian Walkway Improvements At Richland  
Elementary School  
Federal Highway Administration  
CFDA #20.205

### ATTACHMENT B PROJECT LOCATION MAP



**Exhibit "A"**

CSJ # 0918-47-012  
 District # 18-Dallas  
 Code Chart 64 #35200  
 Pedestrian Walkway Improvements At Richland  
 Elementary School  
 Federal Highway Administration  
 CFDA #20.205

**ATTACHMENT C  
 PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

This is an estimate only; final participation amounts will be based on actual charges to the project.

Description	Total Estimate Cost	Federal Participation	Local Participation
Preliminary Engineering (PS&E Development)	25,000	0	25,000
Environmental documents -TxDOT	0	0	0
Right of Way (ROW)	0	0	0
Construction (Federal Participation can not exceed amount approved by Texas Transportation Commission)	343,250	343,250	0
<b>SUBTOTAL</b>	<b>368,250</b>	<b>343,250</b>	<b>25,000</b>
Direct State Costs (including plan review, inspection and oversight) estimated (1%)	3,432.50	3,432.50	0
Construction Contingencies	0	0	0
<b>TOTAL</b>	<b>371,682.50</b>	<b>346,682.50</b>	<b>25,000</b>

**Total participation required from the Local Government = \$25,000**

**RESOLUTION NO. 11-40**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS, ADOPTING THE CITY OF RICHARDSON INVESTMENT POLICY ATTACHED HERETO AS EXHIBIT “A”; DECLARING THAT THE CITY COUNCIL HAS COMPLETED ITS REVIEW OF THE INVESTMENT POLICY AND INVESTMENT STRATEGIES OF THE CITY AND THAT EXHIBIT “A” RECORDS ANY CHANGES TO EITHER THE INVESTMENT POLICY OR INVESTMENT STRATEGIES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with the Public Funds Investment Act, Chapter 2256, TEX. GOV'T CODE, the City Council of the City of Richardson, Texas by resolution adopted an investment policy; and

**WHEREAS**, Section 2256.005, Tex. Gov't Code requires the City Council to review the investment policies and investment strategies not less than annually and to adopt a resolution or order stating the review has been completed and recording any changes made to either the investment policies or investment strategies.

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

**SECTION 1.** That the City of Richardson Investment Policy attached hereto as Exhibit “A” be and the same is hereby adopted and shall govern the investment policies and investment strategies for the City, and shall define the authority of the investment official of the City from and after the effective date of this Resolution.

**SECTION 2.** That the City Council of the City of Richardson has completed its review of the investment policies and investment strategies and any changes made to either the investment policies or investment strategies are recorded in Exhibit “A” hereto.

**SECTION 3.** That all provisions of the resolutions of the City of Richardson, Texas, in conflict with the provisions of this Resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this Resolution shall remain in full force and effect.

**SECTION 4.** That should any word, sentence, paragraph, subdivision, clause, phrase or section of this Resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Resolution which shall remain in full force and effect.

**SECTION 5.** That this Resolution shall become effective immediately from and after its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Richardson, Texas, on this the \_\_\_\_\_ day of December, 2011.

CITY OF RICHARDSON, TEXAS

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
PETER G. SMITH, CITY ATTORNEY  
(PGS:10-24-11:TM 51989)

**Exhibit “A”**

**City of Richardson  
Investment Policy**

**ARTICLE I  
PURPOSE AND NEED FOR POLICY**

Chapter 2256 of the Government Code, as amended from time to time by the Texas State Legislature (“Public Funds Investment Act”) requires each city to adopt rules governing its investment practices and to define the authority of the investment official. The Investment Policy addresses the methods, procedures and practices which must be exercised to ensure effective and prudent fiscal management of the City of Richardson funds.

**ARTICLE II  
SCOPE**

The Investment Policy applies to the investment and management of all funds under direct authority of the City of Richardson.

- A. These funds are accounted for in the City’s Annual Financial Report and include the following:
- (1) the General Fund;
  - (2) Special Revenue Funds;
  - (3) Capital Project Funds;
  - (4) Enterprise Funds;
  - (5) Trust and Agency Funds, to the extent not required by law or existing contract to be kept segregated and managed separately;
  - (6) Debt Service Funds, including reserves and sinking funds to the extent not required by law or existing contract to be kept segregated and managed separately; and
  - (7) Any new fund created by the City unless specifically exempted from this policy by the City or by law.

This investment policy shall apply to all transactions involving the financial assets and related activity of all the foregoing funds.

- B. This policy excludes:
- 1) Employee Retirement and Pension Funds administered or sponsored by the City.
  - 2) Defeased bond funds held in trust escrow accounts.

- C. Review and Amendment

The City Council is required by state statute and by this investment policy to review this investment policy and investment strategies not less than annually and to adopt a resolution or an ordinance stating the review has been completed and recording any changes made to either the policy or strategy statements.

### **ARTICLE III PRUDENCE**

Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived.

In determining whether an investment official has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

- (1) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and
- (2) whether the investment decision was consistent with the written investment policy of the City.

All participants in the investment program will seek to act responsibly as custodians of the public trust. Investment officials will avoid any transaction that might impair public confidence in the City's ability to govern effectively. Investment officials shall recognize that the investment portfolio is subject to public review and evaluation. The overall program shall be designed and managed with a degree of professionalism which is worthy of the public trust. Nevertheless, the City recognizes that in a marketable, diversified portfolio, occasional measured losses are inevitable and must be considered within the context of the overall portfolio's investment rate of return.

Investment officials, acting in accordance with written procedures and exercising due diligence, shall not be held personally responsible for market price changes, provided that these deviations from expectations are reported immediately to the Director of Finance, the City Manager and the City Council of the City of Richardson, and that appropriate action is taken by the investment officials and their oversight managers to control adverse developments.

### **ARTICLE IV OBJECTIVES**

#### **A. Preservation and Safety of Principal**

Preservation of capital is the foremost objective of the City. Each investment transaction shall seek first to ensure that capital losses are avoided, whether the loss occurs from the default of a security or from erosion of market value.

#### **B. Liquidity**

The City's investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements which can be reasonably anticipated. Liquidity will be achieved by matching investment maturities with forecasted cash flow requirements and by investing in securities with active secondary markets.

C. Yield

The investment portfolio of the City shall be designed to meet or exceed the average rate of return on 91-day U.S. treasury bills throughout budgetary and economic cycles, taking into account the City's investment risk constraints and the cash flow characteristics of the portfolio. Legal constraints on debt proceeds that are not exempt from federal arbitrage regulations are limited to the arbitrage yield of the debt obligation. Investment officials will seek to maximize the yield of these funds in the same manner as all other City funds. However, if the yield achieved by the City is higher than the arbitrage yield, positive arbitrage income will be averaged over a five year period, netted against any negative arbitrage income and the net amount shall be rebated to the federal government as required by federal regulations.

**ARTICLE V  
RESPONSIBILITY AND CONTROL**

A. Delegation

Management responsibility to establish written procedures for the operation of the investment program consistent with this investment policy has been assigned to the Director of Finance by the City Manager. The Director of Finance has delegated this responsibility to the Assistant Director of Finance. Such procedures shall include explicit delegation of authority to persons responsible for the daily cash management operation, the execution of investment transactions, overall portfolio management and investment reporting. The Assistant Director of Finance may delegate the daily investment responsibilities to either an internal investment official or an external investment advisor in combination with an internal investment official. The Assistant Director of Finance and/or his representative(s) will be limited by conformance with all federal regulations, ordinances, and the statements of investment strategy.

