



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, JANUARY 5, 2023 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags - Mayor Pro Tem Clint Kolby**
- 3. Service Recognitions**
 - ♦ **Josh Daniels, Water & Wastewater Construction - 5 years**
 - ♦ **Richelle Malinowski, Police Department - 5 years**
 - ♦ **David Doelitsch, Development Services - 15 years**
- 4. Citizens Comments**

CONSENT AGENDA

- 5. Statutory Consent Agenda**

The Statutory Consent Agenda includes non-controversial and routine items that Council may act on with one single vote. A councilmember may pull any item from the Consent Agenda in order that the Council discuss and act upon it individually as part of the Regular Agenda.

 - 5-a. Approve the Minutes from December 15, 2022 Regular Meeting and December 27, 2022 Special Meeting**
 - 5-b. Approve Ordinance No. O-23-001 on Its Second Reading Amending Chapter 17, Offenses and Miscellaneous Provisions of the Code of Ordinances of the City of Brenham**
 - 5-c. Approve Ordinance No. O-23-002 on Its Second Reading Amending Chapter 8, Fire Protection and Prevention of the Code of Ordinances of the City of Brenham**

- 5-d. Approve a Noise Variance for Outreach Ministries to be held on January 7, 2023 at 1200 E. Tom Green Street from 10:00 AM to 11:00 PM**
- 5-e. Approve a Noise Variance for Uptown Swirl to be Held on January 14, 2023, in Downtown Brenham from 3:00 p.m. to 7:00 p.m.**
- 5-f. Approve an Electronic Payment Processing Agreement Between the City of Brenham and Paymentech, LLC, d/b/a Chase Merchant Services on Behalf of JPMorgan Chase Bank, N.A. for Services Related to the Electronic Payment and Collection of Utility and Municipal Court Transactions and Authorize the Mayor to Execute Any Necessary Documentation**

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

- 6. Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading Amending Appendix A - Zoning of the Code of Ordinances of the City of Brenham Granting a Specific Use Permit to Chris and Deanna Marek to Allow an Accessory Dwelling Unit (ADU) as an Accessory Use to Uses Permitted in a Mixed Residential Use Zoning District (R-2) on Approximately 0.386 Acres of Land Located at 604 S. Baylor Street, and Further Described as Lot E Part 3A, E Part 4A, Block 91, of the Original Town Addition in Brenham, Washington County, Texas (Case No. P-22-027)**

REGULAR SESSION

- 7. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham for an Amendment to the City of Brenham's Official Zoning Map to Change the Zoning District From a Local Business Residential Mixed Use District (B-1) to an Industrial Use District (I) on Approximately 3.77 Acres, Which is a Portion of a 6.899 Acre Tract of Land, Currently Addressed as 1150 Dixie Road and Being Further Described as Tract 51 (WCAD) Out of the Phillip Coe Survey, A-0031 in Brenham, Washington County, Texas (Case No. P-22-026)**

8. Administrative/Elected Officials Report

Administrative/Elected Officials Reports: Reports from City Officials or City staff regarding items of community interest, including expression of thanks, congratulations or condolences; information regarding holiday schedules; honorary or salutary recognitions of public officials, public employees or other citizens; reminders about upcoming events organized or sponsored by the City; information regarding social, ceremonial, or community events organized or sponsored by a non-City entity that is scheduled to be attended by City officials or employees; and announcements involving imminent threats to the public health and safety of people in the City that have arisen after the posting of the agenda.
--

Adjourn

Executive Sessions: The City Council for the City of Brenham reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, including but not limited to §551.071 - Consultation with Attorney, §551.072 - Real Property, §551.073 - Prospective Gifts, §551.074 - Personnel Matters, §551.076 - Security Devices, §551.086 - Utility Competitive Matters, and §551.087 - Economic Development Negotiation

CERTIFICATION

I certify that a copy of the January 05, 2023 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan St., Brenham, TX on December 30, 2022 at 11:00 a.m.

Jeana Bellinger, TRMC, CMC

City Secretary

Disability Access Statement: This meeting is wheelchair accessible. The accessible entrance is located at the Vulcan Street entrance to the City Administration Building. Accessible parking spaces are located adjoining the entrance. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours before the meeting) by calling (979) 337-7567 for assistance.

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2023 at _____ AM PM.

Signature

Title

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on Thursday, December 15, 2022, beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members Present:

Mayor Milton Y. Tate, Jr.
Mayor Pro Tem Clint Kolby
Councilmember Shannan Canales
Councilmember Leah Cook
Councilmember Atwood Kenjura
Councilmember Albert Wright

Members Absent:

Councilmember Adonna Saunders

City of Brenham Staff present:

City Manager Carolyn Miller, City Attorney Cary Bovey, Deputy City Secretary Karen Stack, Director of Development Services Stephanie Doland, Director of Economic Development Susan Cates, Director of Finance Stacy Hardy, Fire Chief Roger Williams, Human Resources Director Susan Nienstedt, Strategic Budget Officer Tim McRoberts, Cherry Cash Prewitt, Kyle Branham, Steven Loving, Steven Eilert, Matthew Brown, Jacob Faske, Lloyd Powell, Curtiss Schoen, Todd Ashorn, and Shawn Bolenbarr

Citizens/Others Present:

6th Grade students from Brenham Middle School, Tom Lewis, Courtney Mason, JoAnn Johnson, and Carol Brooks

Media Present:

Jason May, Brenham Banner-Press; and Josh Blaschke, KWHI

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – Mayor Milton Tate**
- 3. Special Recognitions – Brenham Middle School, 6th Grade Students**

4. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

5. Statutory Consent Agenda

5-a. Approve the Minutes from December 1, 2022, Regular Meeting

5-b. Approve Ordinance No. O-22-028 on Its Second Reading Amending the City of Brenham's FY 2021-2022 Adopted Budget

5-c. Approve a Memorandum of Understanding Between the City of Brenham and Washington County Related to Reimbursement of Funding for Linda Anderson Park and Authorize the Mayor to Execute Any Necessary Documentation

A motion was made by Councilmember Wright and seconded by Councilmember Canales to approve the Statutory Consent Agenda Items 5.a. thru 5.c. as presented.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Absent
Councilmember Albert Wright	Yes

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

6. Public Hearing, Discussion, and Possible Action on an Amendment to the State Plan of Operation Between the City of Brenham and the State of Texas Related to the Law Enforcement Support Office (LESO) Program and Authorize the Mayor to Execute Any Necessary Documentation

Mayor Tate opened the Public Hearing.

Sergeant Steven Eilert presented this item. Eilert explained that the Law Enforcement Support Office (LESO) Program allows Police Departments to apply to receive surplus military equipment from the federal government. The Brenham Police Department has participated in this program since 2014 and previously received a Mine Resistant Ambush Protection (MRAP) vehicle through the program. The federal government retains title to the MRAP and the City's continued participation in the LESO program is required for the City to retain possession.

Eilert explained that in May 2022 President Biden signed Executive Order (EO) 14074, limiting the transfer of certain military equipment to law enforcement which requires new policies and procedures regarding equipment received through programs such as LESO. The Texas Department of Public Safety (DPS) has developed an addendum to the original State Plan of Operation contract to implement the President's 2022 EO. The addendum creates strict limits on how the MRAP may be used and requires enhanced reporting and tracking. It also requires authorized personnel to have annual training and for the department to develop a written policy explaining how these new requirements will be implemented.

City Manager Carolyn Miller advised the Council that the process for this amendment was more intense than merely an amendment to be signed. Miller explained there were notices, public hearings, and the drafting and of new policies and procedures and that Chief Parker and Eilert have been working on this since mid-year.

There were no citizen comments.

Mayor Tate closed the public hearing.

A motion was made by Councilmember Kenjura and seconded by Councilmember Canales to approve an amendment to the State Plan of Operation between the City of Brenham and the State of Texas related to the Law Enforcement Support Office (LESO) Program and authorize the Mayor to execute any necessary documentation.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Absent
Councilmember Albert Wright	Yes

REGULAR SESSION

7. Discuss and Possibly Act Upon the Release of Gas Pipeline Easements Affecting the Brenham Market Square Development Property and Authorize the Mayor to Execute Any Necessary Documentation

Public Utilities Project Manager Shawn Bolenbarr presented this item. Bolenbarr explained that in 2001 the City purchased a section of gas pipeline from Cleco that allowed the City to relocate its Gate Station to consolidate measurement facilities and allow centralized odorization and regulation. Bolenbarr stated that although the gas main was purchased by the City, the easements that surrounded the gas main were never formally dedicated to the city.

Bolenbarr advised that on October 17, 2022, Market Square Development requested that the city abandon the easements that are located internal to the Market Square Development site and since the easements were for gas services to serve houses that no longer exist, the City agreed to abandon the easements.

Bolenbarr explained that City Attorney Cary Bovey advised to file a Quit Claim Deed for the abandonment of the easements so that the City could convey that it has no interest in the easements.

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Wright to approve the release of gas pipeline easements affecting the Brenham Market Square Development Property, with the filing of a Quit Claim Deed, and authorize the Mayor to execute any necessary documentation upon final approval by the City Attorney.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Absent
Councilmember Albert Wright	Yes

8. Discuss and Possibly Act Upon the Award of Bid No. 23-002 Related to the Lease of Approximately 46 Acres of Land Located at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation

Purchasing and Fleet Supervisor Kyle Branham presented this item. Branham explained the City issued a bid on November 2022 for the lease of approximately 46 acres located at the Brenham Municipal Airport for hay production and/or livestock grazing. The current lease for the property at the rate of \$35.50 per acre will expire on December 31, 2022.

Branham stated that the bid opening was held on December 7th and three (3) bids were received. After careful review of the bids submitted, Jay Schroeder, the current lessee, was deemed to be the highest bidder at \$38.00 per acre. Branham advised Council that Schroeder has leased this property since 2017, and during that time he has performed fence maintenance, plowed, and planted winter pasture to produce hay, and cattle grazing.

Branham advised that the new lease agreement will be for a term of one (1) year with automatic annual renewals, not to exceed a total of five (5) years. Lease terms will be on the calendar year, January 1 through December 31.

A motion was made by Councilmember Canales and seconded by Councilmember Cook to award Bid No. 23-002 for the lease of approximately 46 acres of land located at the Brenham Municipal Airport, to Jay Schroeder in the amount of \$38.00 per acre and authorize the Mayor to execute any necessary documentation.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Absent
Councilmember Albert Wright	Yes

9. Discuss and Possibly Act Upon Recommendations for Appointments and/or Re-appointments to Various City Boards and Commissions and Authorize the Mayor to Execute Any Necessary Documentation

City Manager Carolyn Miller presented this item. Miller advised that the selection process consisted of several meetings in which the City Manager, City Secretary, and the Council Subcommittee (Councilmembers Canales, Cook and Saunders) reviewed all applications for new appointments and re-appointments. The Subcommittee determined that the following be presented to City Council for consideration:

The following citizens are being recommended to serve a three (3) year term, expiring on December 31, 2025:

Brenham Police Citizen Advisory Committee:

- Andrea Liner, Education Community – Position 10 (new appointment)
- Phyllis McMahon, Senior Citizen Community – Position 4 (new appointment)
- Neal Pieper, LGBTQ Community – Position 3 (new appointment)
- Courtney Mason, Education Community – Position 13 (new appointment)

Library Advisory Board:

- Lillian Marshall – Position 1 (reappointment)
- Keith Herring – Position 2 (reappointment)
- Jerry Wise-Jares – Position 3 (reappointment)

Planning & Zoning Commission:

- Keith Behrens – Position 1 (reappointment)
- Deanna Alfred – Position 5 (reappointment)
- Calvin Kossie – Position 6 (reappointment)
- Darren Heine – Position 2 (new appointment)

Miller advised Council that both the Parks and Recreation Board and Main Street Board had (4) members eligible for reappointment and due to the numerous applications received for each of these two boards the Subcommittee is recommending two (2) of the four (4) members eligible for reappointment be replaced with new members. Miller explained that this change would allow an opportunity for new citizens to serve while maintaining the knowledge of the tenured members.

Parks and Recreation Advisory Board

- Bill Betts – Position 3 (reappointment)
- Delbert Boeker – Position 5 (reappointment)
- Courtney Mason – Position 4 (new appointment)
- Wendy Buth – Position 6 (new appointment)

Main Street Board

- Tiffany Morisak – Position 3 (reappointment)
- Connie Wilder – Position 11 (reappointment)
- Celia Baker-Haley – Position 1 (new appointment)
- Coleen Broussard – Position 2 (new appointment)
- Dax Flisowski – Position 5 (new appointment)
- Andrea Liner – Position 7 (new appointment)

The following citizens are being recommended to serve a two (2) year term, expiring on December 31, 2024:

Brenham Community Development Corporation

- Gary Crocker – Position 5 (reappointment)
- Bill Betts – Position 6 (reappointment)
- Jim Kolkhorst – Position 7 (reappointment)

Brenham Housing Authority Board

- Richard Flammer – Position 4 (reappointment)
- Marcus Wamble – Position 5 (reappointment)
- Cory Flencher – Position 6 (reappointment)
- Lillian Pollard – Position 7 (reappointment)

Board of Adjustments

- Danny Goss – Position 1 (reappointment)
- Arlen Thielemann – Position 2 (reappointment)
- Dax Flisowski – Position 4 (new appointment)

Building and Standards Commission

- Matthew Metzger – Position 3 (new appointment)
- Richard Morris – Position 5 (new appointment)

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Wright to approve the recommendations for appointments and/or re-appointments to various City Boards and Commissions, as presented, and authorize the Mayor to execute any necessary documentation.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Absent
Councilmember Albert Wright	Yes

10. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 17, Offenses and Miscellaneous Provisions of the Code of Ordinances of the City of Brenham

City Manager Carolyn Miller presented this item. Miller explained this item was a continuation from the November 17, 2022 meeting where Fire Marshal Steven Loving presented changes to the Fire Department False Alarm Policy.

Miller explained that after review of Chapter 17, Article V, it was discovered this Article contained outdated language from the 1980's and was no longer applicable to the City's current policies and procedures; therefore, it is recommended this Article be removed and reserved for future use.

A motion was made by Councilmember Canales and seconded by Mayor Pro Tem Kolby to approve an Ordinance on its first reading amending Chapter 17, Offenses and Miscellaneous Provisions of the Code of Ordinances of the City of Brenham.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Absent
Councilmember Albert Wright	Yes

11. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 8, Fire Protection and Prevention of the Code of Ordinances of the City of Brenham

Fire Marshal Steven Loving presented this item. Loving explained this ordinance was a result of a workshop with Council on November 17, 2022, and includes the changes requested by Council. Loving stated that the changes include a shorter period prior to initiation of a graduating fee schedule for false alarms, and tabulations of fees on a quarterly basis. Initiation of a false alarm fee would occur after the third false alarm. The updated fee schedule and change of placement in the Code of Ordinances would bring Brenham's standard in line with several other cities.

Fire Chief Roger Williams advised that the Fire Department is currently working with the Brenham State School to develop procedures that specifically apply to them, in an effort to reduce the number of false alarms generated by residents at that facility.

A motion was made by Councilmember Canales and seconded by Councilmember Kenjura to approve an Ordinance on its first reading amending Chapter 8, Fire Protection and Prevention of the Code of Ordinances of the City of Brenham.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Absent
Councilmember Albert Wright	Yes

12. Administrative/Elected Officials Report

City Manager, Carolyn Miller reported on the following:

- City offices will be closed on Friday, December 23rd and Monday, December 26th for the Christmas holiday.

City Council adjourned into Executive Session at 1:50 p.m.

EXECUTIVE SESSION

13. **Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court, Washington County, Texas**
14. **Section 551.071 Texas Government Code - Consultation with Attorney- Consultation with City Attorney Regarding Legal Issues Concerning the City of Brenham Lake Somerville Raw Water Intake Structure, the Federal Emergency Management Agency, and Associated Matters**

Executive Session adjourned at 2:15 p.m.

RE-OPEN REGULAR SESSION

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Karen Stack
Deputy City Secretary

Brenham City Council Minutes

A special meeting of the Brenham City Council was held on Tuesday, December 27, 2022, beginning at 11:00 a.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members Present:

Mayor Milton Y. Tate, Jr.
Mayor Pro Tem Clint Kolby
Councilmember Atwood Kenjura
Councilmember Albert Wright

Members Absent:

Councilmember Shannan Canales
Councilmember Leah Cook

City of Brenham Staff present:

City Manager Carolyn Miller, City Attorney Cary Bovey, City Secretary Jeana Bellinger, and Human Resources Director Susan Nienstedt

Citizens/Others Present:

None

Media Present:

Jason May, Brenham Banner-Press; and Mark Whitehead, KWHI

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Attorney Cary Bovey**
- 3. Citizens Comments**

Council adjourned into Executive Session at 11:03 a.m.

