



## City of Abilene City Council Agenda

Shane Price, Council Member  
Bruce Kreidler, Council Member  
Kyle McAlister, Council  
Member  
Robert Hanna, City Manager

Norm Archibald,  
Mayor

Anthony Williams, Mayor Pro-tem  
Jay Hardaway, Council Member  
Steve Savage, Council Member  
Stanley Smith, City Attorney  
Danette Dunlap, City Secretary

**Notice is hereby given of a meeting of the City Council of City of Abilene to be held on Thursday, January 26, 2017 at 8:30 AM at 555 Walnut Street, 2nd Floor Council Chambers, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.**

**1. CALL TO ORDER**

**2. INVOCATION**

1. Councilman Kyle McAlister

**3. PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG**

**4. PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS**

**5. MINUTES**

1. Approval of the Minutes from the January 12th Regular Council Meeting

**6. CONSENT AGENDA**

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember or Citizen so requests, in which event the item will be removed from the Consent Agenda and considered separately.

1. **Resolution:** Approval of Change Order to N. 10th & N. Mockingbird Intersection Reconstruction Project *(Michael Rice)*
2. **Resolution:** Amending the Professional Services Contract for a Nurse Practitioner at Mercy Health Care Center. *(Lesli Andrews)*
3. **Ordinance:** *(First Reading)* **Case #Z-2017-01** A request from Nora Carpenter, to rezone property from AO/COR (Agricultural Open Space/Corridor Overlay) to GR/COR (General Retail/Corridor Overlay), being 1.005 acres, located at 7542 Buffalo Gap Rd.; Setting a public hearing for February 9, 2017.

**(Dana Schoening)**

4. **Ordinance:** *(First Reading)* **Case #Z-2017-02:** A request from Tuscan Ridge, LLC., agent Enprotec/Hibbs and Todd, to rezone property from RS6 (Residential Single Family) to PH (Patio Home) being 17.292 acres located in the 7550 Block (west side) of Hardwick Rd, north of Waldrop Dr.; and setting a public hearing on February 9th 2017. **(Dana Schoening)**

## **7. REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS**

1. **Resolution:** Award of Bid #CB-1720 - North 3rd St. Rehabilitation Project **(Michael Rice)**
2. **Ordinance & Public Hearing:** *(Final Reading)* Amending the Fire Code Pamphlet, which amends The International Fire Code, 2009 Edition, adopted by City of Abilene Ordinance, Section 10-47. **(Larry Bell)**
3. **Resolution:** Authorizing Brycer LLC, The Compliance Engine to provide a 3-year contract to the City of Abilene for the purpose of tracking and maintaining compliance of life and fire safety systems within the City boundaries. **(Larry Bell)**
4. **Resolution:** Authorizing the City Manager to execute the Final Guaranteed Maximum Price amendment for Fire Station #4. **(Larry Bell)**
5. **Presentation:** Regarding the Fire Maintenance Facility, including an update on construction costs and construction schedule. **(Larry Bell)**
6. **Discussion:** Quarterly Update of Five Year Strategic Plan for Economic Development **(Kent Sharp)**

## **8. EXECUTIVE SESSION**

**The City Council of the City of Abilene reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code Sections**

### **1. 551.071 (Consultation with Attorney)**

The following pending litigation subjects which may be discussed are:

1. City of Abilene, Texas v. Aurora Bumgarner; 104th Judicial District Court, Taylor County, Texas; filed November 17, 2011
2. Chad Carter v. City of Abilene, Texas; Cause No. 10138-D, In the 350th Judicial District Court, Taylor County, Texas, filed June 17, 2014
3. Gary Lee and Marilu Lee Corpian v. City of Abilene, Cause No. 48,766-A in the 42<sup>nd</sup> District Court, filed August 7, 2014
4. Margarita Mitchell, et al. v. The City of Abilene, et al., filed in the 350th Judicial District Court, Taylor County, Texas, on October 21, 2015
5. Susan Lewis King & Austin King MD vs Ken Paxton, Attorney General of Texas and the City of Abilene. Cause No. D-1-GN-16-001160, filed March 16, 2016
6. Abilene Matera LLC v. Board of Building Standards for the City of Abilene and City of Abilene, Cause No. 10696-D. March 17, 2016.
7. Ruby Flores and Cory Almanza v. Jesus Verastegui, Alfredo Verastegui,

- Rosalva Verastegui, and City of Abilene, Cause No. 49368-A, 42nd District Court, Abilene, Taylor County, Texas, filed April 13, 2016
8. E.G., et al. v. Barry Bond, City of Abilene, and Abilene Independent School District, Case 1:16-cv-00068-BL, U.S. District Court, Northern District, Abilene Division, filed April 28, 2016
9. Gary Corpian and Marilu Lee Corpian v. City of Abilene, Texas, Cause No. 49451-A, In the 42nd Judicial District Court, Taylor County, Texas, filed June 24, 2016
10. Mike Rodriguez, Lauren Rodriguez, Laura Gentry Edwards, Mike Gentry, and Lucy Gentry v. City of Abilene, Case No. 1-16CV-080-BL; In the United States District Court, Northern District of Texas, Abilene Division, filed May 17, 2016, served September 2, 2016
11. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
12. Cause No. 11018-D; City of Abilene and Development Corporation of Abilene v. Texas Municipal League Governmental Risk Pool, In the 350<sup>th</sup> Judicial District Court, Taylor County, Texas, filed January 9, 2017

**2. 551.072 (Deliberations about Real Property)**

- A) Regional Water Supply

**3. 551.073 (Deliberations about Gifts and Donations)**

**4. 551.074 (Personnel Matters)**

City Council may consider appointment, employment, reassignment, duties, discipline, or dismissal of public officers or employees, City Manager, City Attorney, Municipal Court Judge, City Secretary, and City Board and Commission Members.

**The following Boards and Commissions may be discussed:**

Abilene Economic Development Company, Inc.  
Abilene Health Facilities Development Corp.  
Abilene Higher Education Facilities Corporation  
Abilene-Taylor County Events Venue District  
Board of Adjustments  
Board of Building Standards  
Civic Abilene, Inc.  
Civil Service Commission  
Development Corporation of Abilene, Inc.  
Firemen's Pension Fund Board  
Friends of Safety City Board  
Frontier Texas! Board of Directors  
Abilene Housing Authority  
Landmarks Commission  
Library Board  
Mechanical/Plumbing/Electrical & Swimming Pool Board of Appeals  
Mental Health-Mental Retardation Board of Trustees  
9-1-1 Emergency Communications District Board of Managers  
Parks & Recreation Board  
Planning and Zoning Commission

Taylor County Appraisal District  
West Central Texas Municipal Water District  
Tax Increment Reinvestment Zone Board

**5. 551.087 (Business Prospect/Economic Development)**

- A) Hotel Proposals
- B) Consider 380 Agreement for Public Utilities

**6. 551.076 (Deliberations about Security Devices)**

**9. RECONVENE**

- 1. Action if needed from Executive Session

**10. REGULAR AGENDA**

**11. ADJOURNMENT**

*In compliance with the Americans with Disabilities Act, the City of Abilene will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 48 hours prior to the meetings. Please contact Danette Dunlap, City Secretary, at 325-676-6202.*

**CERTIFICATION**

I hereby certify that the above notice of meeting was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the \_\_\_\_\_ day of January, 2017, at \_\_\_\_\_.

\_\_\_\_\_  
*Danette Dunlap, City Secretary*





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO: Robert Hanna, City Manager**

**FROM: Michael G. Rice, P.E., Director of Public Works**

**SUBJECT: Resolution: Approval of Change Order to N. 10th & N. Mockingbird Intersection Reconstruction Project (*Michael Rice*)**

---

**GENERAL INFORMATION**

This is a change order to a previously approved contract with Bontke Brothers Construction Co. Inc., for the reconstruction of the N. 10<sup>th</sup> & Mockingbird intersection. This change order will consist of the removal of a majority of the traffic signal equipment currently in the approved contract. The signal equipment being removed will be part of a more substantial contract at a later date that will encompass several signals City-wide with the expectation of lower prices due to economy of scale. The proposed change order was given to the contractor who has agreed to its execution.

**SPECIAL CONSIDERATIONS**

**FUNDING/FISCAL IMPACT**

Funding for the project was allocated through multiple CO's (2008 & 2015) and CIP funds (2011). This change order will reduce the total contract amount by \$123,158.00 resulting in a new contract amount of \$341,865.45.

**STAFF RECOMMENDATION**

Staff recommends approving the change order to reduce the scope of work in the existing contract in the amount of \$123,158.00.

**BOARD OR COMMISSION RECOMMENDATION**

**ATTACHMENTS:**

Description	Type
❑ Resolution Letter	Resolution Letter
❑ Change Order Form	Backup Material
❑ Project Location Map	Exhibit



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,  
ALLOWING EXECUTION OF CHANGE ORDER TO EXISTING N. 10<sup>TH</sup> & N.  
MOCKINGBIRD INTERSECTION RECONSTRUCTION PROJECT.**

**WHEREAS**, the City of Abilene currently has a fully executed contract, as required by law, for the reconstruction of the N. 10<sup>th</sup> St. & Mockingbird Ln. intersection; and

**WHEREAS**, a change order shall be issued removing the following items from the contract: and

Item 618-1 – Conduit 2”	\$850.00
Item 618-4 – Conduit 6”	\$600.00
Item 620 – Elect. Conductor (No. 6)(Bare)	\$1,074.00
Item 624 – Ground Box	\$20,000.00
Item 656 – Traffic Signal Foundation	\$15,000.00
Item 682 – Ped Heads	\$32,000.00
Item 684 – Signal Cable (16 CONDR)(14 AWG)	\$2,506.00
Item 6266-1 – VIVDS Processor System	\$10,000.00
Item 6266-2 – VIVDS Camera Assembly	\$40,000.00
Item 6266-3 – VIVDS Communication Cable	\$1,128.00

**WHEREAS**, the items listed shall be removed from the contract with a total dollar amount of \$123,158.00. Staff recommends execution of the proposed change order which has been agreed upon by Bontke Brothers Construction Co., Abilene, Texas.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF ABILENE, TEXAS**

PART 1:        That the City Council approves the change order to reduce scope of work in the existing contract in the amount of \$123,158.00.

PART 2:        That this Resolution shall take effect immediately from and after passage.

**ADOPTED** this 26<sup>th</sup> day of January, 2017.

ATTEST:

\_\_\_\_\_  
Danette Dunlap, City Secretary

\_\_\_\_\_  
Norm Archibald, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney



# CITY OF ABILENE

## CHANGE ORDER NUMBER: 1

1. CONTRACTOR: Bontke Brothers Construction Co.

2. Change Order Work Limits: N. 10<sup>th</sup> & Mockingbird Intersection

3. Type of Change: Major (Major/Minor)

4. Reasons: Removing traffic signal equipment in order to bring contract into budget (3" & 4" Conduit will remain to be placed under concrete pavement).

Project: N. 10<sup>th</sup> & N. Mockingbird Intersection Reconstruction Project

Street: N. 10<sup>th</sup> & Mockingbird

Contract Number: 2523

5. Describe the work being revised: Remove items 618-1 (Conduit 2"), 618-4 (Conduit 6"), 620 (No 6 Bare), 624 (Ground Box), 656 (Traffic signal foundation), 682 (Ped heads), 684 (Signal cable 16 Cond 14 AWG), 6266-1 (VIVDS Processor System), 6266-2 (VIVDS Camera Assembly), and 6266-3 (VIVDS Communication Cable).

6. New or revised plan sheet(s), sketch(es), and estimates are attached:

Each signatory hereby warrants that each has the authority to execute this Change Order (CO).

<p>The contractor must sign the Change Order and, by doing so, agrees to waive any and all claims for additional compensation due.</p> <p>THE CONTRACTOR <u>[Signature]</u> Date <u>1-1-17</u></p> <p>(Signature)</p> <p>Typed/Printed Name <u>Kenneth Bontke</u></p> <p>Typed/Printed Title <u>President</u></p>	<p><b>The following information must be provided:</b></p> <p>Change in contract time: <u>0 days</u></p> <p>Original contract price: <u>\$465,023.45</u></p> <p>Existing contract price: * <u>\$465,023.45</u></p> <p>Amount added or subtracted by this CO: <u>-\$123,158.00</u></p> <p>Revised contract price: <u>\$341,865.45</u></p>
---	---

### RECOMMENDED FOR EXECUTION:

[Signature] 1-6-17  
City Engineer Date

\_\_\_\_\_  
City Manager Date

City Engineer's Seal:



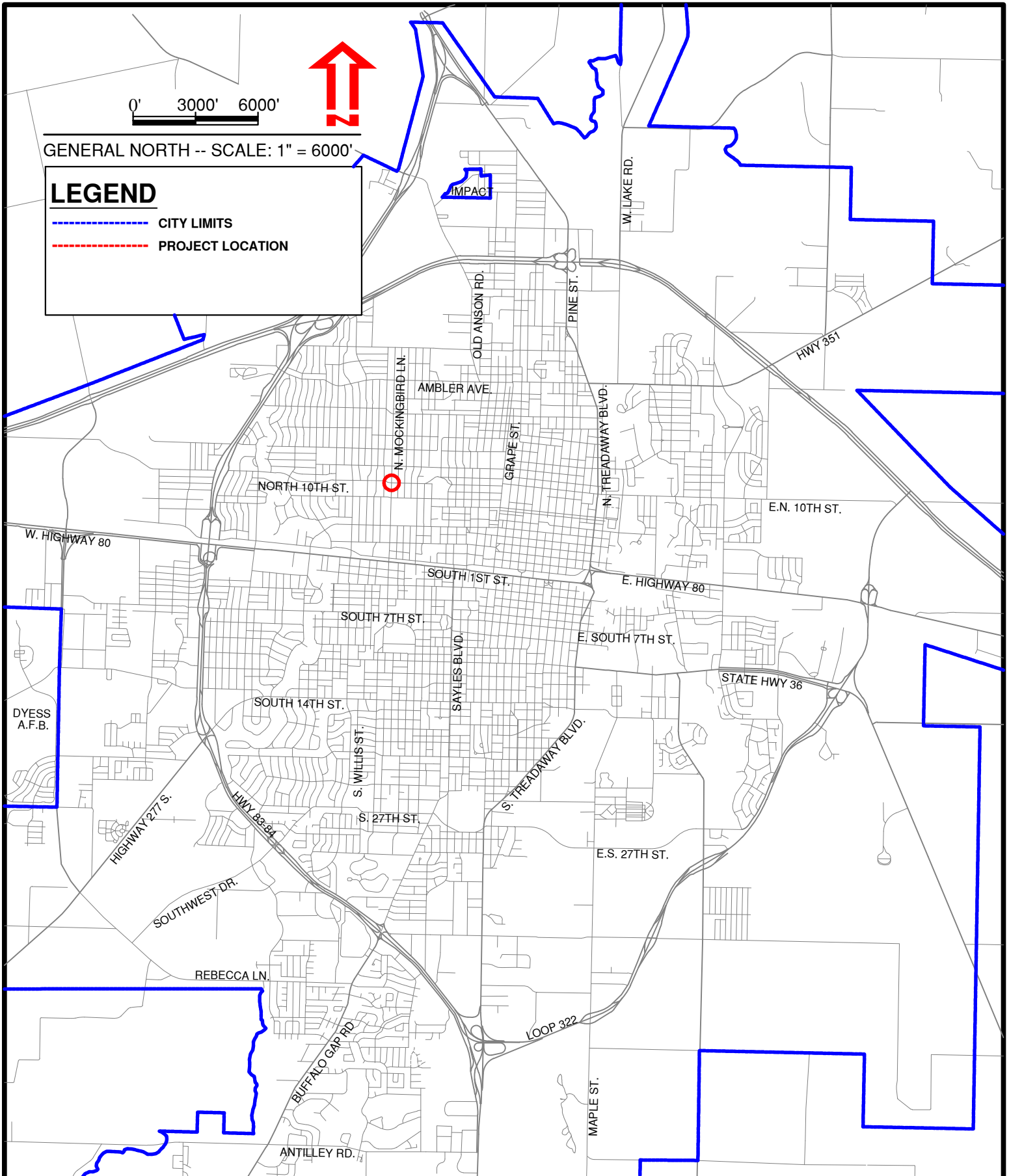
0' 3000' 6000'



GENERAL NORTH -- SCALE: 1" = 6000'

## LEGEND

- CITY LIMITS
- PROJECT LOCATION



Sheet  
1  
of  
1

CITY OF ABILENE, TEXAS  
PUBLIC WORKS DEPARTMENT  
ENGINEERING DIVISION

## N. 10TH & MOCKINGBIRD CONCRETE INTERSECTION PROJECT

Designed By: LARRY WRIGHT

Drawn By: MICHAEL MILLER

Checked By: LARRY WRIGHT

Horizontal Scale: 1"=6000'

Vertical Scale: N.T.S.

Folder: MISC.  
PROJECTS

Computer File Name:

N. 10TH &  
MOCKINGBIRD  
PROJECT

Date: DEC. 2016

# **Agenda Item:**

## **N. 10<sup>th</sup> & N. Mockingbird Intersection Reconstruction Project Change Order**

**Resolution:** Change Order to existing N. 10<sup>th</sup> & N. Mockingbird  
Intersection Reconstruction Project. *(Rice)*



## Agenda Item:

# N. 10<sup>th</sup> & N. Mockingbird Intersection Reconstruction Project Change Order

- Change order will remove most traffic signal equipment in the contract to allow for a larger traffic signal project at a later date that will encompass traffic signals citywide with the expectation of lower prices due to economics of scale.
- Current project cost is \$465,023.45.
- Change order cost would remove \$123,158.00 from contract equating to approximately 26.5% of existing contract.
- Revised contract price would be \$341,865.45.



**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO:** Robert Hanna, City Manager

**FROM:** Lesli Andrews, Director of Community Services

**SUBJECT:** **Resolution: Amending the Professional Services Contract for a Nurse Practitioner at Mercy Health Care Center. *(Lesli Andrews)***

---

**GENERAL INFORMATION**

The Abilene-Taylor County Public Health District (ATCPHD) entered into a contractual agreement with a nurse practitioner (NP) to provide women's reproductive health services. The current contract which began on September 21, 2016 and ends on August 31, 2017 will need to be revised to modify the number of days of NP service provided from two to four days per week for a total of 32 hours per week. The implementation date of February 7, 2017 will encompass a 30-week period of the increased days of service. The goal of the increase is to expand the number of clients the Healthy Texas Women (HTW) Program will be able to provide services for and in turn, increase revenue.

**SPECIAL CONSIDERATIONS**

The ATCPHD was awarded a United Way of Abilene (UWA) grant for 2017 in the amount of \$38,000 with the stipulation that it is to be used to increase the capacity of the NP for the HTW Program.

**FUNDING/FISCAL IMPACT**

There will be no funding impact to the City's general fund and the increase will be covered 100% by the UWA grant. The additional cost for the extended hours of service will be \$29,760 which is well within the grant amount awarded. The funding breakdown for the contractual NP is \$26,000 from HTW Fee for Service Program, \$26,000 from the Family Planning Fee for Service Program, and \$38,000 from the UWA. The NP contract amount is not to exceed \$90,000.

**STAFF RECOMMENDATION**

Staff recommends that the amendment to the contract be approved.

**BOARD OR COMMISSION RECOMMENDATION**

N/A



**ATTACHMENTS:**

Description	Type
☐ Resolution	Resolution Letter
☐ Exhibit A/Amendment	Exhibit
☐ Contract	Backup Material
☐ Presentation	Presentation

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE AN AMENDMENT TO THAT CERTAIN PROFESSIONAL SERVICES CONTRACT, DATED SEPTEMBER 21, 2016, BY AND BETWEEN THE ABILENE TAYLOR COUNTY PUBLIC HEALTH DISTRICT AND CINDY LYN HESS.**

**WHEREAS**, the Abilene Taylor County Public Health District, ("ATCPHD") and Cindy Lyn Hess ("Contractor") entered into a Professional Service Contract (the "Contract") for the provision of professional services; and

**WHEREAS**, the term of the contract expires August 31, 2017; and

**WHEREAS**, ATCPHD and Contractor desire to amend the Contract to change the hourly rate of pay for all work performed after February 7, 2017 from sixty five dollars (\$65.00) per hour to (\$60.00) dollars per hour; and

**WHEREAS**, ATCPHD and Contractor desire to amend the Contract to increase the number of hours worked per week to four days per week, being eight hours per day, for a total of thirty two (32) hours per week, beginning on February 7, 2017;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:**

Part 1: The City Manager or his designee is hereby authorized to negotiate and execute an amendment, substantially in the form of Exhibit A, to amend the Contract referenced above.

Part 2. That this Resolution takes effect immediately upon its adoption.

**ADOPTED this \_\_\_\_<sup>th</sup> day of January, 2017.**

ATTEST:

\_\_\_\_\_  
Danette Dunlap, City Secretary

\_\_\_\_\_  
Norman Archibald, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney

**EXHIBIT A**  
**AMENDMENT TO**  
**PROFESSIONAL SERVICES CONTRACT BETWEEN ABILENE TAYLOR COUNTY**  
**PUBLIC HEALTH DISTRICT AND**  
**CINDY LYN HESS**

On September 21, 2016 the Abilene Taylor County Public Health District, (“ATCPHD”) and Cindy Lyn Hess (“Contractor”) entered into a Professional Services Contract (the “Contract”);

ATCPHD and Contractor desire to amend Attachment B to the Contract, titled “Payment Schedule”, and Attachment D to the Contract, titled “Additional Payment Schedule Information”;

Now, therefore, in exchange of mutual promises herein, the parties agree to amend the above referenced Attachments of the Contract to read as follows:

**ATTACHMENT B**  
**PAYMENT SCHEDULE**

Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$65.00 per hour for any work performed before February 7, 2017, and at a rate of \$60.00 per hour for any work performed after February 7, 2017, for a total sum not to exceed \$85,560 in hourly wages. In addition, any reimbursement for travel expenses shall not exceed \$3,700 for the term of this Contract, and the total of any reimbursement for any license registration fee or fees shall not exceed \$740 for the term of this Contract. Any reimbursement for travel expenses or license registration fees shall be contingent upon funding availability. Total compensation, including, without limitation, hourly compensation, license or registration fee reimbursement, and travel reimbursement shall not exceed \$90,000 during the term of this Contract.

**ATTACHMENT D**  
**ADDITIONAL PAYMENT SCHEDULE INFORMATION**

1. The Professional must complete all services by August 31, 2017.

2. Professional will work on a part-time basis, consisting of eight hours per day, two days per week for that period of this Contract before February 7, 2017 and will work on a part-time basis, consisting of eight hours per day, four days per week, for that period of this Contract after February 7, 2017 for a total not to exceed 1398 hours within the whole term of this Contract.
3. Professional will observe all City of Abilene holidays and will receive two weeks of unpaid vacation.
4. Professional will receive payment on a bi-weekly basis.

All other terms and conditions of the Contract shall remain in full force and effect. If this amendment is not executed prior to the expiration of the initial term or duration of the Contract, the ATCPHD and Contractor expressly agree, by execution of this amendment, to all of the terms and conditions of the Contract for a new term or duration as defined in this amendment. Nothing herein shall be deemed a waiver or release of any rights or obligations of the terms and conditions of the Contract.

*{Remainder of Page Intentionally Left Blank—Signature Page Follows}*

ATCPHD

CINDY LYN HESS

By: \_\_\_\_\_

\_\_\_\_\_  
(signature)

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED:

\_\_\_\_\_  
City Attorney

## **PROFESSIONAL SERVICES CONTRACT (not Architect or Engineer)**

This contract is between the Abilene-Taylor County Public Health District ("ATCPHD"), and Cindy Lyn Hess ("Professional").

The Professional will provide services as stated in Attachment A, Scope of Work.

### **I. TERM**

In consideration of the compensation stated in Paragraph II., the Professional must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Professional must complete all services by August 31, 2017 as stated in Attachment D.

### **II. PAYMENT**

Payment is according to Attachments B and D.

### **III. ASSIGNMENT**

The Professional may not assign in whole or in part any rights, duties, obligations or interest arising from this agreement without the ATCPHD's prior written consent.

### **IV. AMENDMENT OR MODIFICATION**

This contract, including attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent, which are not contained in this contract are of no effect. This contract may not be amended or modified except by both parties' written consent.

### **V. OWNERSHIP OF DOCUMENTS AND MATERIALS**

Ownership of Documents and Materials is according to Attachment C.

### **VI. NONDISCLOSURE**

The Professional may not show to any person or entity any documents, reports, plans, programs, reports, drawings, or any other materials which Professional prepares or acquires in performing this contract, including any duplicate copies kept by Professional. The Professional may not disclose to any person or entity any information regarding the ATCPHD's activities. The ATCPHD may, however, specifically authorize a limited disclosure at its discretion.

## VII. INDEMNITY

### A. Definitions

For the purpose of this section the following definitions apply:

"ATCPHD" shall mean all officers, agents and employees of the Abilene-Taylor County Public Health District.