B. Subordinates

All persons involved in investment activities shall be referred to as "Investment Officials." No person shall engage in an investment transaction except as provided under the terms of this policy, the procedures established by the Assistant Director of Finance and the explicit authorization by the City Manager to withdraw, transfer, deposit and invest the City's funds. The City Council, by resolution, has authorized the City Manager to appoint these individuals. The Director of Finance and the Assistant Director of Finance shall be responsible for all transactions undertaken, and shall establish a system of controls to regulate the activities of subordinate Investment Officials.

C. Internal Controls

Internal controls shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial

markets, or imprudent actions by investment officials. Controls deemed most important would include: control of collusion, separation of duties, third-party custodial safekeeping, avoidance of bearer-form securities, clear delegation of authority, specific limitations regarding securities losses and remedial action, written confirmation of telephone transactions, minimizing the number of authorized investment officials, and documentation of and rationale for investment transactions.

In conjunction with the annual independent audit, a compliance audit of management controls on investments and adherence to the Investment Policy and the Investment Strategy shall be performed by the City's independent auditor.

#### D. Ethics and Conflicts of Interest

An investment officer of the City who has a personal business relationship with a business organization offering to engage in an investment transaction with the City shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree of affinity or consanguinity to an individual seeking to sell an investment to the City shall file a statement disclosing that relationship with the Texas Ethics Commission and the City Council. For purposes of this section, an investment officer has a personal business relationship with a business organization if:

- (1) the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
- (2) funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for the previous year; or
- (3) the investment officer has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the investment officer.

Investment officials of the City shall refrain from personal and business activities involving any of the City's custodians, depositories, broker/dealers or investment advisors which may influence the officer's ability to conduct his duties in an unbiased manner. Investment officials will not utilize investment advice concerning specific securities or classes of securities obtained in the transaction of the City's business for personal investment decisions, will in all respects subordinate their personal investment transactions to those of the City, particularly with regard to the timing of purchase and sales and will keep all investment advice obtained on behalf of the City and all transactions contemplated and completed by the City confidential, except when disclosure is required by law.

#### E. Investment Training Requirements

The Director of Finance, the Assistant Director of Finance, and the Investment officials shall attend at least one ten hour training session relating to their investment responsibilities within 12 months after assuming their duties. In addition to this ten hour requirement, each investment officer shall receive not less than ten hours of instruction in their investment responsibilities at least once during each two year period that begins on October 1<sup>st</sup> and consists of the two consecutive fiscal years after that date. The investment training session

shall be provided by an independent source approved by the investment committee. For purposes of this policy, an “independent source” from which investment training shall be obtained shall include a professional organization, an institute of higher learning or any other sponsor other than a Business Organization with whom the City of Richardson may engage in an investment transaction. Such training shall include education in investment controls, credit risk, market risk, investment strategies, and compliance with investment laws, including the Texas State Public Funds Investment Act. A list will be maintained of the number of hours and conferences attended for each investment official and a report of such information will be provided to the Investment Committee.

## **ARTICLE VI AUTHORIZED INVESTMENTS**

- A. Obligations, including letters of credit, of the United States or its agencies and instrumentalities.
- B. Direct obligations of the State of Texas or its agencies and instrumentalities.
- C. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, the State of Texas, or the United States or its instrumentalities.
- D. Obligations of states, agencies, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than “A” or its equivalent.
- E. Joint Investment Pools of political subdivisions in the State of Texas which invest in instruments and follow practices allowed by current law. A pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.
- F. Certificates of Deposit issued by a depository institution that has its main office or branch office in Texas:
  - (1) and such Certificates of Deposit are:
    - a. Guaranteed or insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or their successors; or
    - b. Secured by obligations described in Article VI, sections A through D above.
  - (2) or such depository institution contractually agrees to place the funds in federally insured depository institutions in accordance with the conditions prescribed in Section 2256.010(b) of the Government Code (Public Funds Investment Act) as amended.

Certificates of Deposit brokered by an authorized broker/dealer that has its main office or a branch office in Texas who contractually agrees to place the funds in federally insured depository institutions in accordance with the conditions prescribed in Section 2256.010(b) of the Government Code (Public Funds Investment Act) as amended.

G. Fully collateralized repurchase or reverse repurchase agreements, including flexible repurchase agreements (flex repo), with a defined termination date secured by a combination of cash and obligations of the United States or its agencies and instrumentalities pledged to the City held in the City's name by a third party selected by the City. Repurchase agreements must be purchased through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in Texas. The securities received for repurchase agreements must have a market value greater than or equal to 103 percent at the time funds are disbursed. All transactions shall be governed by a Master Repurchase Agreement between the City and the primary government securities dealer or financial institution initiating Repurchase Agreement transactions.

The term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. Money received under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

H. No-load money market mutual funds if the mutual fund:

- (1) Is registered with and regulated by the Securities and Exchange Commission;
- (2) Has a dollar-weighted average stated maturity of 90 days or fewer; and
- (3) Includes in its investment objectives the maintenance of a stable net asset value of one dollar for each share.

I. Investment instruments not authorized for purchase by the City of Richardson include the following:

- (1) Banker's Acceptances;
- (2) "Bond" Mutual Funds;
- (3) Collateralized Mortgage Obligations of any type; and
- (4) Commercial Paper, except that the City can invest in local government investment pools and money market mutual funds that have commercial paper as authorized investments. A local government investment pool or money market mutual fund that invests in commercial paper must meet the requirements of Article VI, Sections E and H above.

J. If an investment in the City's portfolio becomes an unauthorized investment due to changes in the Investment Policy or the Public Funds Investment Act, or an authorized investment is rated in a way that causes it to become an unauthorized investment, the investment officials of the City shall review the investment and determine whether it would be more prudent to hold the investment until its maturity, or to redeem the investment. Officials shall consider the time remaining until maturity of the investment, the quality of the investment, and the quality and amounts of any collateral which may be securing the investment in determining the appropriate steps to take.

**ARTICLE VII  
PORTFOLIO AND INVESTMENT ASSET PARAMETERS**

A. Bidding Process for Investments

It is the policy of the City to require competitive bidding for all investment transactions (securities and bank C.D.'s) except for:

- (1) transactions with money market mutual funds and local government investment pools (which are deemed to be made at prevailing market rates); and
- (2) treasury and agency securities purchased at issue through an approved broker/dealer.

At least three bids or offers must be solicited for all other investment transactions. In a situation where the exact security being offered is not offered by other dealers, offers on the closest comparable investment may be used to establish a fair market price of the security. Security swaps are allowed as long as maturity extensions, credit quality changes and profits or losses taken are within the other guidelines set forth in this policy.

B. Maximum Maturities

The City of Richardson will manage its investments to meet anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than five years from the date of purchase.

C. Maximum Dollar-Weighted Average Maturity

Under most market conditions, the composite portfolio will be managed to achieve a one-year or less dollar-weighted average maturity. However, under certain market conditions investment officials may need to shorten or lengthen the average life or duration of the portfolio to protect the City. The maximum dollar-weighted average maturity based on the stated final maturity, authorized by this investment policy for the composite portfolio of the City shall be three years.

D. Diversification

The allocation of assets in the portfolios should be flexible depending upon the outlook for the economy and the securities markets. In establishing specific diversification strategies, the following general policies and constraints shall apply.