EXECUTIVE SESSION

4. **Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court, Washington County, Texas**
5. **Section 551.074 Texas Government Code – Personnel Matters – Discussion and Deliberation Regarding the Process for the Annual Evaluation of the City Manager (Scheduled for January 19, 2023), and Associated Matters**

Executive Session adjourned at 12:11 p.m.

RE-OPEN REGULAR SESSION

6. **Discuss and Possibly Act Upon Matters Related to Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court, Washington County, Texas and Associated Issues, and Authorize the Mayor or the City Manager to Execute Any Necessary Documentation**

No action was taken on this item.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. O-23-001

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 17, OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS BY REPEALING ARTICLE V, ALARMS SYSTEMS; PROVIDING FOR A NEW ARTICLE V, RESERVED, FOR FUTURE AMENDMENTS TO CHAPTER 17; PROVIDING FOR A REPEALER AND SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

WHEREAS, pursuant to Texas Local Government Code, Section 51.001, the City has the authority to adopt ordinances and regulations that are for good government, peace and order of the City; and

WHEREAS, as a home-rule municipality, Texas Local Government Code, Section 51.072 confirms that the City has the full power of local self-government; and

WHEREAS, the City Council finds that Chapter 17, Offenses and Miscellaneous Provisions, Article V, Alarm Systems, of the City of Brenham's Code of Ordinances is antiquated and is no longer applicable; and

WHEREAS, the City Council desires that Article V be repealed in its entirety, and replaced with reservation wording for future amendments to Chapter 17; and

WHEREAS, the City Council hereby finds that the best interests of the City will be promoted by the enactment of this Ordinance;

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

SECTION 1.

Chapter 17, Offenses and Miscellaneous Provisions, Article V, Alarm Systems, of the Code of Ordinances of the City of Brenham is hereby repealed.

SECTION 2.

Chapter 17 of the Code of Ordinances of the City of Brenham is hereby amended to read as follows:

ARTICLE V. RESERVED

Sec. 17-71 – 17-75. RESERVED.

SECTION 3. **SAVINGS CLAUSE**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4. **SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases remaining should any provision be declared unconstitutional or invalid.

SECTION 5. **REPEALER**

Any other ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 6. **EFFECTIVE DATE**

This Ordinance shall become effective upon adoption and publication as required by law.

SECTION 7.
PROPER NOTICE AND MEETINGS

It is hereby officially found and determined that the meetings at which this ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED, on its first reading on the 15th day of December, 2022.

PASSED AND APPROVED, on its second reading on the 5th day of January, 2023.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. O-23-002

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 8, FIRE PROTECTION AND PREVENTION, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS BY AMENDING ARTICLE I, GENERAL, TO ALLOW FEES FOR FALSE ALARMS; PROVIDING FOR A REPEALER AND SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

WHEREAS, pursuant to Texas Local Government Code section 51.001, the City of Brenham, Texas (“City”) has the authority to adopt ordinances and regulations that are for the good government, peace and order of the City; and

WHEREAS, the City Council desires to amend the provisions of Chapter 8 regulating Fire Protection and Prevention, of the Code of Ordinances of the City of Brenham; and

WHEREAS, Chapter 8, Article I, General, of the Code of Ordinances of the City of Brenham, Texas shall be amended as follows; and

WHEREAS, the general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Brenham, Texas, that:

SECTION 1

Chapter 8, Article I, Section 8-6 of the Code of Ordinances of the City of Brenham is hereby amended to read as follows:

Sec. 8-6. Fees charged for false alarms.

“False alarm” shall mean the activation of any fire alarm system subject to this Article which results in a response by the Fire Department and which is caused by: 1) intentional or unintentional misuse of the fire alarm system by the owner, its employees, agents, or occupants; 2) activation of a fire alarm system not caused by heat, smoke or fire, including activations caused by the mechanical failure, malfunction, improper installation, or lack of proper maintenance; or 3) any other alarm activation for which the fire department personnel are unable to determine the apparent cause of the activation.

Excluded from the definition of false alarm is:

- (a) Alarms caused by actions of a communications service provider;
- (b) Alarms caused by power outage of more than four (4) hours, severe weather, or other natural disaster;
- (c) Alarms activated after the fire alarm business has, in good faith, provided advanced notice to the 911 dispatch center that the fire alarm system would be undergoing installation or modifications and maintenance that could trigger a false alarm signal; and
- (d) Multiple fire alarms within a twenty-four (24) hour period that could be considered as one (1) alarm with resulting corrective action being taken by the owner or alarm system service provider.

Any person, firm, or corporation having any type of fire alarm shall not be charged a fee for the first three (3) false alarms responded to by the Fire Department within a calendar year; however, said owner shall be charged for each subsequent alarm:

- (a) \$50.00 (Fifty and No/100 Dollars) for the Fourth (4th) through Sixth (6th) false alarm;
- (b) \$75.00 (Seventy-five and No/100 Dollars) for the Seventh (7th) through the Ninth (9th) false alarm; and
- (c) \$100.00 (One Hundred and No/100 Dollars) for any subsequent false alarm(s) responded to thereafter within a calendar year.

Fees will be charged on all false alarms, regardless of whether the alarm is monitored by the City.

All false alarm fees will be calculated and invoiced quarterly. Payments for false alarm fees shall be due within thirty (30) days of invoice date. Any person delinquent by more than fifteen (15) days in the payment of false alarm fees charged hereunder may be disconnected from alarm monitoring service. Disconnection from alarm monitoring service may result in violation of the Fire Code and is subject to enforcement.

SECTION 2. **SAVINGS CLAUSE**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 3.
SEVERABILITY

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases remaining should any provision be declared unconstitutional or invalid.

SECTION 4.
REPEALER

Any other ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 5.
EFFECTIVE DATE

This Ordinance shall become effective upon adoption and publication as required by law.

SECTION 6.
PROPER NOTICE AND MEETINGS

It is hereby officially found and determined that the meetings at which this ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED, on its first reading on the 15th day of December, 2022.

PASSED AND APPROVED, on its second reading on the 5th day of January, 2023.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



Regular City Council
AGENDA ITEM 5-D.

Agenda Item: Approve a Noise Variance for Outreach Ministries to be held on January 7, 2023 at 1200 E. Tom Green Street from 10:00 AM to 11:00 PM

Meeting Type: Regular Meeting-January 05, 2023

Department: Administration

Staff Contact: Karen Stack

SUMMARY STATEMENT:

Outreach Ministries is holding a fundraiser at the VFW Hall located at 1200 E Tom Green Street on Saturday, January 7th. The event will begin at 8:00 am and last all day. The organizers would like to use amplification equipment for guest speakers and gospel music. A noise variance is required because although the event will be held indoors, the music will likely be audible outside.

ATTACHMENTS:

(1) Noise Variance Request

RECOMMENDED ACTION:

Approve a Noise Variance for Outreach Ministries to be held on January 7, 2023 at 1200 E. Tom Green Street from 10:00 AM to 11:00 PM



Noise Variance Request

For: Click or tap here to enter text.

Name of sponsoring organization: Outreach Ministries

Your Contact Information

Name: Minnie Dabera

Phone: 979 551 2895

Email: _____

Event Details

Event Name: Outreach Ministries Benefit Fund Raiser

Purpose: Benefit Fundraiser

Location: VFW 1200 E Tom Green St Brenham TX 77833

Date: Saturday January 7, 2023

Time: 8:00 AM to All Day

Setup From: 10:00 AM

To: 11:00 AM

Clean up From: 10:00 PM

To: 11:00 PM

Types of activities planned and any additional information specific to this event:

Guest Speaker

Describe activities at this event that require the variance to the noise ordinance:

Gospel Music

Will you use sound amplification equipment? Yes

Cleanup Provisions: _____

Have you ever been found guilty of a criminal offense involving crimes against property, moral turpitude, and/or a felony by any court? NO

Please identify the offence, State of conviction and penalty imposed: _____

Approved by City Council on the _____ day of _____, 2023



Regular City Council
AGENDA ITEM 5-E.

Agenda Item: Approve a Noise Variance for Uptown Swirl to be Held on January 14, 2023, in Downtown Brenham from 3:00 p.m. to 7:00 p.m.

Meeting Type: Regular Meeting-January 05, 2023

Department: Parks & Recreation

Staff Contact: Dane Rau

SUMMARY STATEMENT:

Main Street Brenham is hosting Uptown Swirl 2023 in Downtown Brenham on Saturday, January 14, 2023, from 3-7 p.m. Approximately 800 attendees are expected. This year's annual wine walk around Downtown will feature thirty-five (35) businesses. Music will be playing at the gazebo. Due to the use of amplified sound, a noise variance is required.

ATTACHMENTS:

- (1) Noise Variance Request
- (2) Uptown Swirl 2023 - Poster

RECOMMENDED ACTION:

Approve a noise variance for the Uptown Swirl to be held on January 14, 2023, in downtown Brenham from 3:00 p.m. to 7:00 p.m.



Noise Variance Request

For: Uptown Swirl 2023

Name of sponsoring organization: Main Street Brenham

Your Contact Information

Name: Monique Breaux

Phone: 979-337-7239

Email: mbreaux@cityofbrenham.org

Event Details

Event Name: Uptown Swirl 2023

Purpose: Annual wine walk

Location: Downtown Brenham

Date: 2023-01-14

Time: 3p-7p

Setup From: 1p **To:** 3p

Clean up From: 7:30p **To:** 8:30p

Types of activities planned and any additional information specific to this event: Annual wine walk around Downtown Brenham featuring 35 businesses.

Describe activities at this event that require the variance to the noise ordinance: Music played at the gazebo

Will you use sound amplification equipment? Yes

Cleanup Provisions: The Main Street Promotions Committee will clean up the gazebo area.

Have you ever been found guilty of a criminal offense involving crimes against property, moral turpitude, and/or a felony by any court? No

Please identify the offence, State of conviction and penalty imposed:

Approved by City Council on the _____ day of _____, 2023

2023 ^{Uptown} Swirl _{Downtown Brenham}

Plan Your Getaway with Friends & Family!

January 14 From 3PM-7PM

Purchase at participating Downtown merchants:

\$35 before 12/31 Or **\$40** after 12/31*

Purchase online at DowntownBrenham.com/Swirl:

\$40 before 12/31 Or **\$45** after 12/31*

*** Don't delay!
Quantities are
Limited!**



You will be given a numbered ticket at time of purchase.

On the day of the Swirl, bring your numbered ticket along with your ID to the gazebo on the courthouse square.

In exchange, you will receive your keepsake tasting glass, wrist band and shopping bag. Enjoy!



Regular City Council
AGENDA ITEM 5-F.

Agenda Item: Approve an Electronic Payment Processing Agreement Between the City of Brenham and Paymentech, LLC, d/b/a Chase Merchant Services on Behalf of JPMorgan Chase Bank, N.A. for Services Related to the Electronic Payment and Collection of Utility and Municipal Court Transactions and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-January 05, 2023

Department: Finance

Staff Contact: Stacy Hardy

SUMMARY STATEMENT:

In October, the City was notified that our current credit card payment processor, Elavon, would no longer be integrated with the Incode software used by the utility billing and municipal court operations. We were presented with two suitable options, and after evaluation, would like to transition to Tyler Payments, a product developed by Tyler Technologies who is the provider of our Incode software. This Tyler developed solution will have similar rates as Elavon and because we will separate utility and court payments into different merchant accounts, we will be able to realize savings due to discounts available to utility accounts. Tyler Payments uses Paymentech, LLC, J.P. Morgan Chase Bank as its payment processor. There is no term associated with the Paymentech agreement and once the agreement is signed, it will take 3-4 weeks for our new merchant accounts to be created and then we will be able to move forward with the transition to Tyler Payments.

ATTACHMENTS:

(1) Paymentech, LLC Agreement

RECOMMENDED ACTION:

Approve the Electronic Payment Processing Agreement between the City of Brenham and Paymentech, LLC, d/b/a Chase Merchant Services on behalf of JPMorgan Chase Bank, N.A. for services related to the electronic payment and collection of utility and municipal court transactions and authorize the Mayor to execute any necessary documentation.



**SUBMITTER MERCHANT
PAYMENT PROCESSING INSTRUCTIONS AND GUIDELINES**

These terms and conditions, the application, forms, and other documents provided by you herewith constitute the Agreement between Paymentech, LLC, JPMorgan Chase Bank, NA, and Merchant

Paymentech, LLC, also known as Chase Merchant Services (“CMS”, “we”, or “us”), for itself and on behalf of JPMorgan Chase Bank, N.A. (“Chase”), is excited about the opportunity to join **Tyler Technologies, Inc** (referred to herein as “Submitter”) in providing you, the Merchant signing below (hereinafter referred to as “you” or “Merchant”) with state-of-the-art payment processing services.

When you use the services of Submitter to receive payments for Transactions initiated by Card or by ECP, those Transactions are processed by us through systems and networks owned by the Networks, each of which maintains its own set of Network Rules governing Transactions processed over such Network.

The Network Rules, generally require that we have a direct contract with each merchant for which we process payment transactions through the Network, and this agreement (this “Agreement”) contains certain contractual commitments required by the Network Rules to be contained in each such contract.

1. Compliance with Network Rules, Applicable Law and User Guide; Network Liabilities.

You agree to comply with the Network Rules (including the Security Standards) of each Network, as they pertain to the Transactions you submit to us (directly or via Submitter) for processing through Submitter. You shall not, through act or omission, cause CMS or Chase to violate any Network Rules. You shall perform your obligations under this Agreement in compliance with all applicable federal, state and local laws and regulations and shall not submit any Transaction that it knows to be illegal. CMS reserves the right to temporarily suspend funding or refuse to process any Transaction if we reasonably suspect that it was prepared in violation of any provision of this Agreement, applicable law, or the Network Rules. You agree to pay any and all fines, fees, penalties, liabilities, charges and other amounts which may be imposed or assessed by the Networks on you, Chase or CMS as a result of your actions, omissions, Transactions, Chargebacks or Returns, including without limitation, your failure to comply with the Network Rules, this Agreement or any Security Standards (the “Network Liabilities”).

2. Your Transactions; Chargebacks and Returns.

You represent and warrant that you will only use our services and submit Transactions for processing which represent the sale or lease of goods or the provision of services by you to a Customer and not on behalf of any third-party seller. You shall have full liability for all Chargebacks (with respect to Card Transactions) and all Returns (with respect to ECP Transactions), as may be assessed in accordance with the applicable Network Rules, provided, however, that in the event that any Chargeback or Return is ultimately reversed by the applicable Network in your favor, CMS shall refund you for the amount thereof.

3. Settlement and Funding.

- (a) CMS will submit your Transactions to the applicable Network for processing, and thereafter will provisionally fund the Settlement Account (as defined below).
- (b) You must designate at least one bank account for the deposit and settlement of funds and the debit of any fees and costs associated with CMS’s processing of the Transactions (all such designated bank accounts shall be collectively referred to herein as the “Settlement Account”). You authorize CMS to initiate electronic credit entries, debit entries, and adjustments to your Settlement Account for amounts due to or from you in connection with this Agreement. CMS will not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties, including but not limited to delays or errors by Submitter, the Networks, or your bank.
- (c) Unless otherwise agreed, the dollar amount payable to you for your Transactions will be equal to the amount submitted by you in connection with your sale Transactions, minus the sum of amounts due from you, including Refunds, Chargebacks, Returns, Network Liabilities, and all applicable charges and adjustments; provided, however, that in the event we fail to withhold any such amounts from

your Transaction proceeds, we may debit your Settlement Account for such amounts ;

(d) If we fail to withhold any Refunds, Returns, Chargebacks, Network Liabilities or other charges or amounts due from the proceeds payable to the Settlement Account (including where such proceeds are insufficient to cover such obligations), or if the Settlement Account does not have a sufficient balance to pay amounts due from you under these guidelines, we may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) debit the Settlement Account for the amount of the negative balance; (iii) withhold settlement payments to the Settlement Account until all amounts are paid, (iv) delay presentation of refunds until a payment is made to us of a sufficient amount to cover the negative balance; and (v) pursue any remedies we may have at law or in equity.

4. Specific Requirements, Representations and Warranties Relating to ACH Transactions.

(a) The NACHA Operating Rules (“NACHA Rules”) are the applicable Network Rules governing your ECP Transactions that utilize the ACH network, including, without limitation, ACH, ARC, TEL and WEB Transactions (“ACH Transactions”). You are responsible for complying with the NACHA Rules as set forth in Section 1 of this Agreement. The originating depository financial institution which CMS uses (currently Chase) to originate and process your ACH Transactions (the “ODFI”, as that term is further defined in the NACHA Rules) retains the right to reject or delay any ACH Transaction, to execute an ACH Transaction through any clearing house or channel it deems appropriate, to terminate or suspend your right to originate ACH Transactions, or to audit your compliance with the NACHA Rules.