"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

"Professional" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Professional's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Professional.

"Proven" shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

"Sole negligence" shall mean negligence of a party that is unmixed with the fault of any other person or entity.

### B. Indemnity

**The Professional must indemnify, hold harmless, and defend ATCPHD and the City from and against liability for any claims arising out of the Professional's work and activities conducted in connection with this Contract.**

The Professional is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of ATCPHD or the City.

Professional must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's employees while in the vicinity where the work is being done. ATCPHD and the City are not liable or responsible for the negligence or intentional acts or omissions of the Professional or Professional's employees.

ATCPHD and the City assume no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Professional.

ATCPHD, the City and Professional must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Professional, ATCPHD or City. ATCPHD or the City has the right to compromise and defend the same to the extent of its own interests.

ATCPHD, CITY AND PROFESSIONAL EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE PROFESSIONAL TO INDEMNIFY AND PROTECT ATCPHD AND THE CITY FROM THE CONSEQUENCES OF ATCPHD'S OR THE CITY'S OWN NEGLIGENCE WHILE ATCPHD IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF ATCPHD OR THE CITY.

## VIII. INSURANCE

### A. GENERAL REQUIREMENTS

The Professional agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The Professional is solely responsible for providing the required certificates of insurance. The City may terminate this agreement if the Professional fails to timely comply with the insurance requirements.

The required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by the City of Abilene's Office of Risk Management for their adequacy as to content, form of protection, and providing company.

The required insurance naming the ATCPHD and the City of Abilene as additional insureds must be primary insurance and not contributing with any other insurance available to ATCPHD or the City, under any third party liability policy.

Before the ATCPHD executes the notice to proceed with any work under this agreement, the Professional must provide the City of Abilene Secretary with either an original certificate of



insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the Professional must furnish new certificates or copies of the policy before the expiration date.

## **B. ADDITIONAL REQUIREMENTS**

The required liability insurances and their certificates shall:

1. Name ATCPHD and the City of Abilene as an additional insured with respect to operations for which this agreement is made.
2. Provide for 30 day advance written notice of cancellation or material change.

## **C. TYPES AND AMOUNT OF INSURANCE**

The types of insurance required in this contract are those indicated by initials. If no initials appear on any of items 1 through 6, items 1 through 4 shall be required.

<u>Type</u>	<u>Amount</u>
<input type="checkbox"/> 1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
<input type="checkbox"/> 2. Commercial (Public) Liability including, but not limited to: . Premises/Operations . Independent Contractors . Products/Completed Operations . Contractual Liability (Insuring above indemnity) and where the exposures exist . Explosion Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
<input type="checkbox"/> 3. Business Automobile Liability to include coverage for: . Owned/Leased Autos . Non-Owned Autos . Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
<input checked="" type="checkbox"/> 4. Professional Liability	\$500,000 combined single limit (per occurrence)
<input type="checkbox"/> 5. See Addendum for Special Coverages and/or revisions	
<input type="checkbox"/> 6. No Insurance Required	

## **IX. VENUE, CHOICE OF LAW AND INTERPRETATION**

Venue for any cause of action arising under this contract is Taylor County, Texas. This contract is governed by the laws of the State of Texas both as to interpretation and performance. This contract shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

## **X. TERMINATION**

This contract may be terminated at any time upon 30 days written notice by ATCPHD to Professional. In the event of termination, Professional will be compensated for work satisfactorily performed before the termination date.

If, through any cause, the Professional fails to fulfill his obligations under this contract, or if the Professional violates any of the agreements of this contract, the ATCPHD has the right to terminate the contract by giving five days written notice to the Professional. The Professional will be compensated for work satisfactorily performed before the termination date.

The Professional, however, is not relieved of liability to the ATCPHD or the City of Abilene for damages sustained by ATCPHD or the City because of any breach of contract by Professional. The ATCPHD may withhold any payments to Professional for the purpose of setoff until the exact amount of damages due the ATCPHD or the City of Abilene from the Professional is determined and paid.

## **XI. PROJECT REPRESENTATION**

If applicable, the ATCPHD agrees to appoint a Project Representative to assist in obtaining information from various City of Abilene departments as requested by Professional and in coordinating, monitoring, and evaluating the project to its completion. The Project Representative has no control over the means, methods, techniques, or procedures employed by Professional. The ATCPHD is interested only in the results obtained under this contract; the manner and means of obtaining those results is solely under the Professional's control.

## **XII. NOTICE**

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party at the address below. The name and address for notification may be changed by notice to the other party.

**City -     ATTN: Santos Navarrette, Jr.  
              Health Director  
              850 N. 6<sup>th</sup> St.  
              Abilene, TX 79601**

**Professional - ATTN: Cindy Lyn Hess  
220 Buckskin Rd.  
Abilene, TX 79602**

### **XIII. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES**

Professional, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Abilene, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Professional must obtain all necessary permits and licenses required in completing the work contracted for in this agreement.

### **XIV. NO INDEBTEDNESS**

Professional agrees that no payments owed by him of any nature whatsoever to ATCPHD or the City of Abilene, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The ATCPHD will not knowingly award contracts for goods or services to any bidder in arrears to ATCPHD or the City of Abilene for any debt, claim, demand, or account whatsoever, including taxes, penalty and interest. Professional is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City of Abilene to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty and interest.

### **XV. EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of the ATCPHD and the City of Abilene to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The ATCPHD and the City affirms that employment decisions shall be made only on the basis of bonafide occupational qualifications. The ATCPHD and the City of Abilene shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Abilene, Texas, is a fact as well as an ideal.

### **XVI. VERIFICATION OF EMPLOYMENT ELIGIBILITY**

Professional must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Professional -- not ATCPHD or City of Abilene -- must verify eligibility for employment as required by IRCA.

#### **XVII. MINORITY AND WOMEN BUSINESS ENTERPRISES**

The ATCPHD and City of Abilene hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 500 Chestnut St., 6<sup>th</sup> floor, Abilene, Texas, 79602, 325-690-0300.

#### **XVIII. SALES TAX**

The ATCPHD qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act"), and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The ATCPHD will provide an exemption certificate to the Professional. The Professional must have a sales tax permit issued by the Comptroller of Public Accounts and shall issue a resale certificate complying with the Tax Act, as amended, when purchasing said materials. The Professional is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the project, tangible personal property purchased for use in the performance of this contract and not completely consumed, or other taxable services used to perform this contract, or other taxes required by law in connection with this contract.

IN WITNESS HEREOF the parties have entered into this agreement this 21st day of September, 2016.

**ATCPHD**

By: Mundy Bottom

Title: Assistant City Manager

**PROFESSIONAL**

By: Cindy Hess RN WHCNP-BC

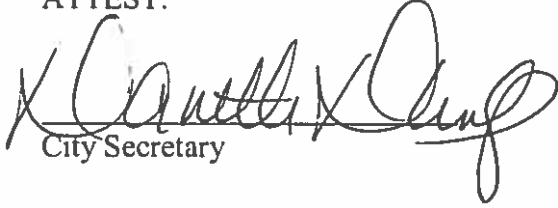
Title: Women's Health Care Nurse Practitioner

Address: 220 Buckskin Rd.  
Abilene, TX, 79602

Phone Number: 325-320-1994

Federal Tax I.D.# \_\_\_\_\_

ATTEST:

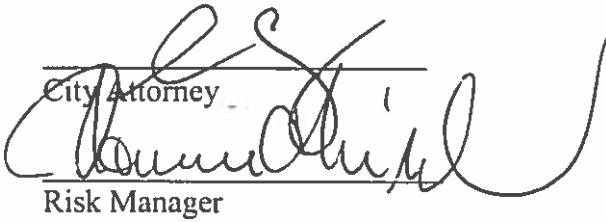
  
\_\_\_\_\_  
City Secretary

ATTEST: (If Corporation)

\_\_\_\_\_  
Corporation's Secretary

Corporate Seal (if available):

APPROVED:

  
\_\_\_\_\_  
City Attorney  
\_\_\_\_\_  
Risk Manager

## **ATTACHMENT A**

### **SCOPE OF SERVICES**

1. Obtain patient medical histories and complete appropriate medical records.
2. Assess patients for family planning, completing female exams, pap smears, pelvic exam, and prescribe birth control.
3. Perform physical examinations of patients using standard medical practices. Assess acute illnesses including sinus infection, respiratory infection, ear infection, flu, and strep throat, treat accordingly.
4. Perform or order diagnostic procedures including laboratory tests and x-rays as appropriate.
5. Follow-up on diagnosis on chronic condition (i.e., Hypertension, Diabetes, thyroid disorders); abnormal procedures (i.e., x-rays/sonograms) and lab results (i.e., elevated blood sugar/cholesterol, electrolytes, white blood count, low RBC, Hct., Hgb.), and initiate referrals as needed.
6. Formulate working diagnoses of patients, involving consultations with the supervising physician as necessary.
7. Develop and implement a patient treatment plan based on standard medical practice and results of examinations and diagnostic procedures.
8. Monitor the progress and effectiveness of therapeutic procedures implemented, and makes adjustments to care as appropriate.
9. Provide counseling and education to patients as appropriate for the medical condition encountered or treated.
10. Conduct minor surgical procedures within the scope of practices authorized by the supervising physician.
11. Request, receive and sign for receipt of pharmaceutical sample prescription medications, and distribute the samples to patients in compliance with state and federal laws governing the prescribing of pharmaceutical medications and signing of prescription drug orders by a physician assistant or family nurse practitioner.
12. Sign or complete orders for prescription medications in compliance with

state and federal laws governing the prescribing of pharmaceutical medications and signing of prescription drug orders by a physician assistant or family nurse practitioner, and adhering to medication formularies approved by the supervising physician.

13. Make referrals to other Health Division programs, physicians, and services as appropriate.
14. Consult with other physicians and other medical personnel concerning patient care issues as appropriate or as needed to further the care of the patient.
15. Provide counseling and education regarding patient diagnosis/condition; treatment, medications, benefits, side-effects, and follow-up.

## **ATTACHMENT B**

### **PAYMENT SCHEDULE PARTIES TO INITIAL OPTION SELECTED**

#### **OPTION 1 X**

Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$ 65.00 per hour not to exceed \$ 49,400.

Professional must submit monthly invoices to ATCPHD accompanied by an explanation of charges, professional fees, and services. ATCPHD will pay invoices according to its normal payment procedures.

#### **OPTION 2 \_\_\_\_\_**

Payment is in a lump sum amount of \$ \_\_\_\_\_ upon completion of the work and written acceptance by ATCPHD's Project Representative.

No mechanic, contractor, subprofessionals, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any building or work covered by the contract or the land upon which the same is situated.

Before final acceptance of this project by the ATCPHD, the Professional must execute and provide ATCPHD with an Affidavit that all bills for labor, materials and incidentals incurred by subprofessionals, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Professional has been notified.

#### **OPTION 3 \_\_\_\_\_**

Payment is a fixed fee amount of \$ \_\_\_\_\_ payable per the schedule upon completion of the work and written acceptance by ATCPHD's Project Representative.

No mechanic, contractor, subcontractor, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any building or work covered by the contract or the land upon which the same is situated.

Before final acceptance of this project by the ATCPHD, the Professional shall execute and provide ATCPHD with an Affidavit that all bills for labor, materials and incidentals incurred by subprofessionals, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Professional has been notified.



## ATTACHMENT C

### OWNERSHIP OF DOCUMENTS AND MATERIALS

*Parties to initial option chosen*

*(Option 1)*   X  

All documents and materials prepared by Professional under the terms of this contract are the ATCPHD's property from the time of preparation, and Professional must deliver the documents and materials to the ATCPHD or make them available for inspection whenever requested. Professional has the right to make duplicate copies of such documents or materials for its own file or for other such purposes as the ATCPHD authorizes in writing.

*(Option 2)*           

All documents and materials prepared by the Professional remain the property of the Professional; however, Professional must furnish ATCPHD, at no additional cost, one set of reproducible mylars of the original drawings of the work and/or one copy of all documents prepared by the Professional pursuant to this Agreement.

## **ATTACHMENT D**

### **ADDITIONAL PAYMENT SCHEDULE INFORMATION**

- I. The Professional must complete all services by August 31, 2017.
- II. Professional will work on a part-time basis, consisting of eight hours per day, two days per week, not to exceed 760 hours within the term of the contract.
- III. Professional will observe all City of Abilene holidays and will receive two weeks of unpaid vacation.
- IV. Professional will receive payment on a bi-weekly basis.

# **Professional Services Contract Amendment**

January 26, 2017



# Nurse Practitioner at Mercy Health Care Center

- The Abilene-Taylor County Public Health District would like to extend the Nurse Practitioners days at Mercy Health Care Center from two days to four days.
- Two days are 100% funded by Healthy Texas Women Fee for Service and Family Planning Fee for Service Programs. The second two days are funded by the 2017 United Way Grant.
- The total contract will not exceed \$90,000.





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO: Mr. Robert Hanna, City Manager**

**FROM: Mr. Dana L. Schoening, Director, Planning and Development Services**

**SUBJECT: Ordinance: (First Reading) Case #Z-2017-01 A request from Nora Carpenter, to rezone property from AO/COR (Agricultural Open Space/Corridor Overlay) to GR/COR (General Retail/Corridor Overlay), being 1.005 acres, located at 7542 Buffalo Gap Rd.; Setting a public hearing for February 9, 2017. (Dana Schoening)**

---

**GENERAL INFORMATION**

**SITE CHARACTERISTICS:**

The subject parcel is 1.005 acres in size and is undeveloped. The parcel is adjacent to the intersection of Buffalo Gap Road and Marlboro Drive and has a delineated driveway cut 75 feet north of the intersection. The surrounding properties to the north, west, and south are zoned AO/COR and developed with single family homes (one parcel is undeveloped). The zoning and use of properties across Buffalo Gap Road (120-foot width right-of-way) are:

- To the southeast, O/COR (Office / Corridor Overlay) with a dental office building and undeveloped land;
- To the east, MF/COR (Residential Multiple-Family / Corridor Overlay) with a residential triplex;
- To the northeast, AO/COR (Agricultural Open Space / Corridor Overlay) and PD-37 (Planned Development/Corridor Overlay) with undeveloped land. The City Council at their January 12th meeting considered and approved rezoning of these properties to GR/COR (General Retail / Corridor Overlay) and NR/COR (Neighborhood Retail/Corridor Overlay) districts.

**ZONING HISTORY:**

The property was annexed in 1980 when the city limit boundary moved southwards from Antilley Road to Beltway South (FM 707). The property was zoned AO at that time. Along with other properties along Buffalo Gap Road, the Corridor (COR) Overlay zoning district was placed on the property in 1995.

**ANALYSIS:**

**Current Planning Analysis**

The Agricultural Open Space (AO) district is typically used as a "holding zone" for land annexed to the City of Abilene, until an applicant requests and the City considers a more intensive zoning district of the land. The applicant is requesting rezoning to the General Retail (GR) zoning district to allow as-yet-undetermined commercial uses. The rezoning request is only to the base zoning district, and the Corridor Overlay zoning will remain on the property. In addition to the development standards of the GR district, the Corridor development standards will also apply to future development on the site. Generally, the Corridor standards impose additional requirements for landscaping, screening and signage along Buffalo Gap Road and adjacent to residential properties.

Although the property has a maximum allowed development potential of approximately 43,700 s.f. of commercial floor space or 24 multi-family dwellings, the actual amount of development that can be built on the property will be substantially less because of development requirements (e.g., parking and landscaping) of the GR/COR zoning. These requirements will also address design and aesthetic concerns along Buffalo Gap Road and land use compatibility with adjacent residential properties. Unless the surrounding properties are rezoned to a non-residential district, any development on the subject parcel will have to be designed to ensure:

- All buildings are located at least 30 feet from all property lines;
- A 20-foot landscaped buffer area is located along the north, west, and south property lines between the commercial development and surrounding residential properties;
- A six- to seven-foot solid wall or fence is installed at the buffer area between the commercial development and surrounding residential properties.

For these reasons, staff believes that future development on the subject parcel will be compatible with and not substantially affect the surrounding properties and that the requested GR zoning is appropriate.

### Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this parcel as Low Density Residential and most of the surrounding area as Low Density Residential and Single Family Residential. However, the Buffalo Gap Corridor Study adopted by the Council in 1994 recognized that there would be commercial uses along Buffalo Gap Road emanating from commercial nodes at Buffalo Gap Road / Beltway South and Buffalo Gap Road / Antilley Road. These three streets are considered major arterials in Abilene's network of thoroughfares, around which intensive commercial zoning is appropriate, allowing both the exposure and multidirectional street capacity necessary for intensive commercial use.

It is staff's opinion the requested General Retail (GR) zoning is consistent with the Comprehensive Plan for the following reasons:

- Properties with General Commercial (GC) zoning are found on both sides of Buffalo Gap Road only 400 feet south of the subject parcel.
- At January 12th City Council meeting the Council considered and approved the commercial rezoning of properties on the east side of Buffalo Gap Road northeast of the subject parcel. The Council approved General Retail (GR) zoning on approximately 3.2 acres that did not abut subdivided small-size residential properties in the Mesquite Forest Estates subdivision and Neighborhood Retail (NR) zoning on a 2.36 acre parcel that abuts a triplex, duplexes, and single family homes in the Mesquite Forest Estates subdivision.
- For the Buffalo Gap Road / Antilley Road commercial node, the City Council has approved General Commercial (GC) zoning along Buffalo Gap Road from Antilley Road to one-half mile south of the intersection.
- The subject parcel is less than one-half mile from the Buffalo Gap Road / Beltway South intersection and commercial node.
- The subject parcel may be viewed as the northern limit to the significant node of intensive commercial activity clustered around the intersection of Buffalo Gap Road and Beltway South.

### SPECIAL CONSIDERATIONS

As provided for in City of Abilene Land Development Code, Article 4, Division 1, Section 1.4.1.3(I)(1), when a written protest against the amendment is signed by the owners of twenty percent (20%) or more of either the area of the lots or land covered by the proposed change, or the area of the lots or land immediately adjoining the area covered by the proposed change and extending two hundred feet (200') from that area, a zoning

amendment shall not become effective except by the favorable vote of three fourths of all members of the City Council.

Regarding this particular rezoning item, three (3) property owners have opposed the rezoning. Together these property owners constitute 29% of the land area within the radius area. The 200' radius area is the legally defined public notification area as provided for in Land Development Code and Texas State Statutes for rezoning applications. Therefore, because opposition is from 20% or more of land area in the public notification area, a super-majority vote of the City Council is required to approve an ordinance for this rezoning item.

### **FUNDING/FISCAL IMPACT**

### **STAFF RECOMMENDATION**

Staff recommends approval of the requested rezoning.

### **BOARD OR COMMISSION RECOMMENDATION**

Mr. Famble moved to approve this request, and Mr. Smith seconded the motion. The vote was approved by four (Smith, Dunnahoo, Famble and McClarty) with none in opposition.

### **ATTACHMENTS:**

Description	Type
❑ Ordinance Cover	Exhibit
❑ Ordinance Exhibit	Exhibit
❑ Staff Report With Maps	Cover Memo
❑ Citizen Responses	Exhibit
❑ PowerPoint Presentation	Presentation

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 23, part known as the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto.

PASSED ON FIRST READING this 26th day of January, A.D. 2017.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19th day of January, 2017, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 9th day of February, 2017 to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 9th day of February, A.D. 2017.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY



ORDINANCE NO. \_\_\_\_\_

EXHIBIT "A"

Rezone property from AO/COR (Agricultural Open Space/Corridor Overlay) to GR/COR (General Retail/ Corridor Overlay).

Legal Description: The legal description for the property is set out in Exhibit "B", attached hereto.



Location: 7542 Buffalo Gap Road.

-END-

ORDINANCE NO. \_\_\_\_\_

EXHIBIT "B"

Being 1.005 acres land being that same tract of land previously described as a one acre tract in Volume 2764, page 233, Official Public Records, Taylor County, Texas out of the Northeast part of the M. Talbot Survey No. 103, Taylor County, Texas, said 1.005 acre tract being more particularly described as follows:

Beginning at a found 3/8" metal rebar at the Northwest corner of said one acre tract and the Southwest corner of a 0.432 acre tract recorded in Volume 2422, Page 288, Official Public Records, Taylor County, Texas and the North most Northeast corner of a 1.432 acre tract recorded in Volume 2715, Page 870, Official Public Records, Taylor County, Texas, for the Northwest corner of this tract, whence the Northeast corner of a 40.8 acre tract in the name of the City of Abilene, described in Volume H, Page 333, Civil Minutes, Taylor County, Texas bears West 221' and North 193.27' and said found 3/8" recorded to be 208.97' South of the North line of said M. Talbot Survey;

THENCE N89° 17'50"E at 75.07' pass a found 1/2" metal rebar at the Southeast corner of said 0.432 acre tract and the Southwest corner of a 0.818 acre tract recorded in Volume 2127, Page 872, Official Public Records, Taylor County, Texas and continue on a total distance 243.18' to a found 3/8" metal rebar on a curve to the left and on the West line of Buffalo Gap Road (120' right-of-way) at the Southeast corner of said 0.818 acre tract, for the Northeast corner of this tract, whence a found 3/8" metal rebar at the Northeast corner of said 0.818 acre tract bears N22° 17' 57"E 207.28';

THENCE with said right-of-way line and with said curve to the left, having a radius of 11519.32', a chord bearing S21°20'36"W 195.32', an arc distance of 195.32' to a found broken concrete highway monument at the end of said curve (hwy sta; 300+52.34);

THENCE S21°14'00"W with the West line of said right-of-way, 41.64' to a found 1/2" metal rebar at the South most Northeast corner of said 1.432 acre tract, for the Southeast corner of this tract, whence a found 3/8" metal rebar at the Southeast corner of said 1.432 acre tract bears S21° 14' 00"W 32.28';

THENCE S89°15'53"W 156.00' to a point whence the center of a 6" cedar fence post bears S84°39'40"E 0.74'. Said point being the interior corner of said 1.432 acre tract for the Southwest corner of this tract;

THENCE N00°15'42"W 219.76' to the point of beginning and containing 1.005 acres of land.

-END-

# ZONING CASE Z-2017-01

## STAFF REPORT



### APPLICANT INFORMATION:

Nora Carpenter

### HEARING DATES:

P & Z Commission: January 3, 2017

City Council 1<sup>st</sup> Reading: January 26, 2017

City Council 2<sup>nd</sup> Reading: February 9, 2017

### LOCATION:

7542 Buffalo Gap Rd, on the west side of Buffalo Gap Road approx. 0.4 miles north of Beltway South (FM 707).

### REQUESTED ACTION:

Rezone property from AO/COR (Agricultural Open Space / Corridor Overlay) to GR/COR (General Retail / Corridor Overlay) zoning



### SITE CHARACTERISTICS:

The subject parcel is 1.005 acres in size and is undeveloped. The parcel is adjacent to the intersection of Buffalo Gap Road and Marlboro Drive and has a delineated driveway cut 75 feet north of the intersection. The surrounding properties to the north, west, and south are zoned AO/COR and developed with single family homes (one parcel is undeveloped). The zoning and use of properties across Buffalo Gap Road (120-foot width right-of-way) are:

- To the southeast, O/COR (Office / Corridor Overlay) with a dental office building and undeveloped land;
- To the east, MF/COR (Residential Multiple-Family / Corridor Overlay) with a residential triplex;
- To the northeast, AO/COR (Agricultural Open Space / Corridor Overlay) with undeveloped land. The Council at their January 12th meeting will consider a rezoning of this property to GR/COR (General Retail / Corridor Overlay).

### ZONING HISTORY:

The property was annexed in 1980 when the city limit boundary moved southwards from Antilley Road to Beltway South (FM 707). The property was zoned AO at that time. Along with other properties along Buffalo Gap Road, the Corridor (COR) Overlay zoning district was placed on the property in 1995.

## ANALYSIS:

### Current Planning Analysis

The Agricultural Open Space (AO) district is typically used as a "holding zone" for land annexed to the City of Abilene, until an applicant requests and the City considers a more intensive zoning district of the land. The applicant is requesting rezoning to the General Retail (GR) zoning district to allow as-yet-undetermined commercial uses. The rezoning request is only to the base zoning district, and the Corridor Overlay zoning will remain on the property. In addition to the development standards of the GR district, the Corridor development standards will also apply to future development on the site. Generally, the Corridor standards will impose additional requirements for landscaping and screening along Buffalo Gap Road and adjacent to residential properties.

Although the property has a maximum allowed development potential of approximately 43,700 sq. ft. of commercial floor space or 24 multi-family dwellings, the actual amount of development that can be built on the property will be substantially less because of development requirements (e.g., parking and landscaping) of the GR/COR zoning. These requirements will also address design and aesthetic concerns along Buffalo Gap Road and land use compatibility with adjacent residential properties. Unless the surrounding properties are rezoned to a non-residential district, any development on the subject parcel will have to be designed to ensure:

- All buildings are located at least 30 feet from all property lines;
- A 20-foot landscaped buffer area is located along the north, west, and south property lines between the commercial development and surrounding residential properties;
- A six- to seven-foot solid wall or fence is installed at the buffer area between the commercial development and surrounding residential properties.