- (1) Portfolio maturities and call dates shall be staggered in a way that avoids undue concentration of assets in a specific sector. Maturities shall be selected which provide for stability of income and reasonable liquidity.
- (2) To attain sufficient liquidity, the City shall schedule the maturity of its investments to coincide with known disbursements. Risk of market price volatility shall be controlled through maturity diversification such that aggregate realized price losses on instruments with maturities exceeding one year shall not be greater than coupon interest and investment income received from the balance of the portfolio.
- (3) The following maximum limits, by instrument, are established for the City's total portfolio:

- U.S Treasury Notes/Bills ..... 100%
- U.S. Government Agencies & Instrumentalities ..... 100%
- U.S. Treasury & U.S. Agency Callables..... 25%
- Certificates of Deposit ..... 25%
- Repurchase Agreements (*See D. (4) below*)..... 50%

- Money Market Mutual Funds *(See D.(5) below)*..... 100%
  - Local Government Investment Pools *(See D.(5) below)*..... 100%
  - State of Texas Obligations & Agencies ..... 25%
  - Obligations of states, agencies, cities and other political subdivisions of any state ..... 25%
- (4) The City shall not invest more than 50% of the investment portfolio in repurchase agreements, excluding bond proceeds and reserves.
- (5) The City shall not invest more than 20% of the investment portfolio in any individual money market mutual fund or government investment pool.
- (6) The investment committee shall review diversification strategies and establish or confirm guidelines on at least an annual basis regarding the percentages of the total portfolio that may be invested in securities other than U.S. Government Obligations. The investment committee shall review quarterly investment reports and evaluate the probability of market and default risk in various investment sectors as part of its consideration.

**ARTICLE VIII  
AUTHORIZED BROKER/DEALERS  
AND FINANCIAL INSTITUTIONS**

- A. Investment officials will maintain a list of financial institutions and broker/dealers selected by credit worthiness, who are authorized to provide investment services to the City. These firms may include:
- (1) all primary government securities dealers; and
  - (2) those regional broker/dealers who qualify under Securities and Exchange Commission Rule 15C3-1(uniform net capital rule), and who meet other financial credit criteria standards in the industry.

The investment officials may select up to six firms from the approved list to conduct a portion of the daily City investment business. These firms will be selected based on their competitiveness, participation in agency selling groups and the experience and background of the salesperson handling the account. The approved broker/dealer list will be reviewed and approved along with this investment policy at least annually by the investment committee.

- B. All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply the investment officials with the following:
- (1) Audited financial statements;
  - (2) Proof of National Association of Securities Dealers (N.A.S.D.) certification, unless it is a bank;
  - (3) Resumes of all sales representatives who will represent the financial institution or broker/dealer firm in dealings with the City; and
  - (4) An executed written instrument, by the qualified representative, in a form acceptable to the City and the business organization substantially to the effect that the business organization has received and reviewed the investment policy of the City and acknowledges that the business organization has implemented reasonable procedures

and controls in an effort to preclude investment transactions conducted between the City and the organization that are not authorized by the City's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the City's entire portfolio or requires an interpretation of subjective investment standards.

**ARTICLE IX  
SAFEKEEPING AND CUSTODY OF  
INVESTMENT ASSETS**

All security transactions, including collateral for repurchase agreements entered into by the City shall be conducted using the delivery vs. payment (DVP) basis. That is, funds shall not be wired or paid until verification has been made that the correct security was received by the safekeeping bank. The only exceptions to DVP settlement shall be wire transactions for money market funds and government investment pools. The safekeeping or custody bank is responsible for matching up instructions from the City's investment officials on an investment settlement with what is wired from the broker/dealer, prior to releasing the City's designated funds for a given purchase. The security shall be held in the name of the City or held on behalf of the City in a bank nominee name. Securities will be held by a third party custodian designated by the investment officials and evidenced by safekeeping receipts or statements. The safekeeping bank's records shall assure the notation of the City's ownership of or explicit claim on the securities. The original copy of all safekeeping receipts shall be delivered to the City. A safekeeping agreement must be in place which clearly defines the responsibilities of the safekeeping bank.

**ARTICLE X  
COLLATERAL**

The City's depository bank shall comply with Chapter 2257 of the Government Code, Collateral for Public Funds, as required in the City's bank depository contract.

**A Market Value**

The Market Value of pledged Collateral must be equal to or greater than 102% of the principal and accrued interest for cash balances in excess of the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF) insurance coverage. The Federal Reserve Bank and the Federal Home Loan Bank are designated as custodial agents for collateral. An authorized City representative will approve and release all pledged collateral. The securities comprising the collateral will be marked to market on a monthly basis using quotes by a recognized market pricing service quoted on the valuation date, and the City will be sent reports monthly.

**B Collateral Substitution**

Collateralized investments often require substitution of collateral. The Safekeeping bank must contact the City for approval and settlement. The substitution will be approved if its value is equal to or greater than the required collateral value.

**C Collateral Reduction**

Should the collateral's market value exceed the required amount, the Safekeeping bank may request approval from the City to reduce Collateral. Collateral reductions may be permitted only if the collateral's market value exceeds the required amount.

D. Letters of Credit

Letters of Credit, as defined in Article VI (A), are acceptable collateral for Certificates of Deposit. Upon the discretion of the City, a Letter of Credit can be acceptable collateral for City funds held by the City's bank depository.

**ARTICLE XI  
INVESTMENT REPORTS**

A. Reporting Requirements

The investment officials shall prepare a quarterly investment report in compliance with section 2256.023 of the Public Funds Investment Act of the State of Texas. The report shall be submitted to the City Council and the Investment Committee within 45 days following the end of the quarter.

B. Investment Records

An investment official designated by the Assistant Director of Finance shall be responsible for the recording of investment transactions and the maintenance of the investment records with reconciliation of the accounting records and of investments carried out by an accountant. Information to maintain the investment program and the reporting requirements, including pricing or marking to market the portfolio, may be derived from various sources such as: broker/dealer research reports, newspapers, financial on-line market quotes, direct communication with broker/dealers, market pricing services, investment software for maintenance of portfolio records, spreadsheet software, or external financial consulting services relating to investments.

C. Auditor Review

The City's independent external auditor must formally review the quarterly investment reports annually to insure compliance with the State of Texas Public Funds Investment Act and any other applicable State Statutes.

**ARTICLE XII  
INVESTMENT COMMITTEE**

A. Members

An Investment Committee, consisting of the City Manager or his designee, the Director of Finance, the Assistant Director of Finance, the Controller, and an appointed investment official, shall review the City's investment strategies and monitor the results of the investment program at least quarterly. This review can be done by reviewing the quarterly written reports and by holding committee meetings as necessary. The committee will be authorized to invite other advisors to attend meetings as needed.

B. Scope

The Investment Committee shall include in its deliberations such topics as economic outlook, investment strategies, portfolio diversification, maturity structure, potential risk to the City's funds, evaluation and authorization of broker/dealers, rate of return on the investment portfolio, review and approval of training providers and compliance with the investment policy. The Investment Committee will also advise the City Council of any future amendments to the investment policy that are deemed necessary or recommended.

C. Procedures

The investment policy shall require the Investment Committee to provide minutes of investment information discussed at any meetings held. The committee should meet at least annually to discuss the investment program and policies.

**ARTICLE XIII  
INVESTMENT STRATEGY STATEMENTS**

The City of Richardson portfolio will be structured to benefit from anticipated market conditions and to achieve a reasonable return. Relative value among asset groups shall be analyzed and pursued as part of the investment program within the restrictions set forth by the investment policy.

The City of Richardson maintains portfolios which utilize four specific investment strategy considerations designed to address the unique characteristics of the fund groups represented in the portfolios.

A. Operating Funds

Suitability - All investments authorized in the Investment Policy are suitable for Operating Funds.

Preservation and Safety of Principal - All investments shall be high quality securities with no perceived default risk.