(b) Any credit made to your Customer’s account as a result of an ACH Transaction originated by you (e.g., an issuance of a refund) is provisional until your Customer’s receiving depository financial institution (the “RDFI”, as further defined in the NACHA Rules) receives final settlement for such entry through a Federal Reserve Bank. If final settlement is not received by the RDFI, the RDFI will receive a refund from your Customer, and your Customer will not be deemed to have been paid by you.

(c) You represent and warrant that: (i) each ACH Transaction you originate will comply with all applicable laws and NACHA Rules; (ii) you will not originate any ACH Transaction as a Third Party Sender (as that term is defined in the NACHA Rules) and will not allow any third party to originate an ACH Transaction through your account under this Agreement; (iii) all ACH Transactions resulting in a debit to the Customer will be authorized by the Customer in writing and signed or similarly authenticated in a manner that complies with the NACHA Rules; (iv) you will obtain and retain proper authorization, in accordance with all applicable laws and the NACHA Rules, for each initiation of an ACH debit or credit to a Customer’s account, and will make copies thereof available to us upon request; and (v) you hereby make to us, and certify compliance with, all warranties that we or the ODFI make, or are deemed to make, under the NACHA Rules, in connection with any ACH Transaction you originate.

5. Safeguarding Account Information; Security Standards.

(a) By accepting Card and ECP payments from your Customers, you acknowledge and understand the importance of protecting Transactions and Account Information and complying with the applicable Network Rules, Security Standards, and applicable law. You also acknowledges the heightened risk associated with access to Transactions and Account Information, and, to the extent you do have access to Transactions and Account Information, you must establish policies and procedures to protect such information in conformity with the Network Rules, Security Standards, and applicable law, including the storage and disclosure of such information. You shall exercise reasonable care to prevent use or disclosure of Transactions, Account Information, other than as necessary to complete a Transaction or as otherwise specifically permitted by the Network Rules or required by applicable law. If at any time you determine or suspect that Transactions or Account Information have been compromised, you must notify CMS immediately and assist in providing notification to such parties as may be required by law or Network Rules, or as CMS otherwise reasonably deems necessary. You further agree to provide CMS, upon its request, with information related to your compliance with the Network Rules and Security Standards as may from time to time be required by the Networks or reasonably requested by us.

(b) You acknowledge that failure to comply with the Network Rules, including the Security Standards, or the occurrence of a Data Compromise Event, may result in assessments, fines and/or penalties by the Networks. In the event CMS or Chase incurs any damage, loss, liability or expense as a result of any such failure or occurrence, including, without limitation, any Network Liability, you shall reimburse CMS and Chase, as applicable, immediately for all such amounts. Furthermore, if any Network requires a forensic examination of you or any of your agents, business partners, contractors, or subcontractors due to a Data Compromise Event, you agree to cooperate with such forensic examination until it is completed, including, without limitation, the engagement of an examiner acceptable to the relevant Network. Notwithstanding the foregoing, the Networks may directly, or demand that CMS, engage an examiner on your behalf in order to expedite the investigation of the Data Compromise Event.

6. Merchant Taxpayer Certification and CMS Reporting Obligations.

Upon request from time to time, Merchant shall provide CMS with the appropriate taxpayer certification documentation, via Internal Revenue Service (IRS) Form W-9 (or the appropriate versions of Form W-8, if applicable). Merchant shall promptly notify CMS if there are any changes in this information. CMS may deduct withholding taxes, if any, from proceeds payable to Merchant or any entity that is a party to this agreement where required under applicable law. CMS may, in accordance with applicable law and from time to time during the term of this Agreement, request Merchant to recertify its taxpayer certification hereunder. Furthermore, Merchant shall be responsible for any penalties related to the reporting obligations of CMS hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from CMS.

7. Amendments and Updates.

We reserve the right to update or amend this Agreement from time to time, including as may be required to ensure compliance with the Network Rules, applicable law, or the policies, procedures or requirements of the ODFI. In such event, we will provide you with the changes, or with an updated copy of this Agreement, and your continued use of our processing services after your receipt of such changes shall constitute your agreement to comply with the Agreement as so amended.

8. Data Security and Privacy

By signing below, you represent to us that you **do not** have access to any Account Information (such as the Customer's primary account number, expiration date, security code or personal identification number) and you will not request access to such Account Information from Submitter. In the event that you do happen to receive Account Information in connection with the processing services provided by Submitter or CMS under these guidelines, you agree that you will not use it for any fraudulent purpose or in violation of any Network or applicable law and you will comply with all applicable Network Rules and Security Standards. If at any time you believe that Account Information has been compromised, you must notify us promptly and assist in providing notification to the proper parties. You must insure compliance with all Security Standards that are applicable to you and which may be published from time to time by the Network. If any Network requires an audit of you due to a Data Compromise Event or suspected event, you agree to cooperate with such audit. You may not use Account Information other than for the sole purpose of completing the Transaction authorized by the Customer for which the information as provided to you, or as specifically allowed by Network Rules, or required by law. In the event of your failure, including bankruptcy, insolvency or other suspension of business operations, you shall not sell, transfer or disclose any materials that contain Transaction information or Account Information to third parties.

9. Definitions.

- (a) **"Card"** means a physical or virtual credit, debit card, pre-paid card, or stored value card, or any evidence thereof (e.g. account number, access number, token, code, payment credential, or other form factor or access device), or any device, mobile application, digital wallet or other technology, medium or method (regardless of form) used to access an account or account number associated therewith and through which Network payment services are delivered, authorized and established between a Customer and a Network, or representatives or members of a Card Network that Merchant accepts from Customers as payment for goods or services.
- (b) **"Account Information"** is information related to a Customer or the Customer's Card or any bank account, depository account, or other account maintained by the Customer, and that is obtained by you or Submitter from the Customer's Card or any check provided by the Customer, or that is otherwise obtained by you from the Customer in connection with a Transaction (for example, an account number, a security code, a PIN number, or the customer's zip code when provided as part of an address verification system). Without limiting the foregoing, such information may include a the Card account number, a bank account number, a card expiration date, the Customer's name or date of birth, PIN data, security code data (such as CVV2 and CVC2) and any data read, scanned, imprinted, or otherwise obtained from the Card or any check printed thereon, or magnetically, electronically or otherwise stored thereon.
- (c) **"ACH"** means Automated Clearing House.
- (d) **"Chargeback"** is a rejection, reversal or return of a Transaction you previously presented to CMS, as permitted and governed by the applicable Network Rules. The term Chargeback shall include any Return of an ECP Transaction.
- (e) **"Customer"** is the person or entity to whom a Card is issued or who is otherwise authorized to use a Card and who initiates a payment with you relating to a Transaction.
- (f) **"Data Compromise Event"** means an occurrence that results, or could result, directly or indirectly, in the unauthorized access to or disclosure of Transactions and/or Account Information.
- (g) **"ECP"** means electronic check processing as a means of receiving or making payment in connection with a Transaction or

Refund. ECP includes various products of a type supported by CMS, including, without limitation, ACH, ARC, CCD, EFT, POP, PPD, TEL, WEB and Facsimile Draft.

- (h) “**Chase**” is JPMorgan Chase Bank, N.A. or other entity providing sponsorship to CMS as required by all applicable Networks. Your acceptance of Network products is extended by the Chase.
- (i) “**Network**” is any payment method provider whose payment method is accepted by you from your Customers and which is accepted by CMS for processing, including, but not limited to, Visa, Inc., MasterCard International, Inc., Discover Financial Services, LLC and other credit and debit card providers, debit network providers. Network also includes the National Automated Clearing House Association (“NACHA”), with respect to Transactions involving any credit or debit entry processed over the ACH network, and any other network or clearing house over which any ECP Transactions may be processed.
- (j) “**Network Rules**” are the standards, bylaws, rules, and operating regulations, as they exist from time to time, of the various Networks, and includes the Security Standards.
- (k) “**CMS**”, “**we**”, “**our**”, and “**us**” is Paymentech, LLC, a Delaware limited liability company, having its principal office at 8181 Communications Parkway, Plano, Texas 75024.
- (l) “**Refund**” means any refund or credit issued for any reason, including, without limitation, for a return of merchandise or cancellation of services, and any adjustment of a Transaction.
- (m) “**Return**” means any rejection, reversal or return of an ECP Transaction or ACH debit entry you previously presented to CMS, as permitted and governed by the applicable Network Rules.
- (n) “**Security Standards**” are all rules, regulations, standards or guidelines adopted or required by the Networks or the Payment Card Industry Security Standards Council relating to privacy, data security and the safeguarding, disclosure and handling of Account Information, including but not limited to the Payment Card Industry Data Security Standards (“PCI DSS”), Visa’s Cardholder Information Security Program, Discover’s Information Security & Compliance Program, American Express’s Data Security Operating Policy, MasterCard’s Site Data Protection Program, MasterCard’s POS Terminal Security program and the Payment Card Industry PIN Entry Device Standard, in each case as they may be amended from time to time.
- (o) “**Transaction**” is a transaction conducted between a Customer and you utilizing a Card or ECP for payment in connection with the sale of goods or the lease or provision of services by you (either directly or through Submitter). Transaction may also be used to refer to the written or electronic record of such a transaction, including, without limitation, an authorization code, settlement record, ECP file, or a credit or debit entry pursuant to and consistent with NACHA Rules which is submitted to CMS to initiate or evidence a Transaction.
- (p) “**Transaction Receipt**” means an electronic or paper record of a Transaction generated upon completion of a sale or Refund, a copy of which is presented to the Customer.

I, the undersigned, individually and on behalf of Merchant, certify, represent and warrant that:

- I am an owner, officer, partner or other authorized representative of the Merchant (“Authorized Representative”), duly authorized to:
 - enter into legally binding agreements on behalf of the Merchant;
 - execute and submit this document on behalf of Merchant;
 - provide all information contained herein (including, as applicable, banking or financial information, and personal information relating to owners, officers, partners or Merchant contacts), on behalf of the Merchant;
- all information contained within this document or submitted in connection herewith is true, complete and not misleading.
- to the extent any bank account information is being provided in connection with this document, Merchant owns such bank account, and such account is being maintained solely for business purposes and not for personal, family, or household purposes
- Chase Paymentech and Member may:
 - investigate and verify the credit and financial information of Merchant, and
 - obtain credit reports on Merchant from time to time in connection with establishing Merchant’s account and maintaining the Agreement.

If I have identified myself as an Owner of Merchant in this document, by signing below I authorize and instruct Chase Paymentech, Member, or their designee(s) to conduct the following in connection with establishing Merchant’s account and maintaining the Agreement:

- obtain and use consumer credit reports (or other information derived therefrom) on me from time to time; and

- investigate and verify personal credit and financial information about me or any other owner identified herein or in the Application, the Agreement, or any other document provided by me or Merchant in connection with any of the foregoing.

Merchant, intending to be legally bound, hereby agrees to the terms and conditions of the above Payment Processing Instructions and Guidelines.

Agreed and Accepted by:

City of Brenham

MERCHANT LEGAL NAME

200 W Vulcan Street Brenham, TX 77833

Legal Address

By (authorized signature)

By, Name, Title

Date



Regular City Council
AGENDA ITEM 6.

Agenda Item: Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading Amending Appendix A - Zoning of the Code of Ordinances of the City of Brenham Granting a Specific Use Permit to Chris and Deanna Marek to Allow an Accessory Dwelling Unit (ADU) as an Accessory Use to Uses Permitted in a Mixed Residential Use Zoning District (R-2) on Approximately 0.386 Acres of Land Located at 604 S. Baylor Street, and Further Described as Lot E Part 3A, E Part 4A, Block 91, of the Original Town Addition in Brenham, Washington County, Texas (Case No. P-22-027)

Meeting Type: Regular Meeting-January 05, 2023

Department: Development Services

Staff Contact: Shauna Laauwe, AICP

SUMMARY STATEMENT:

Chris and DeeAnna Marek (property owners/applicants) are requesting approval of a Specific Use Permit to construct a new 24'x24', 1-story (576 sq.ft.), detached accessory dwelling unit (ADU). The proposed detached accessory dwelling unit (ADU) is intended to be utilized for elderly family members or as supplemental rental income (See Attached Staff Report Exhibit G). In addition to meeting the building codes and the requirements for structures and uses within the R-2 District, Section 10.02(4) of the Zoning Regulations lists six additional development standards for ADUs. As noted in detail in the attached Staff Report, the proposed ADU met or exceeded each of the additional development standards, except for the requirement that the driveway and off-street parking area be improved with an impervious surface of either asphalt or concrete. The existing off-street parking area is nonconforming with a limestone and gravel surface. With the proposed improvements, the nonconforming driveway and parking surface is required to be brought up to the current zoning code. In addition, the subject property is part of two lots in Block 91 of the Original Town Addition, a subdivision that predates the adoption of the Subdivision and Zoning Regulations in 1967. Before a building permit may be issued for the proposed ADU, the subject tract will be required to be replatted into one lot. This is required due to an accessory structure not being allowed to be the only structure on a said lot by the zoning regulations. Following a public hearing, residential replats are approved by the Planning and Zoning Commission.

The purpose of the SUP process is to identify those uses which might be appropriate within a zoning district but, due to either their location, function, or operation, could have a potentially harmful impact on adjacent properties or the surrounding area; and to provide for a procedure whereby such uses might be permitted by further restricting or conditioning them to mitigate or eliminate such adverse impacts. Staff finds that no adverse impacts to adjacent properties or surrounding area is anticipated due to the proposed compatible residential use, site plan, and compliance of the additional development standards.

On Monday, December 19, 2022, after conducting a Public Hearing, the Planning and Zoning Commission **voted unanimously to recommend approval** of the SUP request as presented **with the following conditions**:

1. The subject tract, which is currently platted as two lots, shall be replatted into one residential lot with approval by the Planning and Zoning Commission.
2. Proposed off-street parking area and driveway shall be improved to an impervious surface of either asphalt or concrete.

ATTACHMENTS:

- | |
|--|
| (1) Ordinance - First Reading
(2) Staff Report
(3) Submitted Citizen Comment Forms |
|--|

RECOMMENDED ACTION:

Approve an Ordinance on its first reading amending Appendix A- Zoning of the Code of Ordinances of the City of Brenham granting a Specific Use Permit to Chris and Deanna Marek to allow an accessory dwelling unit (ADU) as an accessory use to uses permitted in a Mixed Residential Use Zoning District (R-2) on approximately 0.386 acres of land located at 604 S. Baylor Street, and further described as Lot E Part 3A, E Part 4A, Block 91, of the Original Town Addition, in Brenham, Washington County, Texas, (Case No. P-22-027) ***with the following conditions:***

1. The subject tract, which is currently platted as two lots, shall be replatted into one residential lot with approval by the Planning and Zoning Commission.
2. Proposed off-street parking area and driveway shall be improved to an impervious surface of either asphalt or concrete.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM GRANTING A SPECIFIC USE PERMIT TO ALLOW AN ACCESSORY DWELLING UNIT (ADU) USE IN AN R-2 MIXED-RESIDENTIAL ZONING DISTRICT ON APPROXIMATELY 0.386 ACRES OF LAND ADDRESSED AS 604 S. BAYLOR STREET, BEING FURTHER DESCRIBED AS E PART 3A, E PART 4A, BLOCK 91, ORIGINAL TOWN ADDITION, IN BRENHAM, WASHINGTON COUNTY, TEXAS.

WHEREAS, Chris and DeAnna Marek, the owners of the 0.386 acres of land generally located on the west side of S. Baylor Street, south of East Second Street, north of Gilder Street and addressed as 604 S. Baylor Street, being further described as E PT 3A, E PT 4A, Block 91 Original Town Addition, in Brenham, Washington County, Texas (the “Property”), have requested that the Property be issued a Specific Use Permit for an Accessory Dwelling Unit; and

WHEREAS, the City of Brenham has adopted Appendix A – “Zoning” of the City of Brenham Code of Ordinances, as amended, which divides the City of Brenham into various zoning districts; and

WHEREAS, Appendix A – “Zoning” of the City of Brenham Code of Ordinances authorizes the City Council to grant specific use permits for specific uses within the various zoning districts; and

WHEREAS, at least ten (10) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested Specific Use Permit; and

WHEREAS, this amendment was recommended unanimously for approval by the Brenham Planning and Zoning Commission during its regular meeting on December 19, 2022, with two (2) conditions: 1) that the Property, which is currently platted as two lots, shall be replatted into one (1) residential lot with approval by the Planning and Zoning Commission; and 2) that the off-street parking area and driveway serving the ADU shall be improved to an impervious surface of either asphalt or concrete; and

WHEREAS, subject to the two (2) aforementioned conditions, the City Council desires to approve this Ordinance granting the specific use permit, as described herein below; and

WHEREAS, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested Specific Use Permit and the City Council considered the final report of the Planning & Zoning Commission;

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

SECTION 1. The Official Zoning Map of the City of Brenham is hereby amended to show that a Specific Use Permit is granted to Chris and DeeAnna Marek for an accessory dwelling unit (ADU), more particularly described in Exhibit “B”, in an R-2 Mixed Residential use zoning district on approximately 0.386 acres of land addressed as 604 S. Baylor Street, being further described as E PT 3A, E PT 4A, Block 91 Original Town Addition in Brenham, Washington County, Texas, said 0.386 acres of land being shown on Exhibit “A” attached hereto and incorporated herein for all purposes.

