



Post Office Box 9010 Addison, Texas
75001-9010
5300 Belt Line Road
(972) 450-7000 Fax: (972) 450-7043

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

AND / OR

WORK SESSION OF THE CITY COUNCIL

6:00 PM

MARCH 8, 2011

TOWN HALL

ADDISON TOWN HALL, 5300 BELT LINE, DALLAS, TX 75254

WORK SESSION

Item
#WS1 - Presentation and discussion of an amendment to the Code of Ordinances, Article XXI - Landscape Regulations requiring a tree pruning permit for commercial properties, as well as, to establish a pre-qualification standard for landscape and tree care companies that perform tree pruning on commercial properties in Addison.

Recommendation:

Staff recommends approval.

Item Presentation and discussion of management comment

#WS2 - letter from the Town's independent auditors, Weaver and Tidwell, and the Fiscal Year 2010 Comprehensive Annual Financial Report.

Attachment(s):

1. Auditor's Comment Letter
2. Communications to Governance

REGULAR MEETING

Pledge of Allegiance

Item #R1- Consideration of Old Business

Introduction of Employees

Discussion of Events/Meetings

Item #R2- Consent Agenda.

#2a- Approval of Minutes for the February 22, 2011 Work and Regular Council Meeting.

#2b- Approval of a license agreement between the Town of Addison and Addison Arbor (formerly Office in the Park) to allow Addison residents use of the two existing tennis courts, restroom and storage facility and putting green in the office park site (generally located along the west side of Midway Road approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive), subject to final review and approval of the City Manager and City Attorney.

#2c- Approval to authorize the City Manager to release the

Fiscal Year 2010 Comprehensive Annual Financial Report.

Item #R3 Presentation by Stephen L. Mansfield, President and CEO of Methodist Health System, Michael Schaefer, CFO, Methodist Health System and Chris Shoup, President, Methodist Hospital for Surgery in Addison thanking the Town of Addison for its support of the Surgery Hospital project.

Item #R4 Discussion and consideration of the appointment of members to the Addison Planning and Zoning Commission.

Item #R5 **PUBLIC HEARING** Case 1623-SUP/7-Eleven Convenience Store #34676. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 001-002 that zoned the property generally located at 4900 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 4900 Belt Line Road, Suite 125, on application from 7-Eleven Convenience Stores, represented by Ms. Christina Tanner of Gardere and Wynne.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend

approval of the amendment to a Planned Development zoning district, being Planned Development District 001-002, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

Item #R6 **PUBLIC HEARING** Case 1624-SUP/Sam's Club #6376.

-

Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 091-066 that zoned the property generally located at 4150 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 4150 Belt Line Road, on application from Sam's Club #6376, represented by Ms. Kimberly Frost of Jack Martin and Associates.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 091-066, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

Item #R7 **PUBLIC HEARING** Case 1625-SUP/Canary Café by Gorji.

-

Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 002-001 that zoned the property generally located at 5100 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 5100 Belt Line Road, Suite 402, on application from Canary Café by Gorgi, represented by Mr. Mansoor Gorji.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 002-001, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

Item #R8 **PUBLIC HEARING** Case 1626-SUP/Mercy Wine Bar.

- Public hearing, discussion and consideration of approval of an ordinance approving a Special Use Permit for the sale of beer and wine for off-premises consumption only, for that property located in a Planned Development District (002-001), located at 5100 Belt Line Road, Suite 544, on application from Mercy Wine Bar, represented by Ms. Judi Burnett.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in

regular session on February 24, 2011, voted to recommend approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

Item #R9 FINAL PLAT/Lots 7R & 8R, Block 8231, Addison Office Condos, Discussion and consideration of approval of a final plat located on two lots of .415 acres in a Commercial-1 zoning district, addressed as 16420 Addison Road, on application from 16420 Addison Road, Ltd., represented by Mr. Mike Boswell.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the final plat for Lots 7R 7 8R, Block 8231, Addison Office Condos, subject to the following condition:

1. The Field notes need to be changed to an Owner's Certificate per the Town of Addison Subdivision Ordinance.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

Item
#R10 -

VACATION OF A FINAL PLAT/Millcreek Apartments,
Discussion and consideration of approval of a vacation of a final plat located on 23.6738 acres in a Planned Development District (007-034) on the southeast side of Vitruvian Way, east of Marsh Lane, on application from UDR, represented by Mr. Bruce Dunne of Icon Consulting Engineers, Inc.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the vacation of the final plat for Millcreek Apartments, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

Item
#R11 -

FINAL PLAT/Vitruvian Park Addition, Lot 3, Block B,
Discussion and consideration of approval of a final plat located on one lot of 5.4611 acres in a Planned Development District (007-034), on the southeast side of Vitruvian Way, approximately 700 feet south of Spring Valley Road, on application from UDR, represented by Mr. Bruce Dunne of Icon Consulting Engineers, Inc.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the final plat for Vitruvian park Addition, Lot 3, Block B, subject to the following conditions:

1. The Master Facilities Agreement for Vitruvian Park specifies that the sidewalk easement along Street C (Bella Lane) is to be 9'. The plat currently specifies 6'. Revise to 9' as required by the Master Facilities Agreement.
2. The label for "Lot 1, Block B" near the southwest corner of the property appears to be incorrect. Please verify.
3. Specify how the S.W.B.T. Easement recorded in Vol. 75184, Pg. 1602 is to be abandoned.
4. Recommend removing the vacated easements.
5. Recommend removing the reference to the Mill Creek plat in the Owner's Certificate if it is vacated.

6. Remove the temporary Oncon Easement from the face of the plat. Provide a separate instrument agreement for the easement.

7. Remove "Not Platted, Future Lot 1, Block C, Vitruvian Park Addition" from the area north of the platted area.

8. Show the POINT OF COMMENCING for Tract 1 on the face of the plat.

9. Place the bearing from the POINT OF COMMENCING to the POINT OF BEGINNING on the face of the plat.

10. Place a "passing" call in Call 1 of Tract 1 and reference the Property recorded in CC Inst No. 200600407616. Show distances on the face of the plat.

11. Place the curve & line numbers in the table in the order they appear in the Owner's Certificate prior to all other needed data.

12. Reverse the bearing of what is currently Curve C2 to flow in the direction of the Owner's Certificate.

13. The bearing on Call 6 of Tract 2 does not match the bearing on the face of the plat. Verify & correct.

14. Provide a closure sheet.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Attachment(s):

1. docket map, staff report, and commission findings

Recommendation:

Administration recommends approval

Item
#R12 -

Presentation, discussion and consideration of approval of an Assignment and Construction Services Agreement between the Town of Addison and UDR, Inc., in the amount of \$84,914, for and regarding the management of the construction of certain public infrastructure (including streets, water and sanitary sewer lines, and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1E).

Recommendation:

Staff recommends approval.

Item
#R13 -

Consideration of authorizing the City Manager to enter into a Construction and Utility Adjustment Agreement between the Town of Addison and Southwestern Bell Telephone Company, d/b/a AT&T Texas to implement the construction of the duct bank and the relocation of AT&T Facilities for the Vitruvian Park Public Infrastructure, Phase IE project (a portion of the Spring Valley Road/Vitruvian Way Extension project).

Attachment(s):

1. Agreement with AT&T
2. Cost Analysis

Recommendation:

Staff recommends approval.

Item #R14 - Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 5 with North Texas Contracting, Inc., in the amount of \$57,262.73 and an extension of five (5) calendar days for the construction of certain public infrastructure (including park, streetscape and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1C).

Attachment(s):

1. Change Order #5
2. Cost Analysis

Recommendation:

Staff recommends approval.

Item #R15 - Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 1.1 with North Texas Contracting, Inc., in the amount of \$26,388.00 and an extension of six (6) calendar days for the construction of Spring Valley Road (a portion of the Spring Valley Road/Vitruvian Way Extension project).

Attachment(s):

1. Change Order 1.1

Item #R16 - Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 2.1 with North Texas Contracting, Inc., in the amount of \$60,851.50 and an extension of fourteen (14) calendar days for the construction of certain public infrastructure (including streets and water lines, and other public infrastructure improvements) within that area of the Town

generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1E) (a portion of the Spring Valley Road/Vitruvian Way Extension project).

Attachment(s):

1. Change Order 2.1
2. Cost Analysis

Recommendation:

Staff recommends approval.

Adjourn Meeting

Posted:

3/4/2011, 5PM, Lea Dunn

THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST 48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.

Council Agenda Item: #WS1

AGENDA CAPTION:

Presentation and discussion of an amendment to the Code of Ordinances, Article XXI - Landscape Regulations requiring a tree pruning permit for commercial properties, as well as, to establish a pre-qualification standard for landscape and tree care companies that perform tree pruning on commercial properties in Addison.

FINANCIAL IMPACT:

An allowance will be set aside in the current parks operations budget for printing or mailing cost for notification of the new regulations to Addison businesses and commercial landscape and tree care companies.

BACKGROUND:

There have been instances when Addison property owners authorized their landscape maintenance companies to excessively "limb up" trees for visibility reasons; thus, permanently disfiguring the tree canopy. This amendment will require commercial property owners/managers to apply for a tree pruning permit to ensure adherence to the Town's tree pruning standards. One of the conditions for permit approval will consist of requiring the property owner to contract with a landscape or tree care company that employs an International Society of Arboriculture (ISA) Certified Arborist. This is a standard certification in the landscape and urban forestry industry. Slade Strickland and Ron Lee, Parks Operations Manager, are ISA Certified Arborist. The ISA Certified Arborist will be responsible for submitting the permit to the parks department for review and approval, to ensure there is a clear understanding of the scope of work to be performed. The permit approval process will also require the property owner to use a pre-qualified contractor on the Town's approved list of contractors.

Mitigation options for anyone violating the ordinance could include:

1. \$1000 fine per diameter inch of tree measured 12 inches above the ground surface.
2. Replacement of the tree diameter inch for diameter inch.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Continue to Attract Visitors, Take actions to make Addison a leader in sustainable development and operations that protect and enhance the Town's quality of life

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #WS2

AGENDA CAPTION:

Presentation and discussion of management comment letter from the Town's independent auditors, Weaver and Tidwell, and the Fiscal Year 2010 Comprehensive Annual Financial Report.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

BACKGROUND:

Our auditors have supplied two letters related to the fiscal year 2010 independent audit. The first letter identifies three areas that are considered significant deficiencies. The Financial and Strategic Services Department reviewed this letter and provided responses to all auditor findings. The second letter provides certain information to the Council as required by professional standards.

The Town's 2010 Comprehensive Annual Financial Report (CAFR) that describes the Town's financial condition as of September 30, 2010. Within the CAFR is the independent auditor's report prepared by Weaver and Tidwell. The auditor's report reflects a "clean" opinion, indicating the Town's finances are managed and reported in conformity with generally accepted accounting principles.

RECOMMENDATION:

COUNCIL GOALS:

N/A, Conduct the Business of the Town in a Fiscally Responsible Manner

ATTACHMENTS:

Description:

- [Auditor's Comment Letter](#)
- [Communications to Governance](#)

Type:

- Exhibit
- Exhibit



March 1, 2011

Town Council and Management
of the Town of Addison

In planning and performing our audit of the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Addison as of and for the year ended September 30, 2010, in accordance with auditing standards generally accepted in the United States of America, we considered the Town of Addison's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town of Addison's internal control. Accordingly, we do not express an opinion on the effectiveness of the Town of Addison's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and, therefore, there can be no assurance that all such deficiencies have been identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the following deficiencies in the Town of Addison's internal control to be significant deficiencies:

PROMPT PAYMENT ACT

Finding: During the audit, we noted instances where payment was not made within the time allotted under the Prompt Payment Act. We recommend management review the internal control system relating to the use and tracking of purchase order or other means of determining what invoices for purchases have not been received at any point in time so that these violations may be prevented.

Management's Response: After reviewing the instances noted, it appears that the invoices were not marked with the date received. Therefore according to the Prompt Payment Act, the invoice date is used as the beginning of the 30-day payment window. Finance staff discussed these instances with the respective departments. The CFO continues to review all invoices not paid within the allotted time and discusses these items with the respective department head. During fiscal year 2010, 5.8% of invoices processed through Accounts Payable were paid outside of the 30-day window. For fiscal year 2011 through February 28, 4.5% of invoices processed through Accounts Payable were paid outside of the 30-day window.

PURCHASE ORDERS

Finding: In the course of performing audit procedures on cash disbursements we noted instances where purchase orders were created after goods were ordered and invoices received in violation of the Town policy. We recommend management review the use of purchase orders to ensure purchases are approved prior to purchase and are within the budgeted amount.

Management's Response: A significant portion of the disbursements noted were payments for special services received, where the billed amount depends on usage or labor hours. Finance staff will review the instances noted to determine if revisions should be made to the Town's purchasing policies. Finance staff has also solicited guidance from Weaver regarding purchasing policies of other municipalities. This issue must be corrected at the department level, since Finance staff does not learn of the disparity until an invoice is received from the vendor and is matched with the appropriate purchase order. Finance staff will bring all instances of noncompliance with purchasing rules to the department head's attention.

BUDGET AMENDMENTS

Finding: During our audit, we noted that additional funding was awarded but a budget amendment or transfer was not formally approved which resulted in a department exceeding appropriations at year end. We recommend that management make the appropriate amendments or transfers to avoid excess expenditures over appropriations.

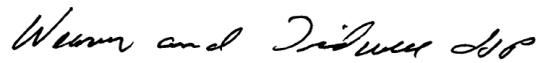
Management's Response: Before the City Council approves a non-budgeted purchase, they are notified that the purchase will require a budget amendment. Throughout the year, Finance compiles this list of budget amendments and presents an amended budget to Council near the end of the fiscal year. This is significantly less cumbersome than amending the budget for each non-budgeted purchase as needed. Total expenditures for the City Council department exceeded the final amended budget by \$34,000. This was due to additional economic development funding agreements that were finalized at the end of the fiscal year. Going forward, Finance staff will monitor expenditures throughout the year to ensure the budget is sufficient for the commitments approved by Council.

Town of Addison
March 1, 2011

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This communication is intended solely for the information and use of management, Town Council, and others within the organization, and is not intended to be and should not be used by anyone other than these specified parties.

Yours truly,

A handwritten signature in cursive script that reads "Weaver and Tidwell LLP".

WEAVER AND TIDWELL, L.L.P.

Dallas, Texas



March 1, 2011

Town Council
Town of Addison
Addison, Texas

We have audited the financial statements of the governmental activities, business type activities, each major fund and the aggregate remaining fund information of the Town of Addison (the Town) for the year ended September 30, 2010, and have issued our report thereon dated February 15, 2011. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated August 24, 2010. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Town are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during 2010. We noted no transactions entered into by the Company during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements was:

Management's estimate of the depreciation expense for the governmental activities, business type activities and proprietary funds, which is based on the cost of the assets being depreciated over the useful life of the asset. We evaluated the key factors and assumptions used to develop the depreciation expense in determining that it is reasonable in relation to the financial statements taken as a whole.

Management's estimate of the Other Postemployment Benefit expense for the governmental activities, which is calculated based on the annual required contribution of the Town, an amount actuarially determined in accordance with the parameters of GASB Statement 45. We evaluated the key factors and assumptions used to develop the Other Postemployment Benefit expense in determining that it is reasonable in relation to the financial statements taken as a whole.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements.

The schedule below summarizes uncorrected misstatements of the financial statements. Management has determined that their effects are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Proposed JE # 1014

To accrue for FY 2010 portion of 10/8 Payroll taxes

01-XXX-51110-00000	SALARIES	\$ 78,475	\$ -
01-000-20110-00000	FEDERAL INCOME TAX PAYABLE		64,104
01-000-20111-00000	MEDICARE PAYABLE		14,371
		<u>\$ 78,475</u>	<u>\$ 78,475</u>

Proposed JE # 1015

To accrue for FY 2010 portion of 10/8 payroll benefits

01-XXX-51350-00000	DEFERRED COMPENSATION	\$ 46,481	\$ -
01-000-20115-00000	DEFERRED COMP.CONTRIB.PAYABLE		46,481
		<u>\$ 46,481</u>	<u>\$ 46,481</u>

Town of Addison
March 1, 2011

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Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated February 15, 2011.

Management Consultations with Other Independent Accountants

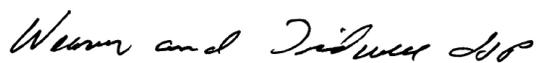
In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Company's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Company's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of Town Council and management of the Town and is not intended to be and should not be used by anyone other than these specified parties.

Yours truly,



WEAVER AND TIDWELL, LLP

Council Agenda Item: #R 2a

AGENDA CAPTION:

Approval of Minutes for the February 22, 2011 Work and Regular Council Meeting.

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[Minutes 2-22-2011](#)

Type:

Cover Memo

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION

February 22, 2011

5:30 PM - Town Hall

Addison Town Hall, 5300 Belt Line, Dallas, TX 75254

Upstairs Conference Room

Council Members Present:

Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Absent:

None

Work Session

Item #WS1 - Recognition and presentation of certificates to the 2010 Citizen Academy graduates.

Presentation of certificates to 2010 Citizen Academy graduates.

There was no action taken.

Item #WS2 - Discussion of a proposal to enter into a joint-use agreement with Addison Arbor (formerly Office in the Park) to allow Addison residents use of the existing tennis courts, restroom and storage facility and proposed putting green in the office park site (generally located along the west side of Midway Road approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive).

Agreement will be presented at a future meeting.

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

**OFFICIAL ACTIONS OF THE ADDISON CITY
COUNCIL
REGULAR MEETING**

February 22, 2011

5:30 PM - Town Hall

Addison Town Hall, 5300 Belt Line, Dallas, TX 75254

02/18/2011, 5PM, Lea Dunn-City Secretary

Council Members Present:

Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Absent:

None

REGULAR MEETING

Item #R1 - Consideration of Old Business

The following employee was introduced: Toni Sweet, Detention Officer, Police Department.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of 2/7/2011 Special Meeting and Work Session minutes and 2/8/2011 Regular minutes

Minutes of 2/7/2011 Special Meeting and Work Session and 2/8/2011 Regular Meeting were approved.