Liquidity - Investment strategies for the pooled operating funds have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. The dollar-weighted average maturity of operating funds, based on the stated final maturity date of each security, will be calculated and limited to one year or less. Constant \$1 NAV investment pools and money market mutual funds shall be an integral component in maintaining daily liquidity. Investments for these funds shall not exceed an 18-month period from date of purchase.

Marketability - Securities with active and efficient secondary markets will be purchased in the event of an unanticipated cash requirement.

Diversification - Maturities shall be staggered throughout the budget cycle to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.

Yield - The City's objective is to attain a competitive market yield for comparable securities and portfolio constraints. The benchmark for Operating Funds shall be the 91 day Treasury bill.

## B. Reserve and Deposit Funds

Suitability - All investments authorized in the Investment Policy are suitable for Reserve and Deposit Funds.

Preservation and Safety of Principal - All investments shall be high quality securities with no perceived default risk.

Liquidity - Investment strategies for reserve and deposit funds shall have as the primary objective the ability to generate a dependable revenue stream to the appropriate reserve fund from investments with a low degree of volatility. Except as may be required by the bond ordinance specific to an individual issue, investments should be of high quality, with short-to-intermediate-term maturities. The dollar-weighted average maturity of reserve and deposit funds, based on the stated final maturity date of each security, will be calculated and limited to three years or less.

Marketability - Securities with active and efficient secondary markets will be purchased in the event of an unanticipated cash requirement.

Diversification - Maturities shall be staggered throughout the budget cycle to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.

Yield - The City's objective is to attain a competitive market yield for comparable securities and portfolio constraints. The benchmark for Reserve and Deposit Funds shall be the 91 day Treasury bill.

## C. Bond and Certificate Capital Project Funds and Special Purpose Funds

Suitability - All investments authorized in the Investment Policy are suitable for Bond and Certificate Capital Project Funds and Special Purpose Funds.

Preservation and Safety of Principal - All investments shall be high quality securities with no perceived default risk.

Liquidity - Investment strategies for bond and certificate capital project funds, special projects and special purpose funds portfolios will have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. The stated final maturity dates of investments held should not exceed the estimated project completion date or a maturity of no greater than five years. The dollar-weighted average maturity of bond and

certificate capital project funds and special purpose funds, based on the stated final maturity date of each security, will be calculated and limited to three years or less.

Marketability - Securities with active and efficient secondary markets will be purchased in the event of an unanticipated cash requirement.

Diversification - Maturities shall be staggered throughout the budget cycle to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.

Yield - The City's objective is to attain a competitive market yield for comparable securities and portfolio constraints. The benchmark for Bond and Certificate Capital Project Funds and Special Purpose Funds shall be the 91 day Treasury bill. A secondary objective of these funds is to achieve a yield equal to or greater than the arbitrage yield of the applicable bond or certificate.

#### D. Debt Service Funds

Suitability - All investments authorized in the Investment Policy are suitable for Debt Service Funds.

Preservation and Safety of Principal - All investments shall be high quality securities with no perceived default risk.

Liquidity - Investment strategies for debt service funds shall have as the primary objective the assurance of investment liquidity adequate to cover the debt service obligation on the required payment date. Securities purchased shall not have a stated final maturity date which exceeds the debt service payment date. The dollar-weighted average maturity of debt service funds, based on the stated final maturity date of each security, will be calculated and limited to one year or less.

Marketability - Securities with active and efficient secondary markets will be purchased in the event of an unanticipated cash requirement.

Diversification - Maturities shall be staggered throughout the budget cycle to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.

Yield - The City's objective is to attain a competitive market yield for comparable securities and portfolio constraints. The benchmark for Debt Service Funds shall be the 91 day Treasury bill.

CITY OF RICHARDSON

TO: Bill Keffler - City Manager  
THRU: Kent Pfeil - Director of Finance  
FROM: Pam Kirkland - Purchasing Manager  
SUBJECT: Bid Initiation Request # 16-12  
DATE: December 5, 2011

Request Council approval to initiate bids for the following:

2012 CITY HALL COOLING TOWER REPLACEMENT

Proposed Council approval date: December 12, 2011  
Proposed advertising dates: December 14, 2011 & December 21, 2011  
Proposed bid due date: Wednesday, January 4, 2012 – 2:00 p.m.  
Proposed bid opening date: Wednesday, January 4, 2012 – 2:30 p.m.  
Engineer's estimated total cost: \$125,000  
Account: 232-2080-581-7499 project #FS 1202



Pam Kirkland, CPPO, CPPB  
Purchasing Manager



Kent Pfeil  
Director of Finance

  
Date

Approved: \_\_\_\_\_  
Bill Keffler  
City Manager

\_\_\_\_\_ Date



## MEMO

TO: Bill Keffler, City Manager

THROUGH: Cliff Miller, Assistant City Manager *CM*

FROM: Jerry Ortega, Director of Public Services *J.O.*  
Joe Travers, Assistant Director of Public Services

SUBJECT: Permission to Advertise Bid #16-12 for the  
City Hall Cooling Tower Replacement

DATE: December 2, 2011

### BACKGROUND INFORMATION:

The City Hall Cooling Tower is scheduled to be replaced in 2012. The existing cooling tower has exhibited severe corrosion problems in recent years and will be replaced with a new, stainless steel tower designed to significantly extend equipment life. The project will include provisions to cool City Hall/Civic Center if needed while the tower is temporarily out of service.

### FUNDING:

Funding is provided from the 2012 Facility Services C.O.'s Account 232-2080-581-7499 Project #FS-1202.

### SCHEDULE:

Construction is expected to begin March 2012 and be completed by May 2012.

**NOTICE TO CONTRACTORS  
CITY OF RICHARDSON**

***City Hall Cooling Tower Replacement***

**BID # 16-12**

Sealed bids addressed to the Honorable Mayor and City Council of the City of Richardson, Texas, will be received at the Office of the City Purchasing Manager, Suite 101, City Hall, 411 West Arapaho Road, Richardson, Texas, until **Wednesday at 2:00 p.m. on January 4, 2012**, and will be opened and read aloud in the **Capital Projects Conference Room 204**, 30 minutes later that same day, for furnishing all labor, materials, tools and equipment, and performing all work required including all appurtenances for:

The City Hall Cooling Tower is scheduled to be replaced in 2012. The existing cooling tower has exhibited severe corrosion problems in recent years and will be replaced with a new, stainless steel tower designed to significantly extend equipment life. The project will include provisions to cool City Hall/Civic Center if needed while the tower is temporarily out of service.

Proposals shall be accompanied by a certified or cashier's check on a state or national bank in an amount not less than five percent (5%) of the possible total of the bid submitted, payable without recourse to the City of Richardson, Texas, or an acceptable bid bond for the same amount from a reliable surety company as a guarantee that the bidder will enter into a contract and execute required Performance and Payment Bonds within ten (10) days after notice of award of contract. The notice of award of contract shall be given to the successful bidder within ninety (90) days following the opening of bids.

The successful bidder must furnish a Performance Bond upon the form provided in the amount of one hundred percent (100%) of the contract price, a material and labor Payment Bond upon the form provided in the amount of one hundred percent (100%) of the contract price, and a Maintenance Bond upon the form provided in the amount of one hundred percent (100%) of the contract price, from a surety authorized under the laws of the State of Texas to act as a surety on bonds for principals.

The right is reserved, as the interest of the Owner may require, to reject any and all bids, to waive any informality in the bids received, and to select bid best suited to the Owner's best interest.