SECTION 2. The development of the Property shall be in accordance with the following special conditions on the subject 0.386 acre tract: 1) the Property, which is currently platted as two lots, shall be replatted into one (1) residential lot with approval by the Planning and Zoning Commission; and 2) the off-street parking area and driveway serving the ADU shall be improved to an impervious surface of either asphalt or concrete.

SECTION 3. Upon holding a properly notified public hearing, the City Council may amend, change, or rescind the Specific Use Permit granted by this Ordinance if:

- a. There is a violation and conviction of any of the provisions of this Ordinance, or any ordinance of the City of Brenham, that occurs on the Property;
- b. The premises, or Property, used pursuant to the Specific Use Permit granted by this Ordinance are enlarged, modified, structurally altered, or otherwise significantly changed unless a separate Specific Use Permit is granted for such enlargement, modification, structural alteration, or change;
- c. As otherwise permitted by law and/or Brenham’s Zoning Ordinance, as it exists or may be amended.

SECTION 4. This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

PASSED and APPROVED on its first reading this the ____ day of January 2023.

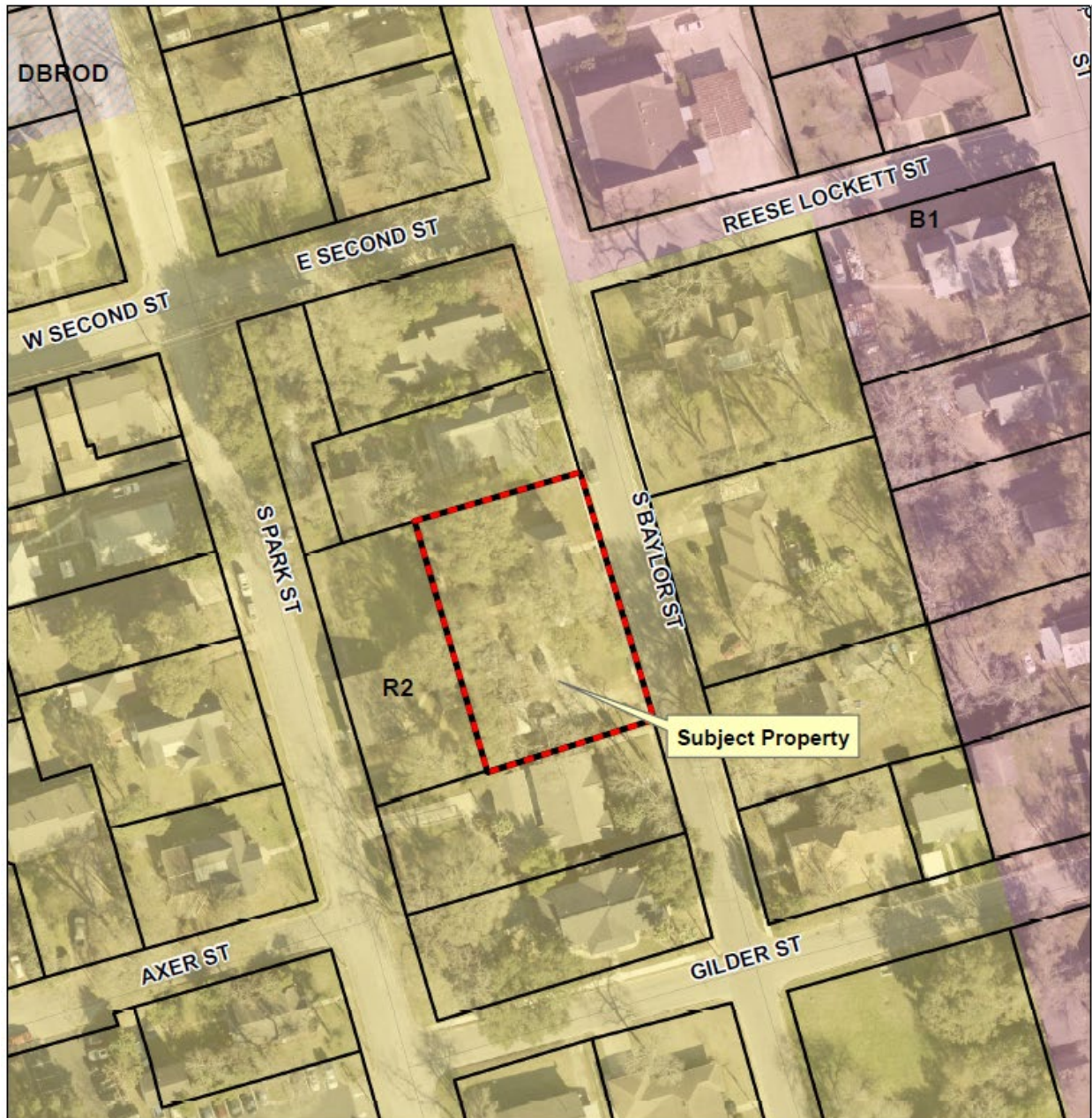
PASSED and APPROVED on its second reading this the ____ day of January 2023.

ATTEST:

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

EXHIBIT "A"



Zoning Map 604 S Baylor Street Specific Use Permit Request

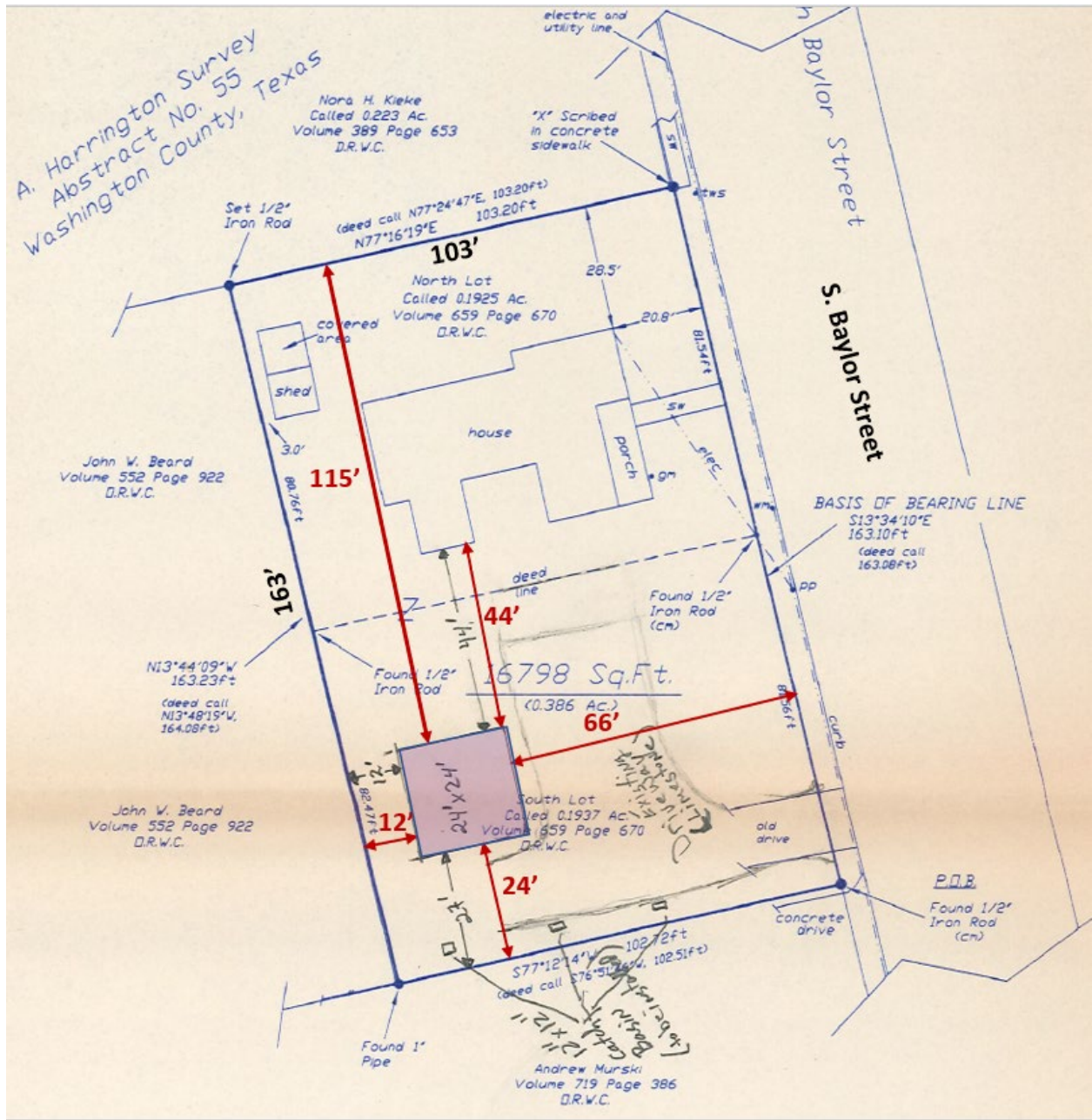


- B1 Local Business Mixed
- Downtown Business/Residential Overlay District
- R2 Mixed Residential



1 inch = 83 feet

EXHIBIT “B” Site Plan



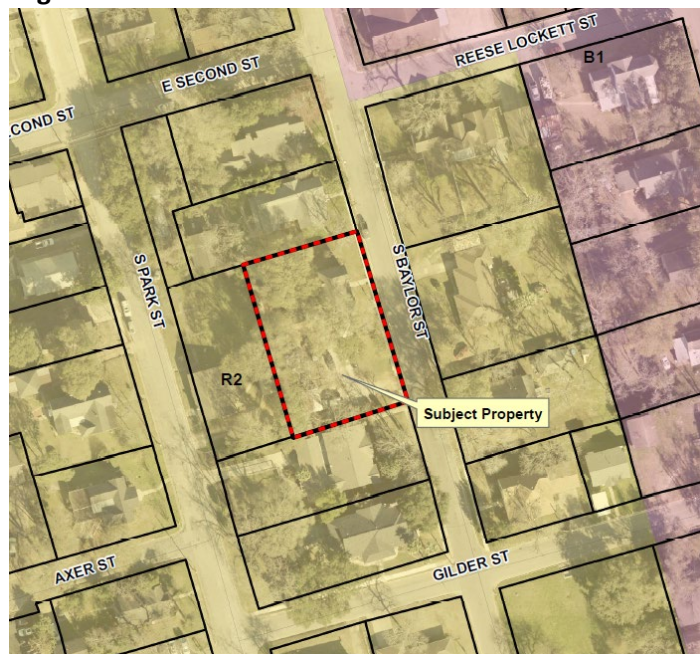
CASE NUMBER P-22-027
SPECIFIC USE PERMIT REQUEST – ACCESSORY DWELLING UNIT

STAFF CONTACT:	Shauna Laauwe AICP, City Planner
APPLICANT/OWNER:	Chris and Deanna Marek
ADDRESS/LOCATION:	604 S. Baylor Street
LEGAL DESCRIPTION:	E PT 3A, E PT 4A, Block 91 Original Town Addition
LOT AREA:	16,798 square feet, approximately 0.386-acres
ZONING DISTRICT/USE:	R-2 Mixed Residential District (Exhibit B)
FUTURE LAND USE:	Single-Family Residential (Exhibit C)
REQUEST:	A request for a Specific Use Permit to allow a proposed Accessory Dwelling Unit (ADU) in a R-2 Mixed Residential Zoning District (Exhibit D).

BACKGROUND:

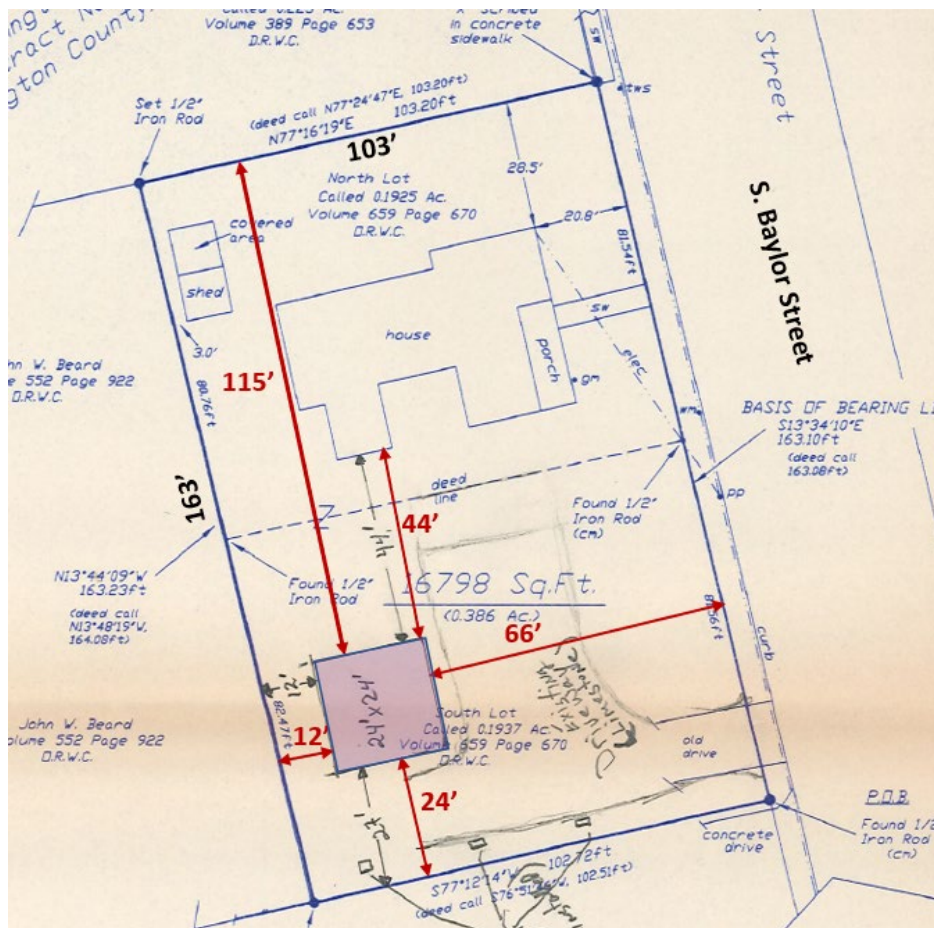
The subject property is a 16,798 square foot (0.386-acre) lot that is addressed as 604 S. Baylor Street, and generally located on the west side of S. Baylor Street, south of E. Second Street and north of Gilder Street. As shown in Figure 1, the property is a rectangular shaped lot that is approximately 163 feet wide along S. Baylor Street and 103 feet in depth. The property is zoned R-2, Mixed Residential Use District and is developed with a 1,743 square foot single-family home and three storage sheds. The existing principal structure was constructed in 1882 and is situated on the northern half of the lot, nearest E. Second Street. The applicants propose to demolish an existing metal storage shed located near the south property line and construct a new 24'x24', (576 square feet), single-story detached accessory dwelling unit (ADU). As detailed in Figure 2 and Exhibit E, the proposed ADU structure will be located on the south portion of the property, 44 feet from the principal house, and setback 66.72 feet from the front property

Figure 1



line along S. Baylor Street, approximately 115 feet from the north side property line, 27 feet from the south side property line, and 12 feet from the rear property line. An existing driveway located on the south end of the lot would be utilized as access and parking. The existing limestone driveway would be required to be an impervious surface of either asphalt or concrete. The applicants state that they plan to utilize the ADU to accommodate guests and to rent as a short-term rental.

Figure 2



The proposed ADU floorplan is not finalized, but the applicant states that it will be a 2-3 bedroom with a 1 or 1 1/2 bathroom. The proposed structure would be a pier and beam foundation like the principal house and have a composition roof, and the same type of siding as the principal home consisting of real wood, smart board and/or hardiplank. The applicant also states that the ADU would be painted in the same colors as the principal house. The proposed ADU would utilize the existing driveway and have a parking space on the south side of the structure. The parking area will need to be improved with an impervious surface of either asphalt or pavement. When improved to an impervious surface, the proposed off-street parking will likely provide ample parking area for the residents and guests of both the principal structure and accessory dwelling unit. Furthermore, the proposed ADU will be placed 66 feet from the front yard setback along S. Baylor Street and would exceed the minimum required 10-foot south side yard setback by 14 feet and the minimum required 10-foot rear yard setback by 2 feet.