A motion to was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was:

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2b - Approval of a resolution approving an amendment to the Tri-Cities Police Consortium Law Enforcement Mutual Aid Interlocal Agreement to provide for the addition of the City of Coppell as a member.

Item pulled for clarification and then approved.

Resolution R011- was approved.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was:

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2c - Approval of an ordinance ordering a general election to be held on May 14, 2011 for the purpose of electing one (1) Mayor for a two (2) year term and three (3) Councilmembers for two (2) year terms each. (Aprobación de una ordenanza que requiere una Elección Municipal General de uno (1) alcalde por dos (2) años y tres (3) miembros del Consejo por dos (2) años cada.).

Ordinance 011-014 was approved.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2d - Approval of a joint election agreement and an election services contract in an amount not to exceed \$25,000 with Dallas County to conduct Addison's Municipal Election on May 14,2011.(Aprobación de una resolución para entrar en un acuerdo de elección conjunta por una cantidad a no excederse \$25,000 con el Condado de Dallas para llevar a cabo las elecciones municipales de Addison el 14 de Mayo de 2011.)

Item was pulled for clarification and then approved.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2e - Approval of award of bid to Members Building Maintenance LTD., for custodial services at the Athletic Club in the amount of \$22,200.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2f - Approval of award of bid to ABS Janitorial Services, for custodial services at Town Hall, Finance, Service Center, Police & Police sub-station and Central Fire facilities in the amount of \$64,740.00.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2g - Approval of award of bid to Texas Trees and Turf totaling \$32,221.65 for landscape renovation and tree replacement planting in various parts of the Town.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2h - Approval of award of bid to Gylan Building Services Inc., for custodial services at the Conference and Theatre Centre and Visit Addison Centre in the amount of \$46,617.96.

A motion to Approve was made by Mayor Joe Chow.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R3 - Presentation by Mr. Amir Omar, Council Member, City of Richardson, and discussion regarding the Regional Tree Initiative program.

Mr. Amir Omar, Council Member, City of Richardson presented information on the Regional Tree Initiative Program.

There was no action taken.

Item #R4 - Presentation of the Planning and Zoning Commission's

2010 Annual Report by Ralph Doherty, Commission Chairman

Ralph Doherty gave a presentation.

There was no action taken.

Item #R5 - Presentation and discussion of the Town of Addison's involvement with Super Bowl XLV.

Barbara Kovacevich gave a presentation. Mayor Chow recognized Richard Chamberlain for his participation and support.

There was no action taken.

Item #R6 - Kathy Farrer has requested to speak to Council regarding the re-instatement of the Personal Property Tax on leased automobiles and the condition of Addison Road.

The following spoke to Council regarding the re-instatement of the Personal Property Tax on leased automobiles and the condition of Addison Road:

Kathy Farrer - Resident

James Molina, 14637 Lakecrest Dr. - Resident

Christopher Mulvaney, 3867 Lakeview Ct. - Resident

There was no action taken.

Item #R7 - Public hearing. Presentation, discussion and consideration of approval of an ordinance amending the Town's Code of Ordinances by adding thereto a new Section 54-33 making it an offense (A) to establish a permanent or temporary residence within 1,000 feet of premises where children commonly gather by (1) a person whose information is contained in a sex offender database maintained by the Department of Public Safety because of a violation involving a child younger than 17, or (2) a person who has been civilly committed as sexually violent predator under State law and who is subject to

compliance with a child safety zone requirement, and (B) to knowingly rent, lease or make available a permanent or temporary residence to such a person; providing for definitions, evidentiary matters, affirmative defenses, and other related matters.

The Mayor opened the Public Hearing.

The following individuals spoke:

Christopher Mulvaney, 3867 Lakeview Ct. - Resident
James Molina, 14637 Lakecrest Dr. - Resident
Tom Braun, 14616 Lexus Ave. - Resident
Sally Fremder, 14616 Lakecrest Cr. - Resident
Steve Brown - Alpha & Omega Services, Addison Business
Maxwell Fisher, Planner - City of Garland

The Mayor closed the Public Hearing.

Ordinance 011-015 was approved subject to amending the distance to 1,500 ft. and final review by the City Attorney.

A motion to Approve was made by Councilmember Kimberly Lay.

The motion was seconded by Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R8 - Presentation to Council of the Addison Police Department's annual Traffic Contact Report, which satisfies the requirements of the State racial profiling law.

Ron Davis gave a presentation.

There was no action taken.

Item #R9 - Presentation, discussion and consideration of authorizing

the City Manager to execute a contract with Landmark Structures Management Inc. in the amount of \$5,704,900 with a contract duration of 540 calendar days for the proposed 1.5 million gallon elevated storage tank.

Nancy Cline gave a presentation.

Mr. Elton York with Caldwell Tanks spoke.

A motion to Approve was made by Bruce Arfsten.

The motion was seconded by Councilmember Roger Mellow.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: Chow

Item #R10 - Presentation of and discussion regarding the Quarterly Financial Report for the period ending December 31, 2010.

Randy Moravec gave a presentation.

There was no action taken.

Item #R11 - Presentation, discussion and consideration of a joint resolution of the North Texas Tollway Authority and the Regional Transportation Council supporting the delivery of IH 35E, SH183, and the North Tarrant Express by the Texas Department of Transportation through public-private partnerships.

Kimberly Lay gave a presentation.

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

Council Agenda Item: #R 2b

AGENDA CAPTION:

Approval of a license agreement between the Town of Addison and Addison Arbor (formerly Office in the Park) to allow Addison residents use of the two existing tennis courts, restroom and storage facility and putting green in the office park site (generally located along the west side of Midway Road approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive), subject to final review and approval of the City Manager and City Attorney.

FINANCIAL IMPACT:

The improvements include resurfacing of the two existing tennis courts, new fencing, nets and windscreens (\$30,400), installation of a new synthetic surface putting green (\$12,000) and refurbishment of the gazebo and restrooms (\$4,100).

The total cost of \$46,500 will require a mid-year budget amendment in the parks operations budget. The initial cost to repair the tennis court lights and the electricity costs will be the responsibility of the Addison Arbor Office Park.

BACKGROUND:

The terms and conditions are summarized in the attached license agreement. The Town and the Addison Arbor staff will share in the responsibility of maintaining the restrooms. The parks department will be responsible for trash removal and removal of debris from the courts and putting green. Reservations will be coordinated through the Addison Athletic Club reservation system.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Provide Quality Leisure Opportunities, Work to instill a "Sense of Community" in Addison's residents

ATTACHMENTS:

Description:

[License Agreement](#)

Type:

Backup Material

STATE OF TEXAS §
COUNTY OF DALLAS §

JOINT USE LICENSE AGREEMENT

This Joint Use License Agreement (“Agreement”) is entered into as of _____, 2011 (the “Agreement Date”) by and between Keller Properties, L.P. (“Keller Properties”), a Texas limited partnership, and the Town of Addison, Texas (“Addison” or the “City”), a Texas home rule municipality, for the purposes and consideration stated below (Keller Properties and the City are herein sometimes referred to together as the “Parties” and individually as a “Party”).

Recitals:

1. Keller Properties is a limited partnership formed and operating under the laws of the State of Texas, with its principal offices located at 5601 Bridge Street, Suite 504, Fort Worth, Texas 76112. Keller Properties is the sole owner of that property located within Addison and known as Addison Arbor, Office in the Park (“Addison Arbor”). Addison Arbor is generally located along the west side of Midway Road approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive is comprised of approximately 11.2967 acres of land, as more fully depicted and described in Exhibit A attached hereto and incorporated herein.

2. Addison Arbor offers a unique business setting with classic architecture, functional and flexible office space, and tree-lined pathways winding through an office campus featuring two tennis courts, a gazebo and landscaping. The portion of Addison Arbor that includes the tennis courts, the gazebo (“Gazebo”), an adjacent open lawn area, and adjacent parking facilities are shown on the attached Exhibit A and identified thereon as the “Recreation Area” (and so called in this Agreement).

3. Keller Properties desires to allow the City to use, and the City desires to use, the Recreation Area in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the above and foregoing recitals, the mutual benefits of this Agreement to the Parties hereto, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, Keller Properties, L.P. and the Town of Addison, Texas hereby agree as follows:

Section 1. Incorporation of Recitals. The above and foregoing Recitals to this Agreement are true and correct and are incorporated into and made a part of this Agreement for all purposes.

Section 2. License. Keller Properties hereby grants to the City, and the City hereby accepts from Keller Properties, a license to use the Recreation Area for recreational purposes. The City may allow its citizens to use the Recreation Area for such purposes in accordance with rules and regulations that may be adopted from time to time by the City’s Department of Parks and Recreation. Access to and from the Recreation Area may be from any point of access (ingress and egress) to Addison Arbor from Midway Road and through and across the driveways and access ways within Addison Arbor. Motor vehicles used to access the Recreation Area shall be parked within those parking areas shown and identified as “Parking Area” on the attached Exhibit A (and so called herein).

Section 3. Term. The term (“Term”) of this Agreement shall commence on the earlier of (i) the date that the Initial Repairs (as defined in Section 5.A., below) have been completed and the Tennis Court lights are fully operating and functioning (as described in and pursuant to Section 5.B.2., below) (which date shall be agreed upon by the Parties), and (ii) July 1, 2011, (“Commencement Date”), and shall continue in effect (i) for a period of 12 full months (plus the first partial calendar month, if any) following the Commencement Date (the “Initial Term”), unless earlier terminated by in accordance with the provisions of Section 6.A., 6.C. or 6.D. of this Agreement, and (ii) following the Initial Term (the “Secondary Term”) shall continue in effect unless terminated by either Party in accordance with Section 6.B. of this Agreement.

Section 4. License Fee. There is no license fee owed under or in connection with this License.

Section 5. Repairs, Maintenance and Operation.

A. *Initial Repairs*. The City will perform, or cause to be performed, the following initial repairs to the Recreation Area (collectively, “Initial Repairs”). These Initial Repairs shall be substantially completed by no later than July 1, 2011.

1. *Tennis Courts*. The two (2) tennis courts (“Tennis Courts”) located within the Recreation Area are in need of refurbishment. Accordingly, the City will, at its sole cost, resurface the Tennis Courts, install new windscreens, a practice backboard, and new nets thereon.

2. *Gazebo; Restrooms*. Adjacent to the Tennis Courts and within the Recreation Area is a Gazebo that includes men’s and women’s restroom facilities (the “Restrooms”) that are in need of refurbishment. The Restrooms located in the and are shown and identified as such on the attached Exhibit A. The City will refurbish the Gazebo structure and the Restrooms at its sole cost.

3. *Putting Green*. East of the Tennis Courts and directly north of the Restrooms is an open lawn area (shown and identified on the attached Exhibit A as “Lawn Area”). The City will install a practice putting green (“Putting Green”) in the Lawn Area at its sole cost.

It is anticipated that the cost to make the Initial Repairs will be approximately \$46,500.00 (the actual cost incurred by the City to make the Initial Repairs being the “Initial Repair Cost”).

B. *Further Repair and Maintenance*. In addition to the Initial Repairs, repair and maintenance of the Recreation Area while this Agreement is in effect shall be in accordance with the following:

1. *Tennis Courts, Putting Green*. The City will maintain, at its sole cost, the Tennis Courts and the Putting Green in good condition and repair, including the regular removal of debris therefrom.

2. *Tennis Court Lights.* Keller Properties, at its sole cost, will maintain in good condition and repair the lights used for tennis purposes and that are existing and located on or adjacent to the Tennis Courts (which lights are identified as “Lights” on the attached Exhibit A). Keller Properties shall cause the Tennis Court Lights to be in good condition and repair by June 1, 2011.
3. *Tennis Court Gates.* The City will, at its sole cost, provide a locking mechanism for the gates that provide access to and from the Tennis Courts.
4. *Gazebo; Restrooms.* Following the initial repairs to the Gazebo and Restrooms as described in Section 5.A., above, Keller Properties will, at its sole cost, maintain the Gazebo and Restrooms in good condition and repair (including, without limitation, providing janitorial service for the Restrooms at least five (5) business days each week (“business days” meaning Monday through Friday, exclusive of holidays).
5. *Recreation Area Signs.* The City will, at its sole cost, post signs that include rules adopted by the City regarding the use of the Tennis Courts and the Putting Green, including information regarding reserving, and the operating hours of, the Tennis Courts and other portions of the Recreation Area.
6. *Parking Area.* Keller Properties, at its sole cost, will maintain the Parking Area in good condition and repair.
7. *Trash.* Keller Properties, at its sole cost, will provide trash and waste collection and removal for the Recreation Area on Monday through Friday of each week (excluding the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, and Christmas Day). Each Monday, if Keller Properties finds that the trash and waste within the Recreation Area is excessive, Keller Properties will notify the City thereof and the City will provide assistance to Keller Properties in collecting and removing the trash and waste.

C. *Operation.*

1. *Reservation, Use and Conduct.* Reservation and use of, and conduct upon, the Tennis Courts and all other portions of the Recreation Area under this Agreement shall be in accordance with rules and regulations as may be adopted from time to time by the City’s Department of Parks and Recreation (“Rules”).

Subject to any terms to the contrary included in any lease, license, or other document granting a right to occupy any portion of the Addison Arbor, executed by Keller Properties or its predecessor in title to the ownership of Addison Arbor prior to the date of this Agreement, the Rules shall be applicable to the tenants or other occupants of Addison Arbor. Keller Properties shall send notice of and impose this requirement on its tenants and other occupants of Addison Arbor.

2. *Hours of Operation.* The Tennis Courts and the other portions of the Recreation Area shall be open seven days a week, 8:00 a.m. through 10:00 p.m., except for holidays of the City.

D. *Plans.* Prior to the commencement of any repair or maintenance work within the Recreation Area by the City that is anticipated by the City to exceed \$46,500.00 in cost, the City will submit to Keller Properties in writing its plans for the work. Keller Properties shall promptly review such plans and approve or disapprove the same (and if plans are disapproved, the disapproval shall identify the specific reason(s) for such disapproval). If disapproved, plans may then be resubmitted to Keller Properties in accordance with this subsection. Approval of plans shall not be unreasonably withheld, conditioned or delayed. If Keller Properties has not approved or disapproved plans submitted by the City within three (3) business days after the date of the submittal, the plans shall be deemed approved.

If the anticipated cost of repair or maintenance work within the Recreation Area by the City is equal to or less than \$5,000.00, the City shall give notice of such work to Keller Properties at least seven (7) business days prior to the commencement of the work. At least seven (7) business days prior to the commencement of any work within the Recreation Area by Keller Properties, Keller Properties will give notice of such work to the City.

E. *Electricity.* In connection with the Tennis Court lights, the City will pay to Keller Properties a monthly electricity charge in advance on the 1st day of each calendar month of the Term in a fixed amount equal to \$_____.

Section 6. Termination.

A. *Termination During Initial Term.* Either Party (the “Defaulting Party”) hereto shall be in default of this Agreement if the Defaulting Party commits a material breach of this Agreement and such breach remains uncured for a period of ten (10) days after notice thereof (which notice shall specifically identify the breach) given by the other party (the “Non-Defaulting Party”) is received by Defaulting Party; however, if the breach cannot with diligence be cured within the said 10-day day period, if within such 10-day period the Defaulting Party provides the Non-Defaulting Party written notice of the curative measures which the Defaulting Party proposes to undertake, and proceeds promptly to initiate such measures to cure such breach, and thereafter prosecutes the curing of such breach with diligence and continuity, the time within which such breach may be cured shall be extended for such period as may be necessary to complete the curing of such breach with diligence and continuity. In the event of such default (i.e., a breach that has not been cured as set forth above), the Non-Defaulting Party may terminate this Agreement upon giving written notice of such termination to the Defaulting Party.

B. *Termination Following Initial Term.* During the Secondary Term, either Party may terminate this Agreement at any time and for any reason (or for no reason) by giving at least sixty (60) days notice of such termination to the other Party.

C. *Termination in Connection with Sale of Addison Arbor.* In the event that, during the Initial Term, Addison Arbor is sold by Keller Properties to a third person or entity (other than a third person or entity related to Keller Properties, including any person or entity that controls, is controlled by, or is under common control with Keller Properties) (“Purchaser”), the Purchaser shall have the right to terminate this Agreement by paying to the City a ratable portion of the Initial Repair Cost equal to the product of the Initial Repair Cost multiplied by a fraction, the

numerator of which is the number of months remaining in the Initial Term at the time of such payment (including the month in which the payment is made) and the denominator of which is the total number of months included in the Initial Term (12 months). Example: The cost of the Initial Improvements is \$35,000. In the 6th month of the Initial Term, Keller Properties sells Addison Arbor. The Purchaser pursuant to the sale desires to terminate this Agreement. To do so, the Purchaser would pay to the City an amount equal to $\$35,000 \times 7 \div 12$, or \$20,416.67. This Agreement shall be deemed terminated upon the City's receipt of such payment.

D. *Appropriation by City.* This Agreement and the City's obligations to make payments hereunder is subject to the annual appropriation and budgeting of funds by the City to make such payments. If funds to make any payment or payments under this Agreement during the Term are not appropriated and budgeted by the City, this Agreement shall terminate on the last day of the City's fiscal year in which funds were appropriated and budgeted by the City.

Section 7. *Recording; Covenants Running with Land.* The City may, in its sole discretion, record in the real property records of Dallas County, Texas a copy of this Agreement or a memorandum of this Agreement. The covenants and agreements contained in this Agreement are covenants and agreements running with the land, are binding upon Keller Properties and its successors in interest, permitted assigns, administrators, beneficiaries, heirs, executors, and other legal representatives, and are binding upon any person, corporation, or other legal entity having or acquiring any right, title or interest in or to any part of Addison Arbor.

Section 8. *Notice.* For purposes of this Agreement, notices and all other communications required to be in writing shall be addressed as provided hereinafter to the Party to whom the notice or other communication is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; seventy-two (72) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Addresses for notice are as follows:

To Keller Properties:

Attn: _____

To the City:

Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
Attention: City Manager

The addresses and addressees for the purpose of this Section may be changed by giving notice of such change in the manner herein provided for giving notice.

