



**NOTICE OF MEETING OF THE
PLANNING AND ZONING COMMISSION
OF
BUDA, TX
6:30 PM - Tuesday, January 25, 2022
Council Chambers, Room 1098
405 E. Loop Street, Building 100
Buda, TX 78610**

This notice is posted pursuant to the Texas Open Meetings Act. Notice is hereby given that a **Regular Planning & Zoning Meeting** of the City of Buda, TX, will be held at which time the following subjects will be discussed and may be acted upon.

A. CALL TO ORDER

B. INVOCATION

C. PLEDGE OF ALLEGIANCE TO THE FLAGS OF THE UNITED STATES AND TEXAS

PLEDGE OF ALLEGIANCE TO THE TEXAS FLAG: Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

D. ROLL CALL

*Vice-Chair Emily Jones
Commissioner Henry Altmiller
Commissioner Jeffrey Cottrill
Commissioner Virginia Jurika
Commissioner Megan McCarthy
Commissioner David Nuckels*

E. PUBLIC COMMENTS/PUBLIC TESTIMONY

Members of the public who wish to participate in Public Comment must complete a form and turn it into the City Clerk before the period provided for Public Comment is called for consideration by the presiding officer. Members of the public who wish to participate during the Public Testimony period provided for any item on the agenda must complete a form and turn it into the City Clerk before the item they wish to participate in is called for consideration by the presiding officer.

F. CONSENT AGENDA

- F.1. Approval of the minutes of the regular meeting of regular meeting of the Planning and Zoning commission held January 11, 2022.**

[PZ 1.11.2022 MINUTES ND.pdf](#)

G. REGULAR AGENDA

- G.1. Deliberation and possible action regarding a request to change the zoning from Arterial Business (B-2) to One and Two-Family Residential (R-3) for approximately 0.89 +/- acres of the property located along the north side of Hillside Terrace approximately 1,500 feet east of Green Meadows Lane, being 29.931 +/- acres out of the George Herder Survey, City of Buda, Hays County Texas (Z 22-01) (Senior Planner David Fowler)**

[Z 22-01 Hillside Terrace SR final.pdf](#)
[Z 22-01 LOI.pdf](#)
[20220120 Zoning Exhibit.pdf](#)
[2017-15 Zone Chg Hillside Terrace.pdf](#)

- G.2. Presentation and discussion of municipal signage regulations, the First Amendment, and possible amendments to the Unified Development Code (UDC). (Assistant City Attorney Cristian Rosas-Grillet)**

[20220121-Buda-Sign Regulation.pdf](#)

H. PLANNING DIRECTOR'S REPORTS

COVID-19, Developments, Engineering Department, FY 2022 Budget, Transportation Mobility and Master Plan, 2014 & 2021 Bond Program, Capital Improvement Projects, Drainage Projects, Wastewater Projects, and Water Project, General/Special Election, Grant Related Projects, Legislative Update, Library Projects, Main Street Program, Buda Economic Development Corporation (EDC), Tourism Projects, Parks & Recreation Department, Historic Preservation Commission, Sustainability Commission, MFV Ad Hoc Committee, Road Projects, Status-Future Agenda Request, Strategic Plan (Planning Director Melissa McCollum)

I. COMMISSION REQUEST FOR FUTURE AGENDA ITEMS

J. ADJOURNMENT

City Hall is wheelchair accessible and accessible parking spaces are available. Requests for accommodations must be made 48 hours prior to the meeting. Please contact City Hall at (512) 312-0084, or FAX (512) 312-1889 for information or assistance.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Planning and Zoning Commission of the City of Buda, was posted on the bulletin board in front of Buda City Hall, which is readily accessible to the public at all times, by 5:00 pm on January 21, 2022.

/s/_____
Melissa McCollum, AICP
Planning Director / Board Liaison



Meetings scheduled in the Council Chambers are set up to publicly broadcast meetings. You may be audio and video recorded while in this facility. Meetings scheduled in other City Facilities are set up to publicly audio record meetings. You may be audio recorded in the other City Facilities.

In accordance with Article III, Section 3.10, of the Official Code of the City of Buda, the minutes of this meeting consist of the preceding Minute Record and the Supplemental Minute Record. Details on meetings may be obtained from the Board Liaison, or video of the entire meeting may be downloaded from the website. (Portions of the Supplemental Minute Record video tape recording may be distorted due to equipment malfunction or other uncontrollable factors.)

A Public Comment period will be provided to allow for members of the public to participate and speak to the Board/Commission on any topic that is not on the meeting agenda. At this time, comments will be taken from the audience on non-agenda related topics. A Public Testimony period will be provided at each meeting of the Board/Commission to allow members of the public to participate and speak to the Board/Commission on any topic that is on the meeting agenda, prior to any vote on the matter up for consideration. During these periods, the presiding officer shall routinely provide three (3) minutes to each person who desires to speak but may provide no less than one (1) minute and no more than five (5) minutes to each person addressing the Board/Commission. The amount of time provided to each person, if altered by the presiding officer, shall be announced by the presiding officer prior to recognizing persons to speak and shall be objectively applied to all persons speaking during Public Comment or each Public Testimony period.

Attendance by Other Elected or Appointed Officials: It is anticipated that members of other governmental bodies, and/or city boards, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the body, board, commission and/or committee. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a possible meeting of the other body, board, commission and/or committee, whose members may be in attendance, if such numbers constitute a quorum. The members of the boards, commissions and/or committees may be permitted to participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that body, board, commission or committee subject to the Texas Open Meetings Act.

CITY OF BUDA
PLANNING AND ZONING COMMISSION REGULAR MEETING
MEETING MINUTES
JANUARY 11, 2022 - 6:30 PM.

A. CALL TO ORDER

Chair Strother called the meeting to order at 6:36 PM.

B. ROLL CALL

Chair Colin Strother	Present
Vice-Chair Emily Jones	Virtual
Commissioner Henry Altmiller	Virtual- Late 6:49 PM
Commissioner Jeff Cottrill	Present
Commissioner Meghan McCarthy	Present
Commissioner Virginia Jurika	Present
Commissioner David Nuckels	Present

C. PUBLIC COMMENTS/PUBLIC TESTIMONY

David Patterson of 16220 Remuda Trail voiced his concerns with Milestone Community Builders and their proposed residential development at the Armbruster and Bailey tracts, as well as his unhappiness with possible variations from the Unified Development Code Milestone is seeking as part of its planned development proposal. His main concerns were with the density of the project and how this would ultimately lead to more traffic and congestion in the area and along FM 967.

D. CONSENT AGENDA

D.1. Approval of the minutes of the regular meeting of the Planning and Zoning Commission held December 14, 2021.

D.2. Consideration and approval of the final plat of Sunfield Subaru Subdivision, being 16.654 +/- acres out of the Josephus and Irvine Survey and the H.M. Dowman Survey No. 546, Hays County, Texas, generally located at the northeast corner of the intersection of Turnersville Road and IH-35, north of Firecracker Drive and addressed as 1401 Turnersville Road (FP 21-10) (Senior Planner David Fowler).

Commissioner McCarthy made a motion to approve the consent agenda, with Commissioner Cottrill seconding the motion. The motion carried 7-0

E. REGULAR AGENDA

E.1. Hold a public hearing, deliberation, and possible action regarding a Specific Use Permit application to allow Warehouse and Outside Storage in the Light Industrial (LI) zoning district within the Gateway Corridor Overlay District (O-G) for the property known as Frank Y. Smith Subdivision, Block A, Lot 3, being +/- 4 acres

located on the south side of Robert S. Light Boulevard approximately 420 feet east of South Loop 4 and addressed as 1781 Robert S. Light Boulevard, Buda, TX 78610 (SUP 21-03) (Senior Planner David Fowler).

Senior Planner David Fowler presented item G.1. to the Commission. The planned use on the site is primarily office, warehouse, and outdoor storage for a portable restroom business. Outdoor storage in the Light Industrial (LI) district requires an SUP, as does warehousing in the Gateway Corridor Overlay within the LI district; as such, the applicant, Liquid Waste Solutions, LLC, is requesting an SUP for the uses. City staff has recommended the SUP for approval by the Planning and Zoning Commission, as the site plan meets UDC requirements.

The applicant, John and Sammie Tritico, presented to the Commission and was available for questions. Commissioners had questions regarding possible odor and contamination from the site, as well as the number of units in the applicant's fleet. The applicant was adamant that there would be no odor or environmental contamination from their site, as all waste disposal and cleaning of units is to occur off-site. The applicant also clarified that they would have roughly 75 to 100 units stored on the site; however, at any given time most of these would be on construction sites. Commissioner Altmiller was concerned with the "Temporary staging and spoils area" shown on the site plan but was assured by staff that this was only temporary and a required part of construction for the site itself.

Chair Strother made a motion for G.1. to approve the SUP request, with Commissioner Altmiller seconding. All commissioners voted in favor by a vote of 7-0.

F. WORKSHOP

F.1. Workshop, consideration, and discussion regarding a proposed future Municipal Utility District (MUD), Development Agreement (DA), and Planned Development (PD) zoning change to allow a primarily residential development on the Bailey and Armbruster Tracts located within the cities of Buda and Austin Extra-Territorial Jurisdiction (ETJ) previously known as Bailey/Persimmon development for approximately 775 acres off RM 967. (Planning Director Melissa McCollum)

Planning Director Melissa McCollum presented this item to the Commission as a workshop item. No action was planned to be taken, but the workshop provided an opportunity for the applicant to share the proposed project. The applicant, Milestone Community Builders, sought feedback from the Commission regarding a proposed residential and non-residential development north of RM 967 and near future SH-45, roughly 775 acres. Both tracts are located in Buda and Austin's ETJs, with a small portion along RM 967 located within the City of Buda limits and zoned B-2. The applicants are also proposing a MUD (financing), DA, and PD zoning to allow for the proposed development.

After listening to the applicant's presentation, multiple Commissioners were expressed dismay to the indication that Milestone could seek approval from other jurisdictions besides the City. Several Commissioners had concerns with traffic and congestion in the area, which is already an issue, and the development of roughly 2,500 living units (2,200 houses 300 apartments) would create additional issues. Chair Strother also addressed concerns from previous workshops when they only sought development on the Bailey tract that it was

already a large development, and now the applicants would essentially be doubling the size of the project by adding the Armbruster tract, while no relief to 967 traffic being given until Phase 6. Chair Strother also voiced concern with the concept of "prairie building" discussed as part of the applicant's presentation, where homes would be completed before necessary roads and infrastructure were constructed. The applicants assured the Commission that this would not be the case.