For these reasons, staff believes that future development on the subject parcel will be compatible with and not substantially affect the surrounding properties and that the requested GR zoning is appropriate.

### Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this parcel as Low Density Residential and most of the surrounding area as Low Density Residential and Single Family Residential. However, the Buffalo Gap Corridor Study adopted by the Council in 1994 recognized that there would be commercial uses along Buffalo Gap Road emanating from commercial nodes at Buffalo Gap Road / Beltway South and Buffalo Gap Road / Antilley Road. These three streets are considered major arterials in Abilene's network of thoroughfares, around which intensive commercial zoning is appropriate, allowing both the exposure and multidirectional street capacity necessary for intensive commercial use.

It is staff's opinion the requested General Retail (GR) zoning is consistent with the Comprehensive Plan for the following reasons:

- Properties with General Commercial (GC) zoning are found on both sides of Buffalo Gap Road only 400 feet south of the subject parcel.
- At your January 12th meeting the Council considered and approved the commercial rezoning of properties on the east side of Buffalo Gap Road northeast of the subject parcel. The Council approved General Retail (GR) zoning on approximately 3.2 acres that did not abut subdivided small-size residential properties in the Mesquite Forest Estates subdivision and Neighborhood

Retail (NR) zoning on a 2.36 acre parcel that abuts a triplex, duplexes, and single family homes in the Mesquite Forest Estates subdivision.

- For the Buffalo Gap Road / Antilley Road commercial node, the City Council has approved General Commercial (GC) zoning along Buffalo Gap Road from Antilley Road to one-half mile south of the intersection.
- The subject parcel is less than one-half mile from the Buffalo Gap Road / Beltway South intersection and commercial node.
- The subject parcel may be viewed as the northern limit to the significant node of intensive commercial activity clustered around the intersection of Buffalo Gap Road and Beltway South.

#### Alternative Action

As an alternative action to approving or denying the requested rezoning, the Council may approve a rezoning to a more restrictive zoning district than the district proposed by the applicant. The Neighborhood Retail (NR) zoning district allows for land uses similar in nature to the General Retail district. However, the NR district is more restrictive to the GR district in the following ways:

- Several uses permitted in the GR district are conditional uses (requiring a use permit) in the NR district. These include fuel sales, hotel/motel, drive-through facilities, fast food restaurants, and automobile wash.
- The hours of operation for businesses in the NR district are limited to 6 a.m. to 11 p.m. daily.
- The maximum building size on a single lot in the NR district is 15,000 s.f.

#### **PLANNING STAFF RECOMMENDATION:**

Staff recommends approval of the requested rezoning.

#### **PLANNING AND ZONING COMMISSION RECOMMENDATION:**

On January 3, 2017, the Planning and Zoning Commission considered and recommended this request by a vote of five (4) in favor (Dunnahoo, Famble, Smith and McClarty), and none (0) opposed.

**NOTIFICATION:** Property owners within a 200-foot radius were notified of the request.

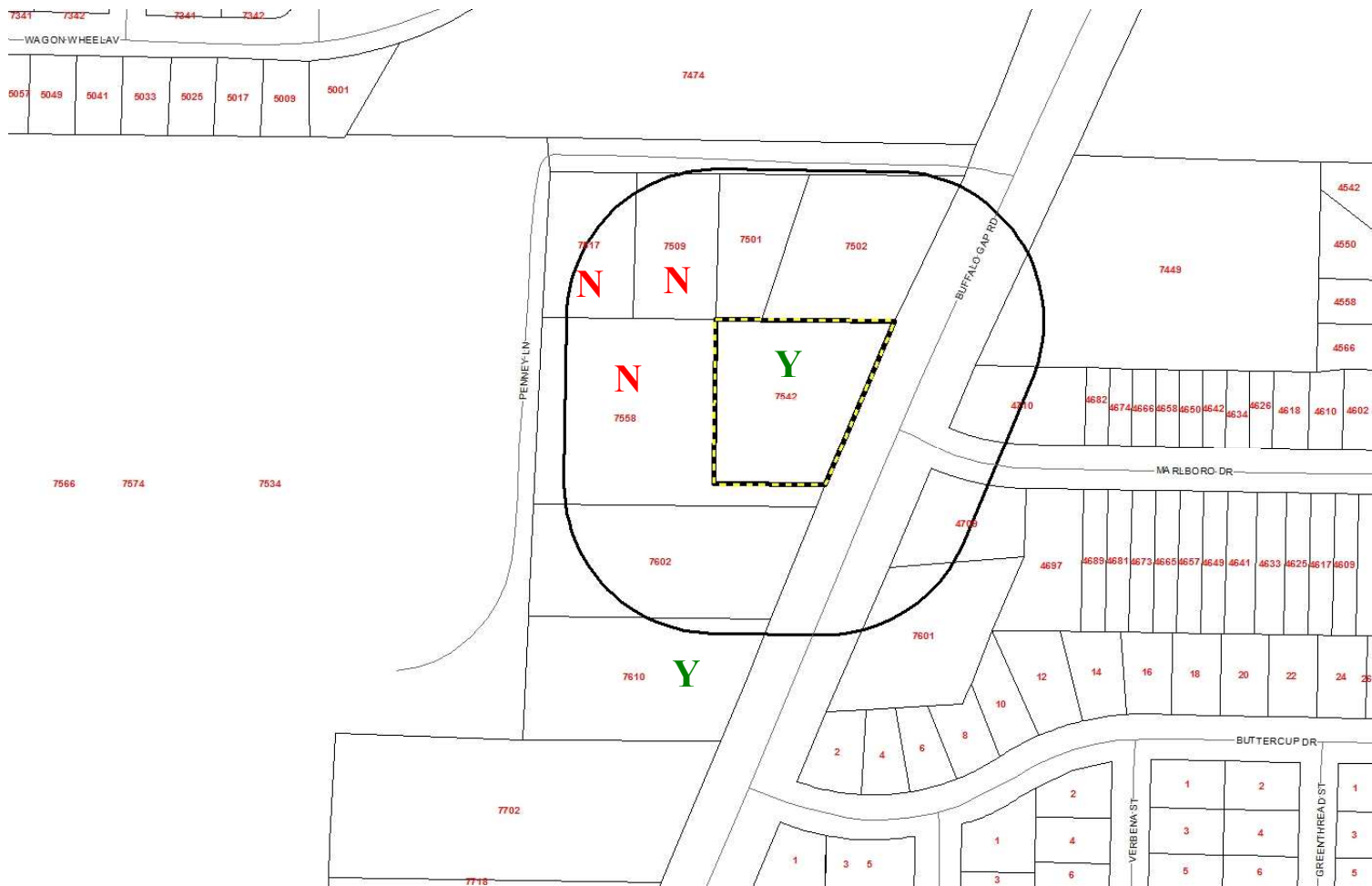
OWNER	SITUS	RESPONSE
CLAUDE PARKER LLC	4710 MARLBORO DR	
COLLETT JOHN R	7602 BUFFALO GAP RD	
INTERNATIONAL MEDICAL	7449 BUFFALO GAP RD	
LYNN TAMMIE ET ALL	7610 BUFFALO GAP RD	In Favor
MARTIN ELDON W	7517 PENNEY LN	Opposed
MC BRIDE CAROL LOUISE KECK	7502 BUFFALO GAP RD	
MK PRICE HOLDINGS LLC	7542 BUFFALO GAP RD	
MORRIS & MORRIS LLC	7601 BUFFALO GAP RD	
MORRIS & MORRIS LLC	4709 MARLBORO DR	
NEATHERLIN TOM ROAD	7501 PENNEY LN	
SMITH JERRY D & GWENDOLYN	7558 BUFFALO GAP RD	Opposed
TUCKER JERRY L	7509 PENNEY LN	Opposed

## PROPERTY OWNER NOTIFICATION AREA

2 in Favor- **Y**

3 Opposed- **N**

*As of January 18, 2017*





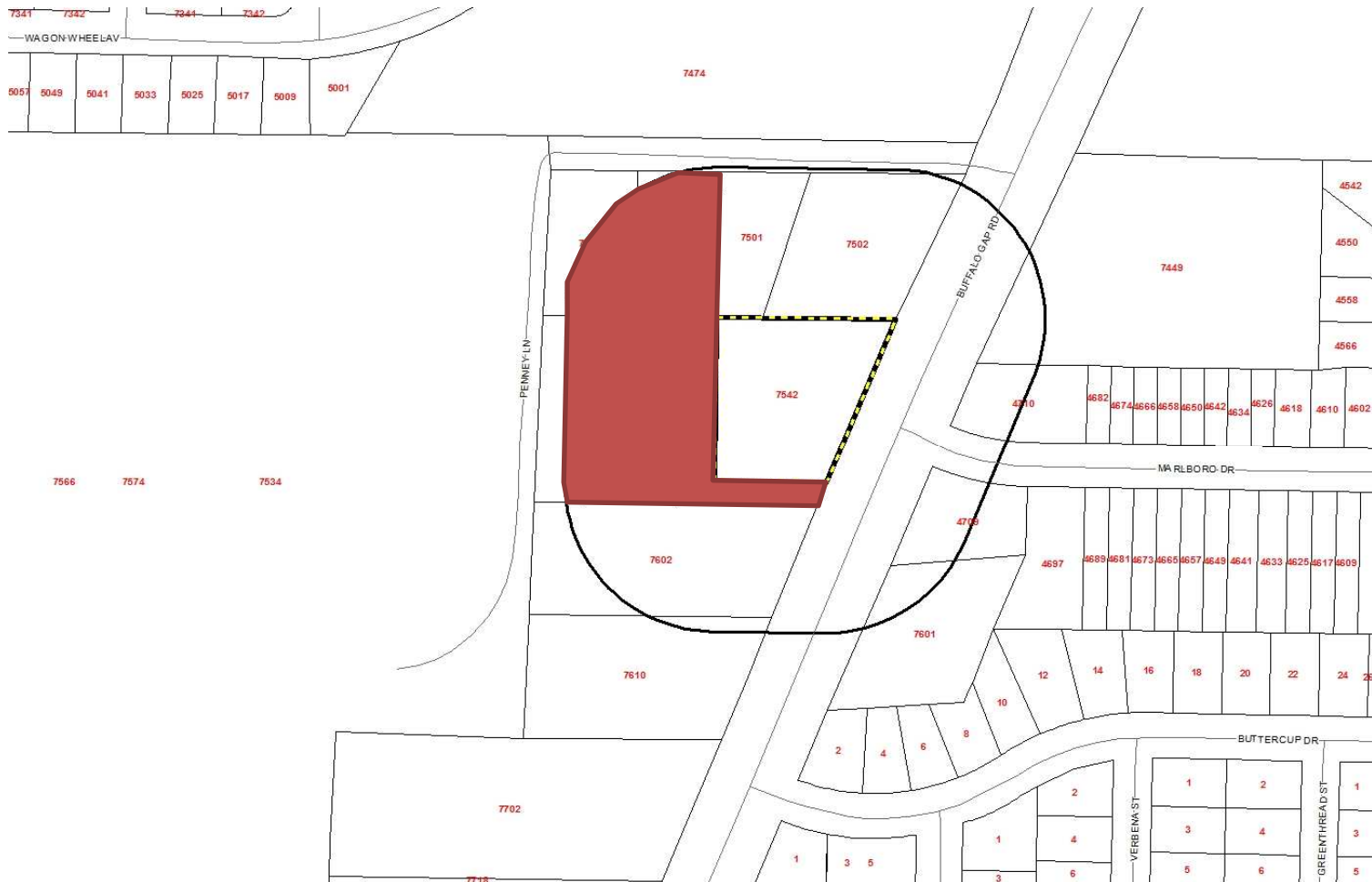
## PROPERTY OWNER WRITTEN PROTEST

Area of Lots (within Buffer Area) with Written Protest from Property Owner  
(Shown in red) 84,877 s.f.

Buffer Area Extending 200 feet from Subject Parcel  
(Area within boundary excluding subject parcel) 290,412 s.f.

Percentage of Written Protest Area in Buffer Area 29.2%

***Per Section 1.4.1.3(i) of the Land Development Code, a super-majority (three-fourths) vote of all members of the City Council is required to approve the rezoning application.***



# ZONING MAP





## AERIAL IMAGERY OF SUBJECT PARCEL



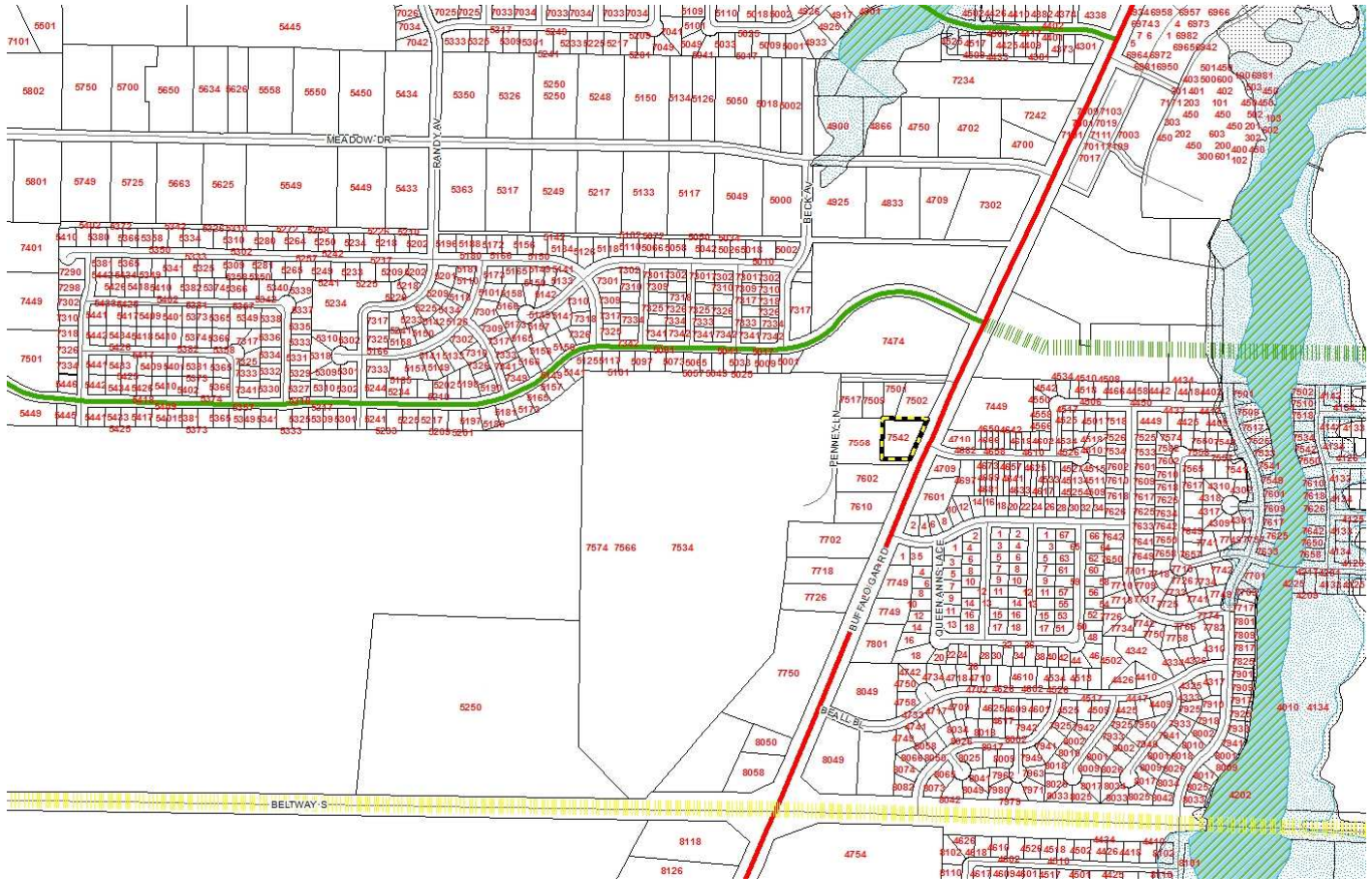


## AERIAL IMAGERY OF SURROUNDING AREA





# FLOODPLAIN AND THOROUGHFARE MAP



## Floodplain

Subject parcel is not located in a floodplain.

## Thoroughfare

## Green is COLLECTOR

Red is ARTERIAL

## Yellow is EXPRESSWAY

Hatched line is PROPOSED



**SUBJECT PARCEL**  
**View to west across Buffalo Gap Road**



*South part of subject parcel*



*North part of subject parcel*

## For the PLANNING & ZONING COMMISSION

Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2017-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also fax or email your position to the fax number or email address also listed below. All correspondence must include your name and address.

Name: NORA CARPENTER

Address:

Mailing To: Planning and Development Services  
P.O. Box 60, Abilene TX 79604-0060

Fax #: (325) 676-6288

email: [planning@abilenetx.com](mailto:planning@abilenetx.com)

I am in favor ☒

I am opposed ☐

Additional Comments:

Signature:

*Nora Carpenter*

DEC 28 AM 11:13

## For the PLANNING & ZONING COMMISSION

Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2017-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also fax or email your position to the fax number or email address also listed below. All correspondence must include your name and address.

Name: LYNN TAMMIE ET ALL

Address: 7610 BUFFALO GAP RD

Mailing To: Planning and Development Services  
P.O. Box 60, Abilene TX 79604-0060

Fax #: (325) 676-6288

email: [planning@abilenetx.com](mailto:planning@abilenetx.com)

I am in favor ☒

I am opposed ☐

Additional Comments:

Signature:

*Lammie Lynn*

DEC 30 AM 11:16

For the PLANNING & ZONING COMMISSION

Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2017-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also fax or email your position to the fax number or email address also listed below. All correspondence must include your name and address.

Name: SMITH JERRY D & Gwendolyn R.  
Address: 7558 BUFFALO GAP RD

Mailing To: Planning and Development Services  
P.O. Box 60, Abilene TX 79604-0060

Fax #: (325) 676-6288  
email: [planning@abilenetx.com](mailto:planning@abilenetx.com)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: Gwendolyn R. Smith

JAN 4 AM 11:08

For the PLANNING & ZONING COMMISSION

Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2017-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also fax or email your position to the fax number or email address also listed below. All correspondence must include your name and address.

Name: MARTIN ELDON W  
Address: 7517 PENNEY LN

Mailing To: Planning and Development Services  
P.O. Box 60, Abilene TX 79604-0060

Fax #: (325) 676-6288  
email: [planning@abilenetx.com](mailto:planning@abilenetx.com)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: Eldon W. Martin

JAN 3 AM 11:15

For the PLANNING & ZONING COMMISSION

Please call (325) 676-6237 if you have any questions about this notice.

CASE #: Z-2017-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also fax or email your position to the fax number or email address also listed below. All correspondence must include your name and address.

Name: TUCKER JERRY L  
Address: 7509 PENNEY LN

Mailing To: Planning and Development Services  
P.O. Box 60, Abilene TX 79604-0060

Fax #: (325) 676-6288  
email: [planning@abilenetx.com](mailto:planning@abilenetx.com)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: Jerry L. Tucker

JAN 3 AM 11:15



# Z-2017-01

**Applicant:** Nora Carpenter

**Request:** Rezone 1.005 ac from AO/COR to GR/COR

**Location:** 7542 Buffalo Gap Road

**Notification:** 2 in favor, 3 opposed (29% opposed)

*(Supermajority vote of Council required to approve)*

**Staff and P&ZC Recommendation:**

Approval of AO/COR to GR/COR as requested

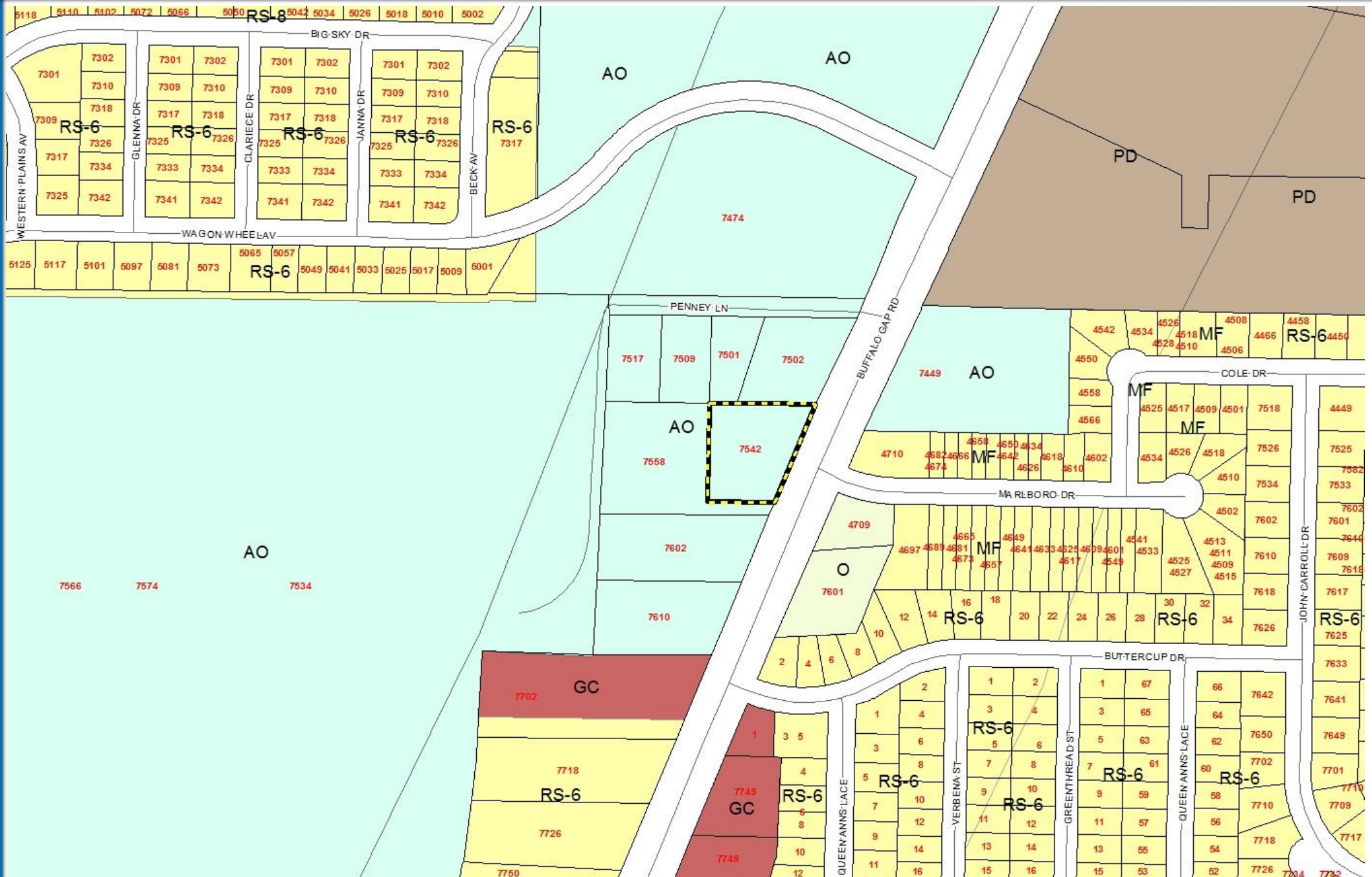




# Z-2017-01 AERIAL IMAGERY









# Z-2017-01 AERIAL IMAGERY





# Subject Parcel

View to West across Buffalo Gap Road





## Views Along Buffalo Gap Road



View to southwest toward Beltway So.