Section 10. Venue; Applicable Law. The obligations of the Parties to this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be and lie in Dallas County, Texas. This Agreement shall be governed by and is subject to and shall be construed in accordance with the laws, rules and regulations of the State of Texas without regard to the choice of laws rules of any jurisdiction.

Section 11. Severability. The provisions of this Agreement are severable, and if any clause, paragraph, section, phrase, word, or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional, or void for any reason by a court of competent jurisdiction, the balance of this Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said illegal, unlawful, unconstitutional, or void clause, paragraph, section, phrase, word, or portion had not been in the Agreement initially. In lieu of any such illegal, invalid, unconstitutional, or void provision, there shall be added hereto another provision that would be permitted that is as close to the intent of the original provision as possible.

Section 12. Miscellaneous.

A. Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (i) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (ii) shall be cumulative, and (iii) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. It is not a waiver of or consent to default if a party fails to declare immediately a default or delays in taking any action.

B. All exhibits to this Agreement are incorporated herein by reference and made a part hereof for all purposes wherever reference is made to the same.

C. Section and paragraph headings are for convenience only and shall not be used in interpretation of this License. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

D. The provisions of this Agreement are solely for the benefit of the Parties hereto and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

E. Failure of either Party, at any time, to enforce a provision of this Agreement shall in no way or event constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either Party thereafter to enforce each and every provision hereof. No term or provision of this Agreement shall be deemed waived or any breached excused unless the waiver or excusing of the breach shall be in writing and signed by the Party claimed to have waived or excused. Further, any consent to or waiver of a breach shall not constitute consent to or waiver of or excuse of any other different or subsequent breach.

F. This Agreement does not, is not intended to, and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the parties.

G. Notwithstanding any other provision of this Agreement nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents is or may be entitled.

H. This Agreement shall bind and inure to the benefit of the respective parties, their personal representatives, successors, and permitted assigns.

I. This Agreement supersedes all previous agreements (if any) and constitutes the entire understanding of the parties regarding the matters set forth in this Agreement. No changes, amendments or alterations to this Agreement shall be effective unless in writing and signed by both parties.

J. The undersigned officers and/or agents of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto.

EXECUTED and effective as of the ____ day of _____, 2011.

KELLER PROPERTIES, L.P.

TOWN OF ADDISON, TEXAS

By: _____

By: _____

Ron Whitehead, City Manager

Typed Name: _____

ATTEST:

Title: _____

By: _____

Lea Dunn, City Secretary

[Acknowledgments Follow on Next Page]

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that [s]he executed the same for the purposes and consideration therein expressed.

[SEAL] Given under my hand and seal of office this _____ day of _____, 2011.

Notary Public, State of Texas

My Commission expires:_____

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that [s]he executed the same for the purposes and consideration therein expressed.

[SEAL] Given under my hand and seal of office this _____ day of _____, 2011.

Notary Public, State of Texas

My Commission expires:_____

EXHIBIT A

Council Agenda Item: #R 2c

AGENDA CAPTION:

Approval to authorize the City Manager to release the Fiscal Year 2010 Comprehensive Annual Financial Report.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

BACKGROUND:

Included with this memorandum is the Town's 2010 Comprehensive Annual Financial Report (CAFR) that describes the Town's financial condition as of September 30, 2010. Within the CAFR is the independent auditor's report prepared by Weaver and Tidwell. The auditor's report reflects a "clean" opinion, indicating the Town's finances are managed and reported in conformity with generally accepted accounting principles.

RECOMMENDATION:

Staff recommends that the Council authorize the release of the 2010 Comprehensive Annual Financial Report.

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R3

AGENDA CAPTION:

Presentation by Stephen L. Mansfield, President and CEO of Methodist Health System, Michael Schaefer, CFO, Methodist Health System and Chris Shoup, President, Methodist Hospital for Surgery in Addison thanking the Town of Addison for its support of the Surgery Hospital project.

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

No Attachments Available

Type:

Council Agenda Item: #R4

AGENDA CAPTION:

Discussion and consideration of the appointment of members to the Addison Planning and Zoning Commission.

FINANCIAL IMPACT:

NA

BACKGROUND:

Commissioner Bruce Arfsten was recently appointed to the City Council. Commissioner Arfsten was appointed by Councilmember Kimberly Lay.

Commissioner DeFrancisco resigned to run for City Council. Commissioner DeFrancisco's appointment belongs to Councilmember Resnik.

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R5

AGENDA CAPTION:

PUBLIC HEARING Case 1623-SUP/7-Eleven Convenience Store #34676. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 001-002 that zoned the property generally located at 4900 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 4900 Belt Line Road, Suite 125, on application from 7-Eleven Convenience Stores, represented by Ms. Christina Tanner of Gardere and Wynne.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 001-002, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

FINANCIAL IMPACT:

No Financial Impact.

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

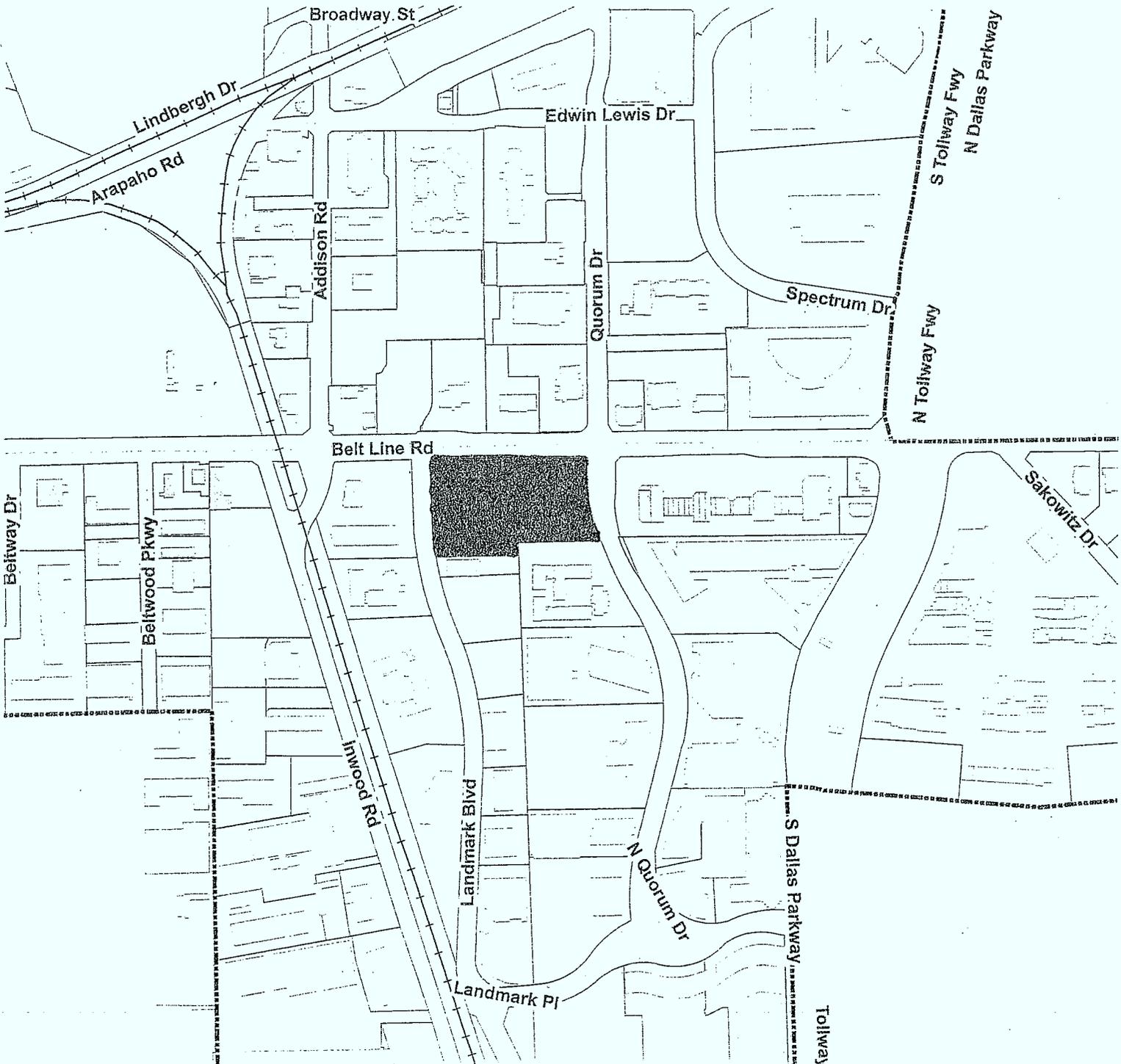
[docket map, staff report, and commission findings](#)

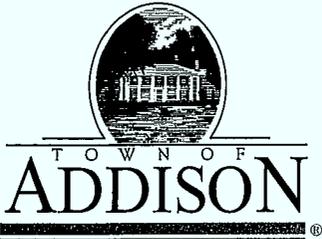
Type:

Backup Material

1623-SUP

PUBLIC HEARING Case 1623-SUP/7-Eleven Convenience Store #34676. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 001-002 that zoned the property generally located at 4900 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 4900 Belt Line Road, Suite 125, on application from 7-Eleven Convenience Stores, represented by Ms. Christina Tanner of Gardere and Wynne.





February 17, 2011

STAFF REPORT

RE: Case 1623-SUP/7-Eleven Convenience Store #34676

LOCATION: Planned Development District 001-002 generally located at 4900 Belt Line Road, Suite 125

REQUEST: Approval of a change to an existing planned development zoning district, being Planned Development District 001-002 in order to allow the sale of beer and wine for off-premises consumption, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for the said property

APPLICANT: Ms. Christina Tanner of Gardere and Wynne

DISCUSSION:

Background. This shopping center was developed in a Local Retail zoning district, but was rezoned to a Planned Development District on January 9, 2001 through Ordinance 001-002. A Special Use Permit for a 7-Eleven store was approved by the City Council through Ordinance 010-039 on November 9, 2010. The space is currently under construction.

On November 2, 2010, a Charter amendment election was held and the location restriction for beer and wine sales was eliminated. It allowed beer and wine to be sold for off-premises consumption in any LR (Local Retail) district, subject to the approval of a Special Use Permit.

On January 11, 2011, the Council approved an amendment to the zoning ordinance (Ordinance 011-007) to provide the following use:

- (27) Sale of beer and wine for off-premises consumption only in any local retail district, in any urban center district, or in any planned development district

wherein the sale of beer and wine for off-premises consumption is specifically allowed in the ordinance establishing such planned development.

Therefore, there is a two-step process required for 7-Eleven, and other stores located in planned development districts, to be able to sell beer and wine for off-premises consumption.

1. First, the planned development district regulations must be amended to the sale of beer and wine for off-premises consumption as an allowed use,
2. A Special Use Permit for the sale of beer and wine for off-premises consumption only must be approved.

While they must be stated as distinct acts of the Commission and Council, these two actions can be combined into one zoning case, one motion for approval, and one ordinance.

Planned Development Ordinance 001-002. The Planned Development ordinance that covers the shopping center in which 7-Eleven is located allows all typical local retail uses. The uses are listed in Section 2 of Ordinance 001-002. Staff recommends the list in Section 2 be amended to read as follows:

SECTION 2. The following regulations shall govern the development of all land within this Planned Development District:

1. USE REGULATIONS

In this Planned Development district, no land shall be used and no building shall be used, erected, or converted to any use other than:

Antique Shop
Aquarium
Art Gallery
Auto seat covers, covering
Baker, retail sales only
Bank, office, wholesale sales office or sample room
Barber and beauty shop
Bird and pet shops, retail
Book or stationery store
Camera shop
Candy, cigars and tobaccos, retail sales only
Caterer and wedding service, offices only
Cleaning, dyeing and laundry pick-up station for receiving and delivery
of articles to be cleaned, dyed and laundered, but no actual work to be
done on premises
Cleaning and pressing shops, having an area of not more than 6,000 square

feet

- Curtain cleaning shop having an area of not more than 6,000 square feet
- Department store, novelty or variety shop, retail sales
- Drug store, retail sales
- Electrical good, retail sales
- Electrical repairing – domestic equipment and autos, retail sales
- Exterminating company, retail
- Film developing and printing
- Fix-it shops, bicycle repairs, saw filing, lawn mower sharpening, retail only, but without outside storage
- Florist, retail sales only
- Furniture repairs and upholstering, retail sales only, and where all storage and display is within the building
- Frozen food lockers, retail
- Grocery store, retail sales only
- Hardware, sporting goods, toys, paints, wallpaper, clothing, retail sales only
- Household and office furniture, furnishings and appliances, retail
- Ice delivery station
- Job printing
- Jewelry, optical goods, photographic supplies, retail sales only
- Meat market, retail sales only
- Mortuary
- Office building
- Parking lot without public garage or automobile facilities for the parking of passenger cars and trucks of less than one (1) ton capacity only
- Photographers or artists studio
- Professional offices for architect, attorney, engineer and real estate
- Public garage, parking, no repairs
- Piano and musical instruments, retail sales only
- Plumbing shop, retail sales only, without warehouse but not storage for materials for contracting work)
- Restaurant, subject to the approval of a Special Use Permit
- Retail store or shop for custom work or the making of articles to be sold for retail on the premises
- Sale of beer and wine for off-premises consumption only (subject to Special Use Permit approval)**
- Seamstress, dressmaker, or tailor
- Seed store
- Shoe repair shop, retail sales only
- Studios, dance, music, drama, health, and reducing
- Studio for the display and sale of glass, china, art objects, cloth and draperies
- Taxi Stand
- Washateria, equipped with automatic washing machines of the type customarily found in the home and where the customers may personally supervise the washing and handling of their laundry
- Wearing apparel, including clothing, shoes, hats, millinery and accessories

It should be noted that this planned development district covers almost eight acres, and the ability to sell beer and wine for off-premises consumption goes to all land contained within the PD. Therefore, in the future, if another store requests an SUP to sell beer and wine for off-premises consumption, it will not have to go through the two-step process because sale of beer and wine for off-premises consumption will already be allowed in the district.

Proposed Plan. The lease space for 7-Eleven is currently under construction. It will occupy a 1,350 square foot space that was formerly occupied by Dunkin' Donuts.

Facades. 7-Eleven is not proposing any changes to the existing facades for the store.

Parking. A convenience store parks at a 1/200 standard retail parking ratio. Beer and wine sales are a standard retail use and currently park at 1/200. The addition of beer and wine sales to this existing store does not change the required parking.

Landscaping. Slade Strickland has inspected the site and finds that the landscaping is in good condition and generally well-maintained.

RECOMMENDATION:

Staff recommends approval of the Amendment to an existing Planned Development District, being Planned Development District 001-002 in order to allow the sale of beer and wine for off-premises consumption only, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink that reads "C. MORAN". The signature is stylized with a large, looped "C" and the name "MORAN" in all caps.

Carmen Moran
Director of Development Services

Case 1623-SUP/7-Eleven Convenience Store #34676
February 25, 2011

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 001-002, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Council Agenda Item: #R6

AGENDA CAPTION:

PUBLIC HEARING Case 1624-SUP/Sam's Club #6376. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 091-066 that zoned the property generally located at 4150 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 4150 Belt Line Road, on application from Sam's Club #6376, represented by Ms. Kimberly Frost of Jack Martin and Associates.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 091-066, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

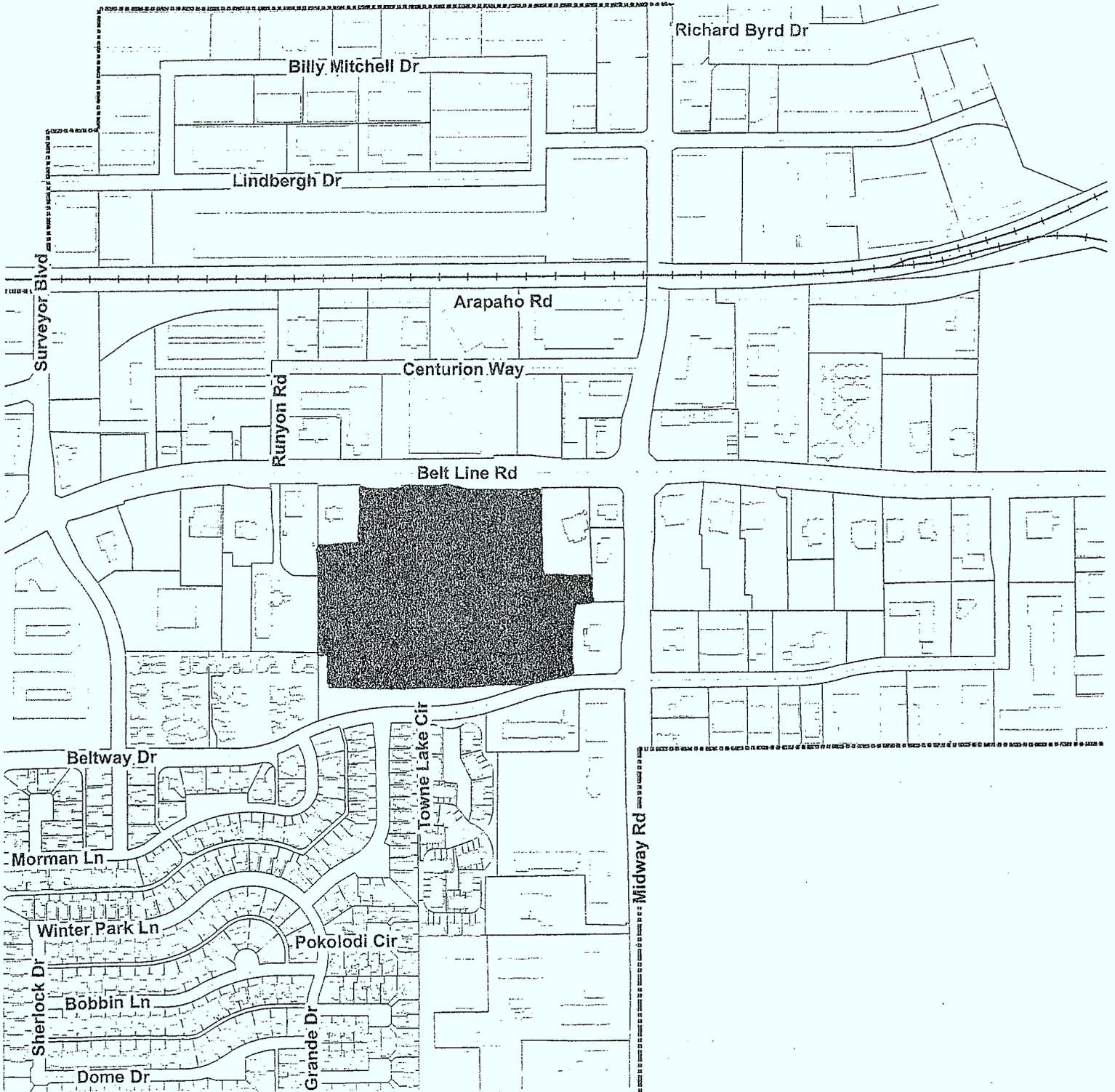
[docket map, staff report, and commission findings](#)

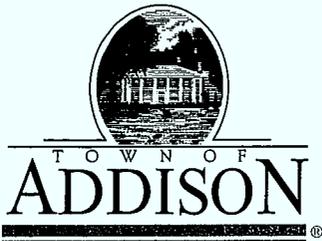
Type:

Cover Memo

1624-SUP

PUBLIC HEARING Case 1624-SUP/Sam's Club #6376. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 091-066 that zoned the property generally located at 4150 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 4150 Belt Line Road, on application from Sam's Club #6376, represented by Ms. Kimberly Frost of Jack Martin and Associates.