Commissioners had concerns with the lack of a TIA for the Armbruster tract and the remaining portions of the Bailey tract. Commissioner Nuckels also asked if the applicants had considered the donation of land for elementary or junior high schools to Hays CISD that would likely be necessary, which was echoed by Commissioner McCarthy. Commissioner Nuckels also voiced concern about the large amount of tree removal that would be necessary for the development and how that could possibly affect the Edwards and Barton Springs Aquifers.

Commissioner Jones argued against the proposed roundabout along RM 967, stating that it could lead to more issues than it would resolve. Commissioner Jurika stated that she did not think the project was appropriate for Buda at this time. Chair Strother stated that he is opposed to the expedited 90-day approval process, the original Bailey tract project, and the additional Armbruster tract.

G. PLANNING DIRECTORS REPORT

Due to time constraints, Chair Strother asked that the director's report be emailed to the Commission.

H. COMMISSION REQUEST FOR FUTURE AGENDA ITEMS

The Commission did not have any future agenda requests.

I. ADJOURNMENT

Commissioner Cottrill made a motion to adjourn the meeting, with Commissioner Altmiller seconding. The meeting was adjourned at 9:41 PM.



Planning & Zoning Commission

Agenda Item Report

January 25, 2022

Contact – David Fowler, AICP, Senior Planner
(512) 312-5745 / dfowler@ci.buda.tx.us

SUBJECT: DELIBERATION AND POSSIBLE ACTION REGARDING A REQUEST TO CHANGE THE ZONING FROM ARTERIAL BUSINESS (B-2) TO ONE AND TWO-FAMILY RESIDENTIAL (R-3) FOR APPROXIMATELY 0.89+/- ACRES OF THE PROPERTY LOCATED ALONG THE NORTH SIDE OF HILLSIDE TERRACE APPROXIMATELY 1,500 FEET EAST OF GREEN MEADOWS LANE, BEING 29.391+/- ACRES OUT OF GEORGE HERDER SURVEY, CITY OF BUDA, HAYS COUNTY, TEXAS (Z 22-01).

1. BACKGROUND

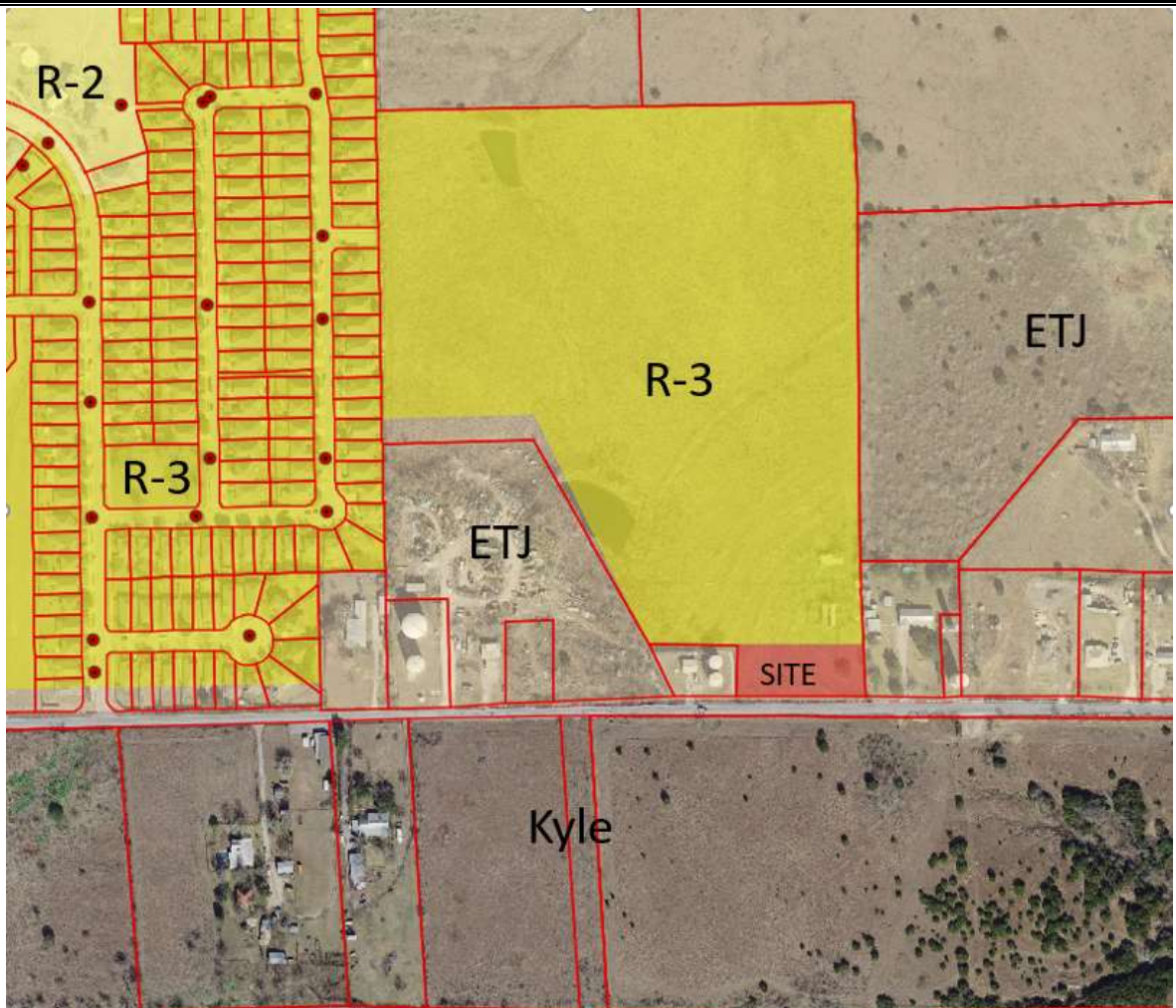
This item is the action item pertaining to an application for a zoning map amendment rezoning of an 0.89-acre portion of a 29.39+/- acre property located immediately east of the Green Meadows Subdivision. The request is to change the area from its current zoning of B-2 to R-3 in order to develop the entire property as a residential project.

The subject property completed annexation in August 2017. The property was rezoned to a split of C2-R2 (Arterial Commercial/Office Commercial) and HDR (High Density Residential) on October 2, 2017. With the adoption of a new Unified Development Code and updated zoning map in October 2017, the property's zoning districts were updated to their current R-3 and B-2, reflecting the zoning district equivalency table in the Buda UDC. The original applicant who had requested the current split zoning of the property is no longer involved in the development of a project on this site. The current applicant wishes to remove the commercial zoning from part of the property and develop the entire property as a residential development.

Surrounding Land Uses

Adjacent land uses include:

East	Outside of City Limits, within ETJ <ul style="list-style-type: none">Agricultural properties
North	Inside City Limits, B-3 zoning <ul style="list-style-type: none">Remainder of parcel
West	ETJ, mix of private and public properties and Inside City Limits, R-3 zoning <ul style="list-style-type: none">Existing Green Meadows Subdivision, which has R-3 zoningETJ area contains a private property as well as a Goforth SUD water facility, GBRA facility
South	Outside of City Limits and ETJ <ul style="list-style-type: none">Area of subdivision development in Kyle jurisdiction, Agricultural properties with associated homesteads



Unified Development Code Guidance

Zoning changes are evaluated based on the following criteria:

1. The zoning change is consistent with the Comprehensive Plan;
2. The zoning change promotes the health, safety, or general welfare of the City and the safe, orderly, and healthful development of the City;
3. The zoning change is compatible with and conforms with uses of nearby property and the character of the neighborhood;
4. The property affected by the zoning change is suitable for uses permitted by the proposed amendment to the zoning map;
5. Infrastructure, including roadway adequacy, sewer, water and storm water facilities, is or is committed to be available that is generally suitable and adequate for the proposed use.

2. FINDINGS/CURRENT ACTIVITY

The overall lot is 29.391 acres, the proposed rezoning area is 0.89 acres, or just over three percent of the lot area. The rezoning area is approximately 313 feet wide (east to west) and 124 feet deep (south to north). The previous applicants had envisioned the area proposed to be rezoned as a community center with some retail. As part of the development, the area would be bisected by a city street to be added to the property with a 70-foot right-of-way. Accounting for the area to be taken by the right-of-way, only 0.60 acres of developable commercial land is being changed to residential in the request.

With the required lot dimensions in R-3 of 6,000 square feet, 55/60 feet in width and 100 feet of depth, the street can fit between two residential lots fronting on the street. Required setbacks in R-3 are 20 feet for the front yard, 5-foot side setback (10' on corners) and 20' rear yard setback. Typically, a landscape lot would be provided between the residential lots and the street to accommodate the required masonry fence along Hillside Terrace.

For the existing B-2 zoning, the minimum lot width is 105 feet on corner lots, the minimum lot depth is 125 feet, front setback is 40 feet, rear setback is 35 feet, street side setbacks are 30 feet and interior lot side setbacks are 0'.

For the public hearing, one property owner was notified within 400' of the area of the rezoning and a sign was placed on the site. Staff has not received any responses for or against the zoning change request.

The following constitutes a preliminary evaluation of the proposed zoning change using the UDC's criteria:

1. The zoning change is consistent with the Comprehensive Plan;

This property is within the Emerging Growth District and on the fringe of a Community Mixed Use Node according to the Future Land Use Character Districts. High density single family residential zoning (<0.25 acre) is considered appropriate in this area. Hillside Terrace is planned for improvements as part of Hays County's recently approved road bonds.