View to northeast toward Antilley Rd





## View to East Across Buffalo Gap Road



Intersection with Marlboro Drive

Residential Multiple-Family / Corridor Overly (MF/COR) Zoning – Triplex (Duplexes and SFR Homes behind)







Office (O) Zoning – Medical Office Building







## Agricultural Open Space / Corridor Overlay (AO/COR) Zoning

*PZC Recommendation for General Retail / Corridor Overlay (GR/COR) and Neighborhood Retail / Corridor Overlay (NR/COR)*

To be considered by City Council on January 12th





# Single Family Homes Around Subject Parcel





# Single Family Homes Around Subject Parcel

View to West across Buffalo Gap Road



# Permitted Uses in AO Zoning

## **RESIDENTIAL USES:**

- C Bed & Breakfast
- P Dwelling– Industrialized Housing Unit
- P Dwelling – Single-Family Detached
- C Vacation Travel Trailer Park

## **ACCESSORY AND INCIDENTAL USES:**

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P Animal Lot
- P Day Care Operation – Home-Based
- P Dwelling – Accessory
- TP Field Office or Construction Office (temporary)
- P Garage Sale
- P Home Occupation
- C Mobile Home (permanent security residence)
- C Mobile Home (temporary security residence)
- TP Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)

## **CULTURAL AND RECREATIONAL USES:**

- p Civic, Social, and Fraternal Organization
- P Fairgrounds/Rodeo
- C Motorized Racing
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Zoo

## **LEGEND**

- |           |   |
|-----------|---|
| <b>P</b>  | <b>Permitted as a Right-of-Use (may be subject to compliance with conditions described within Section 2.4.3 of the Land Development Code)</b> |
| <b>C</b>  | <b>Permitted as a Conditional Use Permit, Requiring Approval by City Council</b>  |
| <b>TP</b> | <b>Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment</b>  |

## **GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:**

- P Community Home
- C Correction, Detention, or Penal Facilities
- P Fire/Police Station
- C Military and Armed Forces Reserve Center
- C Sanitary Landfill

## **EDUCATIONAL AND RELIGIOUS USES:**

- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P School: Public/Private

## **SERVICE**

- C Kennel (with outdoor pens)
- P Kennel (without outdoor pens)
- P Veterinary Service (all size animals)

## **TRADE – RETAIL USES**

- C Liquor Store (on premises consumption) (Defined under Liquor Store)

## **TRANSPORTATION, COMMUNICATION AND UTILITIES:**

- C Airport, Heliport and Flying Field Terminals – Commercial
- C Antenna Tower – Commercial
- P Public Utility Facility
- C Utility Generation, Production, Treatment

## **RESOURCE PRODUCTION AND EXTRACTION USES:**

- P Farming, Ranching & Livestock, Hatchery
- C Mining
- C Petroleum or Gas Well



# Permitted Uses in GR Zoning

## RESIDENTIAL USES:

- P Bed & Breakfast
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Institutional
- P Dwelling – Multiple-Family
- P Dwelling – Single Family Detached
- P Hotel/Motel

## ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Day Care Operation – Home Based
- P Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Freight Container
- P Fuel Sales
- P Garage Sales
- P Home Occupation
- TP Itinerant Business
- P Manufacturing (incidental)
- TP Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage and parking)
- P Recycling Collection Point
- P Subdivision Sales Office (temporary)
- P Swimming Pools, Private (accessory to residential use)
- P Tennis Courts, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems

## CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- P Cultural Facilities
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Recreation and Commercial Entertainment - Indoor

## GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- C Ambulance Service
- P Fire/Police Station
- P Medical/Dental Laboratory
- P Post Office
- C Social Service Facility

## EDUCATIONAL AND RELIGIOUS USES:

- P Arts School
- P Church or Place of Worship
- P Day-Care Operation - Center-Based
- P Educational and Scientific Research
- P School: Public/Private
- C Trade/Business School
- P University/College

## SERVICE

- P/C Automobile Wash
- C Funeral Home/ Mortuary/Morgue
- P Kennel (Without Outdoor Pens)
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- C Printing, Copying, Reproduction, Publishing
- P Repair and Maintenance Services - Automobile/Small Truck (minor)
- P Repair and Maintenance Services (indoor)
- C Tattoo Parlor
- P Veterinary Service (small animals)

## TRADE – RETAIL USES

- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Fuel Sales
- P Liquor Store (Off Premises Consumption) (Defined under Liquor Store)
- P Liquor Store (On Premises Consumption) (Defined under Liquor Store)
- P Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (indoor)
- C Retail Sales/Rental (outdoors, non-vehicle)

## TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Antenna Tower- Commercial
- P Automobile Parking Lot or Structure - Commercial
- P Broadcast Studio
- P Public Utility Facility

## RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

## LEGEND

- P
- C
- TP

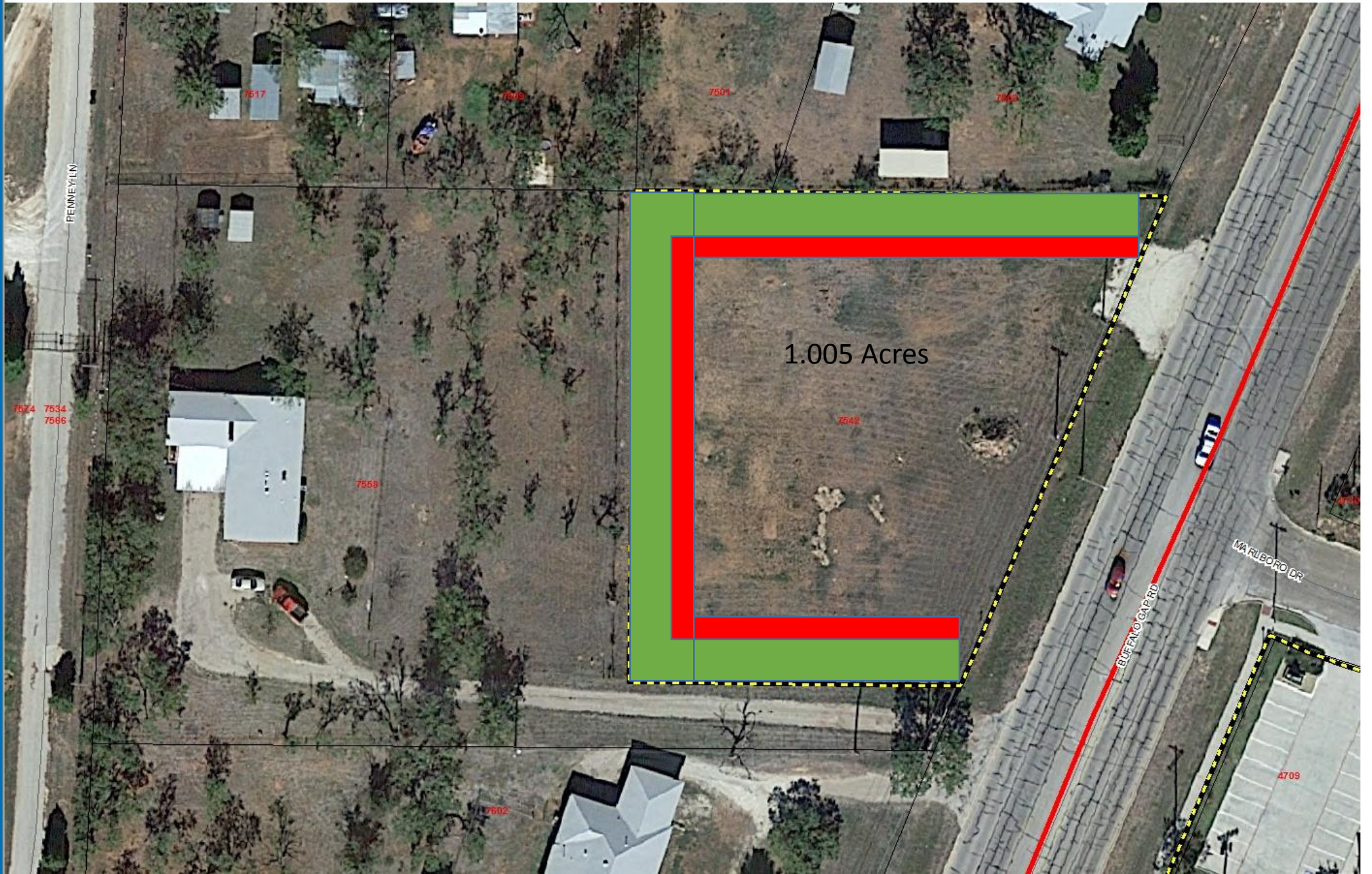
Permitted as a Right-of-Use (may be subject to compliance with conditions described within Section 2.4.3 of the Land Development Code)  
Permitted as a Conditional Use Permit, Requiring Approval by City Council  
Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

- Surrounding properties are zoned AO, a residential zoning district
- Buildings at least 30 feet from property lines
- 20-foot landscaped area along north, west, and south property lines
- 6-7 foot solid wall or fence along landscaped area





# Subject Parcel with Setback and Landscaped Areas





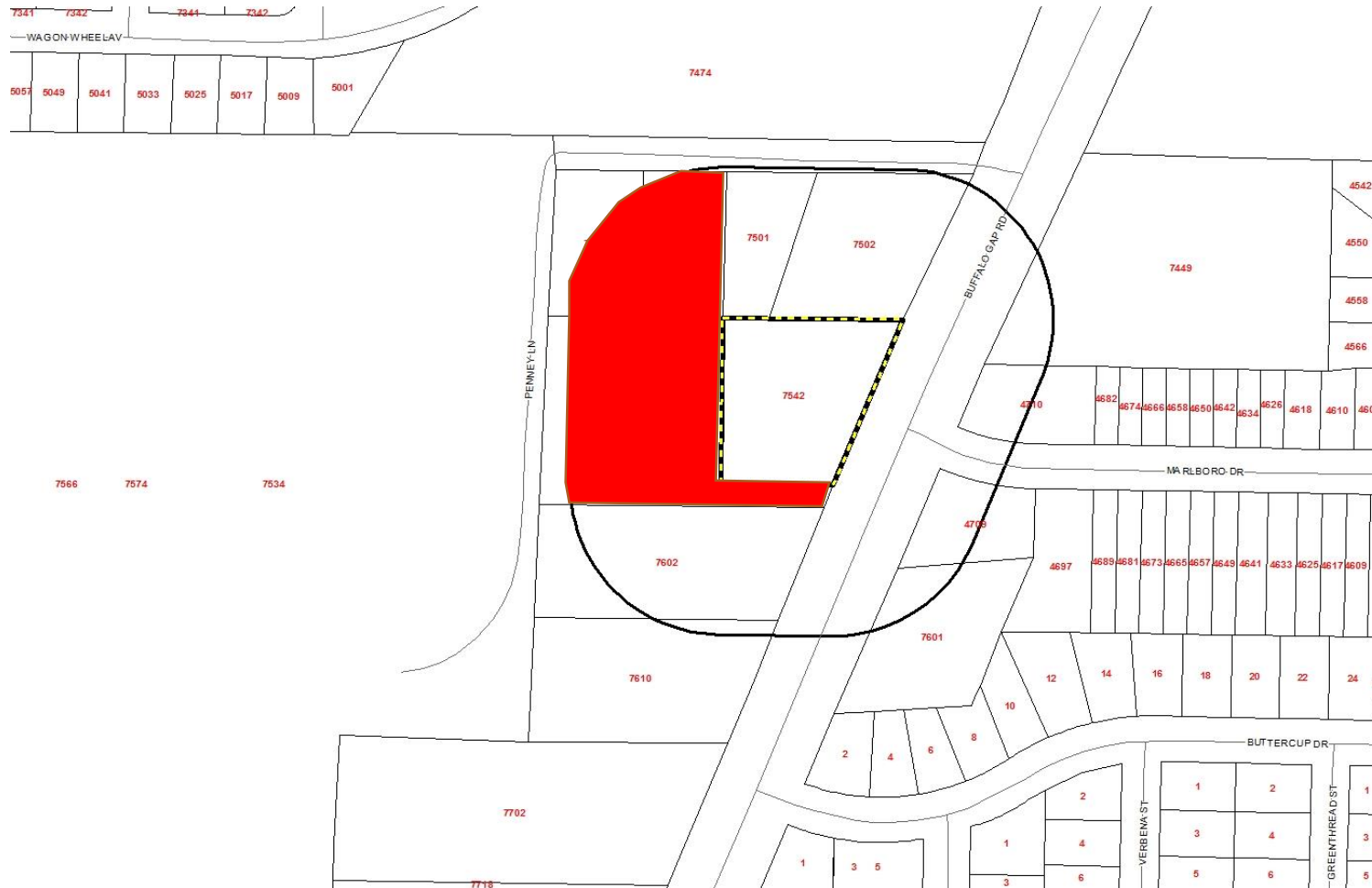
- Property and surrounding area designated Residential
- Buffalo Gap Corridor Study (1994) recognized there would be commercial zoning along Buffalo Gap Road
- Major commercial development and zoning at commercial nodes on Buffalo Gap Road including Antilley Rd and Beltway South
- General Commercial zoning within 400 feet of subject parcel
- Recent Council action for General Retail and Neighborhood Retail zoning on property across Buffalo Gap Rd
- Subject parcel less than one-half (1/2) mile from Beltway South





# Written Protests

Opposed -



Written Protest Area  
84,877 s.f.

Notification Area  
290,412 s.f.

% of Protest Area  
29.2%





- Written protests by owners of 20% or more of area within notification area
- Per Section 1.4.1.3 of Land Development Code, a super-majority (3/4ths) vote of the City Council is required to approve rezoning request



- January 3, 2017 Public Hearing
- Commission, by a 4-0 vote, recommends approval of rezoning request to General Retail (GR) zoning
- Written protests received after Commission public hearing



- Council may consider approving a rezoning to a more restrictive zoning district than that requested
- Neighborhood Retail (NR) zoning similar to GR district in uses allowed
- Some permitted uses in GR district are conditional uses in NR district
  - Drive-through facilities and fast food restaurants
  - Fuel sales and auto washes
  - Hotel / Motel
- Hours of operation in NR district limited to 6 a.m. to 11 p.m.





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO: Mr. Robert Hanna, City Manager**

**FROM: Mr. Dana L. Schoening, Director, Planning & Development Services**

**SUBJECT: Ordinance: (First Reading) Case #Z-2017-02: A request from Tuscany Ridge, LLC., agent Enprotec/Hibbs and Todd, to rezone property from RS6 (Residential Single Family) to PH (Patio Home) being 17.292 acres located in the 7550 Block (west side) of Hardwick Rd, north of Waldrop Dr.; and setting a public hearing on February 9th 2017. (Dana Schoening)**

---

**GENERAL INFORMATION**

**LOCATION:**

7550 Block (west side) of Hardwick Rd. and north of Waldrop Dr.

**REQUESTED ACTION:**

Rezone property from RS-6 to PH.

**SITE CHARACTERISTICS:**

The subject parcel is approximately 17.292 acres and is currently zoned RS-6 (Residential Single-Family). The property is undeveloped. The adjacent properties have RS-6 zoning to the south and west and AO (Agricultural Open Space) zoning to the north and east.

**ZONING HISTORY:**

The property was rezoned from AO to RS-6 in 2015.

**ANALYSIS:**

Current Planning Analysis

Currently the property is zoned RS-6 and is undeveloped. The applicant has future plans to subdivide the property for single family (patio home) residential uses. Most of the surrounding properties are developed with single family residential dwelling units. The property to the south is developed with a school.

· Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this general area as low-density residential. The applicant is requesting the zone change in order to develop a single family (patio home) residential subdivision. The requested zoning would be compatible with the surrounding land uses. The subject property is adjacent to single family developments to the south and west. The property to the east allows for AO (Agricultural Open Space) zoning uses and one of the properties to the south is developed as a school site.

## **SPECIAL CONSIDERATIONS**

## **FUNDING/FISCAL IMPACT**

## **STAFF RECOMMENDATION**

Staff recommends approval as requested.

## **BOARD OR COMMISSION RECOMMENDATION**

Mr. Smith moved to approve this request, and Mr. Famble seconded the motion. The vote was approved by four (Smith, Dunnahoo, Famble and McClarty) with none in opposition.

## **ATTACHMENTS:**

Description	Type
❑ Ordinance Cover	Exhibit
❑ Ordinance Exhibit	Exhibit
❑ Staff Report With Maps	Cover Memo
❑ Citizen Responses	Exhibit
❑ PowerPoint Presentation	Presentation

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 23, part known as the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto.

PASSED ON FIRST READING this 26th day of January, A.D. 2017.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19th day of January, 2017, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 9th day of February, 2017 to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 9th day of February, A.D. 2017.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_

## EXHIBIT "A"

Rezone property from RS-6 (Residential Single-Family) to PH (Residential Single-Family Patio Home).

Legal Description: The legal description for the property is set out in Exhibit "B", attached hereto.



Location: Part of 7550 Hardwick Road.

-END-

EXHIBIT "B"

**FIELD NOTES  
FOR  
PHASE 2  
TUSCANY RIDGE ADDITION  
ABILENE, TAYLOR COUNTY, TEXAS**

**BEING** Phase 2, Tuscany Ridge Addition, Abilene, Taylor County, Texas and being 16.922 acres of land out of Section 11, Lunatic Asylum Lands, Taylor County, Texas and also being part of the land described in Document Number 2014-19361, Official Public Records of Taylor County, Texas. Said 16.922 acres being more particularly described by metes and bounds as follows:

**BEGINNING** at a 30" detachable monument with 2" aluminum cap stamped "HIBBS & TODD" recovered for the southwest corner of this tract on the south line of the aforesaid Section 11, the north line of the W. J. Reddell Pre-emption Survey as established by a boundary line agreement described in Document No. 2013-7157, Official Public Records of Taylor County, Texas and also being the north line of Tuscany Trails Subdivision as shown on plat recorded in Plat Cabinet 2, Slide 334-C, Plat Records of Taylor County, Texas; Said monument bears 1264.22 feet North 89 degrees 45 minutes 33 seconds East from a 1/2" iron rod with cap stamped "AES 4130" recovered for the southwest corner of the aforesaid Section 11;

*Bearings are based on Grid North as determined by RTK GPS observations using the City of Abilene's Monumentation and Mapping Program Survey Marker Number 330 (published coordinates of N 6813304.298, E 1577602.701). From the said marker, the Point of Beginning bears 2280.06 feet North 14 degrees 08 minutes 25 seconds East.*

**THENCE** North 00 degrees 13 minutes 02 seconds East for a distance of 168.90 feet to a recovered 1/2" iron rod with cap stamped "H & T";

**THENCE** North 13 degrees 53 minutes 30 seconds East for a distance of 59.75 feet to a recovered 1/2" iron rod with cap stamped "H & T";

**THENCE** North 27 degrees 34 minutes 31 seconds East for a distance of 1227.69 feet to a recovered 1/2" iron rod with cap stamped "H & T";

**THENCE** South 82 degrees 25 minutes 24 seconds East for a distance of 63.92 feet to a 1/2" iron rod with cap stamped "H & T" recovered on the west line of that certain 20.006 acre tract conveyed to Mike Byrd and described in Document Number 2014-19362, Official Public Records of Taylor County, Texas. Said iron rod bears 175.71 feet South 24 degrees 47 minutes 35 seconds East



from a 1/2" iron rod with cap stamped "H & T" recovered for the northwest corner of the aforesaid 20.006 acre tract;

**THENCE** South 24 degrees 47 minutes 35 seconds East for a distance of 455.76 feet to a 1/2" iron rod with cap stamped "H & T" recovered for an angle point in the west line of the aforesaid 20.006 acre tract;

**THENCE** South 00 degrees 13 minutes 02 seconds West for a distance of 903.27 feet to a 1/2" iron rod with cap stamped "H & T" recovered for the southwest corner of the aforesaid 20.006 acre tract on the south line of the aforesaid Section 11, and being the north right of way line of Waldrop Road;

**THENCE** North 89 degrees 17 minutes 32 seconds West (Bearing Base for this tract) at a distance of 594.06 feet pass a 3/8" iron rod recovered for the northeast corner of the aforesaid Tuscany Trails Subdivision and continue the same course for a total distance of 834.42 feet to the point of beginning and containing an area of 737126 square feet or 16.922 acres of land.

*The purpose of this legal description is for zoning only and does not represent an on the ground survey.*

# ZONING CASE Z-2017-02

## STAFF REPORT



### APPLICANT INFORMATION:

Tuscany Ridge, LLC

Agent: Enprotec/ Hibbs & Todd

### HEARING DATES:

Planning & Zoning Commission: January 03, 2017

City Council 1<sup>st</sup> Reading: January 26, 2017

City Council 2<sup>nd</sup> Reading: February 09, 2017

### LOCATION:

7550 Block (west side) of Hardwick Rd. and north  
Of Waldrop Dr.

### REQUESTED ACTION:

Rezone property from RS-6 to PH.



### SITE CHARACTERISTICS:

The subject parcel is approximately 17.292 acres and is currently zoned RS-6 (Residential Single-Family). The property is undeveloped. The adjacent properties have RS-6 zoning to the south and west, AO (Agricultural Open Space) zoning to the north and east.

### ZONING HISTORY:

The property was rezoned from AO to RS-6 in 2015.

### ANALYSIS:

- Current Planning Analysis

Currently the property is zoned RS-6 and is undeveloped. The applicant has future plans to subdivide the property for single family (patio home) residential uses. Most of the surrounding properties are developed with single family residential dwelling units. The property to the south is developed with a school.

- Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this general area as low-density residential. The applicant is requesting the zone change in order to develop a single family (patio home) residential subdivision. The requested zoning would be compatible with the surrounding land uses. The subject property is adjacent to single family developments to the south and west. The property to the east allows for AO (Agricultural Open Space) zoning uses and one of the properties to the south is developed as a school site.

### PLANNING STAFF RECOMMENDATION:

Staff recommends approval as requested.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:**

Mr. Smith moved to approve this request, and Mr. Famble seconded the motion. The vote was approved by four (Smith, Dunnahoo, Famble and McClarty) with none in opposition.

**NOTIFICATION:**

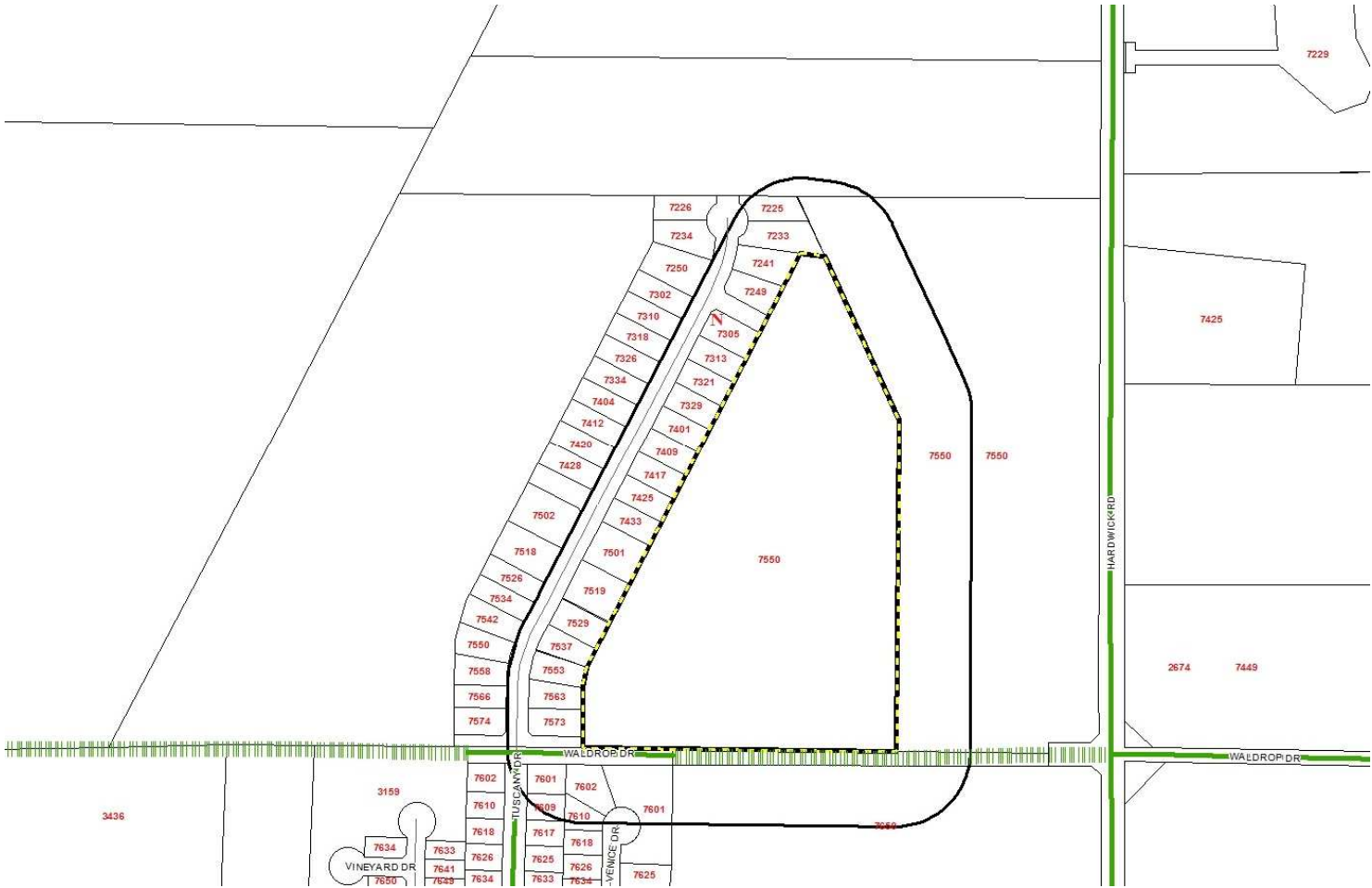
Property owners within a 200-foot radius were notified of the request.