February 17, 2011

STAFF REPORT

RE: Case 1624-SUP/Sam's Club #6376

LOCATION: Planned Development District 091-066
generally located at 4150 Belt Line Road,

REQUEST: Approval of a change to an existing
planned development zoning district,
being Planned Development District 091-
066 in order to allow the sale of beer
and wine for off-premises consumption,
and approving a Special Use Permit for
the sale of beer and wine for off-premises
consumption only for the said property

APPLICANT: Ms. Kimberly Frost of Jack Martin and
Associates

DISCUSSION:

Background. Sam's Club is in a Planned Development zoning District that was approved by the City Council on November 12, 1991.

On November 2, 2010, a Charter amendment election was held and the location restriction for beer and wine sales was eliminated. It allowed beer and wine to be sold for off-premises consumption in any LR (Local Retail) district, subject to the approval of a Special Use Permit.

On January 11, 2011, the Council approved an amendment to the zoning ordinance (Ordinance 011-007) to provide the following use:

- (27) Sale of beer and wine for off-premises consumption only in any local retail district, in any urban center district, or in any planned development district wherein the sale of beer and wine for off-premises consumption is specifically allowed in the ordinance establishing such planned development.

Therefore, there is a two-step process required for Sam's, and other stores located in planned development districts, to be able to sell beer and wine for off-premises consumption.

1. First, the planned development district regulations must be amended to the sale of beer and wine for off-premises consumption as an allowed use,
2. A Special Use Permit for the sale of beer and wine for off-premises consumption only must be approved.

While they must be stated as distinct acts of the Commission and Council, these two actions can be combined into one zoning case, one motion for approval, and one ordinance.

Planned Development Ordinance 001-002. The Planned Development ordinance that covers the Sam's Club store allows all typical local retail uses. The uses are listed in Section 2 of Ordinance 091-066. Staff recommends the list in Section 2 be amended to read as follows:

SECTION 2. The following regulations shall govern the development of all land within this Planned Development District:

1. USE REGULATIONS

In this Planned Development district, no land shall be used and no building shall be used, erected, or converted to any use other than:

Antique Shop
Aquarium
Art Gallery
Auto seat covers, covering
Baker, retail sales only
Bank, office, wholesale sales office or sample room
Barber and beauty shop
Bird and pet shops, retail
Book or stationery store
Camera shop
Candy, cigars and tobaccos, retail sales only
Caterer and wedding service, offices only
Cleaning, dyeing and laundry pick-up station for receiving and delivery
of articles to be cleaned, dyed and laundered, but no actual work to be
done on premises
Cleaning and pressing shops, having an area of not more than 6,000 square
feet
Curtain cleaning shop having an area of not more than 6,000 square feet
Department store, novelty or variety shop, retail sales

Drug store, retail sales
 Electrical good, retail sales
 Electrical repairing – domestic equipment and autos, retail sales
 Exterminating company, retail
 Film developing and printing
 Fix-it shops, bicycle repairs, saw filing, lawn mower sharpening, retail only, but
 without outside storage
 Florist, retail sales only
 Furniture repairs and upholstering, retail sales only, and where all storage
 and display is within the building
 Frozen food lockers, retail
 Grocery store, retail sales only
 Hardware, sporting goods, toys, paints, wallpaper, clothing, retail sales only
 Household and office furniture, furnishings and appliances, retail
 Ice delivery station
 Job printing
 Jewelry, optical goods, photographic supplies, retail sales only
 Meat market, retail sales only
 Mortuary
 Office building
 Parking lot without public garage or automobile facilities for the parking
 of passenger cars and trucks of less than one (1) ton capacity only
 Photographers or artists studio
 Professional offices for architect, attorney, engineer and real estate
 Public garage, parking, no repairs
 Piano and musical instruments, retail sales only
 Plumbing shop, retail sales only, without warehouse but not storage
 for materials for contracting work)
 Restaurant, subject to the approval of a Special Use Permit
 Retail store or shop for custom work or the making of articles to be sold for
 retail on the premises
**Sale of beer and wine for off-premises consumption only (subject to Special Use
 Permit approval)**
 Seamstress, dressmaker, or tailor
 Seed store
 Shoe repair shop, retail sales only
 Studios, dance, music, drama, health, and reducing
 Studio for the display and sale of glass, china, art objects, cloth and draperies
 Taxi Stand
 Washateria, equipped with automatic washing machines of the type customarily
 found in the home and where the customers may personally supervise the
 washing and handling of their laundry
 Wearing apparel, including clothing, shoes, hats, millinery and accessories

Proposed Plan. Sam's Club occupies 136,549 square feet. Sam's Club is not
 proposing to make any structural changes to the space inside or outside of the building.

Facades. Sam's Club is not proposing any changes to the existing facades for the store.

Parking. A convenience store parks at a 1/200 standard retail parking ratio. Sam's Club actually exceeds that requirement and provides parking at a ratio of 1.3/200. Beer and wine sales are a standard retail use and currently park at 1/200. The addition of beer and wine sales to this existing store does not change the required parking.

Landscaping. Slade Strickland has inspected the site and finds that the landscaping is in good condition and generally well-maintained.

RECOMMENDATION:

Staff recommends approval of the Amendment to an existing Planned Development District, being Planned Development District 091-066 in order to allow the sale of beer and wine for off-premises consumption only, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink that reads "C MORAN". The letters are stylized and connected.

Carmen Moran
Director of Development Services

Case 1624-SUP/Sam's Club
February 25, 2011

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 091-066, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Council Agenda Item: #R7

AGENDA CAPTION:

PUBLIC HEARING Case 1625-SUP/Canary Café by Gorji. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 002-001 that zoned the property generally located at 5100 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 5100 Belt Line Road, Suite 402, on application from Canary Café by Gorgi, represented by Mr. Mansoor Gorji.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 002-001, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

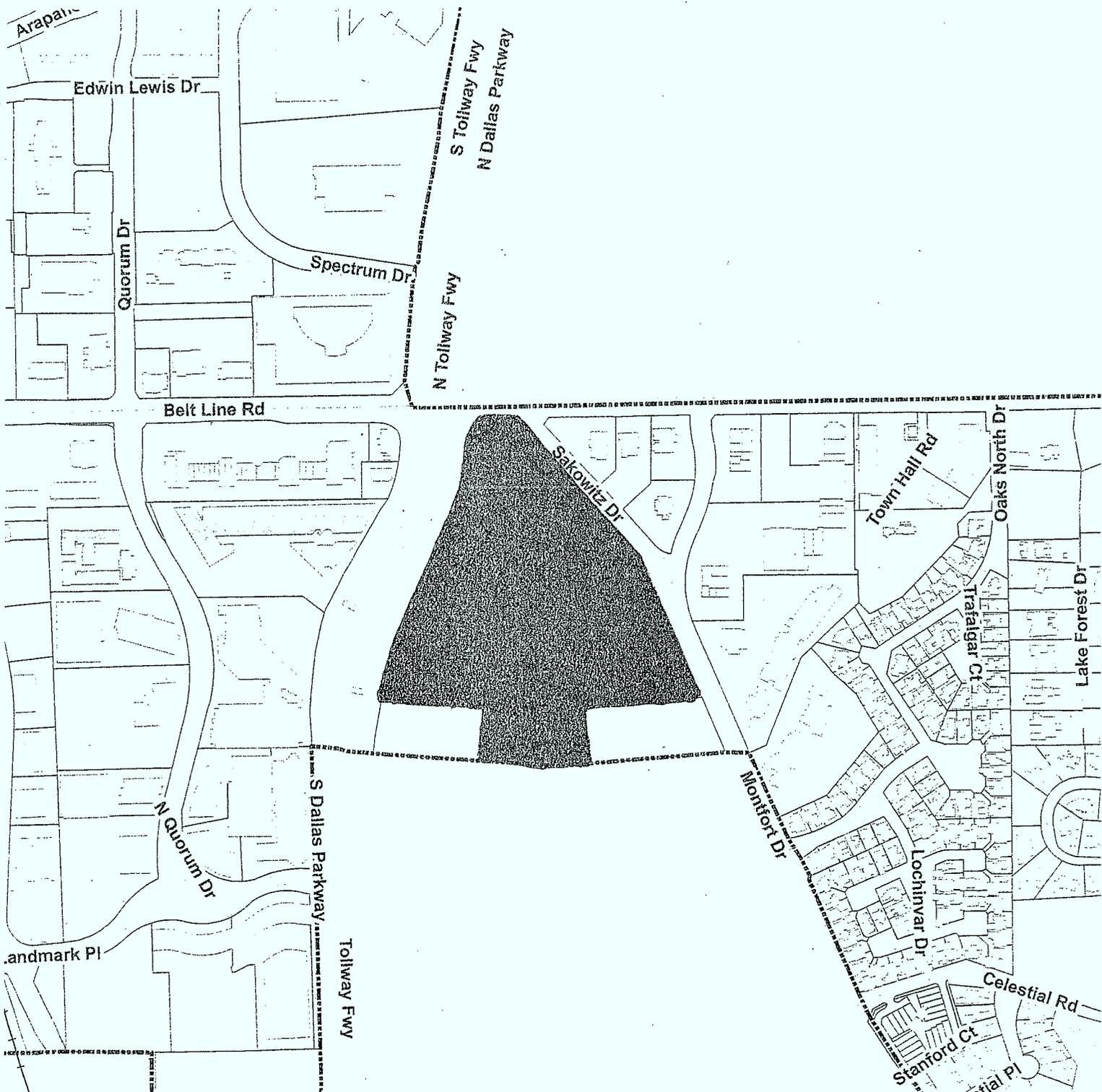
[docket map, staff report, and commission findings](#)

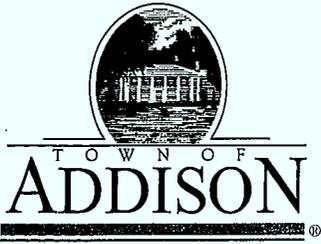
Type:

Cover Memo

1625-SUP

PUBLIC HEARING Case 1625-SUP/Canary Café by Gorji. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 002-001 that zoned the property generally located at 5100 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 5100 Belt Line Road, Suite 402, on application from Canary Café by Gorji, represented by Mr. Mansoor Gorji.





February 18, 2011

STAFF REPORT

RE: Case 1625-SUP/Canary Café by Gorji

LOCATION: Planned Development District 002-001 generally located at 5100 Belt Line Road, Suite 402

REQUEST: Approval of a change to an existing planned development zoning district, being Planned Development District 002-001 in order to allow the sale of beer and wine for off-premises consumption, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for the said property

APPLICANT: Mr. Mansoor Gorji

DISCUSSION:

Background. Canary Café is located in the Village on the Parkway shopping center. Mansoor Gorji took over a former Yoshi's Japanese Restaurant that was approved by the Council on April 8, 1997 through Ordinance 097-014. He currently sells only beer and wine in his restaurant, and he would like for his customers to pick up a bottle of wine to go with a "to go" order.

On November 2, 2010, a Charter amendment election was held and the location restriction for beer and wine sales was eliminated. It allowed beer and wine to be sold for off-premises consumption in any LR (Local Retail) district, subject to the approval of a Special Use Permit.

On January 11, 2011, the Council approved an amendment to the zoning ordinance (Ordinance 011-007) to provide the following use:

- (27) Sale of beer and wine for off-premises consumption only in any local retail district, in any urban center district, or in any planned development district wherein the sale of beer and wine for off-premises consumption is specifically allowed in the ordinance establishing such planned development.

Therefore, there is a two-step process required for Canary Café by Gorji to be able to sell beer and wine for off-premises consumption.

1. First, the planned development district regulations must be amended to the sale of beer and wine for off-premises consumption as an allowed use,
2. A Special Use Permit for the sale of beer and wine for off-premises consumption only must be approved.

While they must be stated as distinct acts of the Commission and Council, these two actions can be combined into one zoning case, one motion for approval, and one ordinance.

It should be noted that the Planned Development regulations will be amended for the entire 32-acre shopping center, so in the future, other stores that want to sell beer and wine for off-premises consumption (such as Mercy Wine Bar, Item #7 on the February 24th agenda) will not be required to amend the Planned Development zoning but can simply get a Special Use Permit.

Planned Development Ordinance 002-001. The Planned Development ordinance that covers the Village on the Parkway Shopping Center allows all typical local retail uses. The uses are listed in Section 1, Sub-section B of Ordinance 002-001. Staff recommends the list in Section 2 be amended to read as follows:

SECTION 1, SUBSECTION B. The following regulations shall govern the development of all land within this Planned Development District:

1. USE REGULATIONS

In this Planned Development district, no land shall be used and no building shall be used, erected, or converted to any use other than:

Antique Shop
Aquarium
Art Gallery
Auto seat covers, covering
Baker, retail sales only
Bank, office, wholesale sales office or sample room
Barber and beauty shop
Bird and pet shops, retail
Book or stationery store
Camera shop
Candy, cigars and tobaccos, retail sales only
Caterer and wedding service, offices only
Cleaning, dyeing and laundry pick-up station for receiving and delivery

- of articles to be cleaned, dyed and laundered, but no actual work to be done on premises
- Cleaning and pressing shops, having an area of not more than 6,000 square feet
- Curtain cleaning shop having an area of not more than 6,000 square feet
- Department store, novelty or variety shop, retail sales
- Drug store, retail sales
- Electrical good, retail sales
- Electrical repairing – domestic equipment and autos, retail sales
- Exterminating company, retail
- Film developing and printing
- Fix-it shops, bicycle repairs, saw filing, lawn mower sharpening, retail only, but without outside storage
- Florist, retail sales only
- Furniture repairs and upholstering, retail sales only, and where all storage and display is within the building
- Frozen food lockers, retail
- Grocery store, retail sales only
- Hardware, sporting goods, toys, paints, wallpaper, clothing, retail sales only
- Household and office furniture, furnishings and appliances, retail
- Ice delivery station
- Job printing
- Jewelry, optical goods, photographic supplies, retail sales only
- Meat market, retail sales only
- Mortuary
- Office building
- Parking lot without public garage or automobile facilities for the parking of passenger cars and trucks of less than one (1) ton capacity only
- Photographers or artists studio
- Professional offices for architect, attorney, engineer and real estate
- Public garage, parking, no repairs
- Piano and musical instruments, retail sales only
- Plumbing shop, retail sales only, without warehouse but not storage for materials for contracting work)
- Restaurant, subject to the approval of a Special Use Permit
- Retail store or shop for custom work or the making of articles to be sold for retail on the premises

Sale of beer and wine for off-premises consumption only (subject to Special Use Permit approval)

- Seamstress, dressmaker, or tailor
- Seed store
- Shoe repair shop, retail sales only
- Studios, dance, music, drama, health, and reducing
- Studio for the display and sale of glass, china, art objects, cloth and draperies
- Taxi Stand
- Washateria, equipped with automatic washing machines of the type customarily

found in the home and where the customers may personally supervise the washing and handling of their laundry
Wearing apparel, including clothing, shoes, hats, millinery and accessories

Proposed Plan. Canary Café by Gorji 1,600 square feet. Canary Café by Gorji is not proposing to make any structural changes to the space inside or outside of the building.

Facades. Canary Café by Gorji is not proposing any changes to the existing facades for the store.

Parking. All uses in this shopping center park at a mixed use ratio of one space per 250 square feet. The addition of beer and wine sales to this existing restaurant does not change the required parking.

Landscaping. Slade Strickland has inspected the shopping center and finds that the landscaping is in good condition and generally well-maintained.