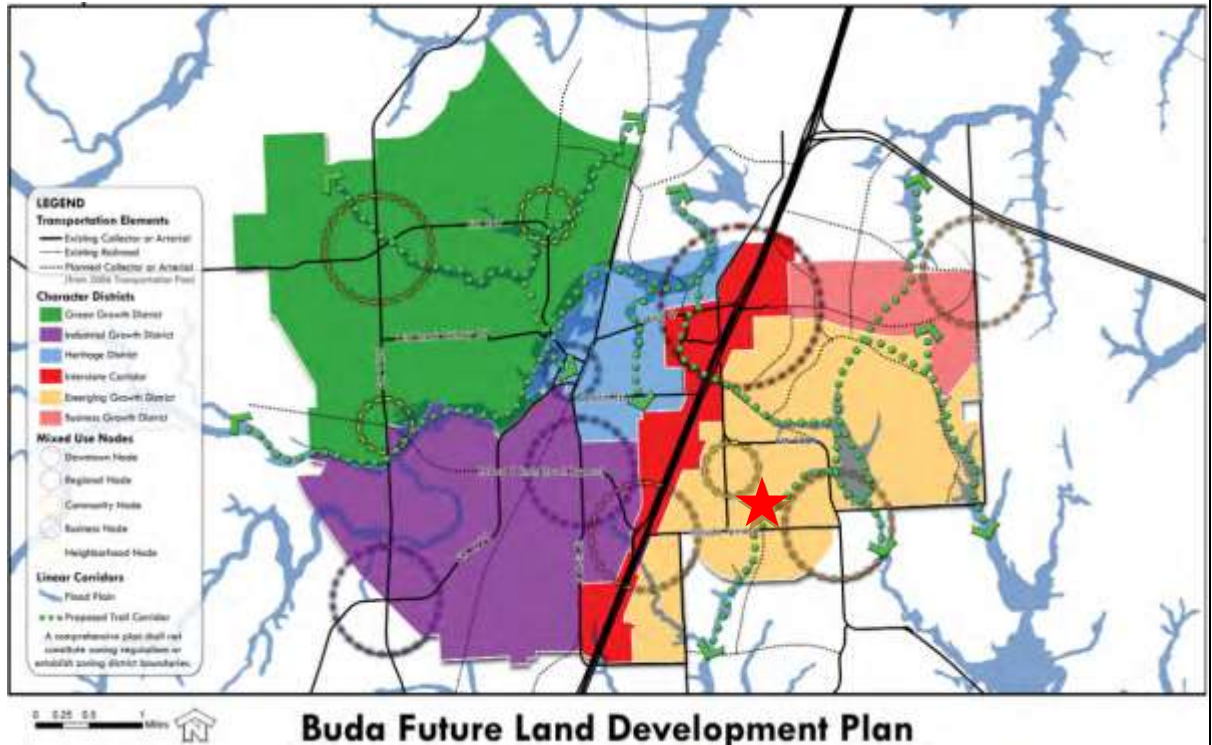
Based on information from the comprehensive plan and surrounding uses, approval of this zoning change would NOT constitute spot zoning, as it could be considered consistent with the Comprehensive Plan. Spot zoning is the application of zoning to a specific parcel or parcels of land within a larger zoned area when the rezoning is usually at odds with a city's master plan and current zoning restrictions and appears wholly out-of-place in comparison to surrounding zoning.

The proposed zoning would remove 0.89 acres of B-2 zoned land from the city. There are approximately 81 additional acres of undeveloped B-2 land in the city, mostly located in the RM 967 and 1626 corridors. Additionally, there are approximately 16 acres of B-2

land along the south side of West Goforth Road west of I-35 that is mostly occupied by nonconforming uses and lots. The rezoning of the property would result in B-2 zoned land falling in share of from 5.02 percent to 5.01 percent of the city's total acreage, while R-3 would increase from 6.36 percent of the city's area to 6.37 percent.

Hillside Terrace Zoning Amendment (Z 22-01)					
Zoning Class	Current Acres	Percent of Total Acres	Acres After Rezone	Percent of Total After Rezone	Percent Change
B2	306.80	5.02%	306.20	5.01%	-0.20%
R3	388.11	6.36%	388.71	6.37%	+0.16%

Changes in zoning district land area after proposed rezoning



CHARACTER DISTRICT AND MIXED USE NODES: APPROPRIATE DEVELOPMENT TYPES

	Development Type										
	Wood Use	Regional Retail Center	Neighborhood Shopping Center	Office	Industrial Park or Distribution Ctr	Low Density Single Family & Agriculture Uses (>1 acre)	Medium Density Single Family (0.25-1 acre)	High Density Single Family (<0.25 acre)	Attached Housing	Multifamily (for sale or rent units)	Cluster Development
CHARACTER DISTRICTS											
Green Growth District	●	×	●	●	×	○	●	●	●	○	●
Emerging Growth District	●	○	●	●	×	○	●	●	●	○	●
Heritage District	●	×	●	●	×	×	●	●	●	○	○
Industrial Growth District	○	×	×	○	●	○	×	×	×	○	○
Business Growth District	●	○	○	●	○	×	×	○	○	○	○
Interstate Corridor	●	●	×	●	○	×	×	×	×	●	×
MIXED USE NODES											
Neighborhood Node	●	×	●	●	×	×	○	○	●	●	○
Community Node	●	×	×	●	×	×	×	○	●	●	○
Business Node	●	×	×	●	●	×	×	×	○	●	×
Regional Node	●	●	×	●	×	×	×	×	×	●	×
Downtown Node	●	○*	●	●	×	×	○	○	○	●	×
● Appropriate ○ Conditional × Not Appropriate											
Notes: * Regional retail in the downtown node would include destination shops such as antique shops and other destination boutique stores.											

2. The zoning change promotes the health, safety, or general welfare of the City and the safe, orderly, and healthful development of the City;

Staff has not identified critical issues with the potential uses in the R-3 district that would negatively affect the health, safety or general welfare of the City and the safe, orderly and healthful development of the City.

3. The zoning change is compatible with and conforms with uses of nearby property and the character of the neighborhood;

The surrounding properties are expected to develop at some point in the future, likely in a primarily residential manner with neighborhood-supporting commercial. The adjacent neighborhood carries identical B-3 zoning to the proposed residential portions of the subject property. A forthcoming development in Kyle to the south of the property appears to be similar in character to a residential development in the City of Buda's R-3 zoning district. While the proposed zoning would remove the possibility of commercial development of the site, there is a nearby form-based node zoned F4 (Form District 4) further west along Hillside Terrace and along the southern portion of the eastern frontage of Old Goforth Road.

4. The property affected by the zoning change is suitable for uses permitted by the proposed amendment to the zoning map;

The larger subject property does have some significant topography, particularly along the northern portions of the site. Two ponds are present on the property, as well as a small wetlands corridor. The smaller area of the parcel under consideration for the zoning change is relatively flat, with no significant topography or tree cover.

For any development on this property, the applicant will be required to comply with applicable development standards such as maximum impervious cover, water detention/quality, and site/building design, pursuant to the Unified Development Code.

The previous applicant had planned on having a mix of single-family residences and townhomes on the site, with the subject area of this zoning amendment request intended for neighborhood commercial. The present applicant would like to develop the entire parcel with only the housing types allowed in the R-3 district (Single-family detached, duplex, and townhouse) but has not yet specified the exact form the development would take. The applicant has provided a sketch of a possible layout, which is attached.

The applicant, as well as staff, have determined a residential project is feasible on the site given the site's characteristics and constraints.

5. Infrastructure, including roadway adequacy, sewer, water and storm water facilities, is or is committed to be available that is generally suitable and adequate for the proposed use.

This zoning change does not negatively affect infrastructure capacity or adequacy. The property is within the City of Buda wastewater service area. The City of Buda has anticipated development of this property as part of its water and wastewater models. The applicant, as with any developer, is responsible for construction of their infrastructure improvements as well as any off-site improvements caused by the project. A Traffic Impact Analysis was performed in association with the project's prior preliminary plan, which the Commission approved in 2018. Hillside Terrace is planned for improvements as part of Hays County's road bonds.

3. FINANCIAL IMPACT

The proposed rezoning will result in the portion of the larger parcel being zoned residential. Residential development would generate platting fees, impact fees and building permit fees as well as property taxes on the completed residences.

4. RECOMMENDATION

Staff recommends approval of the zoning change as it is consistent with the Buda 2030 Comprehensive Plan.

5. ATTACHMENTS

Letter of Intent and exhibits
Original zoning ordinance



December 22, 2021
City of Buda
Director of Planning
405 E. Loop Street, Building 100
Buda, Texas 78610

RE: Letter of Intent to Submit Zoning Application

To Whom it May Concern,

Kimley-Horn would like to hereby request approval to submit zoning change application on behalf of Uhland Plaza, LLC for a ±0.60-acre tract of land located on the north side of Hillside Terrace.

The ±0.60-acre tract is being developed by Rudowsky Development, LLC. The current zoning is B-2, the requested zoning change is for R3. This tract is being incorporated into the Rudowsky Hillside single family development that is currently being prepared for preliminary plan submission. The rest of the development is zoned R3. This application will ensure one continuous zoning for the entire development. A DRC meeting for this application took place on 11/18/21.