**A maximum of Sixty (60) calendar days will be allowed for the project, including equipment delivery lead time. A maximum of five (5) calendar days will be allowed for equipment installation.**

A compact disk (CD) containing digital copies of the plans, specifications and bidding documents may be obtained from the office of the City Engineer, Capital Projects Department in Room 204, of the Richardson Civic Center/City Hall, 411 W. Arapaho Road, Richardson, Texas, beginning at 12:00 p.m. on Tuesday December 13, 2011 upon a **NON-REFUNDABLE FEE OF TWENTY FIVE DOLLARS (\$25.00)** per CD payable to the City of Richardson, accompanied by the Contractor's name, address, phone number, email address and fax number. A printed copy of the documents may also be obtained upon a **NON-REFUNDABLE FEE OF FIFTY DOLLARS (\$50.00)** per set. A maximum of two (2) CD's or plans will be available per Contractor.

**A voluntary pre-bid conference will be held Wednesday, at 10:00 a.m. December 21, 2011, in room 206 of the Richardson Civic Center/City Hall. While voluntary, attendance is strongly encouraged.**

By:/s/Bob Townsend, Mayor  
City of Richardson  
P. O. Box 830309  
Richardson, Texas 75083

**PROPOSED PROJECT SCHEDULE**  
**2012 CITY HALL COOLING TOWER REPLACEMENT**  
**BID #16-12**

Agenda Paperwork to Advertise	Friday, December 2, 2011
Council Authorization to Advertise	Monday, December 12, 2011
Plans/Specs Available for Contractors	Tuesday, December 13, 2011
Advertise in Dallas Morning News	Wednesday, December 14, 2011
Advertise in Dallas Morning News	Wednesday, Dec. 21, 2011
Pre Bid Meeting (10:00 am Room 206)	Wednesday, Dec. 21, 2011
Bids Received/Opened (@ 2:00 open @ 2:30 Room 206)	Wednesday, January 4, 2012
Agenda Paperwork to Award Contract	Friday, January 13, 2011
Council to Award Contract	Monday, January 23, 2012
Pre-Construction Meeting	~ February 2012
Project Start	~ March 2012
Project 50 Calendar Days	~ May 2012

*Project Manager: Joe Travers*  
*Engineers Estimate: \$125,000*  
*Account #232-2080-581-7499 -Project #FS 1202*

CITY OF RICHARDSON

TO: Bill Keffler - City Manager  
THRU: Kent Pfeil - Director of Finance  
FROM: Pam Kirkland - Purchasing Manager  
SUBJECT: Bid Initiation Request # 17-12  
DATE: December 5, 2011

Request Council approval to initiate bids for the following:

2010 SIDEWALK REPAIR PROGRAM PHASE III  
(REGIONS 5 & 6)

Proposed Council approval date: December 12, 2011  
Proposed advertising dates: December 14, 2011 & December 21, 2011  
Proposed bid due date: Thursday, January 5, 2012 – 2:00 p.m.  
Proposed bid opening date: Thursday, January 5, 2012 – 2:30 p.m.  
Engineer's estimated total cost: \$1,400,000  
Account: Neighborhood Vitality G.O. Bonds



Pam Kirkland, CPPO, CPPB  
Purchasing Manager



Kent Pfeil  
Director of Finance



Date

Approved: \_\_\_\_\_

Bill Keffler  
City Manager

\_\_\_\_\_

Date



## MEMO

TO: Bill Keffler, City Manager  
THROUGH: Cliff Miller, Assistant City Manager *CM*  
FROM: Steve Spanos, P.E., Director of Engineering *SS*  
SUBJECT: Permission to Advertise 2010 Sidewalk Repair Program Phase III  
(Regions 5 & 6) – Bid No. 17-12  
DATE: December 2, 2011

### BACKGROUND INFORMATION:

The 2010 Sidewalk Repair Program Phase III includes removal and replacement of existing residential 4' sidewalk and driveway approach pavement. Sidewalk repairs will vary in size at any particular location. The work will also include the construction of barrier free ramps and other appurtenances related to sidewalk and driveway approach repairs including 6" concrete curb, sod, water meter adjustments and sidewalk grinding and or cutting.

### FUNDING:

Funding is provided from Neighborhood Vitality G.O Bonds.

### SCHEDULE:

Capital Projects Department plans to begin construction for this project February 2012 and completed by July 2012.

Cc: Brad Bernhard, P.E., Project Engineer  
LT:Office\Agenda\Executive\Adv\SRP3 17-12.doc

**NOTICE TO CONTRACTORS  
CITY OF RICHARDSON**

**2010 Sidewalk Repair Program Phase III  
Region 5 – Bound by Belt Line/Main, Buckingham, Bowser, Plano Road  
Region 6 – Bound by US75, Custer, Lookout, Renner**

**BID # 17-12**

Sealed Bids addressed to the Purchasing Manager of the City of Richardson, Texas, will be received at the Office of the Purchasing Department, Suite 101, City Hall, 411 West Arapaho Road, Richardson, Texas, until **Thursday 2:00 p.m. on January 5, 2012**, and will be opened and read aloud in the **Capital Projects Conference Room 206**, 30 minutes later that same day, for furnishing all labor, materials, tools and equipment, and performing all work required including all appurtenances for:

The Phase III Sidewalk Repair Project is estimated to remove and replace approximately 150,000 SF of existing residential 4' sidewalk and 22,000 SF of driveway approach pavement. Sidewalk repairs will vary in size from as small as twenty square feet to hundreds of square feet at any particular location. The work will also include the construction of approximately 225 barrier free ramps and other appurtenances related to sidewalk and driveway approach repairs including 6" concrete curb, sod, water meter adjustments and sidewalk grinding and or cutting.

Proposals shall be accompanied by a certified or cashier's check on a state or national bank in an amount not less than five percent (5%) of the possible total of the bid submitted, payable without recourse to the City of Richardson, Texas, or an acceptable bid bond for the same amount from a reliable surety company as a guarantee that the bidder will enter into a contract and execute required Performance and Payment Bonds within ten (10) days after notice of award of contract. The notice of award of contract shall be given to the successful bidder within ninety (90) days following the opening of bids.

The successful bidder must furnish a Performance Bond upon the form provided in the amount of one hundred percent (100%) of the contract price, a material and labor Payment Bond upon the form provided in the amount of one hundred percent (100%) of the contract price, and a Maintenance Bond upon the form provided in the amount of one hundred percent (100%) of the contract price, from a surety authorized under the laws of the State of Texas to act as a surety on bonds for principals.

The right is reserved, as the interest of the Owner may require, to reject any and all bids, to waive any informality in the bids received, and to select bid best suited to the Owner's best interest. The Contractor, to be successful in bidding this project, must have completed a minimum of three similar projects within the last five years.

**A maximum of One Hundred and Five (155) calendar days will be allowed for construction.**

One set of plans, specifications and bid documents may be secured from the Office of the City Engineer, Capital Projects Department in Room 204, of the Richardson Civic Center/City Hall, 411 West Arapaho Road, Richardson, Texas, **beginning at 12:00 p.m. on Tuesday, December 13, 2011** upon a **NON-REFUNDABLE FEE OF Fifty Dollars (\$50.00) per set**, payable to the City of Richardson, accompanied by the contractor's name, address, phone number, email address and FAX number. Maximum of two sets of plans per contractor.