RECOMMENDATION:

Staff recommends approval of the Amendment to an existing Planned Development District, being Planned Development District 002-001 in order to allow the sale of beer and wine for off-premises consumption only, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Respectfully submitted,



Carmen Moran
Director of Development Services

Case 1625-SUP/Canary Café by Gorji
February 25, 2011

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 002-001, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Council Agenda Item: #R8

AGENDA CAPTION:

PUBLIC HEARING Case 1626-SUP/Mercy Wine Bar. Public hearing, discussion and consideration of approval of an ordinance approving a Special Use Permit for the sale of beer and wine for off-premises consumption only, for that property located in a Planned Development District (002-001), located at 5100 Belt Line Road, Suite 544, on application from Mercy Wine Bar, represented by Ms. Judi Burnett.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

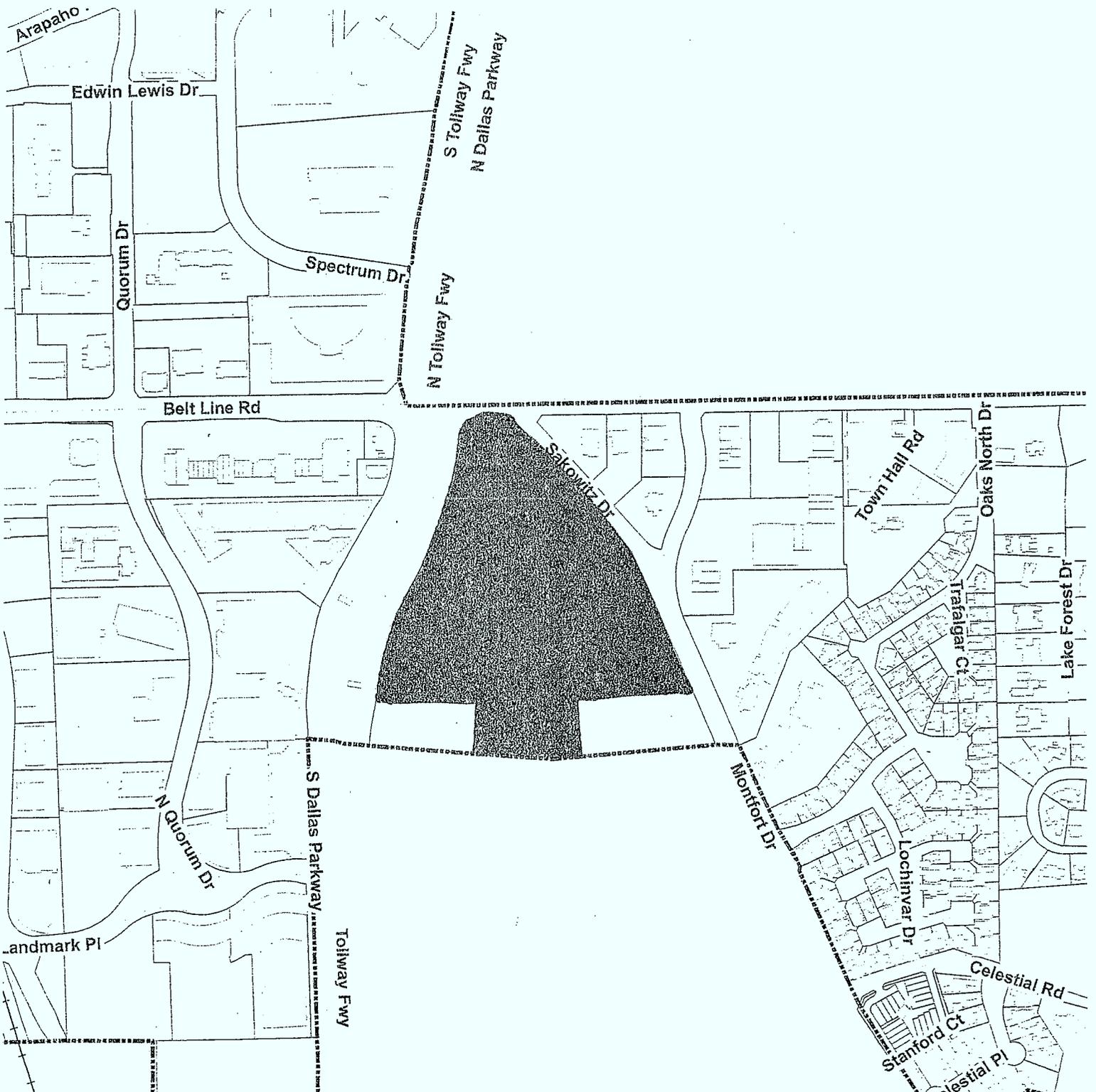
[docket map, staff report, and commission findings](#)

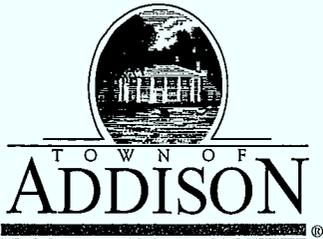
Type:

Backup Material

1626-SUP

PUBLIC HEARING Case 1626-SUP/Mercy Wine Bar. Public hearing, discussion and consideration of approval of an ordinance approving a Special Use Permit for the sale of beer and wine for off-premises consumption only, for that property located in a Planned Development District (002-001), located at 5100 Belt Line Road, Suite 544, on application from Mercy Wine Bar, represented by Ms. Judi Burnett.





DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

February 18, 2011

STAFF REPORT

RE: Case 1626-SUP/Mercy Wine Bar

LOCATION: Property located in a Planned Development District (002-001), at 5100 Belt Line Road, Suite 544

REQUEST: Approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only

APPLICANT: Mercy Wine Bar, represented by Ms. Judi Burnett

DISCUSSION:

Background. The Mercy Wine Bar is located in the Village on the Parkway Shopping Center and was approved as a restaurant by the City Council on October 8, 2002 through Ordinance 002-039. The concept of the store was that of a typical wine bar wherein customers could try various wines and then buy a bottle or multiple bottles of that wine to take home. However, due to the Charter Restriction, Mercy has never been able to sell wine to take home – even though its Texas Alcoholic Beverage Commission license allowed it to do so.

On November 2, 2010, a Charter amendment election was held and the location restriction for beer and wine sales was eliminated. Therefore, beer and wine can currently be sold for off-premises consumption in any LR (Local Retail), in the UC (Urban Center) district, and in any PD (Planned Development) district wherein the sale of beer and wine for off-premises consumption has been allowed, subject to the approval of a Special Use Permit. Mercy Wine Bar is in a Planned Development district, and the PD has already been amended to allow for beer and wine sales (Case 1625-SUP/Canary Café by Gorji).

Proposed Plan. The Mercy Wine Bar occupies a 4,642 square foot space in the Village on the Parkway center. It is immediately east of Blue Mesa Grill. There will not be any other changes to the floor plan to accommodate the bulk beer and wine sales.

Facades. Mercy is not proposing any changes to the existing facades of the convenience store.

Landscaping. The center has existing landscaping. The staff has reviewed the site and finds that the landscaping is in good condition and is being maintained.

Parking. This center has a standard mixed use parking ratio of one space per 250 square feet. The addition of the beer and wine sales to this existing restaurant does not change its parking requirement.

RECOMMENDATION:

Staff recommends approval of the Special Use Permit for the sale of beer and wine for off-premises consumption, subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink that reads "C Moran". The signature is stylized with a large, looped "C" and a more fluid, cursive "Moran".

Carmen Moran
Director of Development Services

Case 1626-SUP/Mercy Wine Bar
February 25, 2011

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Council Agenda Item: #R9

AGENDA CAPTION:

FINAL PLAT/Lots 7R & 8R, Block 8231, Addison Office Condos,
Discussion and consideration of approval of a final plat located on two lots of .415 acres in a Commercial-1 zoning district, addressed as 16420 Addison Road, on application from 16420 Addison Road, Ltd., represented by Mr. Mike Boswell.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the final plat for Lots 7R 7 8R, Block 8231, Addison Office Condos, subject to the following condition:

1. The Field notes need to be changed to an Owner's Certificate per the Town of Addison Subdivision Ordinance.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

FINANCIAL IMPACT:

No budget impact.

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

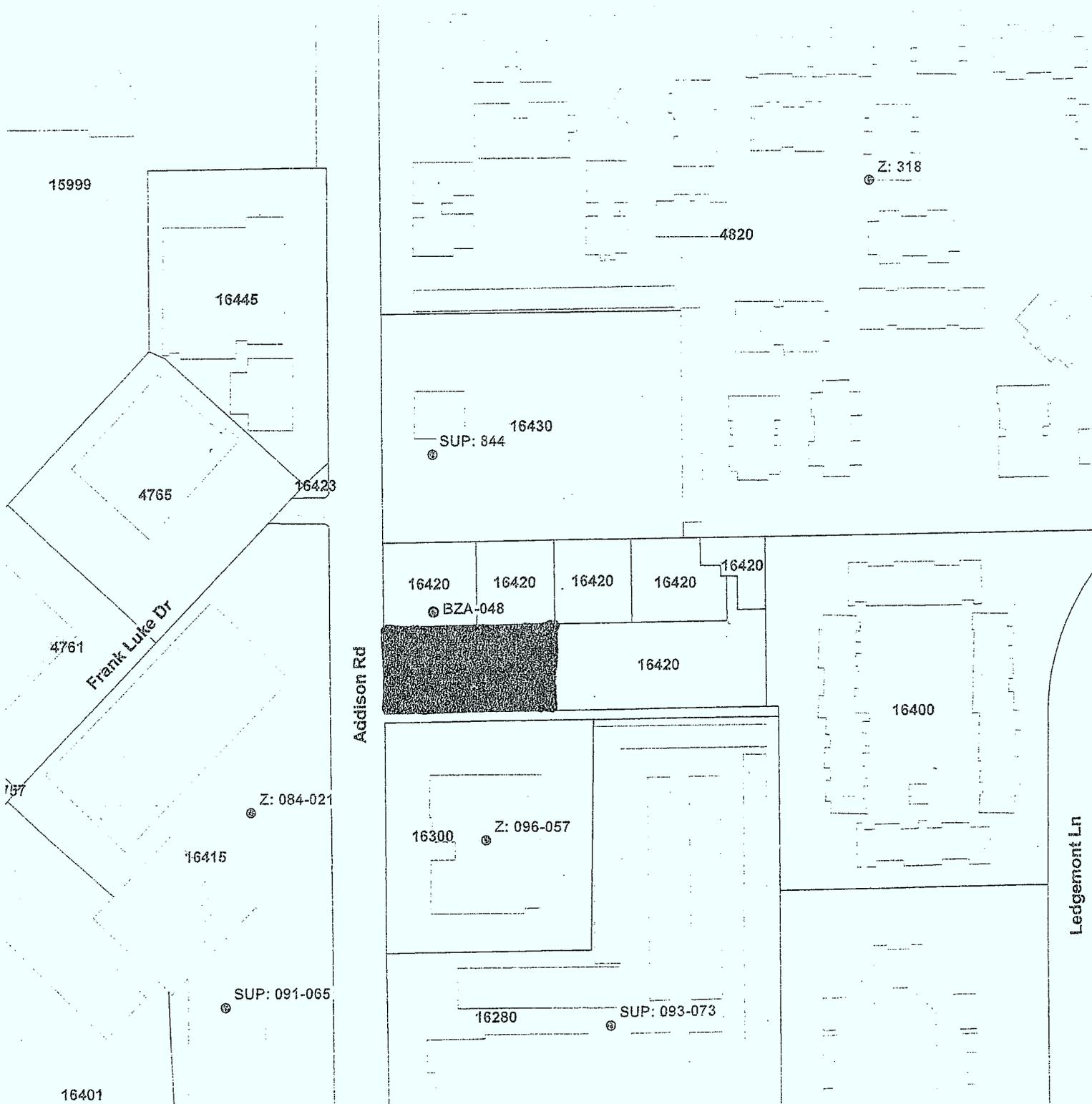
[docket map, staff report, and commission findings](#)

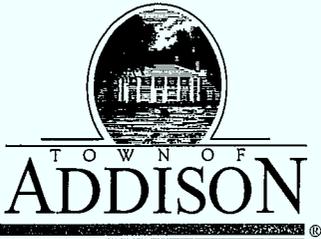
Type:

Backup Material

FINAL PLAT/ Lots 7R & 8R, Block 8231, Addison Office Condos

FINAL PLAT/Lots 7R & 8R, Block 8231, Addison Office Condos, Discussion and consideration of a final plat located on two lots of .415 acres in a Commercial-1 zoning district, addressed as 16420 Addison, on application from 16420 Addison Road, Ltd., represented by Mr. Mike Boswell.





February 17, 2011

STAFF REPORT

RE: FINAL PLAT/Lots 7R & 8R, Block 8231, Addison Office Condos

LOCATION: Two lots of .415 acres in a Commercial-1 zoning district, addressed as 16420 Addison Road

REQUEST: Approval of a final plat

APPLICANT: 16420 Addison Road, represented by Mr. Mike Boswell.

DISCUSSION:

Background. This property was originally developed as an office for Kemp Engineering. It was purchased several years ago by Deborah Shore, Photographer, and she housed her studio in the building. In 2005, the original building was demolished, and the owner developed the site with an office condo project. It looks like a typical garden office project, but various businesses own the individual buildings rather than rent them.

At this point, the owner would like to sell Lots 7R & 8R. The two lots had an Atmos Energy gas line easement that ran east and west along the south property line; however, there was not a gas line in the easement. The applicant approached Atmos about abandoning the easement, and Atmos agreed as long as it could maintain an easement for the gas main facility on private property. The letter from Atmos Energy approving the abandoning of the gas line easement is attached.

Public Works Review. The Public Works Department has reviewed the proposed plat, and recommends the following revisions:

1. The field notes need to be changed to an Owner's Certificate per the Town of Addison Subdivision Ordinance.

RECOMMENDATION:

Staff recommends approval of the final plat for Lots 7R & 8R, Block 8231
Addison Office Condos, subject to the condition listed above.

Respectfully submitted,

A handwritten signature in black ink that reads "C Moran". The signature is written in a cursive, somewhat stylized font.

Carmen Moran
Director of Development Services.

FINAL PLAT/Lots 7R and 8R, Block 8231, Addison Office Condos
February 25, 2011

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the final plat for Lots 7R 7 8R, Block 8231, Addison Office Condos, subject to the following condition:

1. The Field notes need to be changed to an Owner's Certificate per the Town of Addison Subdivision Ordinance.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none



ATMOS Energy
3697 Mapleshade Ln.
Plano, TX 75075

George Long
Project Specialist

February 8, 2011

Scarborough Lane Development
Attn: Mike Boswell
16380 Addison Road
Addison, Texas 75001

Re: Lots 7R & 8R, Block 8231 Addison Office Condos in Addison, Texas.

Dear Mr. Boswell:

This letter is to confirm that Atmos Energy has approved the above named final plat. No easements are required for Atmos Energy Corporation for gas service lines and/or gas manifolds. Atmos Energy Corporation only requirement for easement is with proposed or existing gas main facilities on private property.

Please let me know if you have any questions or comments by contacting me at 972-964-4107.

Sincerely,

A handwritten signature in cursive script that reads "George Long".

George Long
Project Specialist

Council Agenda Item: #R10

AGENDA CAPTION:

VACATION OF A FINAL PLAT/Millcreek Apartments, Discussion and consideration of approval of a vacation of a final plat located on 23.6738 acres in a Planned Development District (007-034) on the southeast side of Vitruvian Way, east of Marsh Lane, on application from UDR, represented by Mr. Bruce Dunne of Icon Consulting Engineers, Inc.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the vacation of the final plat for Millcreek Apartments, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

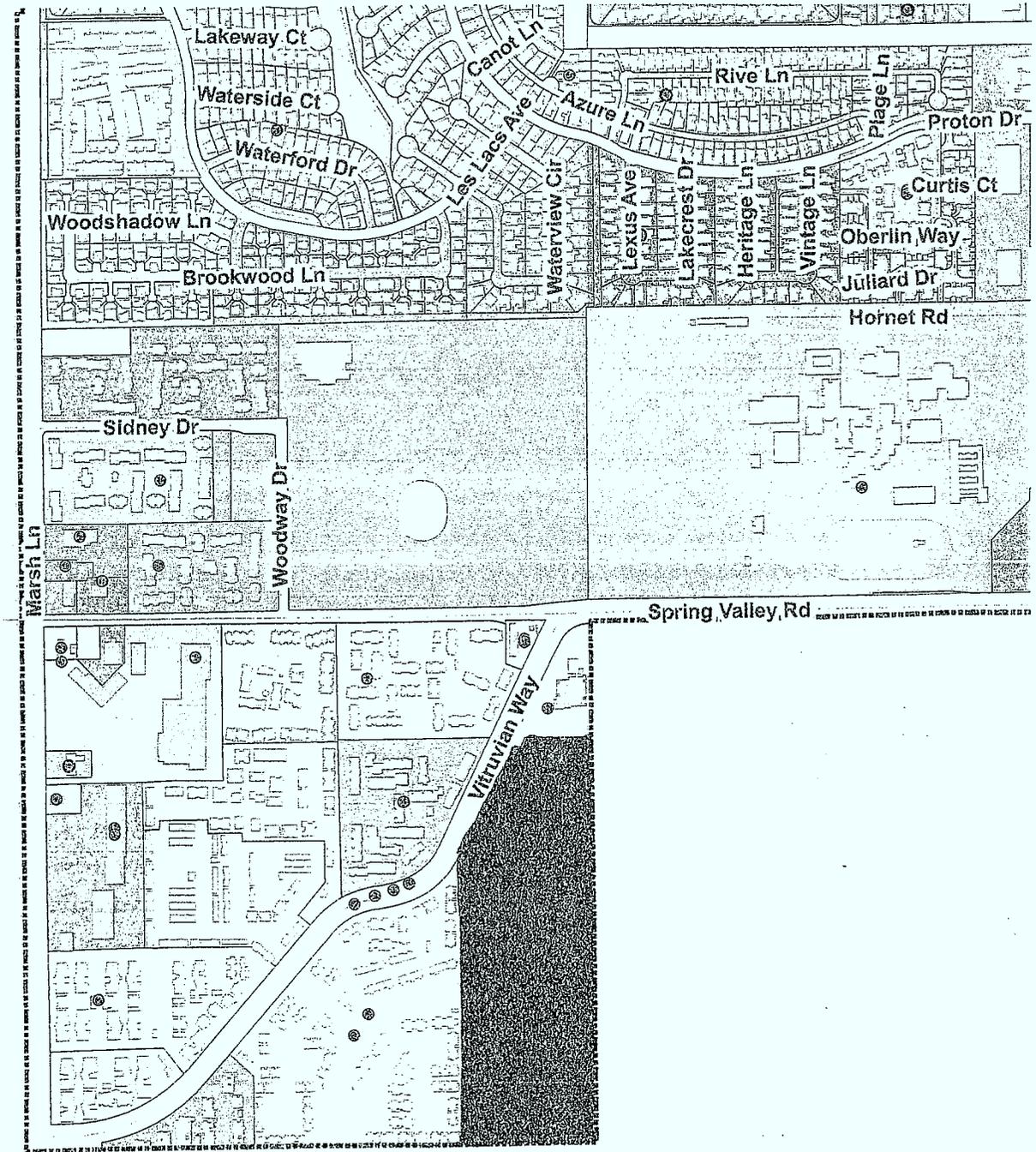
[docket map, staff report, and commission findings](#)

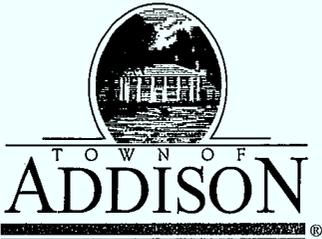
Type:

Backup Material

VACATION OF A FINAL PLAT/ Millcreek Apartments

VACATION OF A FINAL PLAT/Millcreek Apartments, Discussion and consideration of a vacation of a final plat located on 23.6738 acres in a Planned Development District (007-034) on the southeast side of Vitruvian Way, east of Marsh Lane, on application from UDR, represented by Mr. Bruce Dunne of Icon Consulting Engineers, Inc.