Before a building permit may be issued, the subject property that currently consists of two tracts of land will be required to be replatted into one lot. This is required due to an accessory structure being unable to be the only structure on a lot. Plats are approved by the Planning and Zoning Commission.

The R-2 District allows accessory dwelling units (ADUs) with prior approval of a Specific Use Permit (SUP). Thus, the applicants are seeking a SUP to allow for the construction of a 576 square foot accessory dwelling unit on a 0.386-acre tract of land in a R-2, Mixed Residential Use District.

ANALYSIS OF CITY OF BRENHAM ZONING POLICIES:

The purpose of zoning policies is to provide guidelines for considering future amendments to the zoning ordinance (Part 1, Section 4 of Appendix A – “Zoning” of the Brenham Code of Ordinances). They are as follows:

- (1) The city's zoning should recognize and seek to preserve the small-town attributes that make Brenham a special place for its citizens to live, work and play.

The subject property is an approximately 0.386-acre tract and generally located on the west side of S. Baylor Street and is situated mid-block between E. Second Street to the north and Gilder Street to the south. The subject property, and all surrounding properties are located within a R-2, Mixed Residential District that allows for a mix of residential uses to include single family and two-family dwellings, in addition to multifamily dwellings on sites of less than two acres. The subject property and adjacent properties are developed as single-family homes. Further to the east and northeast, across Reese Lockett Street to the north and along S. Market Street to the east is zoned B-1, Local Business Mixed Residential District and developed as a mix of single-family, multifamily, and neighborhood commercial. Further to the north transitions into the Downtown Districts.

The applicants are requesting a SUP to allow the construction of a 24'x24' (576 square feet), one-story detached Accessory Dwelling Unit (ADU) on the south portion of the existing lot. The allowance and standards for ADUs were adopted within in the Zoning Regulations with Ordinance No. O-19-012 that was approved on March 7, 2019. The adopted regulations allow any homeowner living on a single-family or mixed residential zoned property to build an ADU with prior approval of a Specific Use Permit and a building permit. Any homeowner or business owner located in a B-1 zoning district may build an ADU with a building permit. Section 10.02(4) of the Zoning Regulations lists additional development standards that pertain to ADUs:

- a) Should the primary use be a single-family dwelling, the property owner's primary residence shall be the single-family dwelling or ADU.

The applicants/property owners will utilize the existing single-family dwelling as their primary residence.

- b) An ADU must be designed and constructed keeping with the general architecture and building material of the principal structure.

The proposed addition will be in the same general architecture style and building material of the principal structure.

- c) An attached ADU shall be subject to the regulations affecting the principal structure. A detached ADU shall have side yards of not less than the required side yard for the principal structure and rear yards of not less than ten (10) feet.

The proposed ADU exceeds the rear and side yard setback requirements with a rear yard setback of 12-feet, a south side yard setback of 27-feet and a north side yard setback of approximately 115 feet.

- d) One (1) on-site parking space, located to the side or rear of the primary structure, shall be provided for the ADU in addition to the required parking for the principal structure.

The site has driveway access via S. Baylor Street. The applicant proposes to utilize the existing nonconforming limestone parking area located to the south of the principal structure. With the proposed site improvements, the parking area will be required to be converted to an impervious surface of either asphalt or concrete. The proposed parking area would provide for one 9'x19' off-street parking space.

- e) The maximum habitable area of an ADU is limited to either one-half (1/2) of the habitable area of the principal structure, or one thousand (1,000) square feet, whichever is smaller.

The principal structure is 1,743 square feet in area and the proposed ADU is 576 square feet, less than ½ of the habitable area of the principal structure.

- f) ADUs shall not be HUD-code manufactured home or mobile home.

The proposed ADU will not be a HUD-code manufactured home or mobile home.

The SUP process allows staff to identify additional land uses, which may be appropriate in special circumstances. The proposed structure is to be utilized as a short-term rental and as an accommodation for guests. The applicant provided site plan indicates that the structure will have a proposed setback of over 66 feet from S. Baylor Street. The proposed structure will not be out of character with the surrounding neighborhood as it is proposed to be of similar pier and beam construction with comparable siding, paint color and roof composition shingles as the principal structure and nearby properties.

Staff recommends approval of the SUP request as the proposed ADU will be compatible with small-town attributes that make Brenham a special place for its citizens to live as it complies with the development standards for accessory dwelling units and staff is unable to identify any adverse impacts to the surrounding neighborhood.

- (2) The city's zoning should be guided by the future land use plan and other applicable guidelines found in the Comprehensive Plan.

The future land use map portion of the Historic Past, Bold Future 2040 Comprehensive Plan suggests the subject property and the area on the west side of S. Baylor Street as single-family residential, while the area located to the east side of S. Baylor Street is envisioned as Corridor Mixed Use. To the north of East Second Street, the area transitions to Downtown uses. The subject property and surrounding area are currently developed as single-family uses. The requested SUP would not deter from the envisioned use. Staff finds that the proposed request aligns with the goals and land use policies established in the Comprehensive Plan.

- (3) The city's zoning should be designed to facilitate the more efficient use of existing and future city services and utility systems in accordance with the Comprehensive Plan.

The subject property has existing utilities available along S. Baylor Street. ADUs are an opportunity to increase density in a compatible manner within a residential area as they do not require additional infrastructure to be built to accommodate the new dwelling unit.

- (4) The city's zoning should be organized and as straight forward as possible to minimize use problems and enforcement problems.

The proposed SUP, if approved, will be reflected on the City of Brenham zoning map available for citizen viewing on the City of Brenham homepage.

- (5) The city's zoning process should be fair and equitable, giving all citizens adequate information and opportunity to be heard prior to adoption of zoning amendments.

Property owners within 200 feet of the project site were mailed notifications of this request on December 8, 2022. The Notice of Public Hearing was published in the Brenham Banner on December 8, 2022. As of December 15, 2022, Staff has received one written citizen comment form in favor of the request and one citizen comment form against the request regarding the proposed ADU. Any additional forms or written comments received after the staff report is complete, will be presented at the Planning and Zoning Commission meeting.

Any public comments submitted to staff will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

- (6) The city's zoning should ensure that adequate open space is preserved as residential and commercial development and redevelopment occur.

If approved, the property will be required to adhere to the regulations of the R-2 District to include, the accessory dwelling unit development standards, minimum building setbacks and maximum impervious coverage requirements. The applicant has submitted a site plan (Exhibit E) which depicts the proposed location of the ADU and access. The R-2 District allows for greater density of residential units with a mix of residential uses to include single family and two-family dwellings, and multifamily dwellings on sites of less than two acres. As the subject property is 16,798 square feet and is equivalent or larger than the surrounding residential properties, only a minimal increase in density will occur. An increase in impervious cover will occur, as the development improvement will require the existing nonconforming limestone off-street parking area and driveway to be improved to an impervious surface. Even so, Staff finds that the site development requirements will ensure that adequate open space is preserved on the subject property.

- (7) The city's zoning should ensure Brenham's attractiveness for the future location of business and housing by preserving an attractive and safe community environment in order to enhance the quality of life for all residents.

Staff finds that the requested land use is appropriate in this location given adjacent zoning designations, existing development in the vicinity, and conformance with the City's adopted Comprehensive Plan. The proposed use is also in line with the Future Land Use Plan. Prior to approval of a building permit to construct the proposed ADU the applicant is required to replat the property into one lot for the primary residence and ADU. Replatting the property for the proposed accessory dwelling unit is required to meet the zoning and subdivision regulations that an accessory structure may not be the principal structure on a platted lot.

- (8) The city's zoning ordinance should preserve neighborhood culture by retaining and promoting land uses consistent with the community's plan for the development and/or redevelopment of its neighborhoods.

The subject property and the surrounding vicinity are located within a R-2 District, that allows for a mix of residential uses to include single family and two-family dwellings, and multifamily dwellings on sites of less than two acres. The Future Land Use Map, as part of the Comprehensive Plan adopted in September 2019, envisions the subject property and the area on the west side of S. Baylor Street as single-family residential, while the area located to the east side of S. Baylor Street is envisioned as Corridor Mixed Use. To the north of East Second Street, the area transitions to Downtown commercial uses. The subject property and surrounding area are currently developed as single-family uses.

The ADU use would not be out of character with the surrounding vicinity of predominately single-family homes and commercial uses further to the north and east. Staff finds that the proposed ADU is compatible to nearby land uses and is consistent with the land use policies established in the Comprehensive Plan.

- (9) The city's zoning should protect existing and future residential neighborhoods from encroachment by incompatible uses.

Staff finds that approval of the proposed SUP to allow for further development of the property with an ADU will promote the orderly and healthful development of the community. This request, to allow a proposed 24'x24' (576 square foot) detached accessory structure to be located on the south portion of the large 0.386-acre lot, will not adversely affect health, safety, morals, or general welfare of properties in the general vicinity or the community in general.

- (10) The city's zoning should assist in stabilizing property values by limiting or prohibiting the development of incompatible land uses or uses of land or structures which negatively impact adjoining properties.

Staff believes that the proposed development will have a positive effect on the surrounding area and will be compatible with anticipated uses surrounding this property. The proposed ADU would be located on the south side of the property and exceed the minimum required setbacks. The applicant proposes to either rent out the ADU for additional income or use as a guest house. The proposed structure meets the development standards set forth in the zoning ordinance and is in character with both the principal structure and nearby residential properties. The applicant would be required to submit a building permit for the ADU and meet all applicable building and fire code requirements.

- (11) The city's zoning should make adequate provisions for a range of commercial uses in existing and future locations that are best suited to serve neighborhood, community, and regional markets.

If approved, the proposed SUP will allow for a 576 square foot, one- or two-bedroom, one bath detached ADU to be located on the south portion of the existing property that would provide supplemental income or be utilized as a guest house for the property owners. Commercial property is located to the east and northeast within a B-1, Local Business Mixed Residential Use District and developed as a variety of residential and neighborhood commercial uses. Vacant commercial properties are located within the surrounding neighborhood, to the northeast along S. Market Street near Reese Lockett Street. Vacant commercial properties are also located in the vicinity to the north within the B-3 and DBROD Downtown Districts. Staff finds that the proposed SUP, if approved, will not negatively affect vacant land classified for commercial uses.

- (12) The city's zoning should give reasonable accommodation to legally existing incompatible uses, but it

should be fashioned in such a way that over time, problem areas will experience orderly change through redevelopment that gradually replaces the nonconforming uses.

The property is currently developed as a single-family home within a R-2, Mixed Residential District. Staff is not aware of any hindrances on the property created by legally existing incompatible uses. The applicant's request will allow the subject property to develop in a compatible, legally conforming manner.

(13)The city's zoning should provide for orderly growth and development throughout the city.

Staff finds approval of the proposed SUP will allow for the orderly growth and development in the general vicinity and throughout the city.

STAFF RECOMMENDATION:

Staff recommends ***approval*** of a Specific Use Permit to allow for a detached accessory dwelling unit to be located within a R-2 Mixed Residential Use Zoning District for the subject 0.386-acre tract of land that is located at 604 S. Baylor Street and legally described as E PT 3A, E PT 4A, Block 91, Original Town Addition ***with the following conditions:***

1. The subject tract, which is currently platted as two lots, shall be replatted into one residential lot with approval by the Planning and Zoning Commission.
2. Proposed off-street parking area and driveway shall be improved to an impervious surface of either asphalt or concrete.

EXHIBITS:

- A. Aerial Map
- B. Zoning Map
- C. Future Land Use Map
- D. Cover Letter to the Commission
- E. Site Plan
- F. Site photos

EXHIBIT "A"
AERIAL MAP



**Aerial Location Map
604 S Baylor Street
Specific Use Permit Request**



1 inch = 83 feet

EXHIBIT "B"
ZONING MAP



Zoning Map
604 S Baylor Street
Specific Use Permit Request



-  B1 Local Business Mixed
-  Downtown Business/Residential Overlay District
-  R2 Mixed Residential



1 inch = 83 feet

EXHIBIT "C"
FUTURE LAND USE MAP



Future Land Use Plan
FLU_FINAL

- Single Family Residential
- Multi-Family Residential
- Corridor Mixed Use
- Downtown

Future Land Use Map
604 S Baylor Street
Specific Use Permit Request



1 inch = 83 feet

EXHIBIT "D"
SUP APPLICATION COVER LETTER

November 16, 2022

Planning and Zoning Commission:

We, Chris and DeeAnna Marek, would like to construct a 24' x 24' building on the southwest section of our property, located at 604 S. Baylor St., Brenham. We have been in our home since January 2000 and have raised 5 children in the main dwelling and love this town!

This will be used as an ADU (Accessory Dwelling Unit) for the purpose to allow out of town visitors, as well as an AirBnB. We would like to share the area with others and have them feel what it is like to live here while being Hosts to our guests and/or family.

The building will be constructed on a pier and beam foundation, Smartboard lap siding for the exterior with a 6" reveal and a limited lifetime composition roof to mimic the main dwelling. The ADU will have approximately a 12' back yard, 27' left side yard and 45' right side yard. Parking will be in front of the building.

We thank you for your consideration.

Respectfully,



Christopher and DeeAnna Marek

EXHIBIT "E"
PROPOSED SITE PLAN

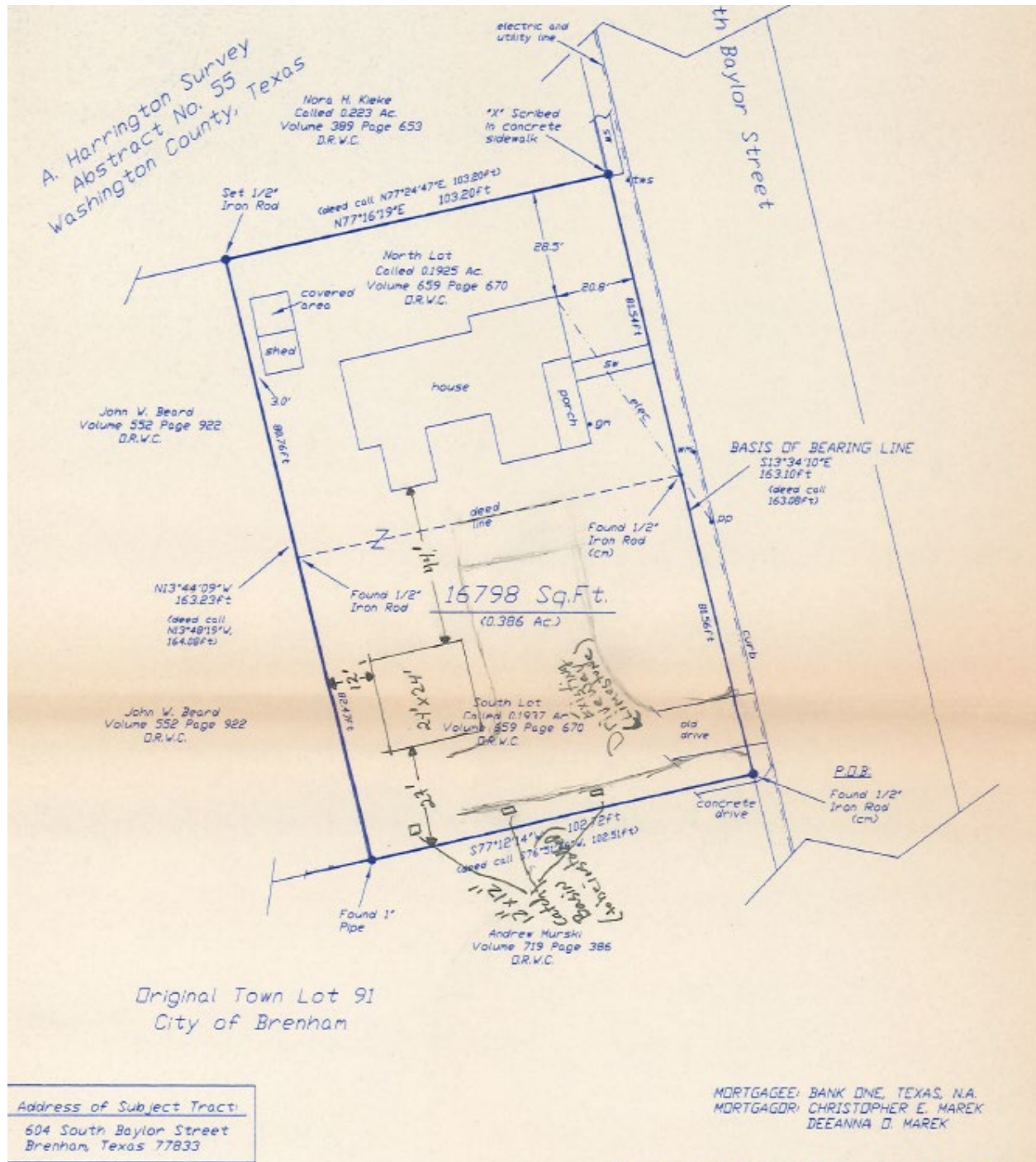


EXHIBIT "F"
SITE PHOTOS



Existing Principal Home



Metal shed is approximate location for the ADU. Can see the unimproved driveway, parking surface, and principal structure.