OWNER	SITUS	RESPONSE
ANDERSON RICHARD	7617 TUSCANY DR	
BIG COUNTRY TRENDSETTERS LLP	7601 VENICE DR	
BYRD MIKE	7550 HARDWICK RD	
BYRD MIKE	7550 B HARDWICK RD	
CHILDERS MATTHEW	7321 TUSCANY DR	
GREENE AARON A & KRISTIN	7602 VENICE DR	
GUNCKEL LANE A	7601 TUSCANY DR	
HENDERSON STEVE	7305 TUSCANY DR	Opposed
LAWSON CHARLES L	7425 TUSCANY DR	
M R MASON CONSTRUCTION INC	7529 TUSCANY DR	
MAYFIELD DAVID R & ASHLEY R	7609 TUSCANY DR	
MELA DEVELOPMENT INC	7401 TUSCANY DR	
MELA DEVELOPMENT INC	7313 TUSCANY DR	
OLSON BRENT & CHRISTINE	7329 TUSCANY DR	
POAGE MATTHEW	7610 VENICE DR	
PREMIER CUSTOM HOMES LLC	7318 TUSCANY DR	
PREMIER CUSTOM HOMES LLC	7326 TUSCANY DR	
SCOTT JONATHAN & REBECCA	7433 TUSCANY DR	
TUSCANY RIDGE LLC	7553 TUSCANY DR	
TUSCANY RIDGE LLC	7550 TUSCANY DR	
TUSCANY RIDGE LLC	7573 TUSCANY DR	
TUSCANY RIDGE LLC	7563 TUSCANY DR	
TUSCANY RIDGE LLC	7518 TUSCANY DR	
TUSCANY RIDGE LLC	7534 TUSCANY DR	
TUSCANY RIDGE LLC	7428 TUSCANY DR	
TUSCANY RIDGE LLC	7542 TUSCANY DR	
TUSCANY RIDGE LLC	7501 TUSCANY DR	
TUSCANY RIDGE LLC	7502 TUSCANY DR	
TUSCANY RIDGE LLC	7566 TUSCANY DR	
TUSCANY RIDGE LLC	7334 TUSCANY DR	
TUSCANY RIDGE LLC	7412 TUSCANY DR	
TUSCANY RIDGE LLC	7404 TUSCANY DR	
TUSCANY RIDGE LLC	7526 TUSCANY DR	

TUSCANY RIDGE LLC	7574 TUSCANY DR	
TUSCANY RIDGE LLC	7420 TUSCANY DR	
TUSCANY RIDGE LLC	7310 TUSCANY DR	
TUSCANY RIDGE LLC	7558 TUSCANY DR	
TUSCANY RIDGE LLC	7519 TUSCANY DR	
TUSCANY RIDGE LLC	7241 TUSCANY DR	
TUSCANY RIDGE LLC	7250 TUSCANY DR	
TUSCANY RIDGE LLC	7249 TUSCANY DR	
TUSCANY RIDGE LLC	7233 TUSCANY DR	
TUSCANY RIDGE LLC	7302 TUSCANY DR	
TUSCANY RIDGE LLC	7234 TUSCANY DR	
TUSCANY RIDGE LLC	7537 TUSCANY DR	
TUSCANY RIDGE LLC	7550 HARDWICK	
WILSON BUILT HOMES LLC	7409 TUSCANY DR	
WILSON BUILT HOMES LLC	7417 TUSCANY DR	
WYLIE IND SCHOOL DIST	7650 HARDWICK RD	

# PROPERTY OWNER NOTIFICATION MAP

0 in Favor- **Y**  
1 Opposed- **N**



## AERIAL IMAGERY OF SUBJECT PARCEL

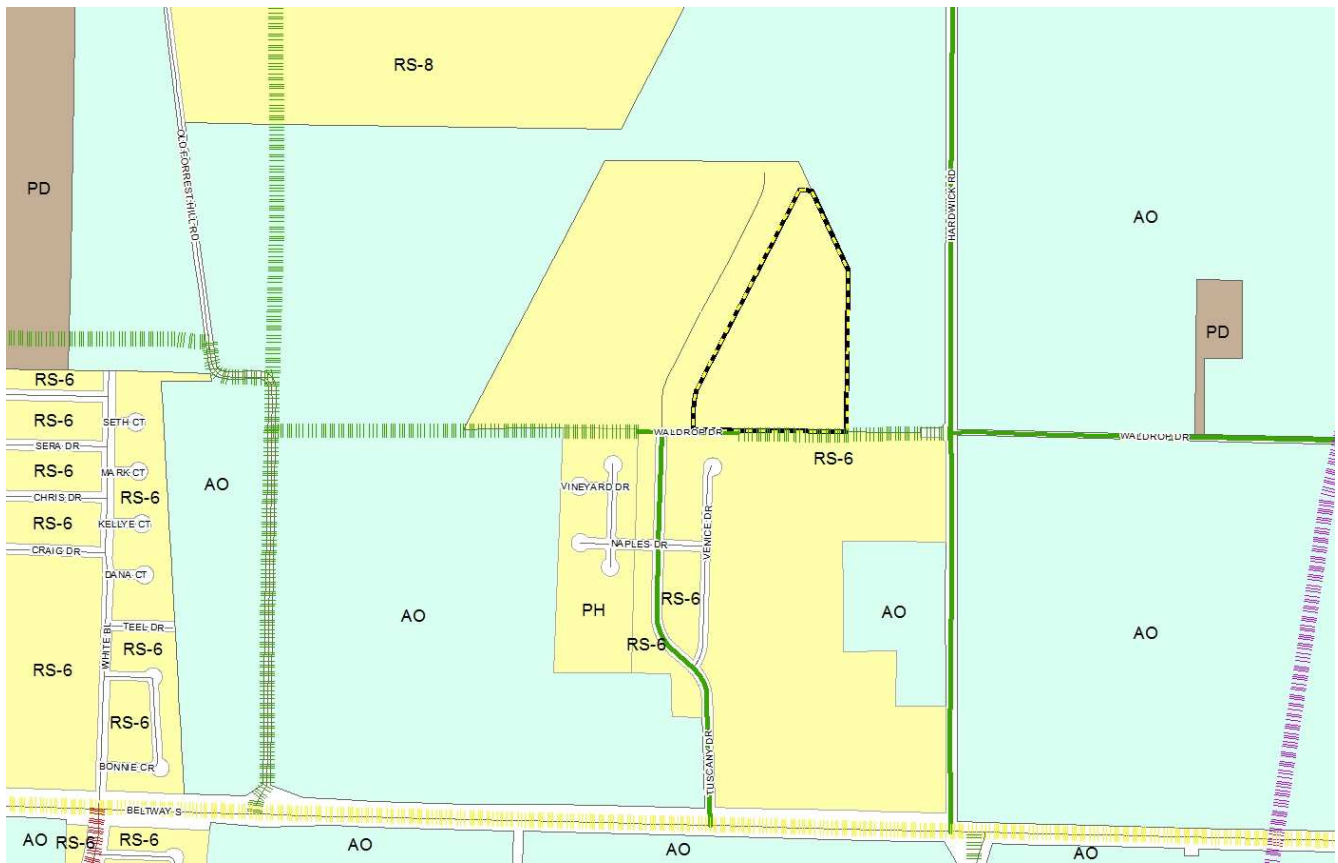




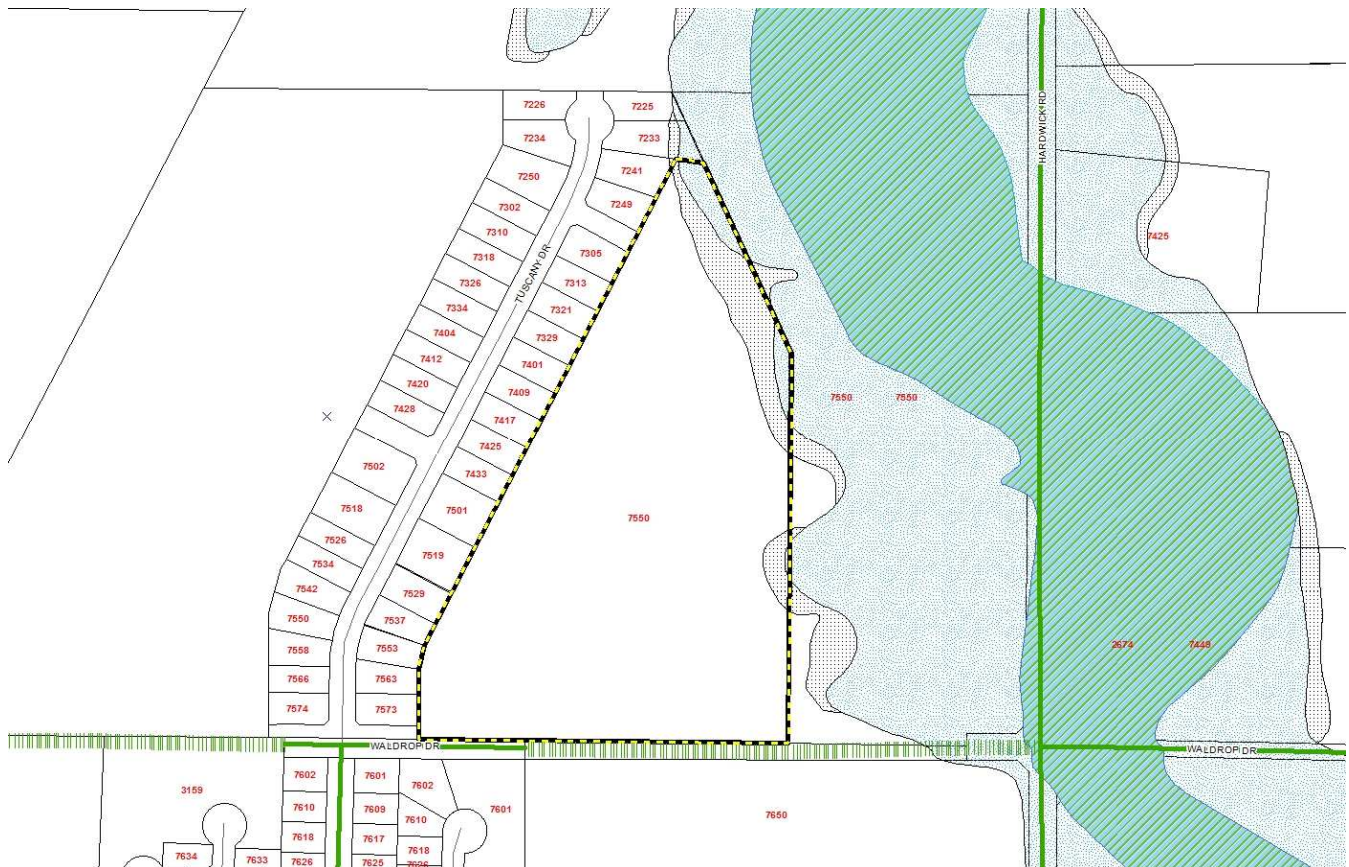
## AERIAL IMAGERY OF SURROUNDING AREA



## ZONING MAP



## FLOODPLAIN AND THOROUGHFARE MAP



### **Floodplain**

Subject parcel is partially located in a floodplain.

### **Thoroughfare**

Green is COLLECTOR

Hatched line is PROPOSED



## SUBJECT PARCEL



**For the PLANNING & ZONING COMMISSION**

Please call (325) 676-6237 if you have any questions about this notice.

**CASE #: Z-2017-02**

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also fax or email your position to the fax number or email address also listed below. All correspondence must include your name and address.

Name: HENDERSON STEVE

Address: 7305 TUSCANY DR

Mailing To: Planning and Development Services  
P.O. Box 60, Abilene TX 79604-0060

Fax #: (325) 676-6288

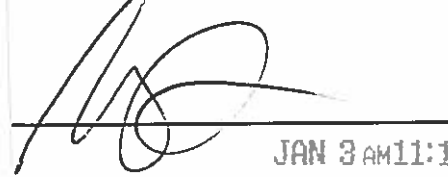
email: [planning@abilenetx.com](mailto:planning@abilenetx.com)

I am in favor ☐

I am opposed ☒

Additional Comments:

Signature: \_\_\_\_\_



JAN 3 AM 11:15

# Z-2017-02

**Request:** Rezone from AO to PH zoning

**Location:** In the 7550 Block (west side) of Hardwick Rd, north of Waldrop Dr.

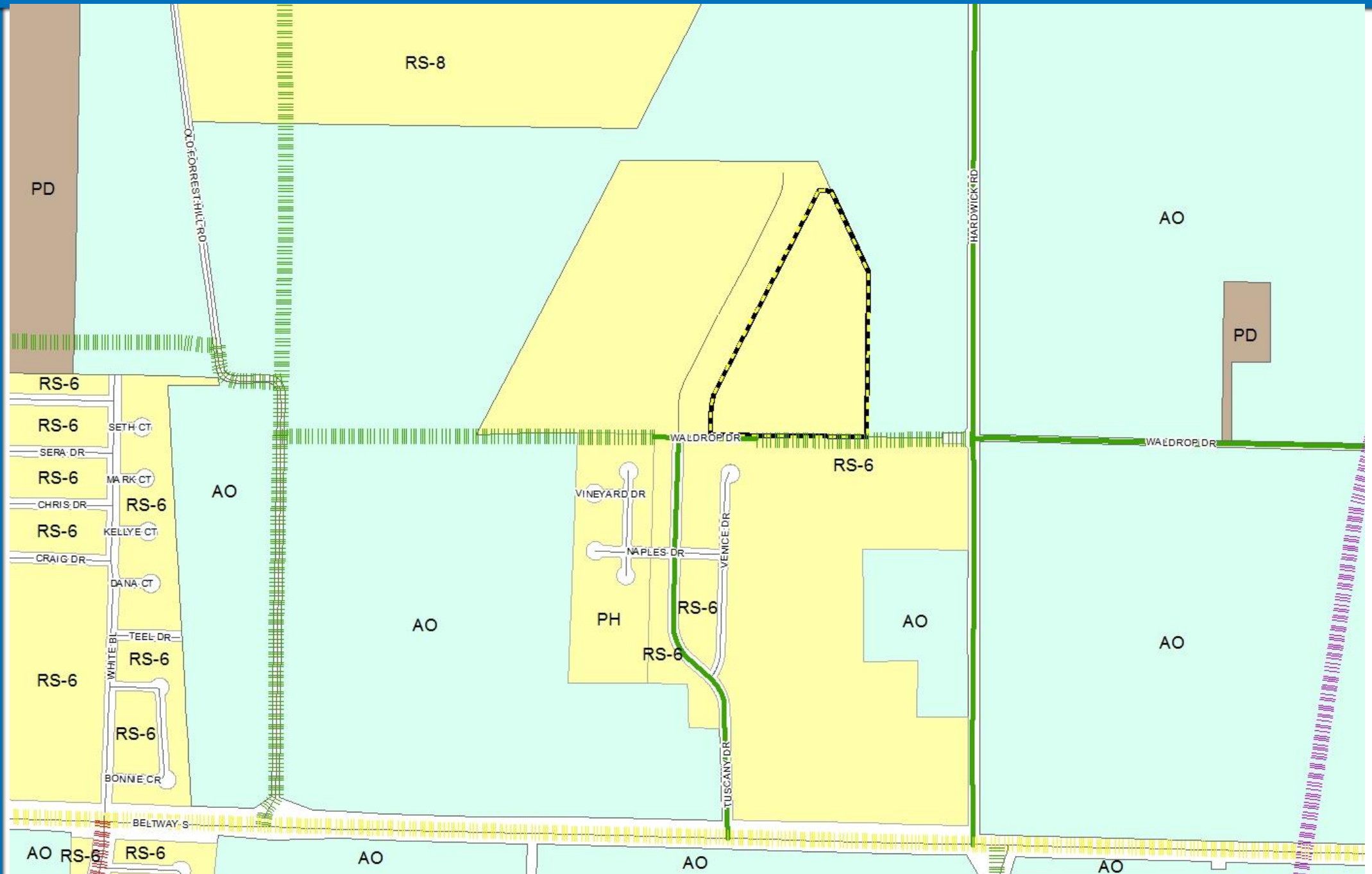
**Notification:** 0 in favor; 1 opposed

**Staff Recommendation:** Approval

**P & Z Recommendation:** Approval





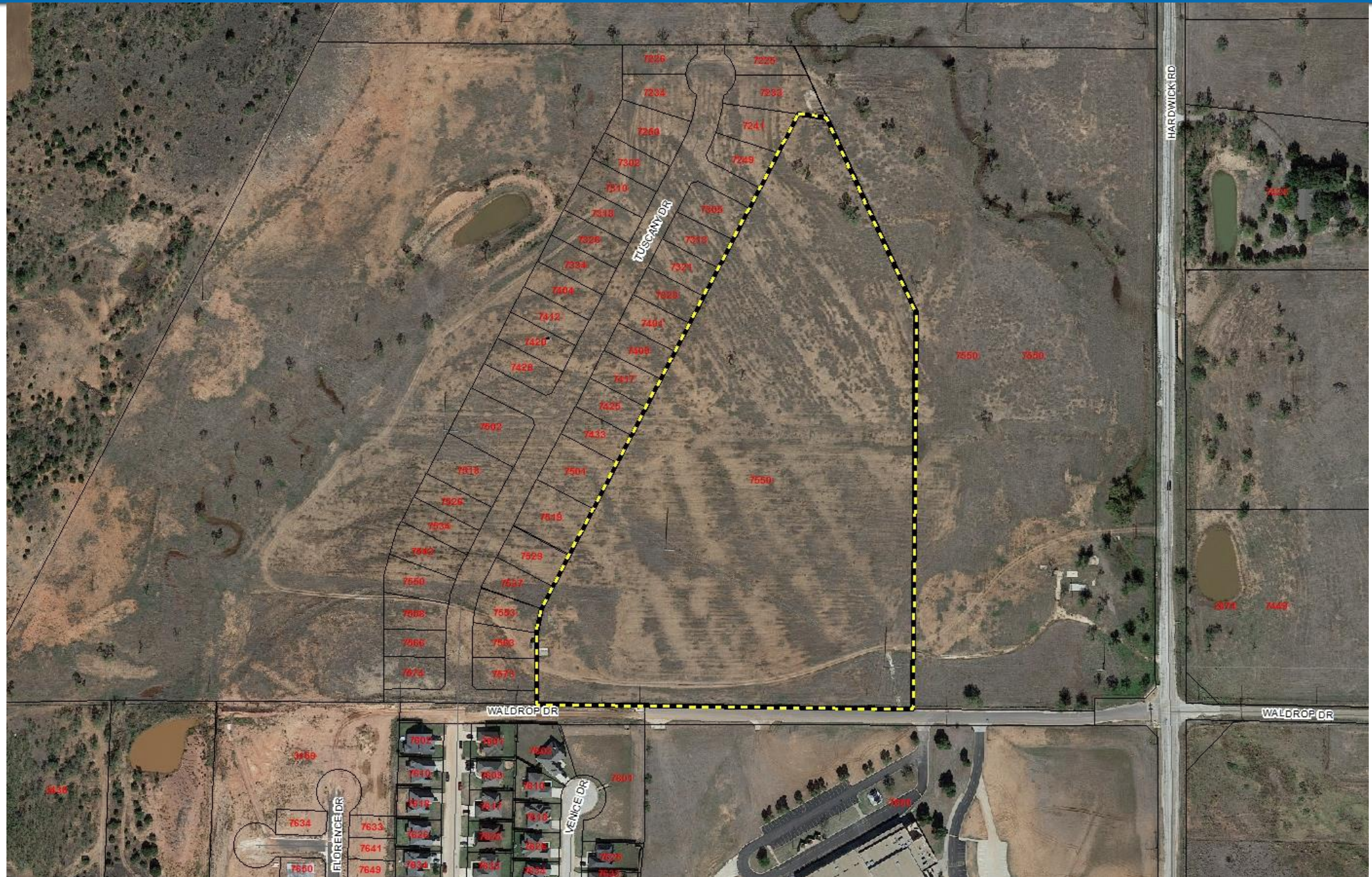






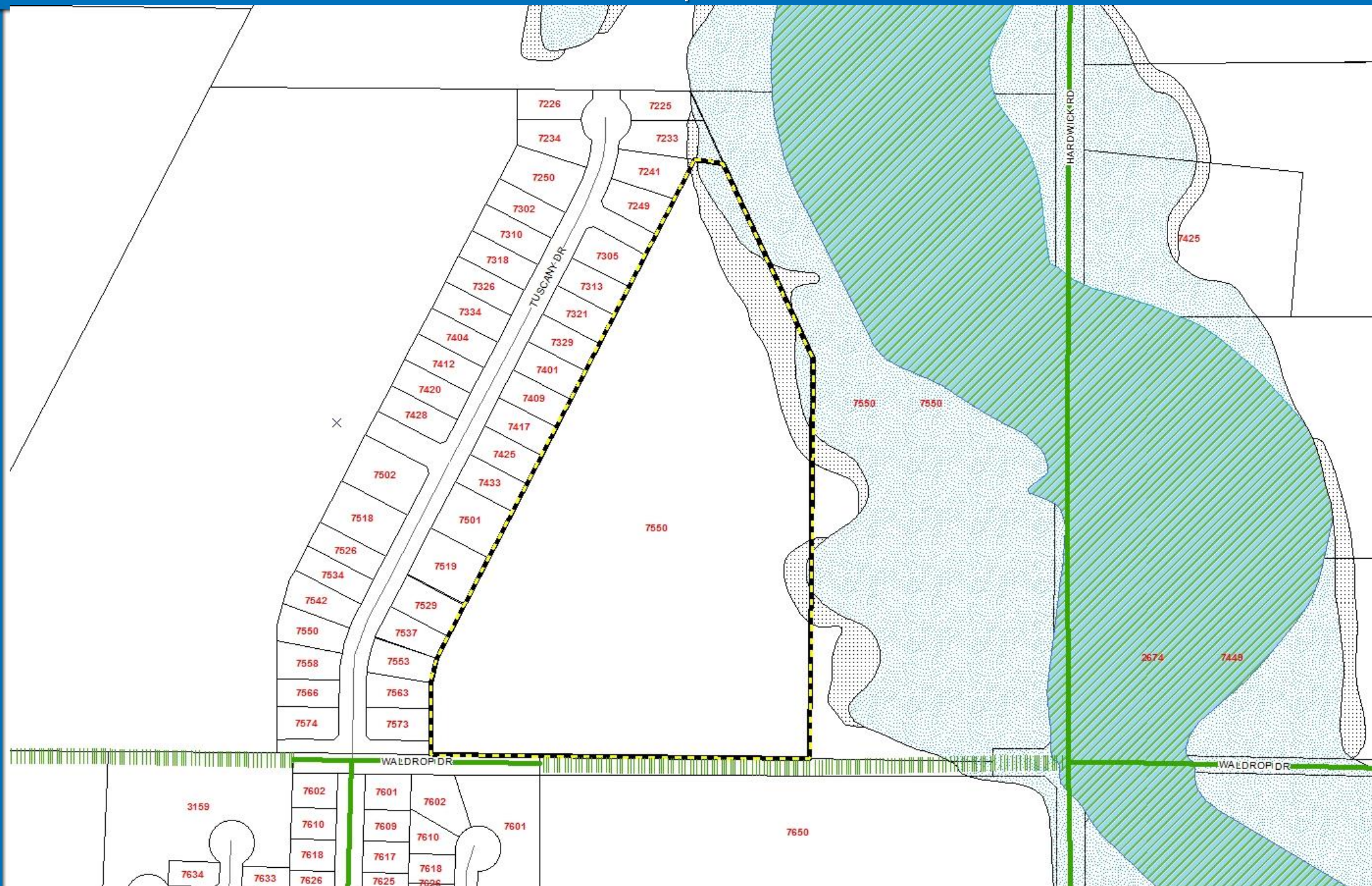








# Flood Map





View looking west at subject property





View looking west at subject property down Waldrop Rd.





View looking north at subject property







View looking east along Griffith Rd.