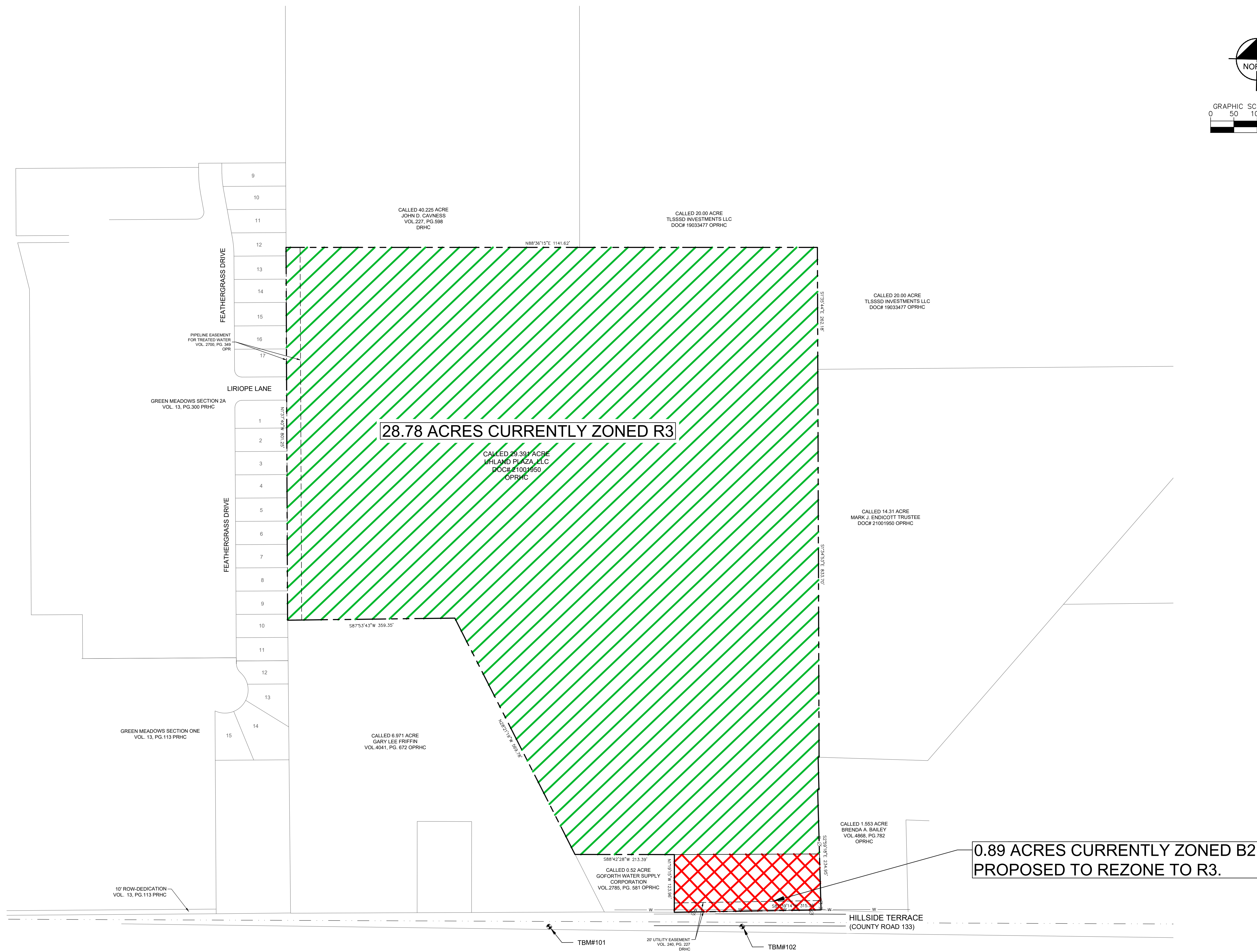
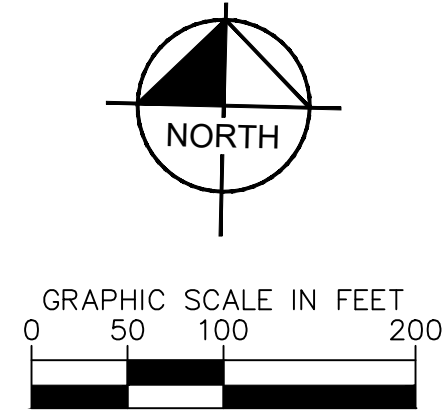


The estimated dates for submission are 12/28 or 1/4.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Ian Roberts, P.E.
Project Manager

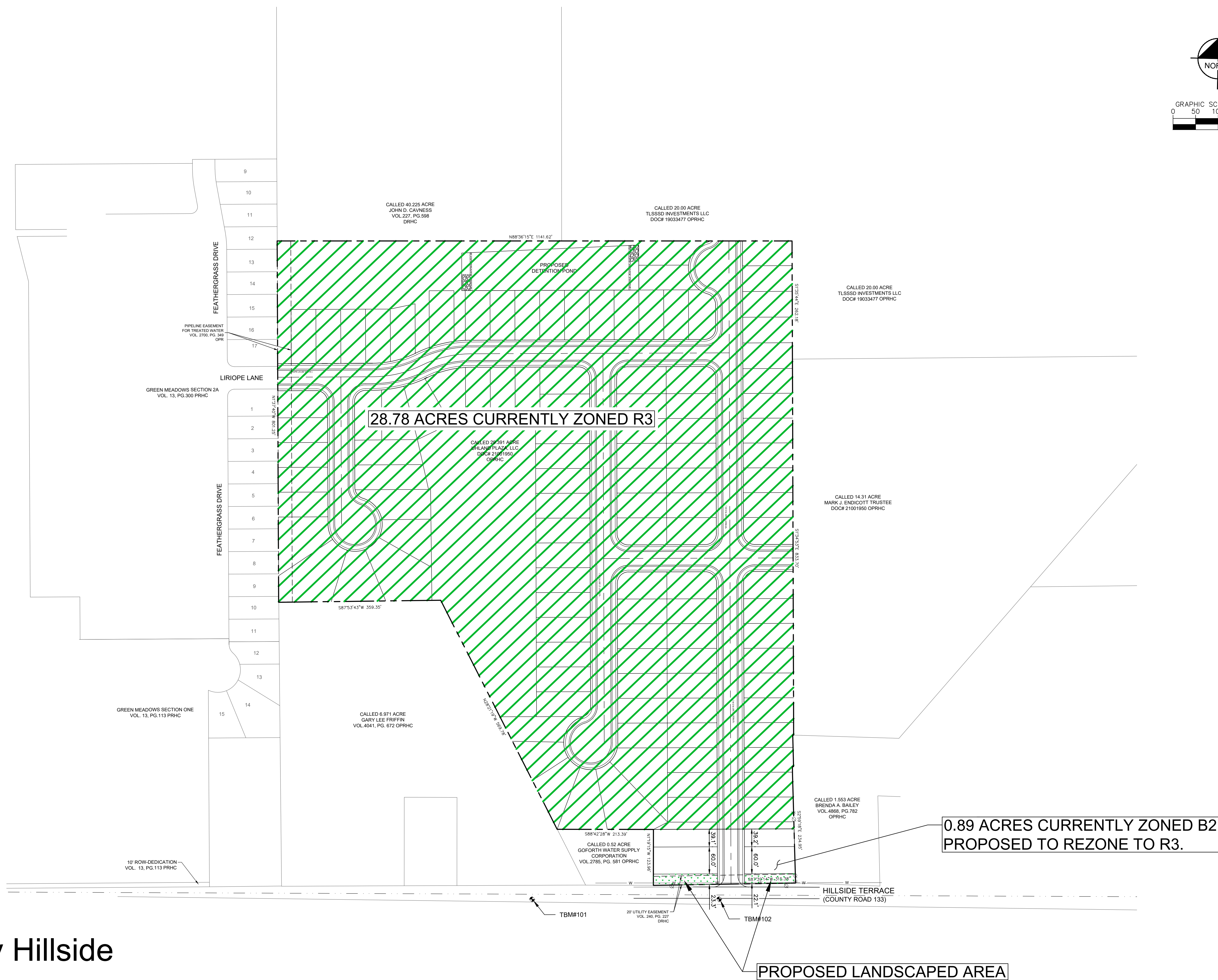
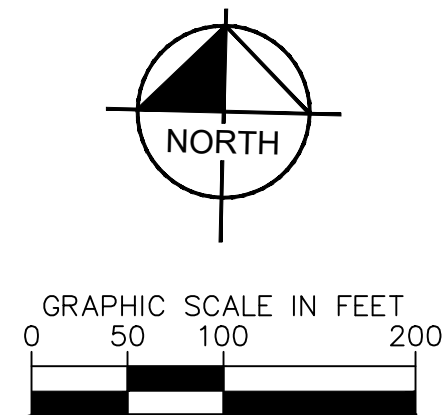


Rudowsky Hillside

Buda, TX
December 8, 2021



5301 Southwest Parkway
Building 3, Suite 100
Austin, TX 78746
(512) 646-2237
State of Texas Registration No. F-928



Rudowsky Hillside

Buda, TX
December 8, 2021

ORDINANCE NO. 2017-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUDA, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY PERTAINING TO APPROXIMATELY 0.89+/- ACRES OF LAND BEING PART OF GEORGE HERDER SURVEY RESULTING IN THE ZONING CHANGING FROM AG AGRICULTURAL TO C2/R2 ARTERIAL COMMERCIAL/OFFICE-ARTERIAL RETAIL AND 28.48+/- ACRES OF LAND BEING PART OF THE GEORGE HERDER SURVEY RESULTING IN THE ZONING CHANGING FROM AG AGRICULTURAL TO HR HIGH DENSITY RESIDENTIAL; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AND PROVIDING A PENALTY CLAUSE.

WHEREAS, on September 26, 2017, the Planning and Zoning Commission of the City of Buda held a public hearing regarding a request to change zoning for the 0.89+/- acres of land out of the George Herder Survey, Hays County, Texas, further depicted in Exhibit 'A', attached, and 28.48+/- acres of land out of the George Herder Survey, Hays County, Texas, further depicted in Exhibit 'B', attached, and recommended that the request be approved by the City Council of the City of Buda; and

WHEREAS, the City Council held a public hearing on October 2, 2017 regarding the request; and

WHEREAS, all requirements of the City of Buda Unified Development Code pertaining to zoning map amendments have been met; and,

WHEREAS, the City Council has determined that adoption of this ordinance is in the interest of the general health, safety, welfare and morals of the community; and

WHEREAS, the City has determined that this ordinance was passed and approved at a meeting of the City Council of the City of Buda held in strict compliance with the Texas Open Meetings Act at which a quorum of the City Council Members were present and voting;

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

Section 1. The base zoning of the aforementioned property, approximately 0.89+/- acres of land, being part of the George Herder Survey, further depicted in Exhibit 'A' attached, is hereby changed from AG Agricultural to C2/R2 Arterial Commercial/Office-Arterial Retail.

Section 2. The base zoning of the aforementioned property, approximately 28.48+/- acres of land, being part of the George Herder Survey, further depicted in Exhibit 'B' attached, is hereby changed from AG Agricultural to HR High Density Residential.

Section 3. The Zoning Map of the City of Buda, Texas is hereby amended to establish the zoning classification as set forth above.

Section 4. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

Section 5. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

Section 6. Effective Date. Pursuant to Section 3.11(D) of the City Charter, this ordinance is effective upon adoption, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after having been published once in its entirety, or a caption that summarizes the purpose of the ordinance and the penalty for violating the ordinance in a newspaper designated as the official newspaper of the City. An ordinance required by the Charter to be published shall take effect when the publication requirement is satisfied.