Existing metal storage shed to be removed.



Looking north on South Baylor Street towards Downtown



Looking south on South Baylor Street. Single-Family Residential properties.

CITY COMMENT FORMS

Mr. Jimmy Faldyn (AGAINST)

City of Brenham Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:

City of Brenham

Attn: Development Services Dept., Case P-22-027

P.O. Box 1059

Brenham, Texas 77834-1059

Name:

(please print)

Address:

Jimmy Faldyn
607 S. Baylor St.

Signature:

Date:

Jimmy Faldyn

I am FOR the requested SPECIFIC USE PERMIT REQUEST as explained on the attached public notice for P&Z Case P-22-027 (Please state reasons below)

☒

I am AGAINST the requested SPECIFIC USE PERMIT REQUEST as explained on the attached public notice for P&Z Case P-22-027 (Please state reasons below)

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

Monday, December 19, 2022, 5:15 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of City Council meeting:

Thursday, January 5, 2023, 1:00 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

To be disclosed during Hearing.

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line.
For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.

Mr. Fred Lowery (FOR)

City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:
City of Brenham
Attn: Development Services Dept., Case P-22-027
P.O. Box 1059
Brenham, Texas 77834-1059

Name:
(please print)
Address:

FRED M. LOWERY
602 S. BAYLOR ST.
BRENHAM, TX 77833

Signature:
Date:

Fred M. Lowery
DEC 14, 2022



I am FOR the requested SPECIFIC USE PERMIT REQUEST as explained on the attached public notice for P&Z Case P-22-027 (Please state reasons below)

I am AGAINST the requested SPECIFIC USE PERMIT REQUEST as explained on the attached public notice for P&Z Case P-22-027 (Please state reasons below)

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

Monday, December 19, 2022, 5:15 PM
City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of City Council meeting:

Thursday, January 5, 2023, 1:00 PM
City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

I SEE NO REASON THAT M/M MAREK SHOULDN'T BE
ALLOWED TO USE THEIR PROPERTY FOR THE PURPOSE OF
THEIR CHOICE AS LONG AS THE ADU CONFORMS TO CURRENT
ORDINANCES.

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line.
For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.

Mr. Gilbert Japko (FOR)

City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:
City of Brenham
Attn: Development Services Dept., Case P-22-027
P.O. Box 1059
Brenham, Texas 77834-1059

Name:
(please print)
Address:

GILBERT JAPKO
604 S. PARK ST
BRENHAM TX 77833



Signature:

Gil Jap

Date:

12/20/22



I am FOR the requested SPECIFIC USE PERMIT REQUEST as explained on the attached public notice for P&Z Case P-22-027 (Please state reasons below)

I am AGAINST the requested SPECIFIC USE PERMIT REQUEST as explained on the attached public notice for P&Z Case P-22-027 (Please state reasons below)

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

Monday, December 19, 2022, 5:15 PM
City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of City Council meeting:

Thursday, January 5, 2023, 1:00 PM
City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

I have an ADU on my property. It helps pay the taxes, insurance and more. Adding housing in the Historic District is beneficial to the city.

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line. For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.

Mr. Pete Simpson (FOR)

City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:

City of Brenham

Attn: Development Services Dept., Case P-22-027

P.O. Box 1059

Brenham, Texas 77834-1059

Name:

(please print)

Address:

PETE SIMPSON

602 S. MARKET ST.

Signature:

Date:

X


12/16/22

I am FOR the requested SPECIFIC USE PERMIT REQUEST as explained on the attached public notice for P&Z Case P-22-027 (Please state reasons below)

I am AGAINST the requested SPECIFIC USE PERMIT REQUEST as explained on the attached public notice for P&Z Case P-22-027 (Please state reasons below)

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

Monday, December 19, 2022, 5:15 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall

200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of City Council meeting:

Thursday, January 5, 2023, 1:00 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall

200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

THOSE FOLKS PUSH ON USING A.O.V. TO CARE
FOR AGING PARENTS. I HAVE NO ISSUE WITH
THIS USE.

You may also submit comments via email to khodae@cityofbrenham.org. Please reference the case number in the subject line.
For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.



Regular City Council
AGENDA ITEM 7.

Agenda Item: Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham for an Amendment to the City of Brenham's Official Zoning Map to Change the Zoning District From a Local Business Residential Mixed Use District (B-1) to an Industrial Use District (I) on Approximately 3.77 Acres, Which is a Portion of a 6.899 Acre Tract of Land, Currently Addressed as 1150 Dixie Road and Being Further Described as Tract 51 (WCAD) Out of the Phillip Coe Survey, A-0031 in Brenham, Washington County, Texas (Case No. P-22-026)

Meeting Type: Regular Meeting-January 05, 2023

Department: Development Services

Staff Contact: Stephanie Doland

SUMMARY STATEMENT:

The subject property is a 3.77-acre east portion of a 6.899-acre property addressed as 1150 Dixie Road and generally located on the east side of Dixie Road, south of Confederate Lane and abutting the Premier Metal Buyers business property to the east located at 1555 Highway 36 North. Premier Metal Buyers is requesting the rezoning from B-1 to Industrial District in order to expand their existing operations to allow for fleet parking, needed site circulation, and additional storage areas. Please see the attached Staff Report for a detailed analysis of the request.

The Planning and Zoning Commission held a public hearing on this item on Monday, November 21, 2022. During the public hearing, two people spoke against the request. City Staff has received two letters in opposition of the proposed rezoning request from Ms. Marie Surovik and Mr. John Nepveux which are attached to this report. After the public hearing and discussion, the Planning and Zoning Commission unanimously (4-0) recommended approval of the zoning request.

On December 5, 2022 the Brenham City Council held the second Public Hearing associated with this rezoning request. During the Public Hearing Ms. Surovik spoke against the request and property owner Mr. Blake Brannon spoke in favor of the request. A motion to table the rezoning request was unanimously approved. To consider the rezoning request and act on the first reading of an Ordinance to rezone the subject 3.77-acre tract a motion is needed to remove the request from the table. An additional motion is needed to act on the proposed rezoning. Following the first reading of the rezoning request a second and final reading of the proposed Ordinance will be placed on the January 19, 2022 Council agenda.

If the rezoning request is approved as presented, Premier Metal Buyers will be required to submit a site plan and building permit application for review and approval by the Commercial Plan Review Committee. Premiere Metal Buyers will then be required to develop and construct the all required zoning, engineering and applicable code requirements prior to use of the 3.77-acre expansion area. Upon completion of all development requirements including required detention, landscaping, screening and buffering, a Certificate of Occupancy will be issued and use of the expansion area approved by the Development Services office.

ATTACHMENTS:

- | |
|--|
| (1) Ordinance - First Reading
(2) Staff Report
(3) Site Plan
(4) Citizen Comments |
|--|

RECOMMENDED ACTION:

No staff recommendation.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES, AND THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FROM LOCAL BUSINESS/RESIDENTIAL MIXED USE DISTRICT (B-1), TO AN INDUSTRIAL DISTRICT (I), ON A 3.77 ACRE TRACT OF LAND AS FURTHER DESCRIBED IN THIS ORDINANCE

WHEREAS, Brannon Industrial Group, LLC, owner of the 3.77 acres of land that is a portion of a 6.899-acre tract generally located on the east side of Dixie Road, west of Oak Creek Way, south of Confederate Lane and addressed as 1150 Dixie Road, and being further described as Tract 51 (WCAD) of the Phillip Coe Survey, in Brenham, Washington County, Texas (the "Property"), has requested that the Property be rezoned; and

WHEREAS, the City of Brenham has adopted Appendix A – "Zoning" of the City of Brenham Code of Ordinances, as amended, which divides the City of Brenham into various zoning districts; and

WHEREAS, Appendix A – "Zoning" of the City of Brenham Code of Ordinance authorizes the City Council to grant zoning changes by adopting ordinances amending Appendix A for each individual permanent zoning change; and

WHEREAS, at least ten (10) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning and Zoning Commission held a public hearing on the requested rezoning; and

WHEREAS, this amendment was recommended unanimously for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting on November 21, 2022; and

WHEREAS, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

WHEREAS, the City Council deems it appropriate to grant such proposed change in the zoning district classification of the Property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, THAT APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AND THE OFFICIAL ZONING MAP BE AMENDED IN THE FOLLOWING MANNER:

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham are hereby amended by changing the zoning district classification from a Local Business / Residential Mixed Use District (B-1) to Industrial District (I) on an approximate 3.77 acres of land addressed as 1150 Dixie Road, and further described as Tract 51 (WCAD) of the Phillip Coe Survey, in Brenham, Washington County, Texas, said area of land being further described and depicted on Exhibit "A" and Exhibit "B" attached hereto and incorporated herein for all pertinent purposes.

SECTION 2. This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

PASSED and APPROVED on its first reading this the ____ day of _____ 2023.

PASSED and APPROVED on its second reading this the ____ day of _____ 2023.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

Exhibit "A"

Blakey Surveying, LLC

4650 Wilhelm Lane
Burton, Texas 77835-5794

Telephone 979-277-8549

BRANNON INDUSTRIAL GROUP, LLC
3.77 ACRE TRACT

ALL THAT TRACT OR PARCEL OF LAND containing 3.77 acres, situated in Washington County, Texas, being out of the Phillip Coe Survey, Abstract No. 31, and being a portion of a called 6.899 acre tract described in that deed dated June 30, 2022, from John L. Choyce, et ux to Brannon Industrial Group, LLC, recorded in Volume 1848, Page 538 of the Official Records of Washington County, Texas, said 3.77 acre tract being more particularly described as follows:

BEGINNING at a found $\frac{1}{2}$ inch iron rod, lying in the Southeast margin of Confederate Lane (30 ft. private access easement, described in Volume 600, Page 308, Official Records of Washington County, Texas), marking the Northwest corner of the Brannon Industrial Group, LLC called 10.00 acre tract (Volume 1389, Page 0233 of the Official Records of Washington County, Texas), marking the Northeast corner of the original called 6.899 acre tract (hereafter referred to as "original tract"), and marking the Northeast corner of the herein described tract;

THENCE along the West line of the called 10.00 acre tract, with the East line of the original tract, S 14deg 15min 33sec E, 430.65 ft., to a point near fence corner, lying in the North line of the Marie A. Surovik Revocable Trust called 15.37 acre tract (Volume 1672, Page 511, Official Records of Washington County, Texas), marking the Southwest corner of said 10.00 acre tract, marking the Southeast corner of the original tract, and marking the Southeast corner of the herein described tract (a treated fence corner post bears N 14deg 15min 08sec W, 1.5 ft. from this point for reference);

THENCE along a portion of the Northwest line of the Surovik tract, with a portion of the Southeast line of the original tract, S 74deg 19min 34sec W, 398.97 ft., to a point for corner, marking the Southwest corner of the herein described tract (a set $\frac{1}{2}$ inch iron rod, marking the Southwest corner of the original tract, bears S 74deg 19min 34sec W, 300.39 ft. from this point for reference);

THENCE with the West line of the herein described tract, severing the original tract, N 09deg 53min 57sec W, 431.66 ft., to a point at fence corner, lying in the Southeast margin of the aforementioned Confederate Lane, lying in the Northwest line of the original tract, and marking the Northwest corner of the original tract;

THENCE along the Southeast margin of Confederate Lane, N 74deg 09min 43sec E, 366.17 ft., to the **PLACE OF BEGINNING** and containing 3.77 acres of land.

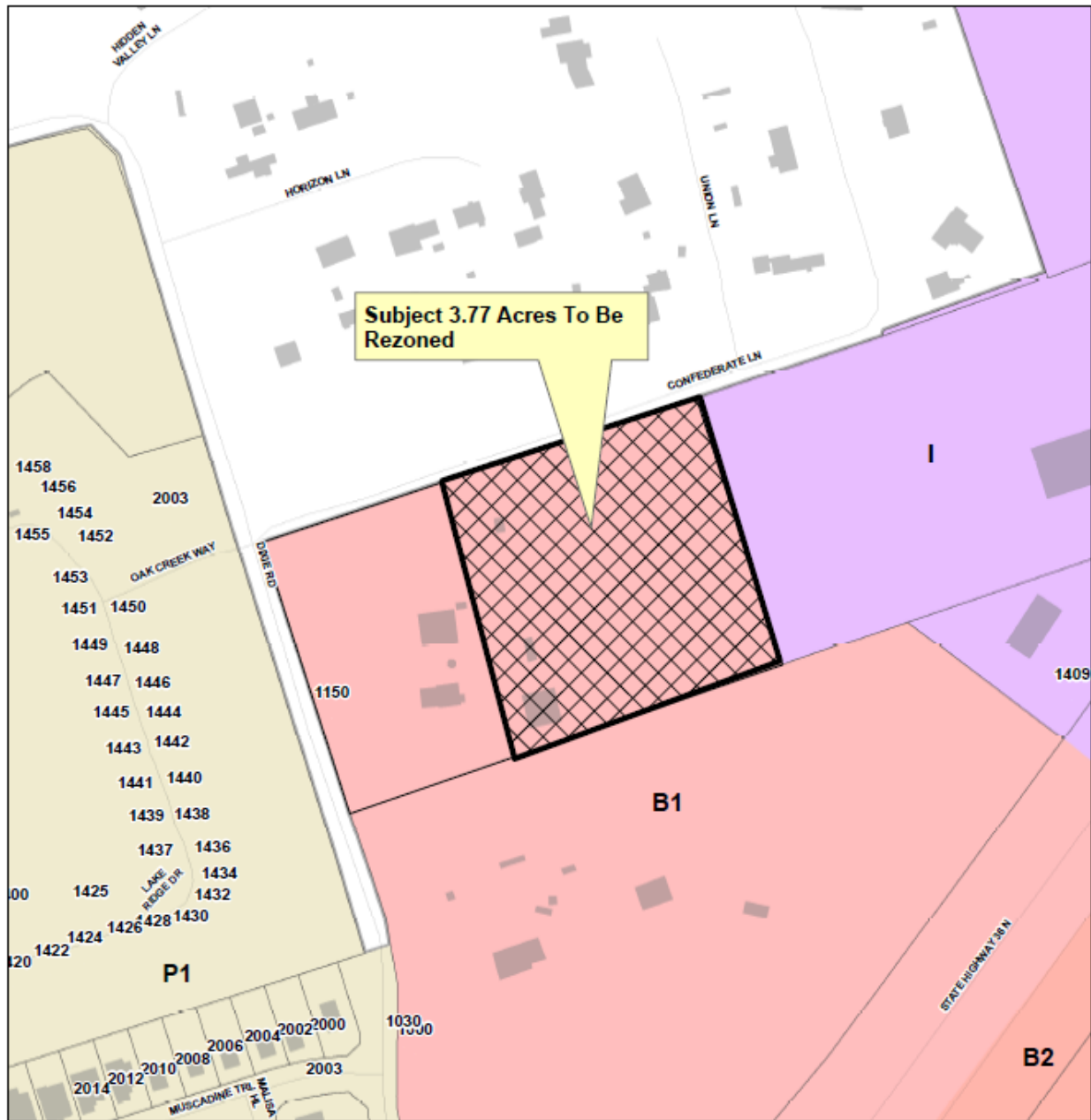
September 14, 2022
W.O.#2022-3353



Michael J. Blakey
Registered Professional Land Surveyor No. 5935

His/her report, and made a part of this description.

Exhibit "B"



1150 Dixie Road

 B1 Local Business Mixed	 I Industrial
 B2 Commercial Research and Technology	 P1 Planned Development
 B3 Historical and Central Business	 R1 Residential Single Family
 B4 Neighborhood Business District	 R2 Mixed Residential
 Downtown Business/Residential Overlay District	 R3 Manufactured Home Residential

1 inch = 200 feet



CASE NUMBER P-22-026
ZONE CHANGE REQUEST – 1150 DIXIE ROAD

STAFF CONTACT:	Shauna Laauwe, AICP, City Planner
OWNERS/APPLICANTS:	Brannon Industrial Group / Premier Metal Buyers
ADDRESS/LOCATION:	1150 Dixie Road (Exhibit A)
LEGAL DESCRIPTION:	Phillip Coe Survey, Tract 51
LOT AREA:	Approximately 3.77-acre portion of a 6.899-acre tract
ZONING DISTRICT/USE:	B-1, Local Business Mixed Residential / Office (Exhibit B)
FUTURE LAND USE:	Estate Residential
REQUEST:	A request to change the zoning classification from a Local Business/Residential Mixed-Use District (B-1) to an Industrial Use District (I) (Exhibit C)

BACKGROUND:

The subject tract consists of a 3.77-acre portion of a 6.899-acre tract addressed as 1150 Dixie Road and generally located on the east side of Dixie Road, south of Confederate Lane and abutting the Premier Metal Buyers business property to the east located at 1555 Highway 36 North. The subject tract is currently zoned as B-1, Local Business Mixed Residential Use District and developed with a single-family home and detached accessory garage. The existing Premier Metal Buyers has been located at 1555 Hwy 36 North since 2011 and consists of 10-acres which was rezoned to the present Industrial District in June 2014. In June 2022, Brannon Industrial Group purchased the subject property to convert the existing residence into an office and to potentially expand the storage and parking area for their adjacent business Premier Metal Buyers. The applicant, Premier Metal Buyers, is at this time requesting a rezoning of a 3.77-acre portion of the 6.899-acre tract (shown within the red-dashed line and diagonal shading in Map 1) from B-1 to I, Industrial District. The rezoning to Industrial would allow the existing metal recycling operation to expand approximately 400-feet to the west towards Dixie Road. The remainder of the tract would remain B-1, Local Business Mixed Residential District and utilized as a business office (Figure 1).