**A voluntary Pre-Bid Meeting will be held Wednesday at 9:00 a.m., December 21, 2011 in the Capital Projects Conference Room 206, Richardson Civic Center/City Hall.**

By:/s/ Bob Townsend, Mayor  
City of Richardson  
P. O. Box 830309  
Richardson, Texas 75083

**PROPOSED PROJECT SCHEDULE**  
**2010 SIDEWALK REPAIR PROGRAM PHASE III**  
**Region 5 – Bound by Belt Line/Main, Buckingham, Bowser, Plano Road**  
**Region 6 – Bound by US75, Custer, Lookout, Renner**

**BID #17-12**

Agenda Paperwork to Advertise	Friday, December 2, 2011
Council Authorization to Advertise	Monday, December 12, 2011
Plans/Specs Available for Contractors	Tuesday, December 13, 2011
Advertise in Dallas Morning News	Wednesday, December 14, 2011
Advertise in Dallas Morning News	Wednesday, Dec. 21, 2011
Pre Bid Meeting (9:00 am Room 206)	Wednesday, Dec. 21, 2011
Bids Received/Opened (@ 2:00 open @ 2:30 Room 206)	Thursday, January 5, 2012
Agenda Paperwork to Award Contract	Friday, January 13, 2012
Council to Award Contract	Monday, January 23, 2012
Pre-Construction Meeting	~ February 2012
Project Start	~ February 2012
Project 155 Calendar Days	~ July 2012

*Project Engineer: Brad Bernhard*  
*Engineers Estimate: \$1.4 mil*



**SIDEWALK REPAIR PROGRAM  
 PHASE III - REGIONS 5 & 6  
 SPRING 2012**



**CITY OF  
 RICHARDSON  
 TEXAS**



## MEMO

**DATE:** December 6, 2011

**TO:** Kent Pfeil – Director of Finance

**FROM:** Pam Kirkland – Purchasing Manager *Pam*

**SUBJECT:** Award of Bid #62-11 for a cooperative annual requirements contract for Traffic Signal Cabinets to Naztec, Inc. pursuant to unit prices

**Proposed Date of Award: December 12, 2011**

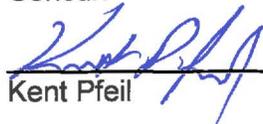
I concur with the recommendation of Robert Saylor – Traffic Operations Engineer and request permission to issue an annual requirements contract for traffic signal cabinet to the low bidder Naztec, Inc. pursuant to unit prices.

Detailed specifications were written to provide fully equipped traffic signal cabinets which include various components. Unit prices were received on the complete cabinet, as well as, additional replacement components such as load switches, flash transfer relays, power supplies, etc. The initial contract is for one year with options to renew for up to four (4) additional one-year periods. Naztec, Inc. was the low bidder; met all requirements of the bid; and is our current supplier of the traffic signal cabinets.

The award of this contract allows the city to purchase the cabinets and components as the requirements and needs of the city arise on an annual basis and during any subsequent renewal period(s). Since the city is not obligated to pay for or use a minimum or maximum amount of cabinets or components, payment will be rendered pursuant to the unit prices bid.

Expenditures are estimated to be \$241,397.50 annually and will be funded from a number of General Fund accounts, bond accounts and the Traffic Safety Fund. The bid was advertised in the *Dallas Morning News* on October 24 & 31, 2011 and posted electronically on Bidsync.com. One thousand two hundred eighteen bidders were electronically notified of the bid; thirty-one bidders viewed the bid; and three bids were received. A mandatory prebid conference was held on November 14, 2011 and nine vendors and three staff members were in attendance.

Concur:

  
Kent Pfeil

### ATTACHMENTS

Xc: Bill Keffler  
Dan Johnson  
Michelle Thames  
David Morgan  
Cliff Miller



## MEMO

TO: Pam Kirkland, Director of Purchasing  
FROM: Robert Saylor, P.E., PTOE – Traffic Engineering and Operations Manager  
DATE: November 30, 2011

SUBJECT: Annual Contract for Traffic Signal Cabinets

I recommend that the City award the contract for Traffic Signal Cabinets to Naztec, Inc. I recommend that this be awarded as an annual contract with options to renew for four (4) additional years.

Expenditures are estimated to be \$241,397.50 annually and will come from a number of General Fund accounts, bond accounts and the Traffic Safety Fund.

Thanks,  
Robert Saylor, P.E., PTOE  
Traffic Engineering and Operations Manager  
City of Richardson  
(972) 744-4324

**Bid Tabulation Packet  
for  
Solicitation 62-11**

**Annual Requirement Contract: Traffic Signal Cabinets**



**City of Richardson**

**Bid #62-11 - Annual Requirement Contract: Traffic Signal Cabinets**Creation Date **Sep 23, 2011**End Date **Nov 22, 2011 2:00:00 PM CST**Start Date **Oct 18, 2011 5:11:58 PM CDT**Awarded Date **Not Yet Awarded**

<b>62-11--01-01 1. Fully equipped traffic signal cabinet</b>					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
<a href="#">Naztec, Inc. [Ad]</a>	First Offer - \$7,987.00	30 / each	\$239,610.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b> 70006-TS2RICHTX			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			
<a href="#">McCain Inc.</a>	First Offer - \$12,096.95	30 / each	\$362,908.50		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b>			
<b>Agency Notes:</b>		<b>Supplier Notes:</b> 180 Days for Sample Cabinet. Spec. Note- 8.4 Thermostat will be 32-140 deg.			
<a href="#">Paradiqm Traffic Systems, Inc. [Ad]</a>	First Offer - \$12,390.00	30 / each	\$371,700.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b>			
<b>Agency Notes:</b>		<b>Supplier Notes:</b> Lead time for first cabinet 60-75 days ARO. Lead time after initial design will be 45-60 days ARO.			

<b>62-11--01-02 2. Spare MMU per specifications</b>					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
<a href="#">McCain Inc.</a>	First Offer - \$828.00	1 / each	\$828.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b>			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			
<a href="#">Paradiqm Traffic Systems, Inc. [Ad]</a>	First Offer - \$848.00	1 / each	\$848.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b> EDI-MMU 16LEip			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			
<a href="#">Naztec, Inc. [Ad]</a>	First Offer - \$975.00	1 / each	\$975.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b> 50155-2500			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			

<b>62-11--01-03 3. Spare BIU per specifications</b>					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
<a href="#">Paradiqm Traffic Systems, Inc. [Ad]</a>	First Offer - \$188.00	1 / each	\$188.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b> EDI-BIU 700			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			
<a href="#">McCain Inc.</a>	First Offer - \$204.00	1 / each	\$204.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b>			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			
<a href="#">Naztec, Inc. [Ad]</a>	First Offer - \$325.00	1 / each	\$325.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b> 50096-2000			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			

<b>62-11--01-04 4. Spare Load Switch</b>					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
<a href="#">McCain Inc.</a>	First Offer - \$18.85	1 / each	\$18.85		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b>			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			
<a href="#">Naztec, Inc. [Ad]</a>	First Offer - \$35.00	1 / each	\$35.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b> 9000-0023			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			
<a href="#">Paradiqm Traffic Systems, Inc. [Ad]</a>	First Offer - \$38.00	1 / each	\$38.00		Y
<b>Product Code:</b>		<b>Supplier Product Code:</b> PDC - SSS87 I/O			
<b>Agency Notes:</b>		<b>Supplier Notes:</b>			

<b>62-11--01-05 5. Spare Flash Transfer Relay</b>					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
<u>McCain Inc.</u>	First Offer - \$17.51	1 / each	\$17.51		Y
<b>Product Code:</b> <b>Agency Notes:</b>			<b>Supplier Product Code:</b> <b>Supplier Notes:</b>		
<u>Naztec, Inc. [Ad]</u>	First Offer - \$27.50	1 / each	\$27.50		Y
<b>Product Code:</b> <b>Agency Notes:</b>			<b>Supplier Product Code:</b> 4501-0020 <b>Supplier Notes:</b>		
<u>Paradigm Traffic Systems, Inc. [Ad]</u>	First Offer - \$39.00	1 / each	\$39.00		Y
<b>Product Code:</b> <b>Agency Notes:</b>			<b>Supplier Product Code:</b> Magnecraft W21ACPX-2 <b>Supplier Notes:</b>		