View looking north east





View looking across Walrop Dr









View looking north west at subject property



# Existing Uses in RS Zoning

## RESIDENTIAL USES:

- C Bed & Breakfast
- C Dwelling – Duplex
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Single-Family Detached
- C Group Home

## ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P/C Day Care Operation – Home-Based
- P Dwelling – Accessory
- TP Field Office or Construction Office (temporary)
- P Garage Sale
- P Home Occupation
- C Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage & parking)
- TP Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems

## CULTURAL AND RECREATIONAL USES:

- C Civic, Social, and Fraternal Organization
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)

## GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Community Home
- P Fire/Police Station
- C Social Service Facility

## EDUCATIONAL AND RELIGIOUS USES:

- P Church or Place of Worship
- P School: Public/Private

## TRANSPORTATION, COMMUNICATION AND UTILITIES:

- P Public Utility Facility

## RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

## LEGEND

- P Permitted as a Right-of-Use (may be subject to compliance with conditions described within Section 2.4.3 of the Land Development Code)
- C Permitted as a Conditional Use Permit, Requiring Approval by City Council
- TP Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment



# Proposed Uses in PH Zoning

## **RESIDENTIAL USES:**

- C Bed & Breakfast
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Patio Home
- P Dwelling – Single-Family Detached

## **ACCESSORY AND INCIDENTAL USES:**

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P/C Day Care Operation – Home-Based
- TP Field Office or Construction Office (temporary)
- P Garage Sale
- P Home Occupation
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage & parking)
- TP Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems

## **CULTURAL AND RECREATIONAL USES:**

- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)

## **GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:**

- P Community Home
- P Fire/Police Station

## **EDUCATIONAL AND RELIGIOUS USES:**

- P Church or Place of Worship
- P School: Public/Private

## **TRANSPORTATION, COMMUNICATION AND UTILITIES:**

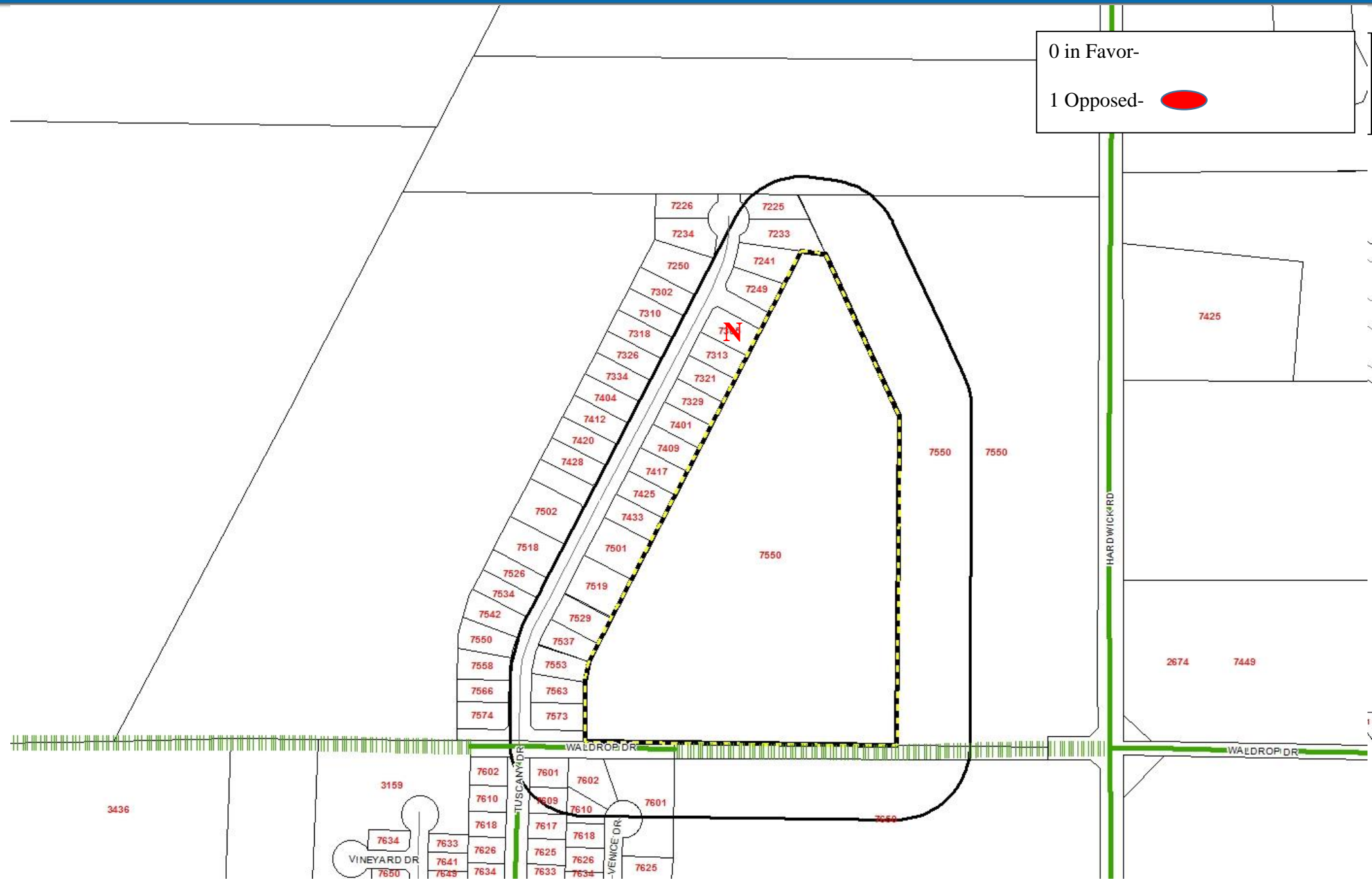
- P Public Utility Facility

## **RESOURCE PRODUCTION AND EXTRACTION USES:**

- P Petroleum or Gas Well
- P Urban Garden

## **LEGEND**

- P Permitted as a Right-of-Use (may be subject to compliance with conditions described within Section 2.4.3 of the Land Development Code)
- C Permitted as a Conditional Use Permit, Requiring Approval by City Council
- TP Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO: Robert Hanna, City Manager**

**FROM: Michael G. Rice, P.E., Director of Public Works**

**SUBJECT: Resolution: Award of Bid #CB-1720 - North 3rd St. Rehabilitation Project (*Michael Rice*)**

---

**GENERAL INFORMATION**

This Project was advertised as a Public Notice on December 18th & 25th of 2016 with a bid opening dated January 10th 2017. This contract involves the mill and overlay with spot full depth repairs of North 3rd St. from N. Willis St. to Graham St. where the scope will change to a reconstruction section ending at Grape St. The contract will also include alley aprons, valley gutters, addition of curb ramps, and areas of curb and gutter replacement throughout the project.

The North 3rd St. project is one of the street projects scheduled for this year as part of Proposition 1 of the voter approved 2015 Bond Program.

North 3rd St. is not located on the approved Bicycle Plan for the City of Abilene.

**SPECIAL CONSIDERATIONS**

This project has a contract completion time of 80 working days (approx. 4 months, weather permitting).

**FUNDING/FISCAL IMPACT**

Funding for this project is allocated through General Obligation funds.

**STAFF RECOMMENDATION**

Staff recommends bid award to Bontke Brothers Construction Co., Inc., of Abilene Texas in the amount of \$1,019,257.41.

**BOARD OR COMMISSION RECOMMENDATION**

**ATTACHMENTS:**

Description	Type
□ Resolution Letter	Resolution Letter



- ▣ Bid Tab
- ▣ Project Location Map
- ▣ Contract
- ▣ Presentation Slides

Backup Material  
Exhibit  
Backup Material  
Presentation

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,  
AWARDING BID TO BONTKE BROTHERS CONSTRUCTION CO., INC., ABILENE, TEXAS**

**WHEREAS**, the City of Abilene duly advertised and gave such notice, as required by law, for bids for the rehabilitation of N. 3<sup>rd</sup> St. from N. Willis St. to Grape St.; and

**WHEREAS**, the project involves the mill and overlay with spot full depth repairs of N. 3<sup>rd</sup> St. from N. Willis St. to Graham St. where the scope will change to a reconstruction section ending at Grape St. The contract will also include alley aprons, valley gutters, addition of curb ramps, and areas of curb and gutter replacement throughout the project: and

**WHEREAS**, the following bids were received and opened on the January 10, 2017:

Bontke Brothers Construction Co., Inc., Abilene, Texas	\$1,019,257.41
Nobles Road Construction Inc., Abilene, Texas	\$1,041,907.44
J.H. Strain & Sons Inc., Tye, Texas	\$1,179,414.70
H.O.S.S. Paving Inc., Colorado City, Texas	\$1,272,766.51
Contract Paving Co., Tye, Texas	\$1,644,646.05

**WHEREAS**, Bontke Brothers Construction Co., Inc., Abilene, Texas submitted the low bid in the amount of \$1,019,257.41 with the bid meeting specifications. Staff recommends awarding the bid to the low bidder, Bontke Brothers Construction Co., Inc., Abilene, Texas.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF ABILENE, TEXAS**

PART 1: That the City Council approves this bid in the amount of \$1,019,257.41.

PART 2: That this Resolution shall take effect immediately from and after passage.

**ADOPTED** this 26<sup>th</sup> day of January, 2017.

ATTEST:

\_\_\_\_\_  
Danette Dunlap, City Secretary

\_\_\_\_\_  
Norm Archibald, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney

**CITY OF ABILENE  
PURCHASING DIVISION  
TABULATION OF BIDS**

PAGE  
1 OF 1

**DEPARTMENT:** ENGINEERING  
**BID NO.:** CB-1720  
**TIME OF OPENING:** 11:00 A.M.  
**DATE OF OPENING:** January 10, 2017

BONTKE BROTHERS  
CONSTRUCTION COMPANY,  
INC.  
ABILENE, TX

NOBLES ROAD  
CONSTRUCTION INC.  
ABILENE, TX

J.H. STRAIN & SONS, INC.  
TYE, TX

H.O.S.S. PAVING, INC.  
COLORADO CITY, TX

CONTRACT PAVING  
COMPANY  
TYE, TX

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
1.	N. 3 <sup>rd</sup> ST. REHABILITATION PROJECT				*1,019,257.41		1,041,907.44		1,179,414.70		1,272,766.51		1,644,646.05		
BASE BID					*1,019,257.41		1,041,907.44		1,179,414.70		1,272,766.51		1,644,646.05		
DISCOUNT															
TOTAL BID					*1,019,257.41		1,041,907.44		1,179,414.70		1,272,766.51		1,644,646.05		

\*NOTES: INDICATES RECOMMENDED AWARD



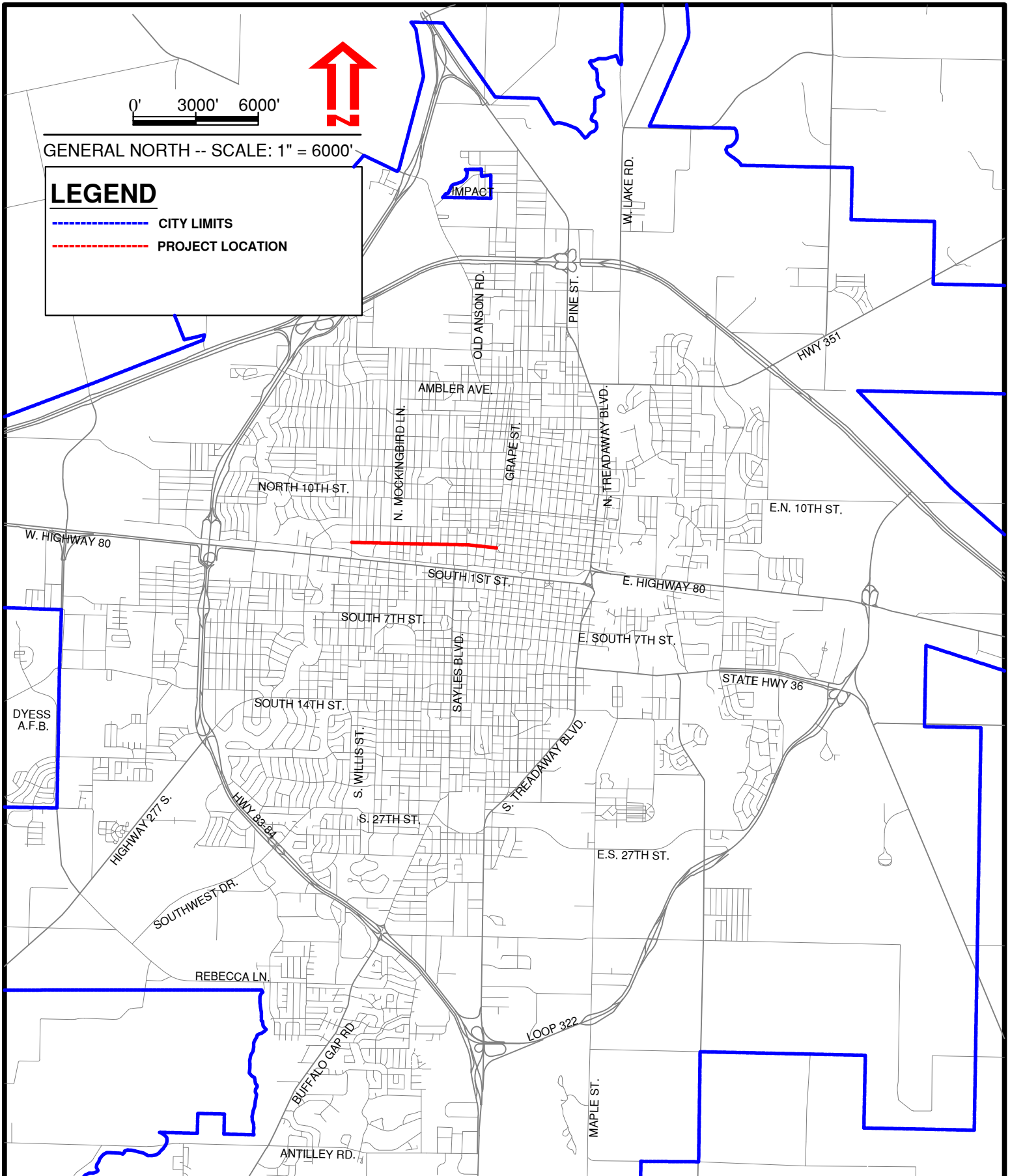
0' 3000' 6000'



GENERAL NORTH -- SCALE: 1" = 6000'

## LEGEND

- CITY LIMITS
- PROJECT LOCATION



Sheet  
1  
of  
1

CITY OF ABILENE, TEXAS  
PUBLIC WORKS DEPARTMENT  
ENGINEERING DIVISION

## NORTH 3RD STREET REHABILITATION PROJECT

Designed By: M. RICE

Drawn By: M. MILLER

Checked By: M. RICE

Horizontal Scale: 1"=6000'

Vertical Scale: N.T.S.

Folder: MISC.  
PROJECTS

Computer File Name:  
N. 3RD ST.  
REHABILITATION

Date: JAN. 2016

# CONSTRUCTION CONTRACT

## BACKGROUND

THIS CONTRACT, made January 26, 2017, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Bontke Brothers Construction Company, Inc. of the City of Abilene, State of Texas. ("Contractor").

The City recognizes a need for high quality construction work; the Contractor agrees to complete the project in return for payment.

## THE AGREEMENT

### 1. Work and Consideration.

The Contractor hereby agrees to commence and complete the construction of Work described as

#### **N. 3<sup>RD</sup> ST. REHABILITATION PROJECT**

The Contractor must provide all Work required in the Contract Documents -- incorporated herein by reference -- labeled:

#### **N. 3<sup>RD</sup> ST. REHABILITATION PROJECT**

All work to be performed will be completed in conformance with (1) Part I and II of the City of Abilene's Standard Specifications for Construction adopted September, 2006 with the attached amendments in these Contract Documents, and (2) the Plans attached to these Contract Documents. City of Abilene specifications control over Texas Department of Transportation specifications in the event of a conflict.

In consideration of this Work, the City will pay the Contractor the sum of \$1,019,257.41 (One million nineteen thousand two hundred fifty-seven dollars and forty-one cents).

2. **Timely Work.** The Contractor must begin and fully complete Work in the days stated in the Notice to Proceed. The time allows for normal delays associated with weather conditions, crew coordination, etc. Time is of the essence, and liquidated damages as set forth in the General Conditions (Paragraph 16) apply for late Work.

3. **Payment.** If Performance and Payment Bonds are required, the City will pay Contractor according to the General Conditions (Paragraph 20). If Performance and Payment Bonds are not required, the City will pay Contractor according to the Instructions to Bidders.

4. **No liens.** No mechanic, contractor, subcontractor, supplier, or other person can or will contract for, or in any other manner have or acquire any lien upon the work of this Contract, or the land upon which it is situated. The laws of the State of Texas govern this Contract.

5. **Venue.** Venue for any legal proceeding is Taylor County, Texas.

6. **Indemnity.**

### A. Definitions

For the purpose of this section the following definitions apply:

"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Contractor" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Contractor's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Contractor.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

"Proven" shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

"Sole negligence" shall mean negligence of a party that is unmixed with the fault of any other person or entity.

#### **B. Indemnity**

The Contractor must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Contractor's work and activities conducted in connection with this Contract.

The Contractor is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Contractor or Contractor's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Contractor.

The City and Contractor must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Contractor or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE



**THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.**

7. **Insurance.** The Special Conditions found the City of Abilene's Standard Specifications for Construction adopted September, 2006, Part I, Division I, Item 3, contain the insurance requirements of this Contract.

8. **Overcharges.** The Contractor assigns to City any claims for overcharges related to this Contract which arise under antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq., as amended.

9. **Contract Interpretation.** Any dispute about the Contract's meaning or application will be interpreted fairly and reasonably, and neither more strongly for or against either party.

10. **Indebtedness to City.** Contractor agrees that no payments owed by him of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any Bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty or interest. Contractor is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City to counterclaim and offset any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty or interest.

11. **Contract Execution.** The Contractor must sign the Contract first, with any necessary attestation and seal. The City Attorney or designee must review the Contract, and approve or disapprove it. If approved, the City's authorized agent will then sign. The City Secretary must keep a signed original in the City Secretary's Office.

12. **Contract Copies.** Each of the two executed copies is an original.

IN WITNESS HERE OF, the parties hereto have executed this contract:

**CONTRACTOR**

Name of Contractor:

Bontke Brothers Const

Business Address:

102 College Drive  
Abilene TX 79601

Signature



Name - Typed or Printed

Kenneth Bontke

Title - Typed or Printed

President

Business Phone No.

325 320 0404

Federal Tax I.D.#

75 133 1325

ATTEST: (If Corporation)

Michael Bontke  
Corporate Secretary's Signature

Corporate Seal  
(if none, write "None") |

**CITY OF ABILENE**

Authorized Signature

APPROVED:

City Attorney

Risk Manager

ATTEST:

City Secretary

Seal: |

# Agenda Item: North 3<sup>rd</sup> St. Rehabilitation Project

**Resolution: Bid Award #CB-1720 North 3<sup>rd</sup> St. Rehabilitation Project.  
(Rice)**





# Agenda Item:

## North 3<sup>rd</sup> St. Rehabilitation Project

- Construction Contract for the rehabilitation of North 3<sup>rd</sup> St. from N. Willis St. to Grape St.
- Project Advertised December 18<sup>th</sup> & December 25<sup>th</sup>, Bids Opened January 10<sup>th</sup>.
- Five bids were received.
- Staff recommends award of contract to Bontke Brothers Construction Co., Inc., in the amount of \$1,019,257.41.



**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO: Robert Hanna, City Manager**

**FROM: Larry Bell, Fire Chief**

**SUBJECT: Ordinance & Public Hearing: (Final Reading) Amending the Fire Code Pamphlet, which amends The International Fire Code, 2009 Edition, adopted by City of Abilene Ordinance, Section 10-47. (Larry Bell)**

---

**GENERAL INFORMATION**

Abilene Fire Department is currently responsible for tracking the inspection, testing, and maintenance of fire and life safety systems within the City of Abilene. Occupancies that have fire and life safety systems installed are required by the Abilene Fire Code to have the systems inspected and tested on a regular basis. Contractors are not required to notify the Fire Department of the completed inspections unless the systems do not pass inspection creating inaccurate data in Abilene Fire Department's reporting software.

An internet-based tool used to document all inspections would improve code compliance, reduce false alarm activity and provide a safer community.

**SPECIAL CONSIDERATIONS**

The ordinance would require contractors to report inspection, testing, and maintenance of fire and life safety systems so that the Abilene Fire Department would have access to complete and up-to date information. The web-based system utilized would be the one chosen by the City and formalized by agreement between the system and the City. Life safety systems requiring record of inspection will include fire alarm systems, sprinkler systems, standpipes, commercial kitchen hood suppression systems, special suppression systems, private hydrants, fire pumps, and spray booths.

**FUNDING/FISCAL IMPACT**

There is no cost to the City or business occupant. Nominal fee for administration is the responsibility of the contractors performing the inspection, testing and maintenance. Most systems are only inspected once per year.

**STAFF RECOMMENDATION**

Staff recommends approval.

**BOARD OR COMMISSION RECOMMENDATION**

N/A

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Ordinance	Ordinance
<input type="checkbox"/> Exhibit	Backup Material
<input type="checkbox"/> Fire Code	Backup Material
<input type="checkbox"/> Revised Presentation	Cover Memo

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS  
AMENDING THE FIRE CODE PAMPHLET, WHICH AMENDS THE  
INTERNATIONAL FIRE CODE, 2009 EDITION, ADOPTED BY CITY OF ABILENE  
ORDINANCE SECTION 10-47; CALLING A PUBLIC HEARING; AND PROVIDING  
AN EFFECTIVE DATE.**

**WHEREAS**, Abilene Fire Department is currently responsible for tracking the inspection, testing, and maintenance of fire and life safety systems within the City of Abilene. Fire and life safety systems are required by the Abilene Fire Code to be inspected and tested on a regular basis. Currently, contractors are not required to notify the Fire Department of the completed inspections unless the systems do not pass inspection; and,

**WHEREAS**, requiring contractors to use a city-approved internet based system will enable the Abilene Fire Department to track each inspection, drive code compliance, reduce false alarm activity and protect the health, safety, and welfare of the Citizens;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF ABILENE, TEXAS:**

- PART 1:** That the fire code pamphlet amending and supplementing the International Fire Code, 2009 Edition, as adopted by City of Abilene Ordinance 10-47, is hereby amended as set out in Exhibit A.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 4:** That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 5:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective thirty (30) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON FIRST READING this 12<sup>th</sup> day of January, 2017.**



A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 8<sup>th</sup> day of January, 2017, the same being more than fifteen (15 days) prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 26<sup>th</sup> day of January, 2017 to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON SECOND AND FINAL READING this 26<sup>th</sup> day of January, 2017.**

ATTEST:

\_\_\_\_\_  
Danette Dunlap, City Secretary

\_\_\_\_\_  
Norm Archibald, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney

## **Exhibit A**

### **107.2.1 Test and inspection records.** *Insert the following at the end of paragraph:*

The above requirement for record inspection and availability of records shall be met by the submission of records to the internet-based system under contract with the City. Contractors required to test fire and life safety systems shall be qualified and registered with the internet-based system under contract with the City at the time the inspection is made. Record of inspection, testing and maintenance of fire and life safety systems shall be entered on the internet-based system under contract with the City at the time the inspection, testing or maintenance is performed. Fees associated with the internet-based system shall be paid by the contractor directly to the internet-based system company.

## **ARTICLE III. FIRE PREVENTION CODE**

### **DIVISION 1. GENERALLY**

#### **Sec. 10-46. Adopted.**

(a) The International Fire Code, 2009 Edition, published by the International Code Council, Inc., together with a fire code pamphlet amending and supplementing that code, are hereby enacted and adopted by reference, as the fire code for the City of Abilene, and is here by incorporated herein. The fire code pamphlet, along with the International Fire Code, are on file in the fire marshal's and city secretary's offices.

(b) Any cross-reference to other codes contained herein shall be construed to mean those codes as adopted by the City of Abilene and amended by local ordinance.

(c) Any cross-reference to specific state agencies tasked with duties or oversight under the International Fire Code shall be construed to mean the agency in the State of Texas then tasked with the duties or oversight referenced, even if such agency might change from time to time.

#### **Sec. 10-47. Amendments.**

The fire code adopted by the provisions of this article has been amended by the city, such amendments and deletions as set out in Attachment "A" are hereby adopted, being on file with the code in the office of the city secretary.

# **ABILENE FIRE CODE**



**TO BE USED IN CONJUNCTION WITH THE  
2009 INTERNATIONAL FIRE CODE**

***Adopted May 24, 2011***



This booklet is to be used in conjunction with the *2009 International Fire Code*, published by the International Code Council, Inc. This pamphlet and the *2009 International Fire Code* comprise the Fire Code for the City of Abilene, Texas.

**TELEPHONE**

Fire Prevention .....676-6434

**FIRE PREVENTION**  
250 Grape Street  
Abilene, Texas 79601

The following Chapters of the **2009 International Fire Code** are adopted in their entirety:

Chapters 2, 4, 7, 8, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

Appendices B, C, D, E, F, G, H, I, J

Chapters 1, 3, 5, 6, 9, 10, 12, 14 of the **2009 International Fire Code** are adopted with the following amendments.

Appendix A is deleted in its entirety.