Map 1

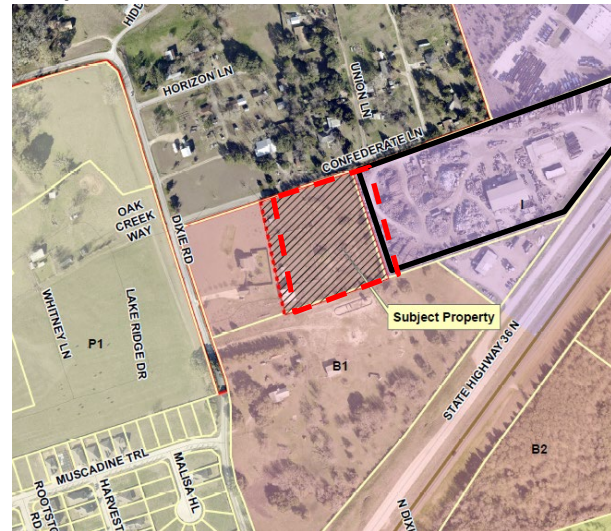
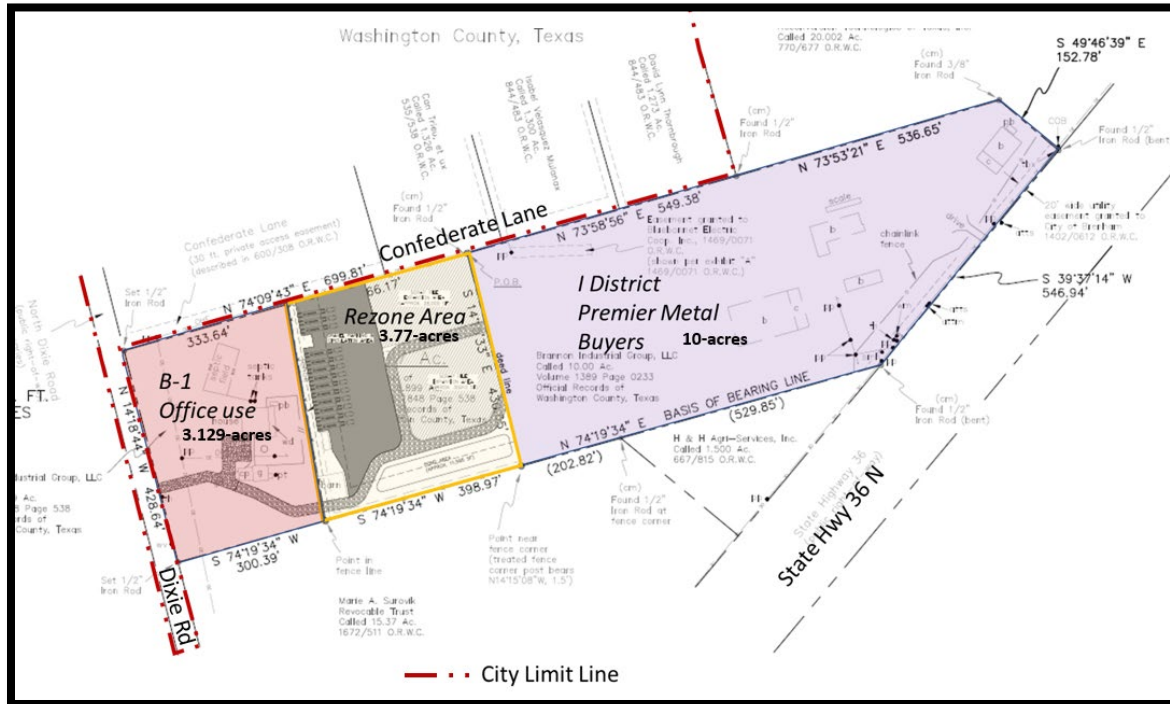
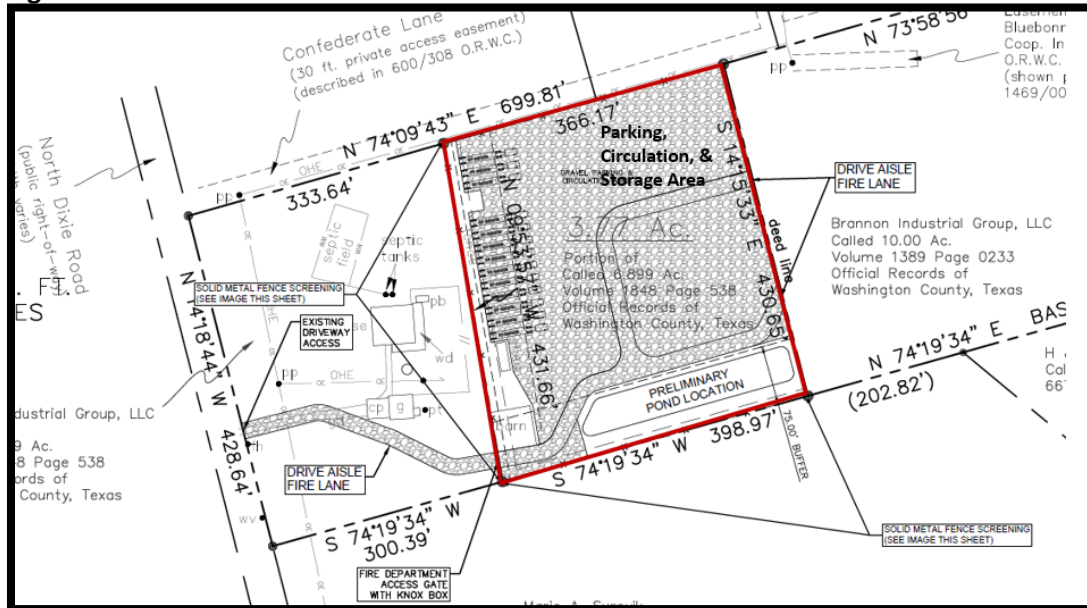


Figure 1



The applicant plans to relocate the existing business operation to a larger location across Brenham but has additional land to purchase and supplementary infrastructure to develop prior to doing so. Until the new site is operational, the applicant states that the business needs the additional 3.77-acres to provide for additional storage area, fleet parking and vehicle/machine circulation in order to keep daily business activities confined within the property and reduce disturbance to the surrounding area. The proposed site plan for the expansion site is shown in Figure 2 below.

Figure 2



The subject property is adjacent and nearby several types of uses. Adjacent to the east and to the northeast is zoned I, Industrial District and developed as Premier Metal Buyers to the east and Allied Waste Services to the northeast located at 1709 Highway 36 North. The north property line of the

subject property shares the city limit line and adjacent to the private access easement for Confederate Lane. The county properties to the north are developed as residential. To the south, is a 15.37-acre tract that is zoned B-1 and is developed as residential, but also has an active oil/gas line easement just south of the subject property line. The abutting property to the west is proposed to remain as B-1 and be redeveloped from a residential use to an office use. Further to the west and southwest, is the Vintage Farms Planned Development District that was approved in two separate rezonings, first the 86.664-acres to the southwest that was approved in April 2017 and the expansion of the development to the west that encompasses 52.428 acres that was approved as a Planned Development District in May 2020. The two Vintage Farms subdivisions currently includes 360 residential lots that have already been constructed or platted. The Vintage Farms development is predominately single-family detached residential but also features future patio home units and 57 townhome units that are currently under construction. To help mitigate the potential negative effects to adjacent and surrounding properties, the applicant is proposing to construct an 8-foot in height metal screening fence along the perimeter of the property, a 75-foot bufferyard along the south property line, and a 50-foot bufferyard along the west property line. Bufferyards are required to provide 20-percent of the total bufferyard area to be landscaped along the property line. No bufferyard has been proposed along the north property line, but Confederate Lane does provide a 30-foot easement between the subject property and residential properties.

The existing subject property and the adjacent properties to west and east are not currently platted. If the rezoning is approved and before any improvements can be made, the subject property and adjacent properties will be required to have a preliminary and final plat submitted and approved by the Planning and Zoning Commission. Furthermore, the subject property will be required to adhere to the zoning requirements of the I, Industrial District and all applicable subdivision, fire, and building codes regulations.

ANALYSIS OF CITY OF BRENHAM ZONING POLICIES:

The purpose of zoning policies is to provide guidelines for considering future amendments to the zoning ordinance (Part 1, Section 4 of Appendix A – “Zoning” of the Brenham Code of Ordinances). They are as follows:

- (1) The city's zoning should recognize and seek to preserve the small-town attributes that make Brenham a special place for its citizens to live, work and play. *Please refer to Map 1 on the previous page for a visual of the current zoning described herein.*

The subject tract consists of a 3.77-acre portion of a 6.899-acre tract addressed as 1150 Dixie Road and generally located on the east side of Dixie Road, south of Confederate Lane and abutting the Premier Metal Buyers property to the east located at 1555 Highway 36 North. The subject property and adjacent property to the south are currently zoned B-1, Local Business Mixed Residential Use District. The subject tract is currently developed as single-family residential and agricultural use, while the property to the south is developed as a single-family home that also has an oil/gas easement area directly to the south of the subject site. Adjacent properties to the north are located outside of the city limits and are generally single-family and agricultural uses. Nearby properties to the west, across Dixie Road are zoned as P1, Vintage Farms Planned Development District and are single-family residential units that are developed and currently under construction. The applicant proposes to subdivide the existing 6.899-acres into two lots, with a 3.129-acre portion that consists of the single-family home to remain zoned as B-1 and redeveloped as office use, with the remainder 3.77-acres is being requested to be rezoned to Industrial District to be later combined with the existing 10-acre Premier Metal Buyers tract to the east. The proposed Industrial District is established to provide for any industrial use that can meet applicable performance standards in

areas that are mostly removed from existing residential and other commercial uses, but that provide good access to major transportation routes. Allowing the proposed rezoning request would allow the approximate 3.77-acre site to be utilized and developed in keeping with the industrial development pattern to the east and northeast. The applicant has proposed additional screening, such as an 8-foot metal fence as opposed to a 6-foot wooden fence and bufferyards to mitigate potential negative effects to nearby residential properties to the south and west.

- (2) The city's zoning should be guided by the future land use plan and other applicable guidelines found in the Comprehensive Plan.

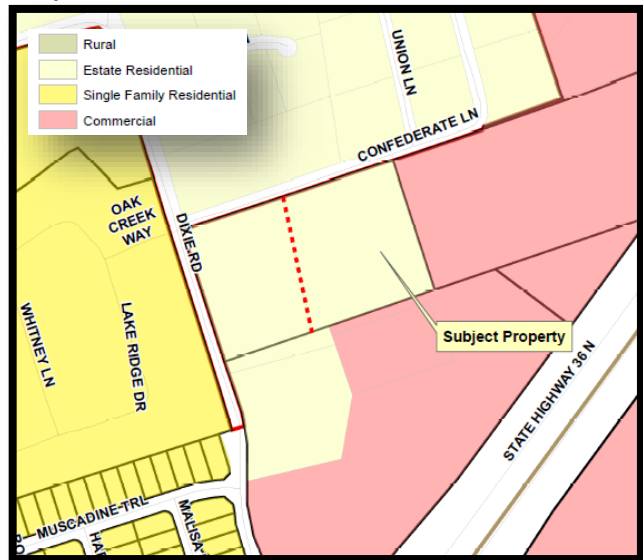
As shown in Map 2, the future land use map portion of the Historic Past, Bold Future: Plan 2040 Comprehensive Plan suggests the subject tract may be appropriate for estate residential. The Comprehensive Plan also includes land use policies to help guide land use decisions. Specifically, the Plan finds that estate residential is appropriate for areas, that due to public service limitations and/or prevailing rural character, should have limited development activity other than large-lot residential. These areas are to provide a transition between the city's rural fringe and more urbanized in-city development patterns and intensities. Lots in this category typically range from one to three or more acres. Perceived

development types for this designation include detached residential dwellings, subdivisions with large acre lots, public/institutional uses, and parks and public spaces. When the Comprehensive Plan 2040 was adopted in September 2019, the entire subject 6.899-acre tract was a large single-family lot as well as the abutting estate residential to the south and the county properties to the north are predominately residential lots of various sizes. If the requested zone change for the 3.77-acre portion of the existing 6.899-acre lot were approved, the zoning regulations would allow for the development of the permitted uses found in the I, Industrial District. Permitted Industrial uses include all permitted uses found in the commercial districts, excluding dwelling units; several types of industrial and manufacturing plants, research laboratories, and wrecking yards. The permitted Industrial uses are a stark contrast from what is envisioned for an Estate Residential area. Since the adjacent 10-acre, Premier Metal Buyers industrial site was in existence at the time of the adoption of the Comprehensive Plan in 2019, it may have been more accurate to envision this area as commercial, but the proposed expanded industrial use still would not align with a commercial designation. Due to the subject tract being adjacent to an Industrial District, the rezoning request is not a spot zoning. As the subject tract is also owned by Premier Metal Buyers and will be replatted to be included in the existing industrial property if the zoning is approved; the requested rezoning is essentially for a 400-foot expansion of the existing Industrial District and use as a metal scrap yard and recycling business.

- (3) The city's zoning should be designed to facilitate the more efficient use of existing and future city services and utility systems in accordance with the Comprehensive Plan.

The subject property is a 3.77-acre portion of a 6.899-acre that has been used as residential and agricultural use. The subject 3.77-acre portion that is part of the rezoning request is currently

Map 2



vacant land listed as agricultural use. The subject site does not have utilities directly to the site and thus, utilities would be required to be extended to the site by the developer. A 12-inch water line is located along Dixie Road to the west, while sewer and gas could be extended from the existing Premier Metal Buyers site from the sewer and gas lines located to the east along State Highway 36 North.

- (4) The city's zoning should be organized and as straight forward as possible to minimize use problems and enforcement problems.

The proposed zone change, if approved, will be reflected on the City of Brenham zoning map available for citizen viewing on the City of Brenham homepage.

- (5) The city's zoning process should be fair and equitable, giving all citizens adequate information and opportunity to be heard prior to adoption of zoning amendments.

Property owners within 200 feet of the project site were mailed notifications of this request on November 10, 2022. The Notice of Public Hearing was published in the *Brenham Banner* on November 10, 2022. As of the date of this staff report, no written public comments have been received. Any comments submitted to staff will be provided in the Planning & Zoning Commission and City Council during the public hearing.

- (6) The city's zoning should insure that adequate open space is preserved as residential and commercial development and redevelopment occur.

The applicant has not stated additional redevelopment plans at this time, however if approved, the property will be required to adhere to minimum building setbacks and maximum impervious coverage requirements for property zoned I, Industrial Use District. The subject site and the adjacent properties to the west and east are not platted. Before being developed, the subject site and adjacent properties also owned by Brannon Industrial Group, will be required to preliminary and final plat the properties. The property would be platted into two lots, with a 3.122-acre lot to the west that abuts Dixie Road and will be redeveloped to an office use, and a second lot of 13.777 acre lot that would consist of the existing Premier Metal Buyers property (10-acres) to the east and the subject site (3.777-acres). With residential property to the south and office use to the west, buffer yard requirements will be in effect that will ensure adequate open spaces are preserved on the subject property. The applicant will also install an 8-foot in height metal fence around the perimeter to provide screening that exceeds the 6-foot requirement. Staff finds that the requirements will ensure that adequate open spaces is preserved on the subject property.

- (7) The city's zoning should insure Brenham's attractiveness for the future location of business and housing by preserving an attractive and safe community environment in order to enhance the quality of life for all of its residents.