<b>62-11--01-06 6. Spare NEMA Type 2 Power Supply</b>					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
<u>McCain Inc.</u>	First Offer - \$348.00	1 / each	\$348.00		Y
<b>Product Code:</b> <b>Agency Notes:</b>			<b>Supplier Product Code:</b> <b>Supplier Notes:</b>		
<u>Paradigm Traffic Systems, Inc. [Ad]</u>	First Offer - \$375.00	1 / each	\$375.00		Y
<b>Product Code:</b> <b>Agency Notes:</b>			<b>Supplier Product Code:</b> EDI PS250 <b>Supplier Notes:</b>		
<u>Naztec, Inc. [Ad]</u>	First Offer - \$425.00	1 / each	\$425.00		Y
<b>Product Code:</b> <b>Agency Notes:</b>			<b>Supplier Product Code:</b> 50128-2101 <b>Supplier Notes:</b>		

<b>62-11--01-07 7. Guaranteed Delivery Time</b>					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
<u>McCain Inc.</u>	First Offer - \$0.00	1 / each	\$0.00		Y
<b>Product Code:</b> <b>Agency Notes:</b>			<b>Supplier Product Code:</b> <b>Supplier Notes:</b>		
<u>Naztec, Inc. [Ad]</u>	First Offer - \$0.00	1 / each	\$0.00		Y
<b>Product Code:</b> <b>Agency Notes:</b>			<b>Supplier Product Code:</b> None <b>Supplier Notes:</b> Prototype Cabinet Delivery Time - 120 to 135 days after notice to proceed. Guaranteed Delivery Time - 120 to 135 days ARO - any quantity.		

**Supplier Totals**

<u><b>Naztec, Inc. [Ad]</b></u>		<b>\$241,397.50 (7/7 items)</b>
Bid Contact <b>Chris McPherson</b> <a href="mailto:chrismcpherson@naztec.com">chrismcpherson@naztec.com</a> Ph 281-240-7233 Fax 281-240-7238	Address <b>P.O. Box 765</b> <b>Sugar Land, TX 77487-0765</b>	
<b>Agency Notes:</b>	<b>Supplier Notes:</b>	
<u><b>McCain Inc.</b></u>		<b>\$364,324.86 (7/7 items)</b>
Bid Contact <b>Rita Raymond</b> <a href="mailto:rbryant@mccain-inc.com">rbryant@mccain-inc.com</a> Ph 760-734-5060	Address <b>2365 Oak Ridge Way</b> <b>Vista, CA 92081</b>	
<b>Agency Notes:</b>	<b>Supplier Notes:</b>	
<u><b>Paradigm Traffic Systems, Inc. [Ad]</b></u>		<b>\$373,188.00 (6/7 items)</b>
Bid Contact <b>Jerry Priester</b> <a href="mailto:estimating@paradigmtraffic.com">estimating@paradigmtraffic.com</a> Ph 817-831-9406 Fax 817-831-9407	Address <b>P.O. Box 14509</b> <b>Ft. Worth, TX 76117</b>	
<b>Agency Notes:</b>	<b>Supplier Notes:</b>	



# MEMO

**DATE:** December 6, 2011  
**TO:** Kent Pfeil – Director of Finance  
**FROM:** Pam Kirkland – Purchasing Manager *Pam*  
**SUBJECT:** Award of Co-Op Competitive Sealed Proposal #902-12 EMS Billing and Collection Services to Digitech Computer, Inc. at the annual fee of 4.95% of collections pursuant to the City of Plano CSP #2011-36-C

**Proposed Date of Award: December 12, 2011**

I concur with the recommendation of Keith Dagen – Assistant Director of Finance and Ed Hotz – Assistant Chief – Fire Administration and request permission to enter into a contract with Digitech Computer, Inc. for the EMS Billing and Collection Services pursuant to the terms and conditions of the City of Plano CSP #2011-36-C.

The City of Plano awarded CSP #2011-36-C to Digitech Computer, Inc. on July 25, 2011. The initial contract is for two (2) years with three (3) one (1) year optional renewals, if agreeable to both parties. A total of eight firms submitted proposals to the City of Plano and Digitech Computer, Inc. and Med 3000 were selected to continue in the evaluation process. Based on their evaluations, Digitech Computer, Inc. was awarded the contract. The attached memo from Mr. Dagen outlines the advantages of Digitech's qualifications and services.

The City of Plano's competitive sealed proposal allowed for cooperative purchasing and Digitech Computer, Inc. has agreed to extend the City of Richardson the same price and terms and conditions offered to Plano on the above referenced proposal. The City of Richardson and the City of Plano are members of the Collin County Governmental Purchasers Forum and through our existing interlocal participation agreement, have the authority to cooperatively purchase goods and services as provided by Texas Government Code, Chapter 791.025 and Texas Local Government Code, Subchapter F, Section 271.102. This agreement automatically renews annually unless either party gives prior notice of termination.

Based on our estimated annual revenue for ambulance collections of \$1,660,000, we anticipate an annual expenditure of \$82,000 for these services.

Concur:

  
Kent Pfeil

## ATTACHMENTS

Xc: Bill Keffler  
Dan Johnson  
Michelle Thames  
David Morgan  
Cliff Miller



## MEMO

**DATE:** November 30, 2011  
**TO:** Pam Kirkland, Purchasing Manager  
**THRU:** Kent Pfeil, Director of Finance  
Alan Palomba, Fire Chief  
**FROM:** Keith Dagen, Assistant Director of Finance  
Ed Hotz, Assistant Chief – Administration  
**SUBJECT:** Recommendation of Award for Ambulance Billing and Collection Services

**Proposed Date of Award: December 12, 2011**

The City of Richardson is seeking a long-term solution for Ambulance Billing and Collection Services. Currently, the Fire Department operates the City's fleet of ambulances and provides patient care and transport as needed. Documentation of each transport is recorded electronically through patient care reporting software and transmitted to the ambulance billing company. The billing company is responsible for appropriate coding of the level of service provided for each transport, billing Medicare, Medicaid, private insurance or the person transported as appropriate and collecting payment for ambulance services. The Finance Department provides oversight of the collection process.

### **Background:**

The City used Southwest General Services ("SGS") as its sole contractor for ambulance billing and collection services from 2003 until 2011. In May 2011, SGS indicated that it would sell its billing contract rights to Municipal Computing Services ("MCS") at the end of July 2011. City staff comprised of Finance, Fire, and IT personnel began the process of evaluating differing options to select an ambulance billing provider. Staff reviewed five potential providers – MCS, Intermedix, Emergicon, Digitech Computer ("Digitech"), and ACS.

Staff considered each billing company through interviews with the companies and other government agencies that have contracted with each company. Each company was considered based on the ability to perform the contracted services, references from other government agencies, and methods and procedures in place to provide assurance that all applicable regulations were followed as part of the service. Staff narrowed down the

selections to two companies – Intermedix and Digitech. Intermedix provided a fee quote of 6% of collections and Digitech provided a fee quote of 4.95% of collections.

Due to the timing of SGS' operations being discontinued, and the attempted transfer of its billing contract rights to MCS, City staff did not have time to complete a traditional Request for Proposal process. Digitech indicated that it believed that it would be awarded a competitively bid contract in the State of Texas during the summer of 2011, with similar terms and pricing that was being offered to the City. Upon recommendation from staff, the City entered into a short-term contract in June 2011 with Digitech for six months or an amount not to exceed \$50,000 in fees. If Digitech did not receive a competitive award as indicated, staff would begin a Request for Proposal process before the short-term contract expired. Staff learned that the City of Plano made a competitive award to Digitech for ambulance billing services at the end of July 2011.