## TABLE OF CONTENTS

CHAPTER 1	ADMINISTRATION .....	6
CHAPTER 2	DEFINITIONS.....	No Amendments
CHAPTER 3	GENERAL PRECAUTIONS AGAINST FIRE.....	8
CHAPTER 4	EMERGENCY PLANNING AND PREPAREDNESS .....	No Amendments
CHAPTER 5	FIRE SERVICE FEATURES.....	8
CHAPTER 6	BUILDING SERVICES AND SYSTEMS.....	10
CHAPTER 7	FIRE-RESISTANCE-RATED CONSTRUCTION.....	No Amendments
CHAPTER 8	INTERIOR FINISH, DECORATIVE MATERIALS AND FURNISHINGS.....	No Amendments
CHAPTER 9	FIRE PROTECTION SYSTEMS.....	10
CHAPTER 10	MEANS OF EGRESS.....	11
CHAPTER 11	AVIATION FACILITIES.....	No Amendments
CHAPTER 12	DRY CLEANING.....	12
CHAPTER 13	COMBUSTIBLE DUST-PRODUCING OPERATIONS.....	No Amendments
CHAPTER 14	FIRE SAFETY DURING CONTRUCTION AND DEMOLITION .....	12
CHAPTER 15	FLAMMABLE FINISHES .....	No Amendments
CHAPTER 16	FRUIT AND CROP RIPENING.....	No Amendments
CHAPTER 17	FUMIGATION AND THERMAL INSECTICIDAL FOGGING ...	No Amendments
CHAPTER 18	SEMICONDUCTOR FABRICATION FACILITIES .....	No Amendments
CHAPTER 19	LUMBER YARDS AND WOODWORKING FACILITIES.....	No Amendments
CHAPTER 20	MANUFACTURE OF ORGANIC COATINGS.....	No Amendments
CHAPTER 21	INDUSTRIAL OVENS.....	No Amendments
CHAPTER 22	SERVICE STATIONS AND REPAIR GARAGES .....	No Amendments
CHAPTER 23	HIGH-PILED COMBUSTIBLE STORAGE .....	No Amendments
CHAPTER 24	TENTS AND OTHER MEMBRANE STRUCTURES.....	No Amendments
CHAPTER 25	TIRE REBUILDING AND TIRE STORAGE .....	No Amendments
CHAPTER 26	WELDING AND OTHER HOT WORK.....	No Amendments
CHAPTER 27	HAZARDOUS MATERIALS-GENERAL PROVISIONS .....	No Amendments
CHAPTER 28	AEROSOLS.....	No Amendments
CHAPTER 29	COMBUSTIBLE FIBERS.....	No Amendments
CHAPTER 30	COMPRESSED GASES.....	No Amendments
CHAPTER 31	CORROSIVE MATERIALS.....	No Amendments
CHAPTER 32	CRYOGENIC FLUIDS .....	No Amendments
CHAPTER 33	EXPLOSIVES AND FIREWORKS.....	No Amendments
CHAPTER 34	FLAMMABLE AND COMBUSTIBLE LIQUIDS .....	No Amendments
CHAPTER 35	FLAMMABLE GASES .....	No Amendments
CHAPTER 36	FLAMMABLE SOLIDS.....	No Amendments
CHAPTER 37	HIGHLY TOXIC AND TOXIC MATERIALS .....	No Amendments
CHAPTER 38	LIQUEFIED PETROLEUM GASES.....	No Amendments
CHAPTER 39	ORGANIC PEROXIDES .....	No Amendments
CHAPTER 40	OXIDIZERS .....	No Amendments
CHAPTER 41	PYROPHORIC MATERIALS.....	No Amendments
CHAPTER 42	PYROXYLIN (CELLULOSE NITRATE) PLASTICS.....	No Amendments

CHAPTER 43	UNSTABLE (REACTIVE) MATERIALS .....	No Amendments
CHAPTER 44	WATER-REACTIVE SOLIDS AND LIQUIDS .....	No Amendments
CHAPTER 45	REFERENCED STANDARDS.....	No Amendments
APPENDIX B	FIRE-FLOW REQUIREMENTS FOR BUILDINGS .....	No Amendments
APPENDIX C	FIRE HYDRANT LOCATIONS AND DISTRIBUTION.....	No Amendments
APPENDIX D	FIRE APPARATUS ACCESS ROADS.....	No Amendments
APPENDIX E	HAZARD CATEGORIES.....	No Amendments
APPENDIX F	HAZARD RANKING.....	No Amendments
APPENDIX G	CRYOGENIC FLUIDS-WEIGHTS AND VOLUME EQUIVALENTS .....	No Amendments
APPENDIX H	HAZARDOUS MATERIALS MANAGEMENT PLAN (HMMP) AND HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) INSTRUCTIONS .....	No Amendments
APPENDIX I	FIRE PROTECTION SYSTEMS – NON COMPLIANT CONDITIONS.....	No amendments
APPENDIX J	EMERGENCY RESPONDER RADIO COVERAGE .....	No Amendments



# **ABILENE FIRE CODE**

## **Chapter 1 ADMINISTRATION**

### **SECTION 101 GENERAL**

**101.1 Title.** *{Amend to read as follows.}* These regulations shall be known as the *Fire Code* of the City of Abilene, hereinafter referred to as “this code.”

### **{Amend Section 103 heading as follows.} SECTION 103 DIVISION OF FIRE PREVENTION**

**103.1 General.** *{Amend to read as follows.}* The division of fire prevention is established within the fire department under the direction of the fire code official. The function of the division shall be the implementation, administration and enforcement of the provisions of this code.

**103.2 Appointment.** *{Amend to read as follows and add sentence at the end.}* The fire code official shall be appointed by the fire chief. The fire code official shall also be known as fire marshal.

**103.3 Deputies.** *{Amend to read as follows.}* In accordance with the prescribed procedures of the fire department and with the concurrence of the fire chief, the fire code official shall have the authority to appoint an assistant fire marshal, other related technical officers, inspectors and other employees.

### **SECTION 105 PERMITS**

**105.1.1 Permits required.** *{Delete the second sentence.}* Permits required by this code shall be obtained from the fire code official. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official.

### **SECTION 107 MAINTENANCE**

**107.2.1 Test and inspection records.** *{Insert the following at the end of paragraph :}* The above requirement for record inspection and availability of records shall be met by the submission of records to the internet-based system under contract with the City. Contractors required to test fire and life safety systems shall be qualified and registered with the internet-based system under contract with the City at the time the inspection is made. Record of inspection, testing and maintenance of fire and life safety systems shall be entered on the internet-based system under contract with the City at the time the inspection, testing or

maintenance is performed. Fees associated with the internet-based system shall be paid by the contractor directly to the internet-based system company.

*{Amend Section 108 heading as follows }*

## **SECTION 108**

### **APPEALS**

**108.1** *{Delete in its entirety and add the following.}* **Appeals.** The Board of Building Standards as established in Chapter 8, Sec. 8-361, et. seq. of the City Code of the City of Abilene, Texas is charged with hearing appeals arising from any decision of the fire code official concerning this code, determining the suitability of alternate materials and methods of construction and providing reasonable interpretation of this code.

Any reference to the board of appeals in this code shall be construed to mean and does mean the Board of Building Standards as established in Chapter 8, Sec. 8-361, et. seq. of the City Code of the City of Abilene, Texas. In the event the board should be of the opinion that any provisions of this code need to be amended, it shall make such recommendation to the City Council for consideration.

## **SECTION 109**

### **VIOLATIONS**

**109.3 Violation penalties.** *{Amend to read as follows.}* Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the code official, or of a permit or certificate used under provisions of this code, shall be guilty of a Class C Misdemeanor, punishable by a fine of not more than five hundred dollars (\$500).

## **SECTION 111**

### **STOP WORK ORDER**

**111.4 Failure to comply.** *{Amend to read as follows.}* Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable for a fine of not more than five hundred dollars (\$500).

## **Chapter 3**

### **GENERAL PRECAUTIONS AGAINST FIRE**

## **SECTION 303**

### **ASPHALT KETTLES**

**303.4 Attendant.** *{Add the following exception.}*

**Exception:** Thermostatically controlled kettles.

## **SECTION 308 OPEN FLAMES**

**308.1.4 Open-flame cooking devices.** *{Amend to read as follows.}* Charcoal burners and other open-flame cooking devices shall not be operated or located on combustible balconies or within 10 feet (3048 mm) of combustible construction.

## **Chapter 5 FIRE SERVICE FEATURES**

### **SECTION 503 FIRE APPARATUS ACCESS ROADS**

**503.2.1 Dimensions.** *{Amend to read as follows.}* Fire apparatus access roads shall have an unobstructed width of not less than 24 feet, exclusive of shoulders, except for approved security gates in accordance with Section 503.6 and an unobstructed vertical clearance of not less than 14 feet.

**503.2.2 Authority.** *{Amend to read as follows.}* The fire code official shall have the authority to require an increase in the minimum access widths and vertical heights where they are inadequate for fire or rescue operations.

**503.2.3 Surface.** An engineered road constructed of asphalt, concrete, processed road base material or other approved driving surface capable of supporting the imposed loads of a fire apparatus. The road shall be properly graded to drain so as to prevent the road from failing to support the fire apparatus imposed load during a rainfall event.

**503.3** *{Amend to read as follows.}* **Identification.** Where required by the fire code official, approved markings and/or signs shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Markings and signs shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility.

#### ***{Add Subsection 503.3.1}***

**503.3.1 Markings.** Markings shall consist of a red stripe not less than six inches wide along both borders of a fire apparatus access road. The words "FIRE LANE NO PARKING" shall be marked on the stripes in white letters not less than four inches high at intervals of not more than 25 feet. The stripe and words shall consist of traffic paint. The markings shall be applied to the vertical face of curbs if adjacent to the fire apparatus access road. If curbs are not present, then the markings shall be applied to the pavement.

#### ***{Add Subsection 503.3.2}***

**503.3.2 Signs.** Signs shall be not less than 12 inches wide and 18 inches high. Signs shall consist of a white background bordered by a red stripe not less than 3/8 inch wide with the words "FIRE LANE NO PARKING" in red letters not less than two inches high. The sign face shall be retro-reflective. Signs shall be permanently affixed to stationary posts or, where approved by the fire code official, buildings or walls. The bottom of signs shall be not less than seven feet above grade. Signs shall be placed at intervals of not more than 50 feet.

**SECTION 507**  
**FIRE PROTECTION WATER SUPPLIES**

**507.5.4 Obstruction.** *{Amend to read as follows.}* Unobstructed access to fire hydrants, fire department inlet connections, or fire protection system control valves shall be maintained at all times. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

**SECTION 508**  
**FIRE COMMAND CENTER**

**508.1.1 Location and access.** *{Amend to read as follows.}* The location and accessibility of the fire command center shall be approved by the fire code official.

**Chapter 6**  
**BUILDING SERVICES AND SYSTEMS**

**SECTION 603**  
**FUEL-FIRED APPLIANCES**

**603.4 Portable unvented heaters.** *{Amend to read as follows.}* Portable unvented fuel-fired heating equipment shall be prohibited in occupancies in Groups A, E, I, R-1, R-2, R-3 and R-4. Rooms or areas where listed and approved portable unvented fuel-fired heating equipment is operated shall be provided with a means of ventilation capable of supplying required combustion air and preventing the accumulation of toxic products of combustion. **Exceptions:** *{Delete exception 1}*

**Chapter 9**  
**FIRE PROTECTION SYSTEMS**

**SECTION 903**  
**AUTOMATIC SPRINKLER SYSTEMS**

**903.2.8 Group R** *{Add following.}*  
*Exception: 1 and 2 Family Dwellings.*

**903.3.1.1.1 Exempt locations.** *{Amend to read as follows.}* Where approved by the fire code official, automatic sprinklers shall not be required in the following rooms or areas where such rooms or areas are protected with an approved automatic fire detection system in accordance with Section 907.2 that will respond to visible or invisible particles of combustion. Sprinklers shall not be omitted from any room merely because it is damp, of fire-resistance-rated construction or contains electrical equipment.

3. *{Amend to read as follows.}* Generator and transformer rooms under the direct control of a public utility and separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

4. *{Delete number 4 in its entirety.}*



**903.6 Existing buildings.** *{Delete in its entirety.}*

## **SECTION 907 FIRE ALARM AND DETECTION SYSTEMS**

**907.3** Where required in existing buildings and structures. *{Delete in its entirety.}*

**912.2; 912.2.1; 912.3; & 912.3.2** – *{Replace fire chief with fire code official.}*

## **Chapter 10 Means of Egress**

**1008.1.7 Thresholds: Exception:** *{Amend the first sentence to read as follows.}* The threshold height shall be limited to 7-7/8 inches (197 mm) where the occupancy is Group R-2 or R-3

**1008.1.9.3 Lock and latches.**

**3.** *{Add the following sentence to end of this paragraph.}* This provision is not applicable when 2.2 of this section is applied, provided the manually operated flush bolts are operable or released without the use of a key or tool. A sign as stated in 2.2 shall be placed on both active and inactive doors.

**1008.1.9.4 Bolt locks: {Exceptions: {Add Exception 6 as follows :}}**

6. In occupancy Group A having an occupant load of 300 or less, Groups B, F, M, and S and in churches, where egress doors are used in pairs and the active door leaf(s) that is keyed or has panic hardware, exceeds the requirements stated in the code for required exit width and/or number of required exits for that building, then manually operated edge or surface-mounted bolts are permitted on the inactive leaf.

**1018.1 Construction.** *{Add Exception 5.}*

5. In Group B Office building, corridor walls and ceilings need not be of fire-resistive construction within office spaces of a single tenant when the space is equipped with an approved automatic smoke-detection system within the corridor. The actuation of any detector shall activate alarms audible in all areas served by the corridor. The smoke=detection system shall be connected to the building's fire alarm system where such a system is provided.

## **Chapter 12 DRY CLEANING**

### **SECTION 1208 FIRE PROTECTION**

**1208.2 Automatic sprinkler system.** *{Add the following exception.}*

**Exception:** Dry cleaning plants in which the quantity of combustible liquids in storage and/or use does not exceed the maximum allowable quantity per control area found in Table 2703.1.1(1).

**Chapter 14**  
**FIRE SAFETY DURING CONSTRUCTION AND DEMOLITION**

**SECTION 1410**  
**ACCESS FOR FIRE FIGHTING**

**1410.1 Required access.** *{Amend to read as follows.}* Approved vehicle access for fire fighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 150 feet (45 270 mm) of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Vehicle access shall be maintained until permanent fire apparatus access roads are available.

# **Third – Party Reporting/Tracking for Life and Fire Safety Systems**

January 26, 2017



# Benefits

- Increased safety for citizens, businesses, and first responders
- Reduced false alarms
- Improved tracking and reporting of life and fire safety systems
- Confirm compliance of inspection, testing, and maintenance of life and fire safety systems





# Responsibilities

- Internet-Based System – Send out notifications, manage the web-based portal, assist as needed
- Contractors – Register with Internet-based system under contract with the City, submit Inspection, Testing, and Maintenance (ITM) reports along with fee, enter new occupancies
- Fire Prevention – Manage data, ensure occupancy compliance, update and enter new data from the current Record Management System (RMS)



# Fee Structure

- Nominal administrative fee - based upon system and Inspection, Test, and Maintenance (ITM) procedure frequency
- Most systems are inspected annually
- Most occupancies consist of one to three life and fire safety systems





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO: Robert Hanna, City Manager**

**FROM: Larry Bell, Fire Chief**

**SUBJECT: Resolution: Authorizing Brycer LLC, The Compliance Engine to provide a 3-year contract to the City of Abilene for the purpose of tracking and maintaining compliance of life and fire safety systems within the City boundaries. (Larry Bell)**

---

**GENERAL INFORMATION**

Abilene Fire Department is currently responsible for tracking the inspection, testing, and maintenance of fire and life safety systems within the City of Abilene. Occupancies that have fire and life safety systems installed are required by the Abilene Fire Code to have the systems inspected and tested on a regular basis.

The Compliance Engine (TCE) is a simple internet based tool that fire prevention divisions can use to track and drive code compliance, reduce false alarm activity and provide a safer community. TCE provides a secure cloud environment that would require third party contractors that inspect, test, and maintain fire and life safety systems to submit their reports on TCE web-based site portal directly to the authority having jurisdiction. TCE would facilitate a more efficient review, tracking, and follow-up process with occupants to correct deficiencies and maintain systems. Systems requiring submittal will include fire alarm systems, sprinkler systems, standpipes, commercial kitchen hood suppression systems, special suppression systems, private hydrants, fire pumps, and spray booths.

**SPECIAL CONSIDERATIONS**

Resolution would name The Compliance Engine as the sole provider of compliance tracking, for life and fire safety systems inspections, testing, and maintenance contractors, within the City of Abilene.

**FUNDING/FISCAL IMPACT**

There is no cost to the City or business occupant.

**STAFF RECOMMENDATION**

Staff recommends approval.

**BOARD OR COMMISSION RECOMMENDATION**

N/A

**ATTACHMENTS:**

Description	Type
☐ Resolution	Resolution Letter
☐ Proposal Letter	Backup Material
☐ Presentation	Presentation



**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS  
AUTHORIZING THE CITY MANAGER TO EXECUTE A 3-YEAR CONTRACT WITH  
BRYCER LLC, THE COMPLIANCE ENGINE FOR THE PURPOSE OF TRACKING  
AND MAINTAINING COMPLIANCE OF LIFE AND FIRE SAFETY SYSTEMS  
WITHIN THE CITY BOUNDARIES.**

**WHEREAS**, Abilene Fire Department is currently responsible for tracking the inspection, testing, and maintenance of fire and life safety systems within the City of Abilene. Occupancies that have fire and life safety systems installed are required by the Abilene Fire Code to have the systems inspected and tested on a regular basis.

**WHEREAS**, The Compliance Engine (TCE) is a simple internet based tool that fire prevention divisions can use to track and drive code compliance, reduce false alarm activity and provide a safer community. TCE provides a secure cloud environment that would require third party contractors that inspect, test, and maintain fire and life safety systems to submit their reports on TCE web-based site portal directly to the authority having jurisdiction. TCE would facilitate a more efficient review, tracking, and follow-up process with occupants to correct deficiencies and maintain systems.

**WHEREAS**, Systems requiring submittal will include fire alarm systems, sprinkler systems, standpipes, commercial kitchen hood suppression systems, special suppression systems, private hydrants, fire pumps, and spray booths.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:**

PART 1: That the City Council authorizes the City Manager to execute a 3-year contract with Brycer LLC, The Compliance Engine.

PART 2: That this Resolution shall take effect immediately from and after passage.

**ADOPTED** this 26th day of January, 2017.

ATTEST:

\_\_\_\_\_  
Danette Dunlap, City Secretary

\_\_\_\_\_  
Norm Archibald, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney

**BRYCER, LLC**  
**4355 Weaver Parkway**  
**Suite 330**  
**Warrenville, IL 60555**

October 10, 2016

Abilene Fire Department  
250 Grape St  
Abilene, TX 79601

Attn: Fire Chief Larry Bell

**Re:    “The Compliance Engine”**

Dear: Chief Bell

We look forward to providing you with “The Compliance Engine” (the “Solution”). This proposal letter provides the basic terms by which Brycer, LLC (“Brycer”) will provide you, Abilene Fire Department (“Client”), with the Solution. The use of the Solution and all matters between Brycer and Client will be subject to the standard “Terms and Conditions” attached to this proposal as Exhibit A. The basic terms are as follows:

1.     **Term:** Brycer will provide Client with the Solution for three years, commencing \_\_\_\_\_ (the “Initial Term”). Thereafter, the Term shall automatically renew for successive three year period unless terminated by Brycer or Client in writing at least 90 days prior to the expiration of the then current Term (each, a “Renewal Term” and together with the Initial Term, the “Term”). Following the expiration or termination of the Term (as provided in the Terms and Conditions), Client shall stop using the Solution; provided, however, Brycer shall make available, and Client shall have the right to download, Client’s data from the Solution for a period of 60 days after the expiration or termination of the Term. Client shall have the right to terminate this agreement upon giving 90 days written notice to Brycer.

2.     **Fees:** Client shall not pay any fees for use of the Solution. Brycer will collect all fees due and payable by third party inspectors in connection with activities relating to the Solution.

3.     **Brycer Responsibilities:** During the Term, Brycer shall be responsible for the following in connection with Client’s use of the Solution:

- ***Availability.*** Brycer shall make the Solution available to Client as set forth on Exhibit B. The maintenance schedule and minimum service levels for the Solution are set forth on Exhibit B.
- ***Service Level.*** Brycer shall provide commercially reasonable levels of customer service with respect to the Solution to all third parties who transact business with Client and access the Solution.
- ***Backup.*** Brycer shall backup the database used in connection with the Solution to a separate server located within the same web hosting firm which the Solution is being hosted on a real time basis. Upon request by Client (which can be no more than once a month) or made prior to or within 60 days after the effective date of termination of the

Term, Brycer will make available to Client a complete and secure (i.e. encrypted and appropriately authenticated) download file of Client data in XML format including all schema and attachments in their native format. Brycer shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Client data. Brycer shall not (a) modify Client data or (b) disclose Client data except as required by law.

- ***Retention of Information.*** Brycer will maintain all information entered into the database by third party inspectors for at least five (5) years from the time such information is entered into the database.
- ***Notices.*** Brycer will be responsible for generating and delivering the following notices to third parties in connection with the Solution: (a) reminders of upcoming inspections that are due; (b) notices that an inspection is past due; and (c) notices of completed inspection reports which contain one or more deficiencies.
- ***Call Center*** Phone calls by Brycer on behalf of the Client to the property for EACH life-safety system overdue for service based on dates automatically tracked within the TCE database. Brycer is not an agent of the Client and all scripts for the overdue calls will be approved by the Client.
- ***Updates and Enhancements.*** In the event Brycer releases any updates, corrections, or enhancements to the Solution during the Term, Brycer shall promptly provide such updates or corrections to Client free of any charge or fee.

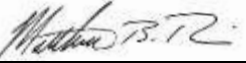
4. **Client Responsibilities:** During the Term, Client shall be responsible for the following in connection with Client's use of the Solution:

- ***Operating System.*** Client shall be solely responsible for providing a proper operating environment, including computer hardware or other equipment and software, for any portion of the Solution installed on the Client's equipment (the "Client Access Software") and for the installation of network connections to the Internet. In addition to any other Client Access Software requirements, Client must use version Internet Explorer 11.0, Edge, Firefox version 37, Chrome 40 or Safari 7.1 (or more recent versions), in addition to having a .pdf reader installed on machines to view attachments.
- ***Training.*** Client shall allow Brycer at Client's facilities to train all applicable personnel of Client on the use of the Solution.
- ***Information.*** Client shall promptly provide Brycer with all appropriate information necessary for Brycer to create the database for the Solution, including without limitation: (a) all commercial building addresses within [jurisdiction] for Brycer's initial upload; and (b) quarterly updates to in a format acceptable to Brycer in its discretion.
- ***Enforcement.*** Client shall take all actions necessary to require in writing (e.g. resolution, ordinance, fire policy, code amendment) the use of the Solution by third party inspection companies.
- ***Reports.*** Client will require all compliant and deficient test results to be submitted.

5. **Ownership of Data.** Client owns all the data provided by Client and received from third party contractors for Client. Brycer shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Client's data.

Please acknowledge your acceptance of this proposal and our standard Terms and Conditions by counter-signing this proposal below. We look forward to a long-term and mutually beneficial relationship with you.

Brycer, LLC

By:   
Its: President

Acknowledged and Agreed to this  
\_\_\_ day of \_\_\_\_\_, 20\_\_\_:

**[CLIENT]**

By: \_\_\_\_\_  
Its: \_\_\_\_\_



## Exhibit A

### Terms and Conditions

Any capitalized terms not defined in these Terms and Conditions shall have the meaning assigned to it in that certain Letter Agreement attached hereto by and between Brycer, LLC and Client (the "Agreement").