February 17, 2011

STAFF REPORT

RE: Vacation of a Final Plat Approval

LOCATION: 23.678 acres in a Planned Development District (007-034) generally located on the south side of Vitruvian Way, east of Marsh Lane

REQUEST: Approval of a vacation of final plat

APPLICANT: UDR, represented by Mr. Bruce Dunne of Icon Engineering, Inc.

DISCUSSION:

Background. UDR has purchased nine apartment complexes in the Brookhaven Club area and is in the process of redeveloping the neighborhood with a new urbanist development called Vitruvian Park. It has built one complex (Savoye) and is under construction on the second complex (Savoye 2). During the process, UDR has had to abandon the old easements that served the existing apartments and put new easements in new places to serve the new apartment buildings.

UDR is currently in design on the third phase of the project, which will cover a portion of the land that was originally platted as the Millcreek Apartments. The Millcreek Apartments plat was approved by the Addison City Council on the 6th day of December, 1976 and recorded in Volume 76233, Page 2251-2253. The simplest way to nullify or erase from the public records all the easements and rights-of-way for the Millcreek Apartments is to "vacate" the plat. Once that is done, the new plat covering the new construction can be recorded.

According to Texas State Law, which is codified in the Local Government Code, Chapter 212, the legal way to vacate a previously-approved plat is to take the original plat, write the word "VACATED" on it, approve it through the normal process (through P&Z and Council) and record it. Bruce Dunne of Icon

Engineering has obtained a certified copy of the original plat and produced the vacating document.

Public Works Review. The Public Works Department has reviewed the proposed plat, and recommends approval of it subject to no conditions.

RECOMMENDATION:

Staff recommends approval of the vacation of the final plat for Millcreek Apartments subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink that reads "C Moran". The "C" is large and loops around the "M", which is also large and loops around the "O". The "RAN" is written in a smaller, more straightforward script.

Carmen Moran
Director of Development Services.

VACATION OF A FINAL PLAT/Millcreek Apartments
February 25, 2011

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the vacation of the final plat for Millcreek Apartments, subject to no conditions.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Council Agenda Item: #R11

AGENDA CAPTION:

FINAL PLAT/Vitruvian Park Addition, Lot 3, Block B, Discussion and consideration of approval of a final plat located on one lot of 5.4611 acres in a Planned Development District (007-034), on the southeast side of Vitruvian Way, approximately 700 feet south of Spring Valley Road, on application from UDR, represented by Mr. Bruce Dunne of Icon Consulting Engineers, Inc.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the final plat for Vitruvian park Addition, Lot 3, Block B, subject to the following conditions:

1. The Master Facilities Agreement for Vitruvian Park specifies that the sidewalk easement along Street C (Bella Lane) is to be 9'. The plat currently specifies 6'. Revise to 9' as required by the Master Facilities Agreement.
2. The label for "Lot 1, Block B" near the southwest corner of the property appears to be incorrect. Please verify.
3. Specify how the S.W.B.T. Easement recorded in Vol. 75184, Pg. 1602 is to be abandoned.
4. Recommend removing the vacated easements.
5. Recommend removing the reference to the Mill Creek plat in the Owner's Certificate if it is vacated.
6. Remove the temporary Oncor Easement from the face of the plat. Provide a separate instrument agreement for the easement.
7. Remove "Not Platted, Future Lot 1, Block C, Vitruvian Park Addition" from the area north of the platted area.
8. Show the POINT OF COMMENCING for Tract 1 on the face of

the plat.

9. Place the bearing from the POINT OF COMMENCING to the POINT OF BEGINNING on the face of the plat.

10. Place a “passing” call in Call 1 of Tract 1 and reference the Property recorded in CC Inst No. 200600407616. Show distances on the face of the plat.

11. Place the curve & line numbers in the table in the order they appear in the Owner's Certificate prior to all other needed data.

12. Reverse the bearing of what is currently Curve C2 to flow in the direction of the Owner's Certificate.

13. The bearing on Call 6 of Tract 2 does not match the bearing on the face of the plat. Verify & correct.

14. Provide a closure sheet.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

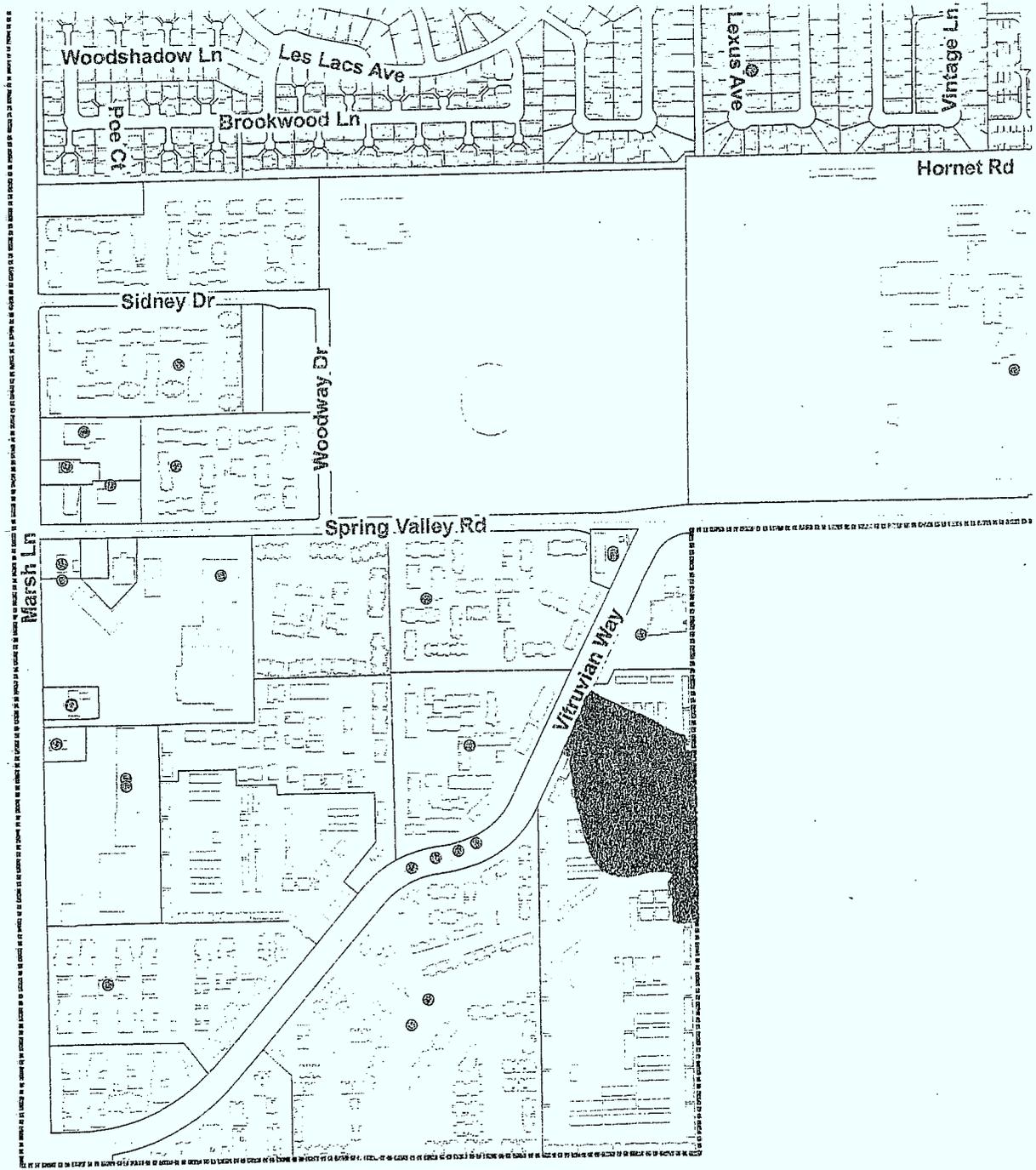
[docket map, staff report, and commission findings](#)

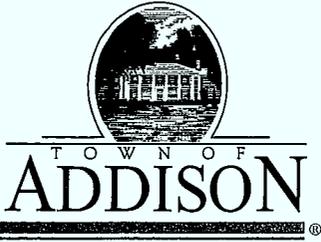
Type:

Backup Material

FINAL PLAT/Vitruvian Park Addition, Lot 3, Block B

FINAL PLAT/Vitruvian Park Addition, Lot 3, Block B, Discussion and consideration of a final plat located on one lot of 5.4611 acres in a Planned Development District (007-034), on the southeast side of Vitruvian Way, approximately 700 feet south of Spring Valley Road, on application from UDR, represented by Mr. Bruce Dunne of Icon Consulting Engineers, Inc.





February 17, 2011

STAFF REPORT

RE: FINAL PLAT/Vitruvian Park
Addition, Lot 3, Block B

LOCATION: One lot of 5.4611 acres in a
Planned Development District
(007-034) generally located on
the south side of Vitruvian Way,
east of Marsh Lane

REQUEST: Approval of a final plat

APPLICANT: UDR, represented by Mr. Bruce
Dunne of Icon Engineering, Inc.

DISCUSSION:

Background. UDR has purchased nine apartment complexes in the Brookhaven Club area and is in the process of redeveloping the neighborhood with a new urbanist development called Vitruvian Park. It has built one complex (Savoye) and is under construction on the second complex (Savoye 2). UDR is currently in design on the third phase of the project and needs to plat the property to dedicate easements and rights-of-way.

Public Works Review. The Public Works Department has reviewed the proposed plat, and recommends the following revisions:

1. The Master Facilities Agreement for Vitruvian Park specifies that the sidewalk easement along Street C (Bella Lane) is to be 9'. The plat currently specifies 6'. Revise to 9' as required by the Master Facilities Agreement.
2. The label for "Lot 1, Block B" near the southwest corner of the property appears to be incorrect. Please verify.
3. Specify how the S.W.B.T. Easement recorded in Vol. 75184, Pg. 1602 is to be abandoned.
4. Recommend removing the vacated easements.
5. Recommend removing the reference to the Mill Creek plat in the Owner's Certificate if it is vacated.

6. Remove the temporary Oncor Easement from the face of the plat. Provide a separate instrument agreement for the easement.
7. Remove "Not Platted, Future Lot 1, Block C, Vitruvian Park Addition" from the area north of the platted area.
8. Show the POINT OF COMMENCING for Tract 1 on the face of the plat.
9. Place the bearing from the POINT OF COMMENCING to the POINT OF BEGINNING on the face of the plat.
10. Place a "passing" call in Call 1 of Tract 1 and reference the Property recorded in CC Inst No. 200600407616. Show distances on the face of the plat.
11. Place the curve & line numbers in the table in the order they appear in the Owner's Certificate prior to all other needed data.
12. Reverse the bearing of what is currently Curve C2 to flow in the direction of the Owner's Certificate.
13. The bearing on Call 6 of Tract 2 does not match the bearing on the face of the plat. Verify & correct.
14. Provide a closure sheet.

RECOMMENDATION:

Staff recommends approval of the final plat for Vitruvian Park Addition, Lot 3, Block B, subject to the conditions listed above.

Respectfully submitted,



Carmen Moran
Director of Development Services



Memorandum

To: Carmen Moran
CC: Nancy Cline
From: Clay Barnett
Date: 2/17/2011
Re: Final Plat Lot 3, Block B Vitruvian Park

1. The Master Facilities Agreement for Vitruvian Park specifies that the sidewalk easement along Street C (Bella Lane) is to be 9'. The plat currently specifies 6'. Revise to 9' as required by the Master Facilities Agreement.
2. The label for "Lot 1, Block B" near the southwest corner of the property appears to be incorrect. Please verify.
3. Specify how the S.W.B.T. Easement recorded in Vol. 75184, Pg. 1602 is to be abandoned.
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11. Place the curve & line numbers in the table in the order they appear in the Owner's Certificate prior to all other needed data.
12. Reverse the bearing of what is currently Curve C2 to flow in the direction of the Owner's Certificate.
13. The bearing on Call 6 of Tract 2 does not match the bearing on the face of the plat. Verify & correct.
14. Provide a closure sheet.

VACATION OF A FINAL PLAT/Millcreek Apartments
February 25, 2011

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the final plat for Vitruvian park Addition, Lot 3, Block B, subject to the following conditions:

1. The Master Facilities Agreement for Vitruvian Park specifies that the sidewalk easement along Street C (Bella Lane) is to be 9'. The plat currently specifies 6'. Revise to 9' as required by the Master Facilities Agreement.
2. The label for "Lot 1, Block B" near the southwest corner of the property appears to be incorrect. Please verify.
3. Specify how the S.W.B.T. Easement recorded in Vol. 75184, Pg. 1602 is to be abandoned.
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8. Show the POINT OF COMMENCING for Tract 1 on the face of the plat.
9. Place the bearing from the POINT OF COMMENCING to the POINT OF BEGINNING on the face of the plat.
10. Place a "passing" call in Call 1 of Tract 1 and reference the Property recorded in CC Inst No. 200600407616. Show distances on the face of the plat.
11. Place the curve & line numbers in the table in the order they appear in the Owner's Certificate prior to all other needed data.
12. Reverse the bearing of what is currently Curve C2 to flow in the direction of the Owner's Certificate.
13. The bearing on Call 6 of Tract 2 does not match the bearing on the face of the plat. Verify & correct.
14. Provide a closure sheet.

Voting Aye: Doherty, Oliver, Wheeler, Wood

Voting Nay: none

Absent: none

Council Agenda Item: #R12

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an Assignment and Construction Services Agreement between the Town of Addison and UDR, Inc., in the amount of \$84,914, for and regarding the management of the construction of certain public infrastructure (including streets, water and sanitary sewer lines, and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1E).

FINANCIAL IMPACT:

Funding established by Certificates of Obligation for Vitruvian Park (from the \$1,301,699 Allocated for Phase 1E by the Master Facilities Agreement, Revised Exhibit "C1").

BACKGROUND:

Included in the Master Facilities Agreement with UDR, Inc., which was approved by Council on October 9, 2007 and amended on November 9, 2010, was a provision to assign the construction management of the Vitruvian Park Infrastructure to UDR, Inc. The provision specifies that eight percent (8%) of the Town's portion of the construction cost was established for Construction Management Services. The Town's portion for Phase 1E is \$1,061,421.00. Eight percent (8%) of this figure is \$84,914.

This provision was added to insure proper coordination between the contractor for the public infrastructure and the contractor for the private infrastructure, thus both parties will be responsible to UDR, Inc. for construction coordination. The objective was to insure that there are no delays to either party due to a lack of coordination and to insure that there is a single point of contact for all construction related activities.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R13

AGENDA CAPTION:

Consideration of authorizing the City Manager to enter into a Construction and Utility Adjustment Agreement between the Town of Addison and Southwestern Bell Telephone Company, d/b/a AT&T Texas to implement the construction of the duct bank and the relocation of AT&T Facilities for the Vitruvian Park Public Infrastructure, Phase IE project (a portion of the Spring Valley Road/Vitruvian Way Extension project).

FINANCIAL IMPACT:

Funding established by Certificates of Obligation for Vitruvian Park (from the \$1,301,699.00 Allocated for Phase 1E by the Master Facilities Agreement, Revised Exhibit "C1").

BACKGROUND:

During the development of the Master Facilities Agreement with UDR, Inc., which was approved by Council on October 9, 2007, UDR, Inc. expressed a desire to insure that AT&T provided the development with an advanced telecommunication system. With this objective, costs were added to the cost estimates used to develop the Master Facilities Agreement that provided for the construction of a duct bank system for the project.

Since that time, the Town of Addison has worked with AT&T to insure that the duct bank system is designed in accordance with their specifications. AT&T was also asked to supply the materials that would be installed, which they have agreed to. This provision is included in the agreement. Additionally, the Town Staff requested that AT&T have their facilities relocated prior to reconstruction of Brookhaven Club Drive (proposed Vitruvian Way), which they have agreed to. This provision is also included in the agreement. The construction of the duct bank by the Town's contractor will not delay the project with construction or relocations. AT&T has requested that they be given full ownership of the facility and the contract work that was valued at \$87,000. AT&T will reimburse the town for \$35,000. The remaining \$52,000 will be funded by UDR, Inc. The agreement has been approved by

both Town/UDR, Inc. and AT&T staff and is being presented for consideration.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A, Promote Quality Transportation Services

ATTACHMENTS:

Description:

[Agreement with AT&T](#)

[Cost Analysis](#)

Type:

Exhibit

Exhibit

CONSTRUCTION AND UTILITY ADJUSTMENT AGREEMENT

THIS CONSTRUCTION AND UTILITY ADJUSTMENT AGREEMENT ("Agreement"), by and between the Town of Addison, Texas, hereinafter identified as the "City", and Southwestern Bell Telephone Company, d/b/a AT&T Texas, a Missouri corporation, hereinafter identified as "AT&T" (the City and AT&T are sometimes referred to herein together as the "parties" and individually as a "party"), is as follows:

WITNESSETH:

WHEREAS, the City intends to reconstruct and improve certain public facilities and infrastructure within the public rights-of-way of the City generally located along Vitruvian Way, a public street located within the City, including the widening, construction, and improvement of a portion of Vitruvian Way (the widening, construction, and improvement of the said portion of Vitruvian Way being sometimes referred to herein as the "Project"); and

WHEREAS, in connection with the Project and in order to enhance, promote and protect the public health, safety and general welfare, to facilitate the adequate provision of transportation and utility services, to promote the preservation of property, and to enhance the aesthetic qualities of the area, the City proposes to construct, on behalf of AT&T, underground duct bank facilities into which AT&T will place its utility conduit, cables and lines; and

WHEREAS, Chapter 283, Texas Local Government Code, Section 283.052 allows AT&T, as a Certificated Telecommunication Provider, to place telecommunication facilities, including the construction of conduit duct banks, in the public rights-of-way of the City, to provide telecommunication services; and

WHEREAS, City has initiated the design of the said duct bank facilities, including the design of the duct bank facility into which AT&T will be able to place and locate its utility conduit, cables and lines (the "AT&T Duct Bank" or "Duct Bank"); and

WHEREAS, the City has notified AT&T that the current location of certain of AT&T's facilities and appurtenances as set forth on Exhibit A attached hereto and incorporated herein (the "AT&T Facilities") are in conflict with the Project, and AT&T has agreed to relocate the AT&T Facilities into the AT&T Duct Bank; and

WHEREAS, AT&T recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, by this Agreement, the City and AT&T desire to implement the construction of the AT&T Duct Bank and the relocation of the AT&T Facilities.