### **Overview of Digitech's Services:**

Digitech was incorporated in New York in 1984 as a company providing ambulance billing software. In 1994, Digitech began offering third-party ambulance billing services in addition to software solutions. Digitech processes approximately \$220 million in ambulance transport claims annually.

#### *Billing Features –*

Digitech bills all clean claims within two days of receipt from the City's patient care reporting software. A web-based search tool and access to Experian's database is used to fill in any data gaps as well as determine potential Medicare, Medicaid, or commercial insurance coverage.

*Contract Enhancement* – Digitech bills all Medicare and Medicaid claims electronically. Several insurance carriers, including Blue Cross Blue Shield, are also billed electronically.

For Medicare, Medicaid, and commercial insurance, Digitech will follow up by telephone and mail to ensure payment as well as file any necessary appeals. For private-pay patients, Digitech will send up to three invoices at 30 day intervals. If there has been no contact or payment after the final invoice, Digitech will turn the account over to a collection agency of the City's choice. Staff is currently reviewing collection agency options, and tentatively plans to utilize American Municipal Services ("AMS"), pending a review of their ambulance collection references. AMS currently provides delinquent collections for the City's utility accounts.

#### *Payment Features –*

All payments for ambulance services are sent directly to the City and are deposited directly into the City's bank accounts.

*Contract Enhancement* – For security of the City’s funds, a lockbox with Frost Bank is used for physical payments. The City’s bank provides Digitech copies of check images for payment posting against billings.

*Contract Enhancement* – Digitech facilitated the City’s enrollment in electronic payments from Medicare and Medicaid. Combined with electronic billing, this can substantially reduce the amount of time it takes for the City to receive payment for services rendered.

*Digitech’s Compliance and Security Features –*

Digitech adheres to all applicable State and Federal regulations for ambulance billing, including HIPAA, FTC Red Flag Rules, Fair Debt Collection Practices Act, Fair and Accurate Credit Transactions Act and the Fair Credit Reporting Act. All employees of Digitech are subject to criminal background checks as well as screened against the Office of Inspector General’s List of Excluded Persons.

Digitech requires all staff members responsible for coding ambulance claims to undergo coding certification from the Centers for Medicare and Medicaid Services (“CMS”). The company also provides ongoing continuing education for staff members offered through industry affiliations and third-party consulting firms specializing in Medicare/Medicaid issues.

*Contract Enhancement* – Digitech will review the City’s EMS documentation and provide onsite training to Fire Department personnel in best practices for electronic patient care reporting document preparation. This session will be recorded for use in future departmental training.

*Contract Enhancement* – Digitech will annually undergo a SAS 70 business process audit by WithumSmith & Brown, a national accounting firm based in New Jersey. This report, prepared by an independent audit firm, audits the processes and controls in place related to Digitech’s claims processing, billing, and related operations. The purpose of a SAS 70 audit is to provide reasonable assurance that the controls in place are suitably designed to achieve the processes being audited. Staff has reviewed the 2011 SAS 70 audit and saw no concerns raised by the independent auditor that would impact the City’s operations.

*Contract Enhancement* – Digitech will annually undergo an independent audit of billing claims and maintain an error rate of less than or equal to one percent for overbilling or under billing CMS. This audit will be performed by the law firm of Page, Wolfberg & Wirth, a national law firm based in Pennsylvania who specializes in Medicare compliance and other EMS issues. In the first, third, and fifth years of the contract, Richardson claims will be reviewed. In the second and fourth years of the contract, all Digitech claims will be reviewed. All audit results will be made available to the City.

Digitech has provided a Certificate of Insurance to the City of Richardson that meets all City insurance requirements for professional services contracts. This insurance includes \$2,000,000 Professional Liability coverage (Errors and Omissions) as part of the contract.

#### *City Compliance Program*

City staff will annually review the independent billing audit reports and SAS 70 reports that are provided as part of the contract and ensure that Digitech remains in compliance with all CMS guidelines as documented in these reports. City staff will compare samples of billing documentation sent to Digitech with the ensuing billings on a quarterly basis to ensure that Digitech is appropriately billing ALS and BLS services as required by CMS guidelines. Staff will also monitor insurance certificates to confirm that no coverages have lapsed during the term of the contract.

City staff also reviewed a recent City of Mesquite award for independent ambulance billing compliance audit and consulting services. Mesquite sought these services in coordination with the City of Cedar Hill. Mesquite and Cedar Hill jointly awarded this work to Page, Wolfberg & Wirth, the same firm that is providing audit services to Digitech as part of the Plano contract. Staff believes that the compliance program that Mesquite has solicited will encompass the same services that are already included as part of the Digitech contract, and that there is no need for additional compliance services at this time.

#### **Recommendation:**

The City of Plano awarded CSP No. 2011-36-C (EMS Billing & Collection Services) to Digitech. Richardson staff has reviewed this award and determined that it will meet all of the City's billing and collection needs as detailed above. Digitech has agreed to extend the same terms and conditions of the Plano award to the City. It is recommended that the City award a contract to Digitech pursuant to the terms and conditions of Plano's award through an interlocal agreement with the City of Plano. This will be a two-year contract with three one-year renewals, for a total possible contract length of five years. The current contract with Digitech is scheduled to expire at the end of February 2012, so staff recommends awarding a new contract no later than January 31, 2012.



City of Richardson  
City Council Work Session  
Agenda Item Summary



Work Session Meeting Date: Monday, December 12, 2011

Agenda Item: Review and Discuss Item Listed on the City Council Meeting Agenda

Staff Resource: Bill Keffler, City Manager

Summary: The City Council will have an opportunity to preview and discuss with City Staff the agenda items that will be voted on at the City Council Meeting immediately following the Work Session.

Board/Commission Action: Various, if applicable.

Action Proposed: No action will be taken.



City of Richardson  
City Council Worksession  
Agenda Item Summary



City Council Meeting Date: Monday, December 12, 2011

Agenda Item: Review and Discuss Tax Increment Financing – General Update

Staff Resource: Dan Johnson, Deputy City Manager

Summary  
The City Council's *Near-Term Action Items* list an element to provide a general briefing to the City Council and community on the City of Richardson's use of Tax Increment Financing.

City staff will recap the impact of TIF #1 since its 2006 inception, and the pending actions for TIF #2 and #3 recently created.

Board/Commission Action: *Summary of prior TIF Board's work plans*

Action Proposed: Receive Presentation; Council Review and Discussion





City of Richardson  
City Council Work Session  
Agenda Item Summary



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**Meeting Date:** Monday, December 12, 2011

**Agenda Item:** Review and Discuss Update on Citywide Radio Project

**Staff Resource:** Steve Graves, Chief Information Officer

**Summary:** Steve Graves will be on hand to present a status update on the progress of, and activities related to, the new City radio system. The Information Technology staff is heavily involved in a wide variety of activities related to the deployment of this mission-critical system.

**Board/Commission Action:** N/A

**Action Proposed:** Review and Discuss Update on Citywide Radio Project

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City of Richardson  
City Council Work Session  
Agenda Item Summary



Work Session Meeting Date: Monday, December 12, 2011

Agenda Item: Items of Community Interest

Staff Resource: Bill Keffler, City Manager

Summary: The City Council will have an opportunity to address items of community interest, including:

Expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the City of Richardson; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the City of Richardson that was attended or is scheduled to be attended by a member of the City of Richardson or an official or employee of the City of Richardson; and announcements involving an imminent threat to the public health and safety of people in the City of Richardson that has arisen after the posting of the agenda.

Board/Commission Action: NA

Action Proposed: No action will be taken.