PASSED AND APPROVED on first reading by an affirmative vote of The City Council of the City of Buda, this 2nd day of October, 2017.

PASSED, APPROVED AND ADOPTED on second and final reading by an affirmative vote of The City Council of the City of Buda, this 17th day of October, 2017.



ATTEST:


Alicia Ramirez, City Secretary

CITY OF BUDA, TEXAS


Todd Ruge, Mayor

FLUGEL LAND SURVEYING

PROFESSIONAL LAND SURVEYORS

Firm No. 10193837

EXHIBIT "A"

LEGAL DESCRIPTION FOR A 0.893 ACRE TRACT

LEGAL DESCRIPTION OF A 0.893 ACRE TRACT OR PARCEL OF LAND, BEING A PORTION OF 29.383 ACRES (CALLED 29.391 ACRES) OUT OF THE GEORGE HERDER SURVEY, ABSTRACT NO. 239, HAVING BEEN CONVEYED TO SUNLION REAL ESTATE, LLC, IN DOCUMENT #16003036, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS; SAID 0.893 ACRE TRACT OR PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found on the north right-of-way (R.O.W) line of Hillside Terrace (R.O.W. varies) being the southwest corner of a called 1.553 acre tract conveyed to Brenda Taylor (formerly Brenda A. Bailey) in Volume 4868, Page 782, Official Public Records, Hays County, Texas, the southeast corner of said 29.383 acre tract, and the southeast corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, S 87°38'16" W along the north R.O.W. line of said Hillside Terrace a distance of **315.33'** to a capped 1/2" iron rod found stamped "Byrn Survey" being the southeast corner of a called 0.52 acre tract conveyed to Goforth Special Utility District in Volume 3348, Page 190, Deed Records, Hays County, Texas, also recorded in Document #800006567, Official Public Records, Hays County, Texas, a southwest corner of said 29.383 acre tract, and the southwest corner of the herein described tract;

THENCE, N 1°16'14" W along the east line of said called 0.52 acre tract a distance of **123.98'** to a capped 1/2" iron rod found stamped "Byrn Survey" being the northeast corner of said called 0.52 acre tract, an interior corner of said 29.383 acre tract, and the northwest corner of the herein described tract;

THENCE, through and across said 29.383 acre tract **N 87°38'16" E** a distance of **312.15'** to a calculated point on the west line of said called 1.553 acre tract and the east line of said 29.383 acre tract for the northeast corner of the herein described tract;

THENCE, S 2°44'35" E along the west line of said called 1.553 acre tract and the east line of said 29.383 acre tract a distance of **123.97'** to the **POINT OF BEGINNING** and containing **0.893 acres** of land, more or less.

BASIS OF BEARINGS:

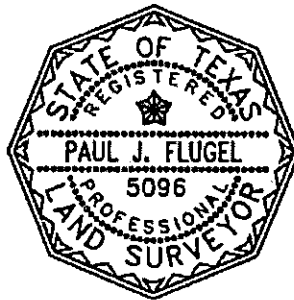
Bearings are based on NAD '83 State Plane Coordinates.
(Texas Central 4203)



I do hereby certify that this description is true and correct to the best of my knowledge and belief, and was prepared from an actual on the ground survey under my supervision, and that the markers described herein actually exist, as described, at the time of my survey.

As Prepared by
Flugel Land Surveying
Firm Registration No. 10193837

Paul J. Flugel

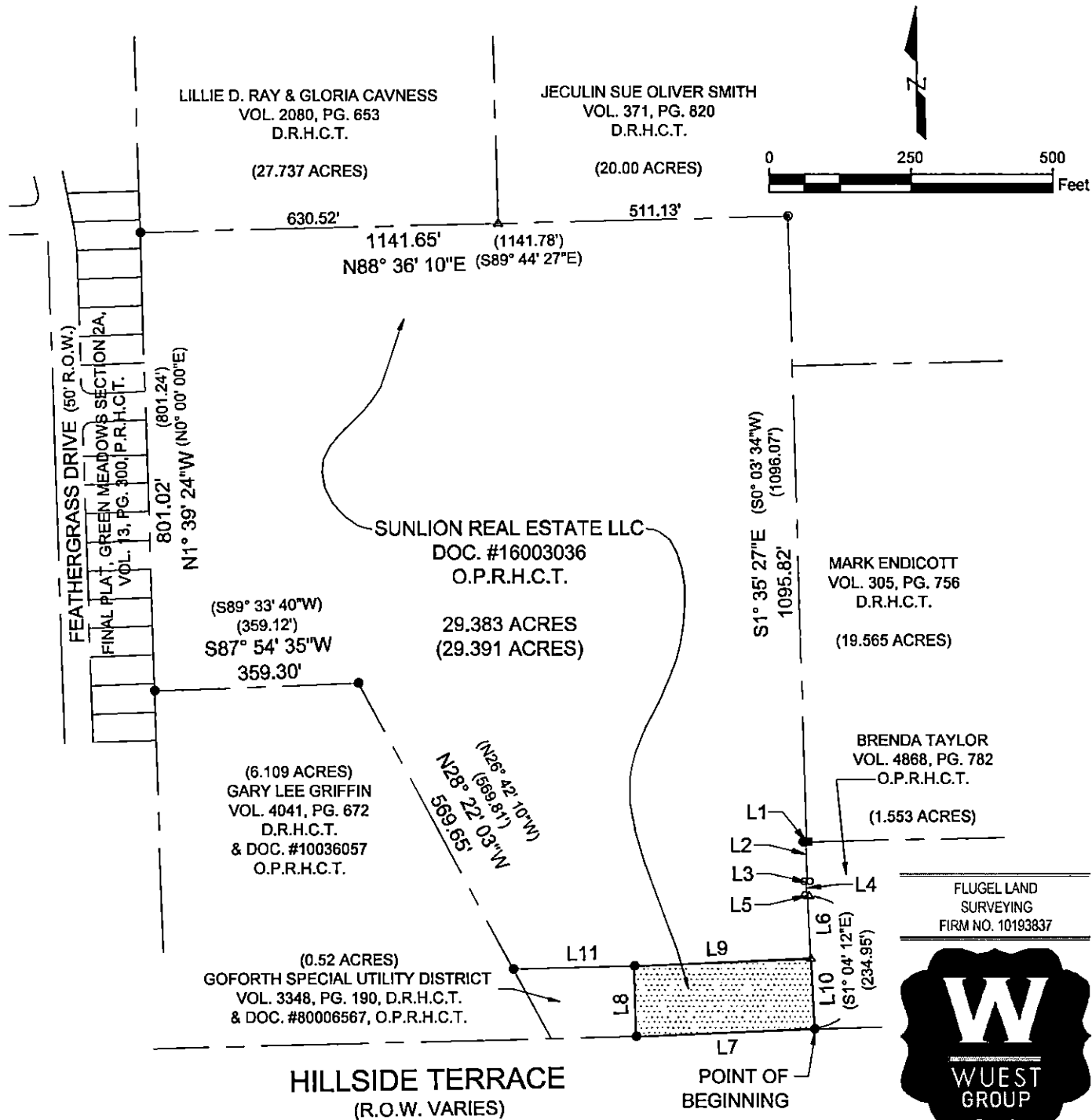


Paul J. Flugel
RPLS No. 5096

Date of Survey: 10/25/2016
Date of Field Notes: 9/5/2017

SURVEY OF

0.893 ACRES, BEING A PORTION OF 29.383 ACRES (CALLED 29.391 ACRES) OUT OF THE GEORGE HERDER SURVEY, ABSTRACT NO. 239, HAVING BEEN CONVEYED TO SUNLION REAL ESTATE, LLC, IN DOCUMENT #16003036, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS



ENGINEERING & DESIGN

FIRM # F-15324
2007 S 1ST STREET, SUITE 103
AUSTIN, TEXAS 78704
(512)394-1900

SHEET

3 of 4

SURVEY OF
0.893 ACRES, BEING A PORTION OF 29.383 ACRES (CALLED 29.391 ACRES) OUT OF THE GEORGE
HERDER SURVEY, ABSTRACT NO. 239, HAVING BEEN CONVEYED TO SUNLION REAL ESTATE, LLC, IN
DOCUMENT #16003036, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N88° 12' 14"W (N83° 02' 46"W)	1.98' (2.01')
L2	S2° 44' 35"E (S1° 04' 12"E)	69.86' (69.92')
L3	S87° 15' 25"W (S88° 55' 48"W)	2.69' (2.69')
L4	S2° 44' 35"E (S1° 04' 12"E)	23.22' (23.24')
L5	N87° 15' 25"E (N88° 55' 48"E)	1.15' (1.15')
L6	S2° 44' 35"E	110.84'
L7	S87° 38' 16"W (S89° 17' 36"W)	315.33' (315.53')
L8	N1° 16' 35"W (N0° 22' 35"E)	123.98' (123.98')
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L10	S2° 44' 35"E	123.96'
L11	S88° 43' 25"W (N89° 36' 26"W)	213.28' (213.37')

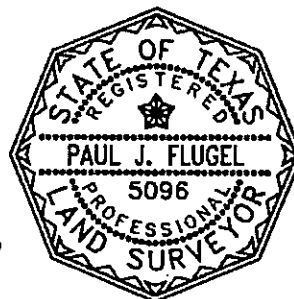
LEGEND	
●	1/2" IRON ROD FOUND
■	4"x4" CONCRETE MONUMENT
⊙	2.5" IRON BOLT FOUND
○	1/2" IRON ROD SET STAMPED "P FLUGEL 5096"
△	CALCULATED POINT
R.O.W.	RIGHT-OF-WAY
()	RECORD INFORMATION
P.R.H.C.T.	PLAT RECORDS, HAYS COUNTY, TEXAS
D.R.H.C.T.	DEED RECORDS, HAYS COUNTY, TEXAS
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS

HORIZONTAL DATUM:

TEXAS STATE PLANE COORDINATES
NAD '83 (SOUTH CENTRAL ZONE 4204)

AS SURVEYED BY:

Paul J. Flugel



PAUL J. FLUGEL
RPLS NO. 5096
FIRM NO. 10193837

DATE OF FIELD SURVEY:
10-25-2016
DATE OF PLAT:
9-5-2017

FLUGEL LAND
SURVEYING
FIRM NO. 10193837



ENGINEERING & DESIGN

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4 OF 4

FLUGEL LAND SURVEYING

PROFESSIONAL LAND SURVEYORS

Firm No. 10193837

EXHIBIT "B"

LEGAL DESCRIPTION FOR A 28.482 ACRE TRACT

LEGAL DESCRIPTION OF A 28.482 ACRE TRACT OR PARCEL OF LAND, BEING A PORTION OF 29.383 ACRES (CALLED 29.391 ACRES) OUT OF THE GEORGE HERDER SURVEY, ABSTRACT NO. 239, HAVING BEEN CONVEYED TO SUNLION REAL ESTATE, LLC, IN DOCUMENT #16003036, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS; SAID 28.482 ACRE TRACT OR PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" iron rod found for the **POINT OF REFERENCE** on the north right-of-way (R.O.W) line of Hillside Terrace (R.O.W. varies) being the southwest corner of a called 1.553 acre tract conveyed to Brenda Taylor (formerly Brenda A. Bailey) in Volume 4868, Page 782, Official Public Records, Hays County, Texas, and the southeast corner of said 29.383 acre tract; **THENCE**, N 2°44'35" W a distance of 123.97' to a calculated point on the east line of said 29.383 acre tract and the west line of said called 1.553 acre tract being the southeast corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, through and across said 29.383 acre tract **S 87°38'16" W** a distance of **312.15'** to a capped ½" iron rod found stamped "Byrn Survey" being the northeast corner of a called 0.52 acre tract conveyed to Goforth Special Utility District in Volume 3348, Page 190, Deed Records, Hays County, Texas, also recorded in Document #800006567, Official Public Records, Hays County, Texas, an interior corner of said 29.383 acre tract, and an angle point on the south line of the herein described tract;

THENCE, **S 88°43'25" W** along the north line of said called 0.52 acre tract a distance of **213.28'** to a capped ½" iron rod found stamped "Byrn Survey" on the east line of a called 6.109 acre tract conveyed to Gary Lee Griffin in Volume 4041, Page 672, Deed Records, Hays County, Texas, also recorded in Document #10036057, Official Public Records, Hays County, Texas, being the northwest corner of said called 0.52 acre tract, a southwest corner of said 29.383 acre tract, and a southwest corner of the herein described tract;

THENCE, **N 28°22'03" W** along the east line of said called 6.109 acre tract a distance of **569.65'** to a ½" iron rod found being the northeast corner of said called 6.109 acre tract, an interior corner of said 29.383 acre tract, and an interior corner of the herein described tract;

THENCE, **S 87°54'35" W** along the north line of said called 6.109 acre tract a distance of **359.30'** to a ½" iron rod found on the east line of Lot 10, Final Plat, Green Meadows Section 2A, recorded in Volume 13, Page 300, Plat Records, Hays County, Texas, being a southwest corner of said 29.383 acre tract, and a southwest corner of the herein described tract;

THENCE, **N 1°39'24" W** along the east line of said Final Plat, Green Meadows Section 2A, a distance of **801.02'** to a capped ½" iron rod found stamped "RDS" on the east line of Lot 12, of said Final Plat, Green Meadows Section 2A, being the southwest corner of a called 27.737 acre tract conveyed to Lillie D. Ray & Gloria Cavness in Volume 2080, Page 653, Deed Records, Hays County, Texas, the northwest corner of said 29.383 acre tract, and the northwest corner of the herein described tract;

THENCE, **N 88°36'10" E** along the south line of said called 27.737 acre tract a distance of 630.52' to a calculated point, from which a found ½" iron rod bears 2.40' north, for the southeast corner of said called 27.737 acre tract and the southwest corner of a called 20.00 acre tract conveyed to Jaculin Sue Oliver Smith in Volume 371, Page 820, Deed Records, Hays County, Texas, and continuing 511.13' for a



total distance of **1141.65'** to the top of a 2 ½" iron rod found, protruding 2' up from the ground, being and interior corner of said called 20.00 acre tract, the northeast corner of said 29.383 acre tract, and the northeast corner of the herein described tract;

THENCE, S 1°35'27" E along the west line of said called 20.00 acre tract and a called 19.565 acre tract conveyed to Mark Endicott in Volume 305, Page 756, Deed Records, Hays County, Texas, a distance of **1095.82'** to a 4"x4" concrete monument found on the north line of said called 1.553 acre tract being the southwest corner of said called 19.565 acre tract and a jog in the east line of said 29.383 acre tract and the herein described tract;

THENCE, N 88°12'14" W along the north line of said called 1.553 acre tract a distance of **1.98'** to a ½" iron rod found being the northwest corner of said called 1.553 acre tract and a point on the east line of said 29.383 acre tract and the herein described tract;

THENCE, S 2°44'35" E a distance of **69.86'** to a ½" iron rod set with a cap stamped "P Flugel 5096" at a jog in the west line of said called 1.553 acre tract and the east line of said 29.383 acre tract and the herein described tract;

THENCE, S 87°15'25" W a distance of **2.69'** to a ½" iron rod set with a cap stamped "P Flugel 5096" on the west line of said called 1.553 acre tract and the east line of said 29.383 acre tract and the herein described tract;

THENCE, S 2°44'35" E a distance of **23.22'** to a ½" iron rod set with a cap stamped "P Flugel 5096" at a jog in the west line of said called 1.553 acre tract and the east line of said 29.383 acre tract and the herein described tract;

THENCE, N 87°15'25" E a distance of **1.15'** to a calculated point on the west line of said called 1.553 acre tract and the east line of said 29.383 acre tract and the herein described tract;

THENCE, S 2°44'35" E along the west line of said called 1.553 acre tract and the east line of said 29.383 acre tract a distance of **110.79'** to the **POINT OF BEGINNING** and containing **28.482 acres** of land, more or less.

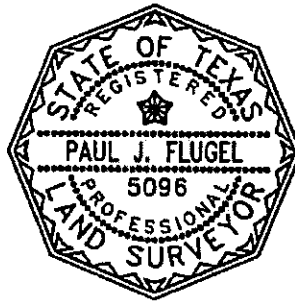
BASIS OF BEARINGS:

Bearings are based on NAD '83 State Plane Coordinates.
(Texas Central 4203)

I do hereby certify that this description is true and correct to the best of my knowledge and belief, and was prepared from an actual on the ground survey under my supervision, and that the markers described herein actually exist, as described, at the time of my survey.

As Prepared by
Flugel Land Surveying
Firm Registration No. 10193837

Paul J. Flugel

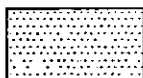
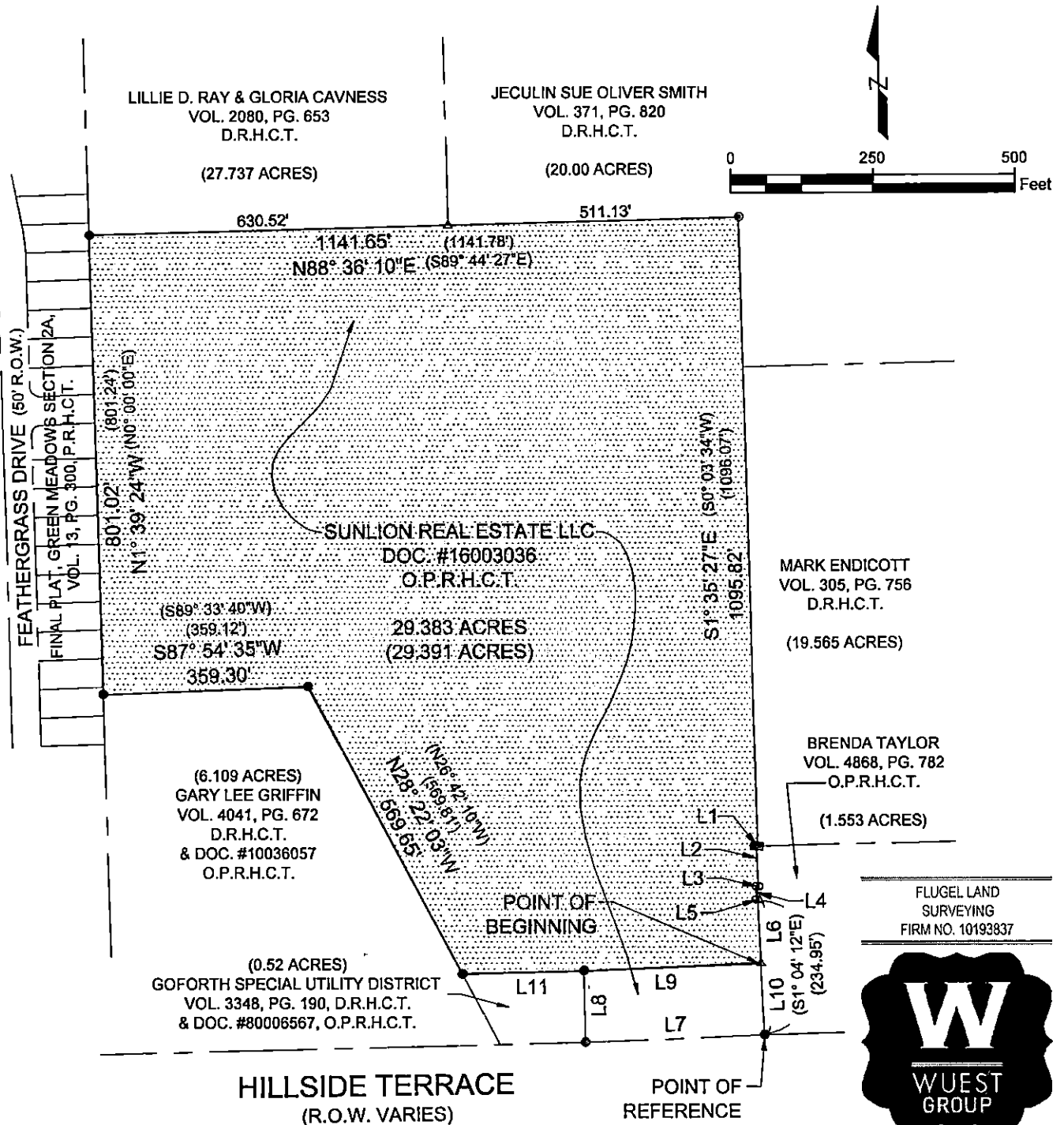