NOW, THEREFORE, in consideration of the above and foregoing premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the City and AT&T agree as follows:

1. **Preparation of Plans.**

The City has previously prepared plans (the "Plans"), for the construction of the AT&T Duct Bank, which Plans are attached hereto as Exhibit B. The Plans have been previously reviewed

and are hereby approved by AT&T. By approving the Plans, AT&T confirms that the Plans are in compliance with AT&T's Standards described in Paragraph 2(c) of this Agreement.

2. **Design and Construction Standards.** The design and construction of the AT&T Duct Bank shall comply with and conform to the following:

- (a) All applicable local, state and federal laws, regulations, ordinances and the policies of the City;
- (b) The terms of all applicable governmental permits or other approvals, as well as any private approvals of third parties necessary for such work; and
- (c) The standard specifications, standards of practice, and construction methods (collectively, "Standards") which AT&T customarily applies to facilities comparable to the AT&T Facilities that are constructed by AT&T or for AT&T by its contractors at AT&T's expense, which Standards are current at the time this Agreement is signed by AT&T.

3. **Construction by City.**

- (a) AT&T hereby requests that the City cause to be constructed, and City agrees to cause to be constructed, the AT&T Duct Bank as a part of and in connection with the construction of the Project. The City has entered or intends to enter into an agreement (the "Contractor Agreement") with a third party contractor or contractors (one or more, the "Contractor") to construct the Project, and including the construction of the AT&T Duct Bank. The City will include in the Contractor Agreement a provision that the construction shall be performed in a good and workmanlike manner and in accordance with the Plans (except as modified pursuant to Paragraph 9 of this Agreement).
- (b) The City will retain the Contractor through the City's normal procedures. Upon selection of a Contractor to perform the construction of the Project, the City will notify AT&T of its selection.
- (c) In return for all services to be provided by the City hereunder in connection with the design and construction of the Duct Bank, AT&T agrees to pay to the City the amount of Thirty Five Thousand and No/100 Dollars (\$35,000.00). City shall invoice AT&T monthly, each bill to include AT&T's share of all charges received by the City from its General Contractor in the previous month, less a 5% retainage. Upon Acceptance of the Duct Bank, the City shall invoice AT&T for the balance outstanding. Each invoice shall be due and payable not later than forty-five (45) days after receipt.

4. **Materials to be Furnished by AT&T.** AT&T shall furnish to the City, at AT&T's sole cost and expense, all conduit, manholes, manhole lids, manhole necks, manhole racks, and such other materials as may be required or necessary to construct the AT&T Duct Bank and which are to be incorporated into the AT&T Duct Bank. All PVC Pipe will be delivered to the Project site by _____, 2011. To avoid potential breakage, damage, or other loss; the manholes will be delivered to the on site contractor just in time for placing. Manhole deliveries will be scheduled and coordinated with the on site contractor.

5. **Adjustment of AT&T Facilities.** Upon acceptance of the Duct Bank as set forth in Paragraph 7(b), below ("Acceptance"), AT&T will be responsible for the relocation of its facilities, including the placement and splicing of any necessary cables or lines, and the removal of any abandoned facilities. AT&T agrees to relocate the AT&T Facilities at its sole cost and expense

(and without seeking reimbursement or repayment for such cost and expense from any entity or person). Provided the scope of the Project does not change from that anticipated as of the date of this Agreement, the relocation of the AT&T Facilities shall be completed no later than 30 days after the Acceptance of the Duct Bank. In the event the relocation of the AT&T Facilities is not completed by such date, AT&T shall be responsible for any costs incurred by the City due to any resulting delays in the Project.

6. **Project Management.** City will provide project management during the construction of the Duct Bank.

7. **Inspection and Acceptance by AT&T.**

(a) Throughout the construction of the AT&T Duct Bank, AT&T shall provide adequate inspectors to inspect such construction. The work shall be inspected by AT&T's inspector(s) as often as AT&T deems necessary for prudent installation. Further, upon request by City or the Contractor, AT&T shall furnish an inspector at any reasonable time in which construction of the AT&T Duct Bank is underway, including occasions when construction is underway in excess of the usual forty (40) hour work week and at such other times as reasonably required by the City or the Contractor. AT&T agrees to immediately orally notify the City and/or the authorized representative of the Project construction manager (UDR, Inc.) (the "Construction Manager") of any concerns resulting from any such inspection, and to promptly thereafter (but in any event not later than 24 hours following such inspection) confirm such concerns electronically or in writing by giving notice thereof to the City and to the Construction Manager. In the event AT&T fails to give such immediate oral notice and to confirm the same in writing within the said 24 hour time period, the AT&T Duct Bank shall be deemed to be in compliance with the Plans and Standards and acceptable to AT&T up to that date of the last AT&T inspection of the construction of the AT&T Duct Bank, except to the extent there are unknown hidden defects that would not be reasonably apparent to the City or AT&T..

(b) AT&T shall perform a final inspection of the AT&T Duct Bank, including conducting any tests as are necessary or appropriate, within ten (10) business days after its receipt of written notice from the City or a contractor of the City that construction of the AT&T Duct Bank has been substantially completed. As part of the final inspection, City shall, in the presence of AT&T's inspector, utilize a measuring pull tape to demonstrate duct integrity and to obtain accurate footage for cable placement. AT&T shall accept such construction if it is consistent with the performance standards described in Paragraph 2, by giving written notice of such acceptance to City within said ten (10) day period (the "Acceptance Notice"). If AT&T does not accept the construction, then AT&T shall, not later than the expiration of said ten (10) day period, notify City in writing of its detailed grounds for non-acceptance with specific recommendations for correcting the problem (the "Non-Acceptance Notice"), and if the recommended corrections are both reasonably required and necessary to make the AT&T Duct Bank in compliance with the Plans and Standards, and the City Engineer concurs that they are both reasonable and necessary, City will cause the corrections to be made. AT&T shall re-inspect any revised construction (and re-test if appropriate) and give notice of acceptance (the "Reconstruction Acceptance Notice"), not later than ten (10) business days after completion of corrective work. If AT&T does not accept the re-construction, then AT&T shall, not later than the expiration of said ten (10) day period, notify City in writing of its detailed grounds for non-acceptance with specific recommendations for correcting the problem (the "Subsequent Non-Acceptance Notice"), and if the recommended corrections are both reasonably required and necessary to make the AT&T Duct Bank in compliance with the Plans and Standards, and the City Engineer

concur that they are both reasonable and necessary, City will cause the corrections to be made. This process shall be followed until or unless AT&T does not timely give the City the Acceptance Notice, the Non-Acceptance Notice, the Subsequent Non-Acceptance Notice, or the Reconstruction Acceptance Notice as set forth above, then in any of those events AT&T shall be deemed to have accepted the AT&T Duct construction work.

- (c) From and after AT&T's Acceptance (or deemed acceptance), AT&T agrees to accept ownership of, and full operation and maintenance responsibility for the Duct Bank.
 - (d) City shall require the Contractor to warrant the Contractor's work on the AT&T Duct Bank. Such warranty shall be for a minimum period of two (2) year following acceptance of substantial completion of the work by AT&T.
8. **Field Modifications.** City shall provide AT&T with documentation of any approved field modifications, including Utility Adjustment Field Modifications as well as minor changes described in Paragraph 9 of this Agreement, occurring in the construction of the AT&T Duct Bank.
9. **Amendments and Modifications.** This Agreement and the Plans, once approved pursuant to Paragraph 1 of this Agreement, may be amended or modified only by a written instrument executed by the parties hereto.
- For purposes of this Paragraph 9, "Utility Adjustment Field Modification" shall mean any horizontal or vertical design change from the Plans previously approved by the City and AT&T, due either to design of the Project or to conditions not accurately reflected in the approved Plans. A Utility Adjustment Field Modification must be agreed upon by the City and AT&T. A minor change (e.g., an added utility marker at a Right-of-Way line, a change in vertical bend, etc.) will not be considered a Utility Adjustment Field Modification and will not require written approval of the Parties, but shall be shown in the documentation required pursuant to Paragraph 8, above.
10. **Relationship of the Parties.** This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship or joint enterprise relationship between the parties hereto and under no circumstances shall AT&T or City be considered as or represent itself to be an agent of the other.
11. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.
12. **Assignment; Binding Effect; No Third Party Beneficiaries.** Except as set forth in this Agreement, neither AT&T nor City may assign or otherwise convey or transfer any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed.

This Agreement shall bind AT&T, the City and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by either party hereto shall give or be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the AT&T Duct construction work or the public in general.

13. **Breach by AT&T or City.** If either party claims that the other has breached any of its obligations under this Agreement, the party will notify the other in writing of such breach, and the

breaching party shall have 30 days following receipt of such notice (or such longer period of time as may be set forth in the notice) in which to cure such breach, before the non-breaching party may invoke any remedies which may be available to it as a result of such breach; provided, however, that both during and after such period the breaching party shall have the right, but not the obligation, to cure any breach; provided, however, that if the breach cannot with diligence be cured within said 30-day period, if within such 30-day period the breaching party provides the non-breaching party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such failure, and thereafter prosecutes the curing of such failure with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such failure with diligence and continuity.

14. **Notices.** Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

City: Nancy Cline
Director of Public Works
16801 Westgrove Drive
Addison, Texas 75001
Phone: (972) 450-2878
Fax: (972) 450-2837
ncline@addisontx.gov

AT&T: Walter Byrne
Area Manager
2200 N. Greenville
Richardson, Texas 75082
Phone: (972) 234-7004
Fax: (972) 301-6893
db8968@att.com

Any notice or demand required herein shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) by confirmed fax, or (d) by reliable messenger or overnight courier to the appropriate address set forth above. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Either party may from time to time designate any other address for this purpose by written notice to the other party.

15. **Approvals.** Any acceptance, approval, or any other like action (collectively "Approval") required or permitted to be given by AT&T or the City pursuant to this Agreement:
- (a) Must be in writing to be effective (except if deemed granted pursuant hereto),
 - (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding

such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval.

16. **Time.**

- (a) Time is of the essence in the performance of this Agreement.
- (b) All references to "days" herein shall be construed to refer to calendar days, unless otherwise stated.
- (c) Neither AT&T nor the City shall be liable to the other for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts.

17. **Continuing Performance.** In the event of a dispute, the parties agree to continue their respective performance hereunder to the extent feasible in light of the dispute, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.

18. **Authority.** City and AT&T each represents to the other party that the respective party has taken all actions necessary to authorize its undersigned signatory to execute this Agreement and to bind such party to its terms.

19. **Cooperation.** The parties acknowledge that the timely completion of the Project will be influenced by the ability of the parties to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the parties agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the City's current and future construction schedules for the Project.

20. **Captions; Premises: "Include".** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the content of their respective paragraphs. The above and foregoing premises and recitals to this Agreement are true and correct and are incorporated herein and made a part hereof for all purposes. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

21. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.

22. **Effective Date.** This Agreement shall become effective upon the date of signing by the last party signing this Agreement.

23. **Rights, Remedies.**

The rights and remedies of the parties (or either of them) set forth in this Agreement are and shall be in addition to any and all other rights and/or remedies either party may have at law, in equity, or otherwise, and may be pursued successively or concurrently as either party may elect. The exercise of any remedy by either party shall not be deemed an election of remedies or preclude that party from exercising any other remedies in the future.

24. **Limitation of Liability**

EXCEPT AS SET FORTH IN PARAGRAPH 5 OF THIS AGREEMENT, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, REGARDING THE CITY'S CONSTRUCTION OF THE DUCT BANK AND AT&T'S RELOCATION OF THE AT&T FACILITIES AS SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS OF CUSTOMERS OR OF ANY OTHER THIRD PARTIES, OCCASIONED BY ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

25. **No Vested property Rights Granted.** Notwithstanding anything else in this Agreement, nothing in this Agreement grants, conveys or vests in any way any property rights to AT&T in the public rights-of-way. AT&T agrees the AT&T Duct Bank is a telecommunication facility that is being placed in the public rights-of-way to the extent allowed a Certificated Telecommunication Provider under Chapter 283, Texas Local Government Code, Section 283.052. The parties agree that it was not the intent of the City to convey, grant or vest any property rights to AT&T by this Agreement in the public rights-of-way, and that AT&T is using the public rights-of-way only to the extent allowed a Certificated Telecommunication Provider by Chapter 283, Texas Local Government Code, Section 283.052. Such telecommunication facilities shall be relocated at the City's request, the cost of such relocation to be borne as provided by applicable law.

TOWN OF ADDISON, TEXAS

**SOUTHWESTERN BELL TELEPHONE
COMPANY**

By: _____
Authorized Signature

By: _____
Duly Authorized Representative

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

DESCRIPTION OF AT&T FACILITIES TO BE RELOCATED

EXHIBIT B

DUCT BANK PLANS

PHASE 1E COST ANALYSIS
11/2/2010

Phase 1E Design & Construction Costs		<u>\$ 1,301,699.00</u>
Professional Services Fees		
Icon Consulting Engineers, Inc. (Allocated)	\$ (10,252.70)	
Icon Consulting Engineers, Inc.	\$ (118,775.00)	
TBG Partners	<u>\$ (3,000.00)</u>	
Total Professional Services Fees		\$ (132,027.70)
Construction		
Original Contract	\$ (1,000,569.50)	
Change Order 2.1	<u>\$ (60,851.50)</u>	
Total Construction		\$ (1,061,421.00)
Construction Phase Services		
Kleinfelder (4%)	\$ (42,456.84)	
UDR (8%)	<u>\$ (84,913.68)</u>	
Total Construction Phase Services		\$ (127,370.52)
Revenue		
AT&T	\$ 35,000.00	
UDR, Inc. (Funds for the Duct Bank)	<u>\$ 52,000.00</u>	
Total Revenue		<u>\$ 87,000.00</u>
Remaining Funds		<u>\$ 67,879.78</u>

Council Agenda Item: #R14

AGENDA CAPTION:

Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 5 with North Texas Contracting, Inc., in the amount of \$57,262.73 and an extension of five (5) calendar days for the construction of certain public infrastructure (including park, streetscape and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1C).

FINANCIAL IMPACT:

Funding established by Certificates of Obligation for Vitruvian Park (from the \$9,531,404 Allocated for Phase 1C by the Master Facilities Agreement, Revised Exhibit "C1").

BACKGROUND:

This change order includes several items needed for continuing construction of the creek area park. It includes irrigation changes, additional trees, changes in retaining wall quantities and types, water main changes, fish habitats, and many other items determined necessary by the Town of Addison or as requested by UDR, Inc. since Change Order #4, which was approved by Council on November 9, 2010.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Provide Quality Leisure Opportunities

ATTACHMENTS:

Description:

[Change Order #5](#)

[Cost Analysis](#)

Type:

Exhibit

Exhibit

CHANGE ORDER NO. 5

Vitruvian Park

PUBLIC INFRASTRUCTURE – PHASE 1C PARK & STREETScape IMPROVEMENTS

Associated with
VITRUVIAN PARK

February 16, 2011

1. **INTENT OF CHANGE ORDER:** The intent of this change order is to modify the provisions of the contract entered into by the Town of Addison, Texas and North Texas Contracting, Inc. for Public Infrastructure Improvements (Phase 1C) to serve Vitruvian Park, dated February 12, 2010.