1. Restrictions on Use. Client shall not copy, distribute, create derivative works of or modify the Solution in any way. Client agrees that: (a) it shall only permit its officers and employees (collectively, the "Authorized Users") to use the Solution for the benefit of Client; (b) it shall use commercially reasonable efforts to prevent the unauthorized use or disclosure of the Solution; (c) it shall not sell, resell, rent or lease the Solution; (d) it shall not use the Solution to store or transmit infringing or otherwise unlawful or tortious material, or to store or transmit material in violation of third party rights; (e) it shall not interfere with or disrupt the integrity or performance of the Solution or third-party data contained therein; and (f) it shall not reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code which is derived from the Solution. Client is responsible for all actions taken by the Authorized Users in connection with the Solution.
2. Proprietary Rights. All right, title and interest in and to the Solution and any and all derivative works or modifications thereof (the "Derivative Works"), and any accompanying documentation, manuals or other materials used or supplied under this Agreement or with respect to the Solution or Derivative Works (the "Documentation"), and any reproductions works made thereof, remain with Brycer. Client shall not remove any product identification or notices of such proprietary rights from the Solution. Client acknowledges and agrees that, except for the limited use rights established hereunder, Client has no right, title or interest in the Solution, the Derivative Works or the Documentation.
3. Independent Contractor. Nothing in the Agreement may be construed or interpreted as constituting either party hereto as the agent, principal, employee or joint venturer of the other. Each of Client and Brycer is an independent contractor. Neither may assume, either directly or indirectly, any liability of or for the other party. Neither party has the authority to bind or obligate the other party and neither party may represent that it has such authority.
4. Reservation of Rights. Brycer reserves the right, in its sole discretion and with prior notice to Client, to discontinue, add, adapt, or otherwise modify any design or specification of the Solution and/or Brycer's policies, procedures, and requirements specified or related hereto. All rights not expressly granted to Client are reserved to Brycer, including the right to provide all or any part of the Solution to other parties.
5. Use of Logos. During the term of this Agreement, Brycer shall have the right to use Client's logos for the purpose of providing the Solution to Client.
6. Confidential Information. Brycer and Client acknowledge and agree that in providing the Solution, Brycer and Client, as the case may be, may disclose to the other party certain confidential, proprietary trade secret information ("Confidential Information"). Confidential Information may include, but is not limited to, the Solution, computer programs, flowcharts, diagrams, manuals, schematics, development tools, specifications, design documents, marketing information, financial information or business plans. To the extent allowed by the Texas Public Information Act, each party agrees that it will not, without the express prior written consent of the other party, disclose any Confidential Information or any part thereof to any third party. Confidential Information excludes information: (a) that is or becomes generally available to the public through no fault of the receiving party; (b) that is rightfully received by the receiving party from a third party without limitation as to its use; or (c) that is independently developed by receiving party without use of any Confidential Information. At the termination of this Agreement, each party will return the other party all Confidential Information of the other party. Each party also agrees that it shall not duplicate, translate, modify, copy, printout, disassemble, decompile or otherwise tamper with any Confidential Information of the other party or any firmware, circuit board or software provided therewith. Notwithstanding the foregoing, the parties acknowledge that Client shall be permitted to comply with any all federal and state laws concerning disclosure.
7. Brycer Warranty. Brycer represents and warrants to Client that Brycer has all rights necessary in and to any patent, copyright, trademark, service mark or other intellectual property right used in, or associated with, the Solution, and that Brycer is duly authorized to enter into this Agreement and provide the Solution to Client pursuant to this Agreement.
8. Disclaimer. All information entered into Brycer's database is produced by third party inspectors and their agents. **THEREFORE, BRYCER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION ENTERED INTO BRYCER'S DATABASE BY EITHER CLIENT OR THIRD PARTY INSPECTORS. EXCEPT AS SET FORTH IN SECTION 7, BRYCER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOLUTION OR ANY OTHER INFORMATION AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BRYCER'S SOLE LIABILITY FOR BREACH OF THE REPRESENTATION AND WARRANTY SET FORTH IN SECTION 7, AND CLIENT'S SOLE REMEDY, SHALL BE THAT BRYCER SHALL INDEMNIFY AND HOLD RECIPIENT HARMLESS FROM AND AGAINST ANY LOSS, SUIT, DAMAGE, CLAIM OR DEFENSE ARISING OUT OF BREACH OF THE REPRESENTATION AND WARRANTY.**
9. LIMITATION ON DAMAGES. **EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR OR OBLIGATED IN ANY MANNER FOR SPECIAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS OR SYSTEM DOWNTIME. CLIENT ACKNOWLEDGES AND AGREES THAT IN NO CASE SHALL BRYCER 'S LIABILITY FOR ANY LOSS OF DATA OR DATA INTEGRITY EXCEED THE REPLACEMENT COST OF THE MEDIA ON WHICH THE DATA WAS STORED.**
10. Risks Inherent to Internet. Client acknowledges that: (a) the Internet is a worldwide network of computers, (b) communication on the Internet may not be secure, (c) the Internet is beyond the control of Brycer, and (d) Brycer does not own, operate or manage the Internet. Client also acknowledges that there are inherent risks associated with using the Solution, including but not limited to the risk of breach of security, the risk of exposure to computer viruses and the risk of interception, distortion, or loss of communications. Client assumes these risks knowingly and voluntarily and holds Brycer harmless from

all liability from all such risks. Not in limitation of the foregoing, Client hereby assumes the risk, and Brycer shall have no responsibility or liability of any kind hereunder, for: (1) errors in the Solution resulting from misuse, negligence, revision, modification, or improper use of all or any part of the Solution by any entity other than Brycer or its authorized representatives; (2) any version of the Solution other than the then-current unmodified version provided to Client; (3) Client's failure to timely or correctly install any updates to the Client Access Software; (4) problems caused by connecting or failure to connect to the Internet; (5) failure to provide and maintain the technical and connectivity configurations for the use and operation of the Solution that meet Brycer's recommended requirements; (6) nonconformities resulting from or problems to or caused by non-Brycer products or services; or (7) data or data input, output, accuracy, and suitability, which shall be deemed under Client's exclusive control.

11. Breach. Brycer shall have the right to terminate or suspend this Agreement, and all of Client's rights hereunder, immediately upon delivering written notice to Client detailing Client's breach of any provision of this Agreement. If Client cures such breach within 5 days of receiving written notice thereof, Brycer shall restore the Solution and Client shall pay any fees or costs incurred by Brycer in connection with the restoration of the Solution.
12. Illegal Payments. Client acknowledges and agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift or anything of value from any employee or agent of Brycer in connection with the Agreement.
13. Beneficiaries. There are no third party beneficiaries to the Agreement.
14. Force Majeure. Neither party shall be responsible for any failure to perform due to unforeseen, non-commercial circumstances beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, blackouts, accidents, or strikes. In the event of any such delay, any applicable period of time for action by said party may be deferred for a period of time equal to the time of such delay, except that a party's failure to make any payment when due hereunder shall not be so excused.
15. Notices. All notices required in the Agreement shall be effective: (a) if given personally, upon receipt; (b) if given by facsimile or electronic mail, when such notice is transmitted and confirmation of receipt obtained; (c) if mailed by certified mail, postage prepaid, to the last known address of each party, three business days after mailing; or (d) if delivered to a nationally recognized overnight courier service, one business day after delivery.
16. Assignment. The Agreement may not be assigned or transferred by Client without the prior written consent of Brycer and any purported transfer in violation of this section shall be null and void. The Agreement shall be binding upon and inure to the benefit of the parties thereto and their respective successors and representatives.
17. JURISDICTION AND VENUE. THE AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, AND ENFORCEABLE UNDER, THE LAWS OF THE STATE IN WHICH CLIENT EXISTS APPLICABLE TO CONTRACTS MADE IN SUCH STATE AND THAT ARE TO BE WHOLLY PERFORMED IN SUCH STATE WITHOUT REFERENCE TO THE CHOICE-OF-LAW PRINCIPLES OF SUCH STATE. THE PARTIES IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR FROM OR RELATED TO THE AGREEMENT SHALL BE LITIGATED ONLY IN COURTS LOCATED WITHIN THE STATE IN WHICH CLIENT EXISTS. THE PARTIES HEREBY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID STATE. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRANSFER OR CHANGE VENUE OF ANY SUCH ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THE AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.
18. Attorneys' Fees. The prevailing party in any proceeding in connection with the Agreement shall be entitled to recover from the non-prevailing party all costs and expenses, including without limitation, reasonable attorneys' and paralegals' fees and costs incurred by such party in connection with any such proceeding.
19. Entire Agreement. The Agreement sets out the entire agreement between the parties relative to the subject matter hereof and supersedes all prior or contemporaneous agreements or representations, oral or written.
20. Amendment. The Agreement may not be altered or modified, except by written amendment which expressly refers to the Agreement and which is duly executed by authorized representatives of both parties. The waiver or failure by either party to exercise or enforce any right provided for in the Agreement shall not be deemed a waiver of any further right under the Agreement. Any provision of the Agreement held to be invalid under applicable law shall not render the Agreement invalid as a whole, and in such an event, such provision shall be interpreted so as to best accomplish the intent of the parties within the limits of applicable law. The Agreement may be executed by facsimile and in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
21. Expiration. The rights and obligations contained in these Terms and Conditions shall survive any expiration or termination of the Agreement.

## **Exhibit B**

### **Maintenance Schedule and Minimum Service Levels**

1. **Uptime and Maintenance.**

The Solution shall be available 24 hours per day during the term of this Agreement. The Solution shall be fully functional, timely and accessible by Client at least 99.5% of the time or better and Brycer shall use reasonable efforts to provide Client with advance notice of any unscheduled downtime.

2. **Response Time.**

Developer shall respond to telephone calls from Client within two hours of the call and/or message and all emails from Client within two hours of the receipt of the email.

3. **Customer Support**

Customer support hours are 24/7/365. The toll free number is 1-855-279-2371

Brycer will assign client a dedicated customer representative with direct access to their email and work number.

# **The Compliance Engine Third – Party Reporting/Tracking for Life and Fire Safety Systems**

January 26, 2017





# Benefits

- Increased safety for citizens, businesses, and first responders
- Reduced false alarms
- Improved tracking and reporting of life and fire safety systems
- Confirm compliance of Inspection, Testing, and Maintenance (ITM) of life and fire safety systems



# Responsibilities

- Collect, organize, and categorize 3<sup>rd</sup> party inspection reports
- Track and drive code compliance
- Provide notifications to occupancies
- Provide detailed analytics and reports
- Provide 24 hour customer support



# Fee Structure

- Nominal administrative fee paid by Inspection, Testing, and Maintenance (ITM) contractors - based upon system and ITM procedure frequency
- Most systems are inspected annually
- Most occupancies consist of one to three life and fire safety systems





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO: Robert Hanna, City Manager**

**FROM: Larry Bell, Fire Chief**

**Resolution: Authorizing the City Manager to execute the Final Guaranteed Maximum  
SUBJECT: Price amendment for Fire Station #4. (Larry Bell)**

---

**GENERAL INFORMATION**

On March 24, 2016, the City Council approved a Construction Manager at Risk Agreement with Speed Fab-Crete. At the time of the Agreement, the construction budget for Fire Station #4 was \$2,264,900. After all pre-construction and design activities were completed, the work associated with Fire Station #4 was bid out and came in at a cost of \$3,053,094. This was \$788,194 over the budget for this project.

The team of PSC and Speed Fab-Crete quickly went to work to modify the design and construction aspects of the project and were able to bring the cost of the station down to \$2,467,909. (This is a cost reduction of \$585,185!) In order to realize these savings, there were several features of the Fire Station removed that impacted the functionality and look of the facility. City staff directed that a few of these options be put back into the design and scope of the facility. This resulted in a Final GMP of \$2,578,830 for Fire Station #4. This Final GMP is \$313,930 over the original construction budget for Station #4.

**SPECIAL CONSIDERATIONS**

One of the major design imperatives for these fire stations was to adequately serve the public for another 40-50 years by having the capacity to house two full fire companies and EMS service staff. The only remaining cuts that can be made in the current design would remove one of the equipment bays and the housing arrangements for the second fire company. Making these cuts will compromise the station's ability to serve future growth and future needs of the community. Adding this space and capacity in the future will be at a greater cost than including them at this time.

**FUNDING/FISCAL IMPACT**

The increased costs associated with Fire Station #4 can be covered by reducing the scope of the Fire Training Facility by \$313,930. This reduction in scope will change the type of construction for the training facility from brick/tilt-up walls to a pre-engineered metal construction.

**STAFF RECOMMENDATION**



Staff recommends approval of the written resolution authorizing the City Manager to execute the Final GMP for Fire Station #4 in the amount of \$2,578,830.

**BOARD OR COMMISSION RECOMMENDATION**

N/A

**ATTACHMENTS:**

Description	Type
☐ Draft Resolution	Exhibit
☐ Revised Slides	Cover Memo

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS  
AUTHORIZING THE CITY MANAGER TO EXECUTE A GUARANTEED MAXIMUM  
PRICE AMENDMENT WITH SPEED FAB-CRETE FOR FIRE STATION NO. 4.**

**WHEREAS**, the City Council on March 4, 2016 approved a Construction Manager at Risk Agreement with Speed Fab-Crete for the construction of three fire stations (Stations 4, 7, & 3); and

**WHEREAS**, the Agreement with Speed Fab-Crete calls for the development of a Guaranteed Maximum Price for the project; and

**WHEREAS**, Speed Fab-Crete has submitted a Guaranteed Maximum Price Amendment in the amount of \$2,578,830.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF ABILENE, TEXAS:**

Part 1: The City Council authorizes the City Manager to execute the Guaranteed Maximum Price Amendment with Speed Fab-Crete in the amount of \$2,578,830.

Part 2. That this Resolution takes effect immediately upon its adoption.

**ADOPTED this \_\_\_\_\_ day of January, 2017.**

ATTEST:

\_\_\_\_\_  
Danette Dunlap, City Secretary

\_\_\_\_\_  
Norman Archibald, Mayor

APPROVED:

\_\_\_\_\_  
Stanley Smith, City Attorney

# **Council Update: Fire Station #4 Final GMP**

January 26, 2017





- 2015 Bond Program
  - Three new Fire Stations
  - First station to be built is Station #4 currently located at 1909 W. Stamford Street
- Budget for Fire Stations
  - \$7,725,000 for all three stations
  - \$2,575,000 per station



- Project Team
  - Design - Parkhill, Smith, & Cooper/Tittle Luther Partnership
  - Construction Manager At Risk (CMAR) - Speed Fab-Crete
- Pre-construction and design phase has transitioned to construction phase
- Work has been bid out to sub-contractors



Fire Station #4 Initial Bid Results			
	Original Budget	Initial Bids	over/under
Design	310,100.00	310,100.00	0.00
Construction	2,264,900.00	3,053,094.00	(788,194.00)
	2,575,000.00	3,363,194.00	(788,194.00)

Fire Station #4 Value Engineering Bid Results			
	Original Budget	Initial Bids	over/under
Design	310,100.00	310,100.00	0.00
Construction	2,264,900.00	2,578,830.00	(313,930.00)
	2,575,000.00	2,888,930.00	(313,930.00)

- After initial bids were received
  - Project team revised the scope and design of the project.
  - Value engineering process found \$474,264 in savings for the project.
- CMAR process - CMAR and the design team
  - Familiar with the project
  - Result - Quickly identified value engineering and constructability options.



## Four-fold door systems

- Will be used on the front of the new Fire Stations
- Lower maintenance cost
- Faster opening
- More attractive than traditional overhead doors

## If GMP is approved

- Construction begins
- Station 4 personnel will move out of their mobile home in about nine months





**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO: Robert Hanna, City Manager**

**FROM: Larry Bell, Fire Chief**

**Presentation: Regarding the Fire Maintenance Facility, including an update on  
SUBJECT: construction costs and construction schedule. *(Larry Bell)***

---

**GENERAL INFORMATION**

On April 28, 2016, the City Council approved a Design Build Agreement with Hasen Design Build & Development for the design and construction of the Fire Maintenance Facility as part of the 2015 Bond Program. The Agreement established the preliminary Guaranteed Maximum Price (GMP) at \$1,990,000.

Hasen has completed all design activities and has bid all aspects of the work. The Final GMP remains at \$1,990,000. Construction is scheduled to be completed in early June, 2017.

**SPECIAL CONSIDERATIONS**

The Design Build team of Hasen and Jacob & Martin has done a tremendous job of designing a facility that meets all of the needs of the Abilene Fire Department while still meeting the budget and schedule.

**FUNDING/FISCAL IMPACT**

The funds were approved by voters as part of the 2015 Bond Election. No additional funds are needed to complete this project.

**STAFF RECOMMENDATION**

No action is required for this Item.

**BOARD OR COMMISSION RECOMMENDATION**

N/A

**ATTACHMENTS:**

Description	Type
□ Revised Slides	Presentation





# **Council Update: Fire Maintenance Facility Final GMP**

January 26, 2017



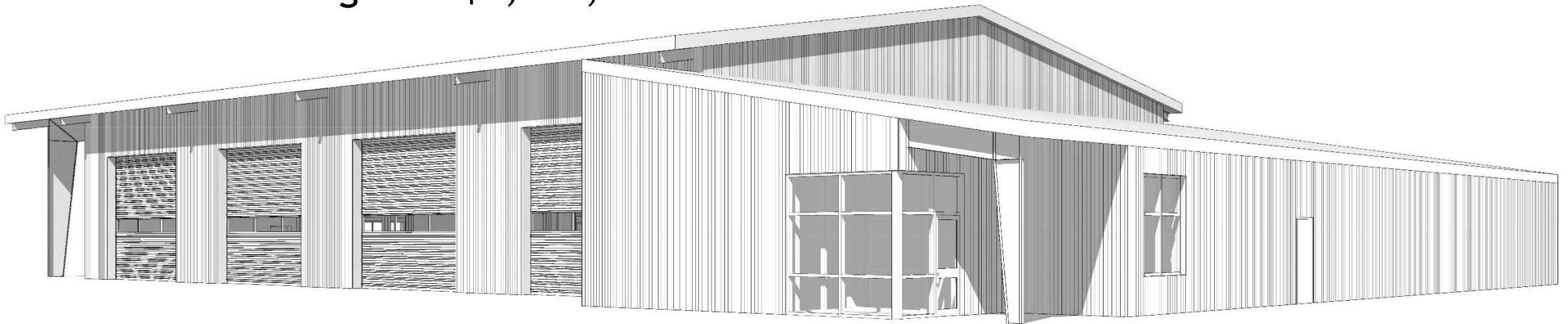


- 2015 Bond Program
  - New Fire Maintenance Facility
  - Replaces current maintenance shop located at 643 South 7<sup>th</sup>
- Budget for Maintenance Facility \$1,990,000.

Project Team - Design Build project with the team of Hasen Design Build & Development and Jacob & Martin Engineering

Design activities complete and project has been bid for construction

Within the budget of \$1,990,000.





## New Fire Maintenance Facility

- 13,724 square feet
- Provides ample space to maintain all Fire Department equipment
- Provides storage and office space.
- Large bays provide room for large ladder trucks to swing out the ladders for maintenance.
- Such features have never been available to Fire Dept. staff







Construction is under way

- Fire Dept. mechanics are looking forward to the needed space to keep critical equipment on the front line.
- Thank you to the Council and the voters who have been supportive of your Fire Department.



**City Council  
Agenda Memo**

**City Council Meeting Date: 1/26/2017**

**TO:** Robert Hanna, City Manager

**FROM:** Kent Sharp, CEO of the Development Corporation of Abilene

**SUBJECT:** Discussion: Quarterly Update of Five Year Strategic Plan for Economic Development  
(Kent Sharp)

---

**GENERAL INFORMATION**

Mr. Sharp will present to the City Council the first quarterly report covering progress made toward implementation of the action items under each of the ten strategies outlined in the five-year strategic plan developed in 2015 for Abilene's future economic development efforts.

**SPECIAL CONSIDERATIONS**

This presentation was made to the DCOA board during its November 22, 2016 board meeting. Mr. Sharp will return to City Council each quarter to provide updates toward implementation efforts.

**FUNDING/FISCAL IMPACT**

None

**STAFF RECOMMENDATION**

None

**BOARD OR COMMISSION RECOMMENDATION**

None

**ATTACHMENTS:**

Description	Type
❑ Quarterly Update of Five Year Strategic Plan	Presentation

# **Strategic Plan**

Quarterly Update  
Development Corporation of Abilene





# Strategy 1: Aggressively market and promote Abilene as a destination for new investment and employment

- Lots cleared of mesquites/tall grass/weeds at Five Points (DCOA)
- Bids on RR extension at Five Points (DCOA)
- RR Crossing repaired with more permanent concrete (DCOA)
- Mesquites cleared at 18/36 Property (DCOA)
- AIF database (CLP2) is populated with 82 developers, brokers, site consultants (AIF)
- DCOA and AIF met with 32 site selection consultants at three different events: (DCOA/AIF)
  - 6 at Site Consultant Day in Dallas, Texas
  - 16 at Dallas Mavericks vs Sacramento King event in Dallas, TX
  - 10 at Great States Investment Summit in Dallas, TX
- Warehouse availability becoming a problem, immediate needs currently
- Up to 150,000 sq. ft needed within next 2-3 months



## Strategy 2: Build a deep and highly skilled talent base through development, retention and attraction

- AIF hired Talent Development Director (AIF)
- Met with Community in Schools to leverage their assets in classrooms (AIF/DCOA)
- Seaton Higginbotham's workforce committee through ACOC completed first phase of engagement (ACOC)
- Established workforce training program with Taylor County high schools, Cisco College and Texas Workforce Commission in the areas of electrical, HVAC/R, welding, industrial maintenance and industrial plumbing (DCOA/AIF/Cisco/Taylor County ISD's)
  - 42 students enrolled 2016-2017
  - 14 electrical
  - 11 HVAC/R
  - 17 welding
- Met with Manoa Sebahizi and David Mukire, two leaders of Int. Refugee program and retired McMurry professor, Dr. Morris Baker, who is working with the Noah Evangelical Association (<http://www.noahevangalicalassociation.com/>) (DCOA)
  - They provided much detail on the background of the program and what refugees face when arriving in Abilene



## **Strategy 2: Build a deep and highly skilled talent base through development, retention and attraction**

- World of Work 2016 was held on Wednesday, November 16, 2016. Approximately 2,500 students in grades 8 – 12 from 41 schools attended the event, (see attached list and schedule) which featured 90 different exhibitors, including local resources, educational providers and employers. For the first time, a small number of 8th grade students from two of the four Abilene ISD middle schools were in attendance at WOW. High school juniors and seniors also had the opportunity to participate in mock interviews conducted by local business and community leaders (WS)



## **Strategy 3: Develop an innovation ecosystem that spawns and supports innovative people and businesses**

- Abilene Start-up Community: \$1,000 - DCOA hosted an Entrepreneurial Mindset Lunch November 14, 2016 at Lytle Land and Cattle. 45 individuals attended the event; most were entrepreneurs learning about the resources in the Abilene community associated with helping their efforts and included DCOA, AIF, SBD and TWC (DCOA)
- Initial meetings with Griggs Center at ACU conducted to develop a more formalized partnership between the Chamber and the Center (ACOC/ACU)
- ACU Startup Week: DCOA is \$7,500 Sponsor - ACU Startup Week will took place last November 14th - 18th and was one of the largest events of its kind on a college campus in the nation. We are working with our nationally recognized ACU CEO group to host approximately 100-150 events on-campus and across town that are focused on promoting entrepreneurship (ACU/DCOA)
- Springboard Program: DCOA is \$25,000 Sponsor- The DCOA is matching the Workforce Solution of West Central Texas' support of \$25,000 for the ACU Springboard program. (ACU/DCOA)





## **Strategy 4: Position Abilene as top of mind for businesses and talent in the DFW Metroplex**

- A new campaign has been developed called “Why I ABI,” featuring local people of interest. The 52-week campaign is dependent upon funding and features specific vignette-style stories to illustrate the people of Abilene and the compelling story of living and doing business here. (ACOC)



## **Strategy 5: Support the growth and prosperity of existing businesses**

- AIF developed database actively monitors information on 311 local businesses including number of employees, products and services produced, NAICS code and business needs (AIF)
- AIF has purchased and will begin to deploy the Synchronist program for its business and retention program this year. Deployment to begin December 2016. (ACOC/AIF)
- AIF has been hosting a semi-annual “Manufacturers Luncheon” for the last few years and plans to continue to do so. (AIF)



## **Strategy 6: Make downtown Abilene a center of employment and investment**

- (Update for 6.1 – 6.6) Significant focus has been undertaken by Chamber/AIF, supported by City of Abilene, Dian Graves Owen Foundation and the Dodge Jones Foundation. Phase one of two has been completed (community engagement) and an intensive strategic growth and development plan should be delivered in the Spring, 2017. (ACOC)



## **Strategy 7: Continue redeveloping the Pine Street corridor as a central mixed-use artery connecting downtown to the City's emerging education and healthcare district**

- Underway, included in 6.1. through 6. 2.. above (ACOC)





## **Strategy 8: Engage emerging leaders in economic development and civic affairs**

- The AYP has diversified its offerings to members and is preparing the rollout of “On the Board,” a comprehensive listing/online source for matching YP members with these opportunities. In addition, many Chamber leadership functions have been filled for 2017 by those involved in AYP. (ACOC)



## Strategy 9: Leverage Dyess Air Force Base as a source of talent and as an economic driver

- Workforce Solutions in conjunction with the Military Partnership hosted the 4th annual Hiring Red White and You on November 10, 2016 at the Taylor County Round Building. The event is targeted to active duty military and spouses who are transitioning out and veterans. Approximately 60 different employers participated in the event and approximately 100 military members and their families. (WS)
- The Chamber's Team Workforce has entered into discussions with Monster.com for the development and use of a localized jobs board, initially geared specifically to exiting Dyess personnel. In addition, Team Workforce will address and staff this opportunity closely going forward. (ACOC/MAC)
- Workforce Solutions will be launching the Military Family Support Pilot Program in late 2016 or early 2017. This program will focus on providing employment assistance specifically to military spouses at Dyess AFB. Workforce is coordinating with Shea Hopkins (AIF) on this project and anticipates hiring a military spouse to serve in the lead role. (WS)



## **Strategy 10: Launch a community-wide public awareness campaign designed to encourage residents to become ambassadors for Abilene's success**

- The Chamber is broadening and adding depth to those programs already within its programs to facilitate this tactic. (ACOC)
- Working through the early stages of identifying and standing up a “Red Carpet Task Force” that will more closely link the private sector and specific local leaders to economic development prospects under strictly controlled and confidential settings. The AIF is nearing completion of a restructuring that brings closer alignment of its activities with this specific tactic. (ACOC)