Paul J. Flugel
RPLS No. 5096

Date of Survey: 10/25/2016
Date of Field Notes: 9/5/2017

SURVEY OF

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PROPOSED HR ZONING TRACT (28.482 ACRES)



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AUSTIN, TEXAS 78704
(512)394-1900

SHEET

4 OF 5

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LEGEND

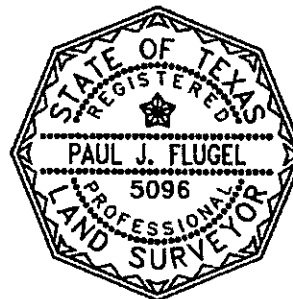
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HORIZONTAL DATUM:

TEXAS STATE PLANE COORDINATES
NAD '83 (SOUTH CENTRAL ZONE 4204)

AS SURVEYED BY:

Paul J. Flugel



PAUL J. FLUGEL
RPLS NO. 5096
FIRM NO. 10193837

DATE OF FIELD SURVEY:
10-25-2016
DATE OF PLAT:
9-5-2017

FLUGEL LAND
SURVEYING
FIRM NO. 10193837



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5 OF 5

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BOJORQUEZ
LAW FIRM, PC
TexasMunicipalLawyers.com

The Story of Sign Regulation

- Texas Law Requirements
- Case Law and Constitutional Considerations
- Code enforcement
- What Comes Next? Examples and Guidance



Reasons for regulating signs

- Why is your client regulating signs?
 - Aesthetics?
 - Public Safety?
- Does your sign regulation accomplish these goals?



Authority for Regulation

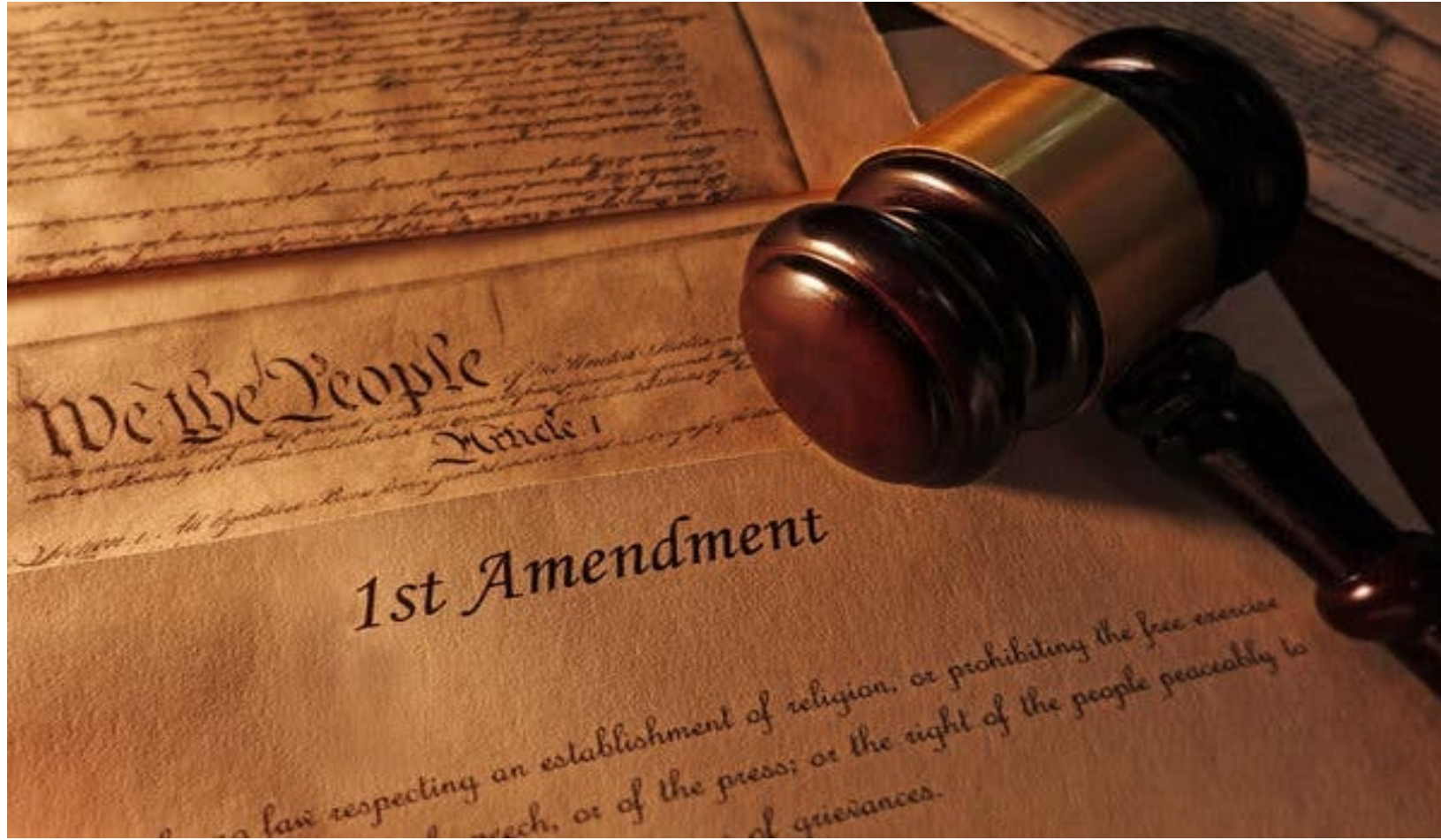
- Chapter 216 of the Local Government Code: Regulate, Remove, Relocate.
- Chapter 393 of the Transportation Code: Regulate in the Right-of-Way.
- Chapter 259 of the Texas Election Code: Affects how Cities regulate political signs.

Types of Speech

- Commercial Speech
- Non-Commercial Speech
- Governmental Agencies – See Tex. Att’y Gen. Op. GA-697 (2009)
- Political Speech



First Amendment



First Amendment

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; ***or abridging the freedom of speech***, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

First Amendment

- Limits the government's ability to regulate speech in public forums
- Does not guarantee a right to express oneself at all times and places or in any manner that may be desired

First Amendment Rights

- Free Speech rights under the First Amendment of the U.S. Constitution are not absolute; they are balanced against personal rights or interests of society—such as public safety and aesthetics.

Content-Based Restrictions



Subject to ***strict scrutiny***



Targets speech based on its communicative content



Because of the topic discussed or message expressed

Strict Scrutiny

- Content based speech restrictions are “presumptively unconstitutional”
- Must be the ***least restrictive means*** of achieving a ***compelling state interest***

Which restrictions are content based?

- Text of the Regulations
 - Apply only to or carve out exemptions for certain groups, topics or functions
 - Example: No religious-based speech
- Prompted by the prospect of an adverse audience response
 - Listeners' reaction to speech is not a content-neutral basis for regulations
- Individualized Restrictions
 - How similarly situated speakers/groups have been treated in the past
 - Cannot be justified without reference to the content of the speech regulated

Content-Neutral

- Time, place, and manner regulations
- Must be ***narrowly tailored*** to serve a ***significant government interest***
- Need not be the least restrictive or least intrusive means of doing so
- Invalidated if substantially broader than necessary to achieve the government's interest

1st Amendment Rights

- Speech may be regulated, but restrictions must pass muster.
 - Intermediate scrutiny: must be narrowly tailored to **serve** a significant government interest.
 - Strict scrutiny: must be narrowly tailored to **serve** a compelling government purpose and be the least restrictive means necessary to achieve the purpose.



City of Ladue v. Gilleo

- Over-inclusive
 - “Displaying a sign from one’s own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means.” *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994).
 - Visual Clutter elimination is a good reason for regulations, but the regulation foreclosed the important ability to put a sign in your own yard.
 - Non-commercial signs deserve special protection.



Reed v. Town of Gilbert

- *Reed v. Town of Gilbert*, No. 13-502 (June 18, 2015).
- If you must read a sign to regulate, the ordinance is **content based**.



Reed v. Town of Gilbert

- Town of Gilbert ordinance distinguished between *political* (electoral), *ideological* (non-commercial), and *directional* signs with different rules for time, location, and size.
- “Temporary Directional Signs”: signs intended to direct passersby to a “qualifying event” of a non-profit organization.
- Must be < 6 sq. ft; no more than 4 signs on any property; and displayed < 12 hours before event and up to 1 hour after.
- Church challenged ordinance.



Reed v. Town of Gilbert

U.S. Supreme Court: a regulation can be *content based* in two ways:

- by distinguishing speech by the *topic discussed*
- if the regulation's purpose or justification depends on the underlying *idea or message expressed*—i.e., regulation is facially content neutral, but motives were content based.

“A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech”

Alito's Concurrence

Alito, Sotomayor, and Kennedy joined the opinion of the Court but added “*a few words of further explanation*” about rules that would not be “*content based.*” Cities may:

- Regulate the *locations* in which signs may be placed.
- Distinguish between *free-standing signs* and those *attached to buildings*.
- Distinguish between *lighted vs. unlighted signs*.
- Distinguish between *fixed messages* and *electronic or variable*.
- Distinguish between placement on *private* or *public property*.
- Impose time restrictions on signs advertising a one-time event?

Reed v. Town of Gilbert

After *Reed*:

- Rules based on message: if you need to read a sign to know how to regulate it, *content-based*.
- *Non-commercial* signs: content-based regulations pass muster only by surviving **strict scrutiny**.
- Underinclusive, too many exceptions, can undercut the purposes of the ordinance.
- *Commercial* signs: content-based regulation may still be allowed under *Reed* with **intermediate scrutiny**.



Reagan National Adv. v. City of Austin

Can a City distinguish between on- and off-premise signs, or is it an unconstitutional content-based regulation?



Reagan National Adv. v. City of Austin

History of Austin's Sign Ordinance

- Austin prohibited new off-premise signs beginning in 1983.
 - Existing off-premise signs are non-conforming signs
 - May not expand the nonconformity, convert to a digital sign, or increase the sign's illumination.