2. **DESCRIPTION OF CHANGES:** This change order defines revisions to the scope of work that the Contractor shall make and the associated changes to the respective bid items:

<u>Affected</u> <u>Pay Item</u>	<u>Description of Revision</u>	<u>Unit</u>	<u>Quantity</u>	<u>Revised</u> <u>Quantity</u>	<u>Unit</u> <u>Change</u>	<u>Unit</u> <u>Cost</u>	<u>Cost</u> <u>Change</u>
38	6" Reinf. Concrete Park Path Pavement	S.Y.	3,734	3,723	-11	\$50.00	-(\$550.00)
41	4" Reinf. Concrete Pavement (Misc.)	S.Y.	172	144	-28	\$55.00	-(\$1,540.00)
52	Connect Proposed Area Drains to S.D.	EA.	19	0	-19	\$500.00	-(\$9,500.00)
64	Furnish & Install 6" PVC S.D. Pipe	L.F.	513	329	-184	\$40.00	-(\$7,360.00)
83	Furnish & Install 1 1/2" Water Pipe	L.F.	103	64	-39	\$6.00	-(\$234.00)
85	Furnish & Install 3/4" Water Pipe	L.F.	375	388	13	\$4.00	\$52.00
92	Furnish & Install Cast Iron Fittings	Tons	4.0	4.4	0.4	\$1,000.00	\$400.00
112	Furnish & Install Irrigation Conduits	L.F.	853	920	67	\$13.00	\$871.00
114	Furnish & Install 3/4" Sch. 40 Conduits	L.F.	5,662	5,678	16	\$2.50	\$40.00
128	F & I Elec. Conductor (No. 12) XHHW-2	L.F.	8,319	8,451	132	\$1.00	\$132.00
166	F & I Concrete Encasement for Conduits	L.F.	132	562	430	\$12.00	\$5,160.00
189	Furnish & Install Live Oak, 4" Caliper	EA.	130	135	5	\$560.00	\$2,800.00
212	Furnish & Install 2 1/2" Mainline PVC Pipe	L.F.	1,800	2,784	984	\$1.32	\$1,298.88
213	Furnish & Install 1/2" to 2 1/2" Lateral Pipe	L.F.	4,000	6,733	2,733	\$1.32	\$3,607.56
224	Furnish & Install Wire w/ Splices & Box	L.F.	30,000	51,420	21,420	\$0.10	\$2,142.00
229	F & I 4" Spray Heads w/ Bubbler Nozzles	EA.	111	119	8	\$11.00	\$88.00
329	For 12" Dia. Drilled Shaft Pier w/ Casing	V.F.	1,856	2,205	349	\$50.00	\$17,450.00
CO1-2	Soil Nail - Class C Fascia Wall w/ Cap	L.F.	3,875	3,832	-43	\$173.50	-(\$7,460.50)
CO1-3	6" Drain Grate, Round, NDS-No. 90B	EA.	7	3	-4	\$834.00	-(\$3,336.00)

<u>Affected</u> <u>Pay Item</u>	<u>Description of Revision</u>	<u>Unit</u>	<u>Quantity</u>	<u>Revised</u> <u>Quantity</u>	<u>Unit</u> <u>Change</u>	<u>Unit</u> <u>Cost</u>	<u>Cost</u> <u>Change</u>
CO1-4	6" Drain Grate, Round, NDS-No. 918B	EA.	15	0	-15	\$1,334.00	-\$20,010.00
CO2-17	Furnish & Install 6" PVC Water Pipe	L.F.	74	52	-22	\$45.00	-\$990.00
CO2-20	Install 10" Steel Casing Pipe by Open Cut	L.F.	20	0	-20	\$75.00	-\$1,500.00
CO3-22	4T4 Duct Bank Structure per AT&T	L.F.	274	174	-100	\$45.00	-\$4,500.00
CO3-23	4'x8'x6' Manhole Structure per AT&T	EA.	2	1	-1	\$2,000.00	-\$2,000.00
CO5-1	F & I Klassic Trench Drain w/ Grate	L.F.	0	135	135	\$213.18	\$28,779.30
CO5-2	Fish Habitat	L.S.	0	1	1	\$3,500.00	\$3,500.00
CO5-3	Steel Revisions to Grotto Framing	L.S.	0	1	1	\$5,806.35	\$5,806.35
CO5-4	10' Structural Wall at Ponte Ave. Weir	L.F.	0	43	43	\$722.00	\$31,046.00
CO5-5	Furnish & Install 8" PVC Water Pipe	L.F.	0	99	99	\$50.00	\$4,950.00
CO5-6	Furnish & Install 8" Gate Valve & Box	EA.	0	2	2	\$1,500.00	\$3,000.00
CO5-7	Furnish & Install 8" & 2" Irrig. Conduits	L.F.	0	206	206	\$18.69	\$3,850.14
CO5-8	Recirculation Control Cabinet Upgrade	L.S.	0	1	1	\$1,270.00	\$1,270.00

3. **EFFECT OF CHANGE:** This change order will have the following effect on the cost of this project:

Original Contract Amount	\$ 9,140,815.30
Amount of Change Order No. 1	\$ (679,683.76)
Amount of Change Order No. 2	\$ 232,939.76
Amount of Change Order No. 3	\$ 190,786.00
Amount of Change Order No. 4	\$ 217,812.30
Amount of Change Order No. 5	\$ 57,262.73
Revised Contract Amount	\$ 9,159,932.33

4. **EFFECT OF CHANGE ON CONTRACT TIME:** The changes in scope required under this change order will add -5- days to this project.

Contract Time Thru Change Order No. 4	<u>585</u> Days
Amount from Change Order No. 5	<u>5</u> Days
Revised Contract Time	<u>590</u> Days

5. **AGREEMENT:** By the signatures below, duly authorized agent of the Town of Addison, Texas and North Texas Contracting, Inc. do hereby agree to append this **Change Order No. 5** to the original contract between themselves, dated February 16, 2011.

TOWN OF ADDISON, TEXAS

ATTEST:

By: _____
 Ron Whitehead, City Manager

By: _____
 Lea Dunn, City Secretary

NORTH TEXAS CONTRACTING, INC.

ATTEST:

By: _____

By: _____

PHASE 1C COST ANALYSIS
2/29/2011

Phase 1C Allocation from Master Facilities Agreement		<u>\$ 9,531,404.34</u>
Professional Services Fees		
Icon Consulting Engineers, Inc. (Allocated)	\$ (1,267,100.00)	
LRK (Sign Design for Park Package)	<u>\$ (9,550.00)</u>	
Total Professional Fees		\$ (1,276,650.00)
Construction		
Original Contract	\$ (9,140,815.30)	
Change Order #1	\$ 679,683.76	
Change Order #2	\$ (232,939.76)	
Change Order #3	\$ (190,786.00)	
Change Order #4	\$ (217,812.30)	
Change Order #5	<u>\$ (57,262.73)</u>	
Total Construction		\$ (9,159,932.33)
Construction Phase Services		
Kleinfelder (4%)	\$ (366,397.29)	
UDR (8%)	<u>\$ (578,561.32)</u>	
Total Construction Phase Services		\$ (944,958.61)
Park Electrical for Oncor		\$ (77,779.21)
Revenue		
Dallas County	\$ 1,000,000.00	
AT&T	\$ 23,394.00	
UDR, Inc. (Funding #1)	\$ 750,000.00	
UDR, Inc. (Funding #2)	\$ 62,686.24	
Unfunded Portion	<u>\$ 91,835.57</u>	
Total Revenue		<u>\$ 1,927,915.81</u>
Remaining Funds		\$ -

Council Agenda Item: #R15

AGENDA CAPTION:

Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 1.1 with North Texas Contracting, Inc., in the amount of \$26,388.00 and an extension of six (6) calendar days for the construction of Spring Valley Road (a portion of the Spring Valley Road/Vitruvian Way Extension project).

FINANCIAL IMPACT:

Funding established by 2008 Certificates of Obligation for Spring Valley Road.

BACKGROUND:

This change order includes several items needed for continuing construction of Spring Valley Road. It includes revisions to the storm sewer system, addition of an opticom system to serve the existing City of Farmers Branch Fire Station, tree uplighting revisions, water line revisions and adjusting a 16" water line in order to clear the duct bank construction.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

[Change Order 1.1](#)

Type:

Exhibit

Change Order #1.1

Spring Valley Road Widening - Schedule 1

Town of Addison, Texas
Prepared by Halff Associates, Inc.
February 24, 2011

ITEM NO.	DESCRIPTION	UNIT	QTY	Engineer's Estimate	
				UNIT PRICE	EXTENDED PRICE
<i>Junction Box</i>					
CO1.1-1	9' X 7' TYPE M MOD STORM MANHOLE	1	EA	\$6,900.00	\$6,900.00
1.62	7' X 4' RCB	-27	LF	\$323.00	-\$8,721.00
1.66	MANHOLE (TY M)(MOD)(9' X 5')	-1	EA	\$5,500.00	-\$5,500.00
CO1.1-2	60" CL III - RCP	21	LF	\$288.00	\$6,048.00
	<i>Subtotal</i>				-\$1,273.00
<i>Opticom</i>					
CO1.1-3	Drill Shaft Signal Pole (24")	6	VF	\$165.00	\$990.00
1.89	Conduit-2" DIA (SCH 40 PVC)	310	LF	\$7.00	\$2,170.00
CO1.1-4	Ground Box Type E W/ Apron	2	EA	\$900.00	\$1,800.00
CO1.1-5	Ped Pole Assembly	1	EA	\$1,350.00	\$1,350.00
CO1.1-6	Opticom Sensors	1	EA	\$950.00	\$950.00
1.115	Opticom Detector Cable	510	LF	\$1.00	\$510.00
	<i>Subtotal</i>				\$7,770.00
<i>Tree Uplight</i>					
1.136	Tree Uplight 70 Watt Metal Halide	-15	EA	\$1,000.00	-\$15,000.00
CO1.1-7	Tree Uplight W/Moon Pulse E-17 Lamp	15	EA	\$879.00	\$13,185.00
	<i>Subtotal</i>				-\$1,815.00
<i>Water Line</i>					
1.76	6" PVC Water By Open Cut With Embedment	-5	LF	\$50.00	-\$250.00
1.80	Install Fire Hydrant Assembly	1	EA	\$2,500.00	\$2,500.00
1.79	6" Gate Valve With C.I. Valve Box and Cover	1	EA	\$1,100.00	\$1,100.00
CO1.1-8	Install 8" X 6" Tapping Sleeve	1	EA	\$2,000.00	\$2,000.00
	<i>Subtotal</i>				\$5,350.00
<i>16" Water Line</i>					
CO1.1-9	Remove & Dispose of Exist Asbestos Water Line	40	LF	\$20.00	\$800.00
CO1.1-10	16" PVC Pipe, Fittings & Special Couplings	1	LS	\$9,676.00	\$9,676.00
CO1.1-11	Thrust Blocking	4	CY	\$95.00	\$380.00
CO1.1-12	Install 16" Water Line (Crew Days)	1	DY	\$3,250.00	\$3,250.00
CO1.1-13	Trench Safety	1	LS	\$400.00	\$400.00
CO1.1-14	CNCT To Exist 16" AC Water Line	2	EA	\$750.00	\$1,500.00
CO1.1-15	Spoils Haul Off/Clean Up	1	LS	\$350.00	\$350.00
	<i>Subtotal</i>				\$16,356.00
	Junction Box				-\$1,273.00
	Opticom				\$7,770.00
	Tree Uplight				-\$1,815.00
	Water Line				\$5,350.00
	16" Water Line				\$16,356.00
	Total for Change Order #1.1				\$26,388.00
	Original Contract Amount				\$2,477,827.40
	Revised Contract Amount				\$2,504,215.40
	Additional Days Requested				6 Days
	Original Contract Time				271 Days
	Revised Contact Time				277 Days

AGREEMENT: By the signatures below, duly authorized agent of the Town of Addison, Texas and North Texas Contracting, Inc. do hereby agree to append this Change Order No. 1.1 to the original contract between themselves, dated November 11, 2010.

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

ATTEST:

By: _____
Lea Dunn, City Secretary

NORTH TEXAS CONTRACTING, INC.

By: _____
Page 1 of 1

ATTEST:

By: _____

Council Agenda Item: #R16

AGENDA CAPTION:

Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 2.1 with North Texas Contracting, Inc., in the amount of \$60,851.50 and an extension of fourteen (14) calendar days for the construction of certain public infrastructure (including streets and water lines, and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1E) (a portion of the Spring Valley Road/Vitruvian Way Extension project).

FINANCIAL IMPACT:

Funding established by Certificates of Obligation for Vitruvian Park (from the \$1,301,699 Allocated for Phase 1E by the Master Facilities Agreement, Revised Exhibit "C1").

BACKGROUND:

This change order includes several items needed for continuing construction of the extension of Vitruvian Way. It includes revisions to the construction entrance, addition of the parallel parking along Vitruvian Way, water and sewer revisions, street light revisions, and items determined necessary by the Town of Addison or requested by UDR, Inc. since construction began.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

[Change Order 2.1](#)

[Cost Analysis](#)

Type:

Exhibit

Exhibit

CHANGE ORDER NO. 2.1

Vitruvian Park

PUBLIC INFRASTRUCTURE – PHASE 1E

Schedule 2 – Vitruvian Way Extension

Associated with

THE RECONSTRUCTION of SPRING VALLEY ROAD & VITRUVIAN WAY

February 17, 2011

1. **INTENT OF CHANGE ORDER:** The intent of this change order is to modify the provisions of the contract entered into by the Town of Addison, Texas and North Texas Contracting, Inc. for Public Infrastructure Improvements (Phase 1E) to serve Vitruvian Park, dated November 11th, 2010.

2. **DESCRIPTION OF CHANGES:** This change order defines revisions to the scope of work that the Contractor shall make and the associated changes to the respective bid items:

Affected Pay Item	Description of Revision	Unit	Plan Quantity	Revised Quantity	Unit Change	Unit Cost	Cost Change
2.04	Install & Maintain Inlet Protection	EA.	5	6	1	\$100.00	\$100.00
2.07	Install & Maintain Silt Fencing	L.F.	610	496	-114	\$2.00	-\$228.00
2.08	Install & Maintain Rock Check Dam	EA.	1	0	-1	\$500.00	-\$500.00
2.12	Remove Existing Asphalt Drive Approach	S.Y.	861	731	-130	\$4.00	-\$520.00
2.13	Remove Existing Concrete Sidewalk	S.F.	3,560	5,402	1,842	\$1.00	\$1,842.00
2.14	Remove Existing Concrete Curb & Gutter	L.F.	1,694	1,904	210	\$2.00	\$420.00
2.24	Fine Grading and Subgrade Preparation	S.Y.	3,860	4,109	249	\$1.00	\$249.00
2.25	6" Lime Stabilized Subgrade	S.Y.	3,860	4,109	249	\$2.50	\$622.50
2.26	Hydrated Lime (6% by Weight)	Tons	70	74.5	4.5	\$160.00	\$720.00
2.27	10" Reinforced Concrete Street Pav't	S.Y.	3,731	3,968	237	\$35.00	\$8,295.00
2.29	6" Reinforced Monolithic Concrete Curb	L.F.	2,298	2,521	223	\$1.00	\$223.00
2.30	6" Reinforced Concrete Curb & Gutter	L.F.	366	101	-265	\$20.00	-\$5,300.00
2.31	4" Reinforced Concrete Sidewalk Pav't	S.F.	3,291	2,512	-779	\$3.00	-\$2,337.00
2.36	4" Crushed Limestone Flex Base	S.Y.	516	300	-216	\$8.00	-\$1,728.00
2.37	4" HMAC Type "B" Base Course	S.Y.	497	281	-216	\$17.00	-\$3,672.00
2.38	2" HMAC Type "D" Surface Course	S.Y.	497	281	-216	\$11.00	-\$2,376.00
2.39	Emulsified Asphalt Membrane	Gal.	100	58	-42	\$4.00	-\$168.00
2.46	4" Wide White Solid Pavement Marking	L.F.	468	532	64	\$1.00	\$64.00
2.66	F & I 6" PVC Water Pipe by Open Cut	L.F.	77	91	14	\$35.00	\$490.00
2.71	F & I Cast Iron Fittings for Water Pipe	Tons	2.8	2.9	0.1	\$2,000.00	\$200.00
2.78	F & I 8" Sanitary Sewer (8'-10' Depth)	L.F.	160	175	15	\$90.00	\$1,350.00
2.85	Street Light Pole, Type 1 w/ Fixture	EA.	7	16	9	\$3,500.00	\$31,500.00
2.86	Concrete Drilled Shaft Foundation, Type 1	EA.	7	16	9	\$500.00	\$4,500.00

<u>Affected</u> <u>Pav Item</u>	<u>Description of Revision</u>	<u>Unit</u>	<u>Plan</u> <u>Quantity</u>	<u>Revised</u> <u>Quantity</u>	<u>Unit</u> <u>Quantity</u>	<u>Unit</u> <u>Cost</u>	<u>Cost</u> <u>Change</u>
2.91	1 1/4" Sch 80 PVC Conduit w/ 2#6 & 1#10	L.F.	468	938	470	\$10.00	\$4,700.00
CO2.1-1	Remove & Relocate Existing FH	EA.	0	1	1	\$500.00	\$500.00
CO2.1-2	8" Reinforced Concrete Street Pav't	S.Y.	0	84	84	\$55.00	\$4,620.00
CO2.1-3	F & I 4" Subsurface Landscape Drain	L.F.	0	351	351	\$35.00	\$12,285.00
CO2.1-4	F & I 4" Subsurface Drain Cleanout	EA.	0	4	4	\$650.00	\$2,600.00
CO2.1-5	Connect 4" Subsurface Drain to S.D.	EA.	0	3	3	\$800.00	\$2,400.00

3. **EFFECT OF CHANGE:** This change order will have the following effect on the cost of this project:

Original Contract Amount	\$ 1,000,569.50
Amount of Change Order No. 1	\$ 60,851.50
Revised Contract Amount	\$ 1,061,421.00

4. **EFFECT OF CHANGE ON CONTRACT TIME:** The changes in scope required under this change order will add 14 days for this project.

Original Contract Time	<u>271</u> Days
Amount from Change Order No. 1	<u>14</u> Days
Revised Contract Time	<u>285</u> Days

5. **AGREEMENT:** By the signatures below, duly authorized agent of the Town of Addison, Texas and North Texas Contracting, Inc. do hereby agree to append this **Change Order No. 1** to the original contract between themselves, dated February 17, 2011.

TOWN OF ADDISON, TEXAS

ATTEST:

By: _____
Ron Whitehead, City Manager

By: _____
Lea Dunn, City Secretary

NORTH TEXAS CONTRACTING, INC.

ATTEST:

By: _____

By: _____

PHASE 1E COST ANALYSIS
11/2/2010

Phase 1E Design & Construction Costs		<u>\$ 1,301,699.00</u>
Professional Services Fees		
Icon Consulting Engineers, Inc. (Allocated)	\$ (10,252.70)	
Icon Consulting Engineers, Inc.	\$ (118,775.00)	
TBG Partners	<u>\$ (3,000.00)</u>	
Total Professional Services Fees		\$ (132,027.70)
Construction		
Original Contract	\$ (1,000,569.50)	
Change Order 2.1	<u>\$ (60,851.50)</u>	
Total Construction		\$ (1,061,421.00)
Construction Phase Services		
Kleinfelder (4%)	\$ (42,456.84)	
UDR (8%)	<u>\$ (84,913.68)</u>	
Total Construction Phase Services		\$ (127,370.52)
Revenue		
AT&T	\$ 35,000.00	
UDR, Inc. (Funds for the Duct Bank)	<u>\$ 52,000.00</u>	
Total Revenue		\$ 87,000.00
Remaining Funds		<u>\$ 67,879.78</u>