Reagan National Adv. v. City of Austin

History of Austin's Sign Ordinance

- Austin's amendments since 1983.
 - Allowed to relocate some non-conforming signs (2008).
 - *Reed*- Focused amendments that did not impact the City's off-premise sign/nonconforming sign requirements (Aug. 2017).

Reagan National Adv. v. City of Austin

How the City of Austin defined “off-premise sign” before *Reagan*

- Off-premise sign – A sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site.
- The city’s code allowed digitization of on-premise signs but prohibited digitization of off-premise signs.



Reagan National Adv. v. City of Austin

Litigation

- Reagan National Advertising wanted to digitize some of its off-premise signs.
- Reagan challenged the City of Austin's Code stating that the distinction between on- and off-premise signs was a content-based restriction of speech (facially and as applied).



Reagan National Adv. v. City of Austin

Litigation

- Reagan sought a declaration that the City's regulations are unconstitutional, and Reagan may convert its off-premise signs to digital.
- The City won at the trial court: 377 F.Supp.3d 670 (W.D. 2019).
- Reagan won at the appellate court: 972 F.3d 696 (5th Cir. 2020).
- City's petition for certiorari is pending: No. 20-1029.

Reagan National Adv. v. City of Austin

- Prior to *Reagan*, many cities, in reviewing their sign ordinances, relied on Justice Alito's concurrent in *Reed*, which specifically listed distinctions between on-premise and off-premise signs as those that would not be considered content based.
- The Court noted that to determine whether a sign is on-premise or off-premise, the government official had to read the message written on the sign to determine its meaning, function, or purpose; therefore, the regulation was content-based.

Austin Court of Appeals

Auspro court: “under Reed’s framework, the Texas Act’s outdoor-advertising regulations and associated Department rules are, on their face, content-based regulations of speech”

- Such regulations must meet strict scrutiny test.
- This is close to a regulatory death sentence because meeting strict scrutiny is extremely difficult.



Chapter 391, Transportation Code, amendment “fixes” *Auspro*

S.B. 2006 (2017) makes clear that TxDOT can still regulate signs that:

- 1. Advertise goods and services.
- 2. Where primary purpose of the sign is advertising.

See Texas Transportation Code Chapter 391.



Commercial Content in Strict Scrutiny

- *Reagan Outdoor Adver. v. City of Austin*, 5th Circuit.
 - When regulation of off-premises signs includes non-commercial content, the regulation is content-based, reviewed under strict scrutiny, and won't be upheld.
 - “a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs person to any location not on that site.”
 - Updated: “a sign that displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution, or other commercial message which is generally conducted, sold, manufactured, produced, offered, or occurs elsewhere than on the premises where the sign is located.”
 - *International Outdoor, Inc. v. City of Troy, Mich.*, 6th Circuit.
 - Strict scrutiny when content-based regulations affects commercial content. Intermediate scrutiny is only for content neutral regulations.

Other Appellate Courts

- **9th:** *Contest Promotions, LLC v. City & Cty. of S.F.*, No. 17-15909, 2017 U.S. App. LEXIS 15375 ,at *14 (9th Cir. Aug. 16, 2017). See also *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 606 (1980).
- **10th:** *Aptive Environ., LLC v. Town of Castle Rock*, 959 F.3d 961 (2020).
- **3rd:** *Greater Philadelphia Chamber of Commerce v. City of Philadelphia*, 949 F.3d 116 (2020).
- **2nd:** *Vugo, Inc. v. City of New York*, 931 F.3d 42 (July 16, 2019).

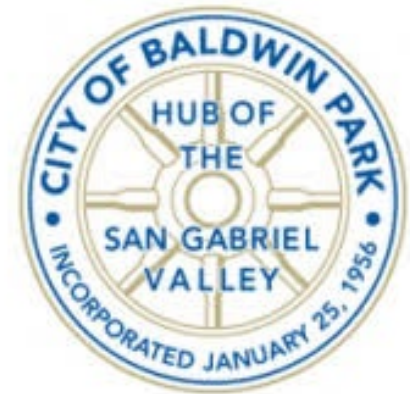
Even if your regulation is analyzed under Intermediate Scrutiny, it can still fail due to under-inclusiveness, over-inclusiveness, or just not meeting your purposes.

Political Signs



Potential Political Sign Problems

Language allowing additional signs (regardless of content) during election season was unconstitutional . . . *WWW.RICARDOPACHECO.COM et al. v. CITY OF BALDWIN PARK*, No. 2:16-cv-09167-CAS(GJSx), 2017 WL 2962772 (C.D. Calif July 10, 2017).



Potential Political Sign Problems

Baker v. City of Fort Worth, N.D. Tex. December 2020

Signs on city owned property-cannot differentiate among different non-commercial content-political sign analysis.

Strict Scrutiny-compelling interest and narrowly tailored.



Types of Signs/Messaging

- Government Signs (TxDOT, Counties, Schools, etc.)
- Political Signs (Regulated under Ch. 259, Election Code)
 - Electioneering at Polling Places (Ch. 61, Election Code)
- Non-Commercial Speech
- Commercial Signs (business signs, billboards, etc.)

Government Signs

Transportation Code Ch. 393:

- Signs prohibited in right-of-way
- There are certain exceptions to this, including those that are allowed by a political subdivision
- In some instances, signs in the ROW can be removed without notice. If the designated officer knows who the owner of the sign is, they are required to attempt to notify them of the confiscated sign.



Political Signs

- Regulated under Election Code Ch. 259 with specific allowances for dimensions, and where they're allowed to be located.
- Municipalities are not allowed to prohibit the signs as allowed under Ch. 259; therefore, city code should be content neutral on this topic.
- Still required to keep signs out of the right-of-way.



Electioneering Near Polling Places

The entity that owns or controls a public building being used as a polling place may not, at any time during the voting period, prohibit electioneering on the building's premises outside of the area described in Subsection (a), *but may enact reasonable regulations concerning the time, place, and manner of electioneering*. Election Code § 61.003(a-1)

“Electioneering” includes the posting, use, or distribution of political signs or literature.

Non-Commercial Speech

- All properties (commercial and non-commercial) should have access to free speech in the form of non-commercial messaging.
- Municipalities are not allowed to prohibit the signs as allowed under 259, therefore a city code should be content neutral on this topic.
- Still required to keep signs out of the right-of-way



Non-Commercial Speech

- Can you regulate profanity/inappropriate content?



Commercial Speech

- Authority for municipalities to regulate under Local Gov't Code 216.
- City regulations should be content neutral, and regulated by size, lighting, square footage, zoning (use), etc.
- Ensure the city's regulation does not require the code officer to read the sign to determine if it's allowed or not.



Commercial Speech

- All commercial signs should have access to non-commercial speech.



Code Enforcement



Code Enforcement

What are situations that you all actually see in your city?

- Signs in the right-of-way?
- Signs with inappropriate content?
- Signs mounted to a fence? Tree? Telephone pole?
- Variance requests, because signs don't meet code?
- Political signs?
- All of the above?

Code Enforcement – Can a City Remove Signs?

- Yes. A city may require a sign's removal, relocation, or reconstruction under Chapter 216 of the Local Government Code.
- Cities usually only prospectively ban or regulate signs because the removal, relocation, or reconstruction of an existing sign often costs the city money and may result in litigation.

Code Enforcement – How Does a City Remove Signs?

- Step 1 – A city must have an ordinance that applies to existing signs.
- Step 2 – Before a city may require removal of a sign, the city must determine compensation for the sign owner through a municipal sign board. Board determines the amount of compensation after the city gives the sign owner an opportunity for a hearing. Loc. Gov't Code § 216.005.

Code Enforcement – How Does a City Remove Signs?

- Step 3 – Once regulatory action is taken and compensation for the sign is determined by the municipal sign board, “any person aggrieved by a decision” may appear to the district court. Tex. Loc. Gov’t Code § 216.014.



Code Enforcement – How Does a City Remove Signs?

How does a City remove signs from the right-of-way?

- Does the City have an ordinance detailing the prohibition of signs in the right-of-way subject to the code enforcement process if there's a violation?
- Yes? Remove the signs.
- No? Remove the signs.



Components of a Good Sign Ordinance

Specifications for signs:

- Types of signs
- Maximum height
- Portability
- Setbacks
- Color pallet
- Materials
- Mounting
- Illumination
- Zoning
- Safety
- Landscaping

- Movement

Procedure:

- Administrative procedure for sign permits
- Variance and appeals process



How to Regulate Without Speech

Specifications for signs:

- Types of signs
- Maximum height
- Portability
- Setbacks
- Color pallet
- Materials
- Mounting
- Illumination
- Zoning
- Safety
- Landscaping
- Movement



Signs the City Doesn't Want? Prohibit Them!

- Prohibit signs **by type**, not content.
 - Pole signs
 - Billboards
 - Balloon gorillas
 - Dilapidated



Be Specific

Follow-up after sign ordinance changes, upheld.

Residential Signs allowed:

- Up to 3 flags or pennants of up to 10 square feet on a staff or pole of no longer than 8 feet;
- Up to 3 permanent signs with a combined area of no more than 10 square feet and a height of no more than 4 feet;
- Up to 6 temporary window signs with a combined area of no more than 9 square feet, except that no more than 50% of the area of any given window may be covered by window signs;
- Up to 4 other temporary signs with a combined area of no more than 10 square feet and a height of no more than 3 feet.

Top 10

10. Take the words “political” and “holiday” out of your sign ordinance.
9. Ensure that you address dilapidated signs.
8. Decide whether Real Estate Signs are commercial.
7. Have your code enforcement officer and prosecutor read your drafts for enforceability.
6. List of Prohibited Signs (content neutral or could include commercial messaging).

Top 10

5. List of always approved signs (without permits): government signs, traffic signs, extra signs that everyone can have-non-commercial signs.
4. Flags.
3. Content-neutral or content-neutral for non-commercial and some commercial regulation. By Zoning District, size of lot, sign type, lighting.
2. Clearly state what your purposes for your regulations generally including traffic safety and aesthetics, character of the City.

Final Rule

1. Ensure that your sign code serves your significant/compelling governmental interests and that no exceptions or definitions cause under-inclusiveness or over-inclusiveness.