Staff recognizes that the industrial uses, to include scrap metal and recycling, are incompatible to nearby residential. The applicant does however have a long-term plan to relocate near Blue Bell Creamery across town and has taken steps to mitigate some of the negative effects of the industrial business. The property owner/applicant has saved the 3.129-acres that abuts Dixie Road as a B-1 use that will serve as a buffer between the subject tract and the Vintage Farms subdivisions. The applicant has also stated the intention to construct an 8-foot metal screening fence along the perimeter to the north, south and west property lines and to provide bufferyards along the south (75-feet) and west (50-feet) property lines. Within the bufferyards, 20 percent along the forementioned property lines must be landscaped, with the remainder of the buffer being allowed

to be utilized for parking, drive aisles, detention facilities, or green space. Placing the detention pond on the south property line will provide both buffering and green space to the adjacent residential property.

- (8) The city's zoning ordinance should preserve neighborhood culture by retaining and promoting land uses consistent with the community's plan for the development and/or redevelopment of its neighborhoods.

As stated in criteria Number 2 above, the proposed industrial use is not in line with the Future Land Use Plan. Rezoning the approximate 3.77-acre tract of land to Industrial will allow the existing Premier Metal Buyers to provide fleet parking, needed circulation, and additional storage to their current operations. The proposed expansion would bring the industrial business approximately 400-feet closer to Dixie Road to the west and the surrounding residential properties. The applicant is however, with the approximate 3.129-acre portion to remain B-1 and utilized as an office use, providing a minimum 300-foot separation between the subject tract and Dixie Road. Vintage Farms does have an approximate 87-foot platted common area along Dixie Road and the nearest residential lot rear lot line located on Oak Creek Way would be approximately 457-feet from the west property line of the subject property. The proposed 8-foot metal screening fence along the perimeter is higher than the required 6-foot fence and will help provide a visual screen to adjacent and nearby properties. As stated previously, required, and stated bufferyards will also mitigate negative effects of the industrial use. Bufferyard requirements are established to preserve existing neighborhoods and ensure adjacent property develops in a manner compatible to nearby land uses.

- (9) The city's zoning should protect existing and future residential neighborhoods from encroachment by incompatible uses.

Staff recognizes that the industrial uses, to include scrap metal and recycling, are incompatible to nearby residential. The applicant does however have a long-term plan to relocate near Blue Bell Creamery across town and has taken steps to mitigate some of the negative effects of the industrial business. The property owner/applicant has saved the 3.129-acres that abuts Dixie Road as a B-1 use that will serve as a buffer between the subject tract and the Vintage Farms subdivisions. The applicant has also stated the intention to construct an 8-foot metal screening fence along the perimeter to the north, south and west property lines and to provide bufferyards along the south (75-feet) and west (50-feet) property lines. Within the bufferyards, 20 percent along the forementioned property lines must be landscaped, with the remainder of the buffer being allowed to be utilized for parking, drive aisles, detention facilities, or green space. Placing the detention pond on the south property line will provide both buffering and green space to the adjacent residential property. As for possible negative noise from the industrial use, the zoning ordinance does have a noise ordinance that is enforced by the Brenham Police Department. For Industrial uses, the noise level is restricted to 85 decibels. Measurements for noise levels may not be for less than 10 minutes or greater than 30 minutes and are measured made on the property line at the point closest to the activity that is generating the noise.

- (10)The city's zoning should assist in stabilizing property values by limiting or prohibiting the development of incompatible land uses or uses of land or structures that negatively impact adjoining properties.

Limiting factors of the proposed business expansion use of land or structures that negatively impact adjoining properties are the provided bufferyards of 75-feet to the south and 50-feet to the west that will require 20 percent along the forementioned property lines to be landscaped, with the remainder of the buffer being allowed to be utilized for parking, drive aisles, detention facilities, or

green space. Placing the detention pond on the south property line will provide both buffering and green space to the adjacent residential property. Furthermore, the property owners/applicant is proposing to rezone only 3.77-acres of the 6.899-acre usable property for the expansion of the existing industrial use. Allowing for an approximate 3-acre buffer between the industrial use and Dixie Road right-of-way.

- (11)The city's zoning should make adequate provisions for a range of commercial uses in existing and future locations that are best suited to serve neighborhood, community, and regional markets.

If approved, the proposed rezoning will allow the existing adjacent industrial use to expand their operations to allow for fleet parking, truck circulation and additional storage. The applicant will keep a 3.129-acre portion along Dixie Road of the overall 6.899-acre site to be redeveloped as office use and to serve as a transition between the industrial use and surrounding residential uses. Vacant, B-1 and B-2 commercial properties are in the general vicinity of the subject tract to the east along State Highway 36. Staff believes that the proposed zoning change, if approved, will not negatively affect vacant land classified for commercial uses.

- (12)The city's zoning should give reasonable accommodation to legally existing incompatible uses, but it should be fashioned in such a way that over time, problem areas will experience orderly change through redevelopment that gradually replaces the nonconforming uses.

The subject tract is an existing legally conforming use and would be developed for a scrap yard industrial use that is a permitted use in the requested I, Industrial District. The requested zoning would allow the existing Premier Metal Buyers to expand their existing scrap metal and recycling business in a manner that meets zoning, building and fire codes.

- (13)The city's zoning should provide for orderly growth and development throughout the city.

In 2011, Brannon Industrial Group purchased the adjacent property located at 1555 Highway 36 North for their Premier Metal Buyer scrap metal and recycling business. In 2014, the 1555 Highway 36 N location was rezoned from B-2, Commercial Research and Technology District to the existing I, Industrial District. In 2016, Stylecraft purchased 86.664-acres to the southwest for residential development that was approved for a Planned Development District in April 2017. In late 2019 or early 2020, Stylecraft purchased an additional 52.428-acres directly to the east of the subject tract, across Dixie Road, for additional residential development. The Planned Development District for the new subdivision was approved in May 2020. The plat for Vintage Farms Phase V establishes an approximate 87-foot common area along Dixie Road to provide for a buffer area and possible expansion of the Dixie Road right-of-way. Lastly in 2022, Brannon Industrial Group purchased the 6.899-acres that includes the subject tract in order to pursue a rezoning and to establish a new business office. Staff acknowledges the incompatible uses but does recognize that the request is an expansion of an existing industrial district site that is not a new use/business. The applicant may request to rezone to expand Premier Metal Buyers and the proposed rezoning would not be considered a spot zoning. The applicant has provided a written statement and site plan that shows attempts to mitigate the negative impacts of their business on surrounding residential uses. Firstly, the applicant chose to request only a 3.77-acre portion of the newly purchased 6.899-acre tract for a rezoning to Industrial District for the expansion of the existing business. The remaining 3.129-acres would help serve as a buffer between the industrial use and the residential uses in the new Vintage Farms subdivision located at Dixie Road and Oak Creek Way. The applicant has stated that

they will provide an 8-foot metal screening fence along the north, south and west perimeter to serve as a visual barrier to the site. Lastly, the site plan indicates bufferyards of 75-feet along the south property line that will also include the site's detention pond and a 50-foot buffer yard to the west property line. As stated above, 20-percent of bufferyards are required to be landscaped, with the remaining 80-percent being restricted to parking, driveway circulation, detention ponds, and green space. Growth has been rapid in recent years and both the residential and commercial/industrial growth in the area, while incompatible, have taken steps to mitigate the negative effects that may arise from the use.

EXHIBITS:

- A. Aerial Map
- B. Zoning Map
- C. Future Land Use Map
- D. Cover Letter
- E. Site Plan
- F. Site photos

EXHIBIT "A"
AERIAL MAP

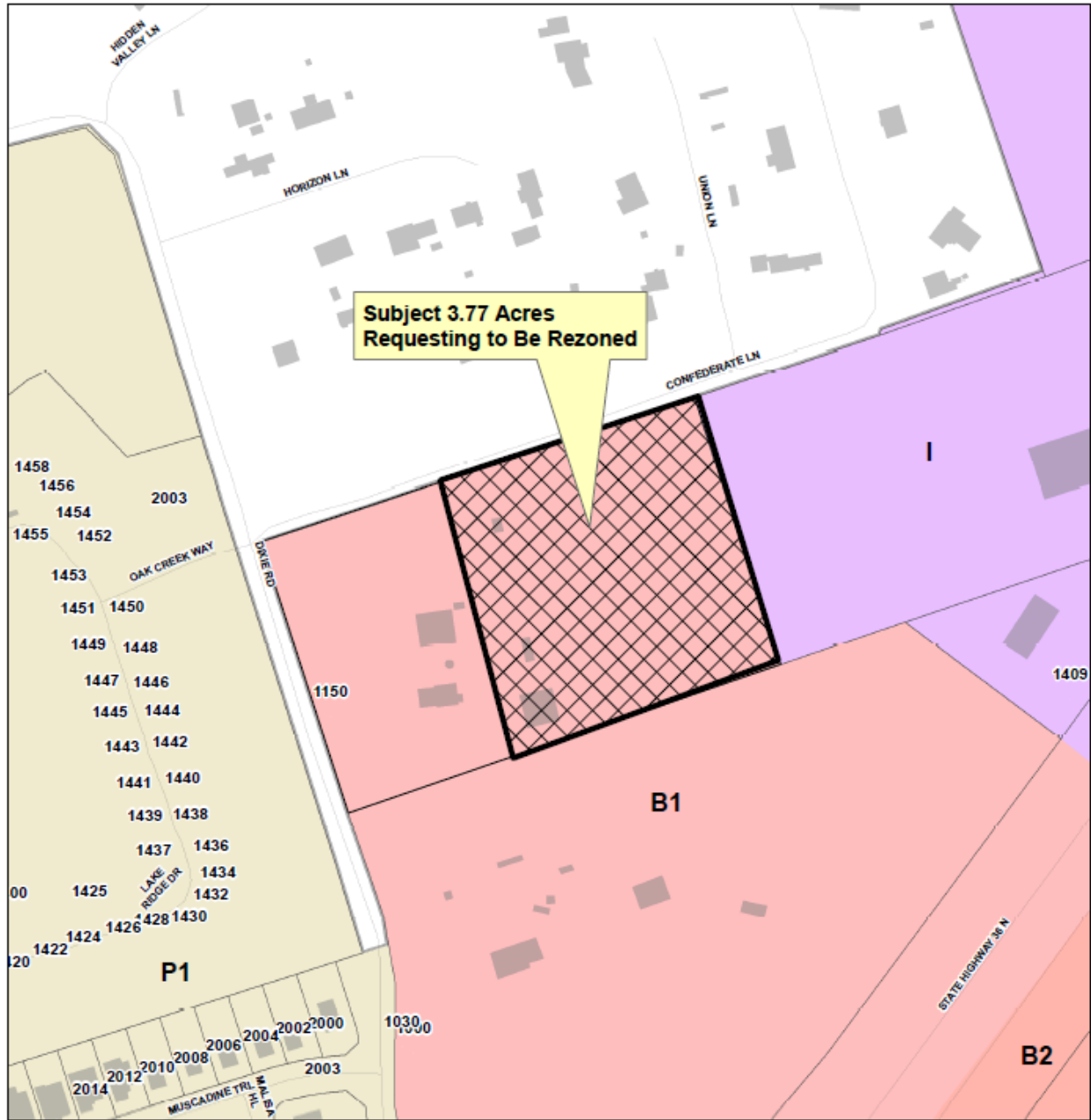


**Aerial Map
Rezoning B-1 to I, Industrial
1150 Dixie Rd**



1 inch = 292 feet

EXHIBIT "B" ZONING MAP



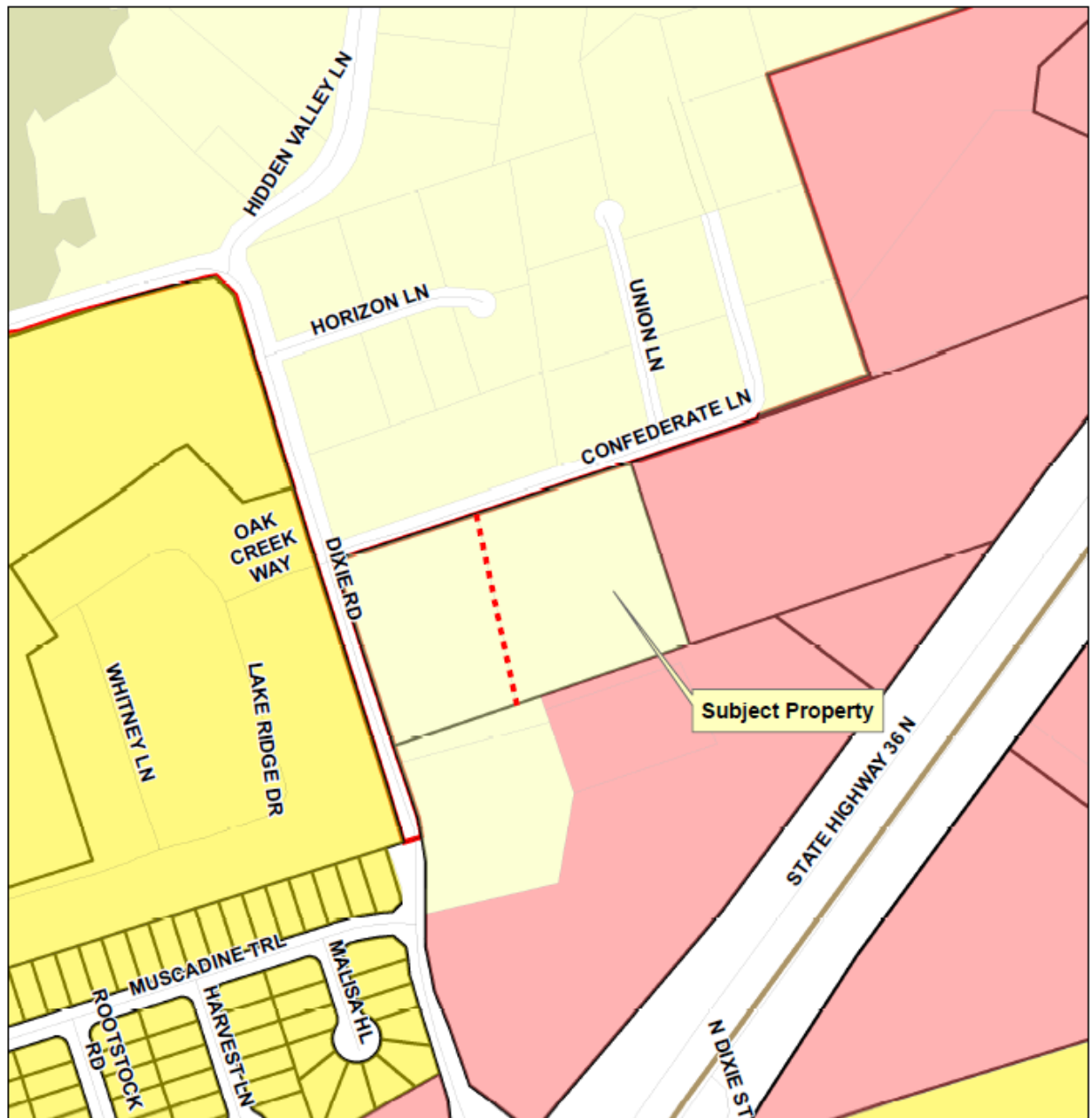
1150 Dixie Road

	B1 Local Business Mixed		I Industrial
	B2 Commercial Research and Technology		P1 Planned Development
	B3 Historical and Central Business		R1 Residential Single Family
	B4 Neighborhood Business District		R2 Mixed Residential
	Downtown Business/Residential Overlay District		R3 Manufactured Home Residential

1 inch = 200 feet



EXHIBIT "C"
FUTURE LAND USE MAP



Future Land Use Plan

FLU_FINAL

- Rural
- Estate Residential
- Single Family Residential
- Commercial

Future Land Use Map
Rezoning B-1 to I, Industrial
1150 Dixie Rd



1 inch = 292 feet

EXHIBIT "D"
ZONE CHANGE COVER LETTER



November 15, 2022

City of Brenham
Planning & Zoning Commission
200 W Vulcan
Brenham, TX 77833

Re: Partial Rezoning of Parcel 12307
Premier Metal Buyers Expansion

To whom it may concern:

Parcel 12307 has been purchased by Brannon Industrial Group and the eastern 3.77-acre portion (approximately half the lot) is planned to be used as an expansion of their existing business and will require rezoning efforts to an Industrial (I) zoning category. The rezoning will be from B1 Local Business Mixed to I Industrial. The expansion will provide more area for storage and vehicle/machine circulation to keep daily business activities confined within the property and reducing disturbance to the surrounding areas. The expansion area will provide code compliant setbacks, screening and buffer yards from the adjacent uses. Such screening will be completed by extension of the existing 8-ft tall solid metal, opaque fencing around the perimeter of the expansion area. Buffer yards within the re-zoned parcel will be provided for the subject tract per the allocation below:

- North Parcel Line/Confederate Lane ROW: 0-ft (County/ETJ No Zoning)
- East Parcel Line/Existing Industrial Use: 0-ft (Same Zoning of Industrial)
- South Parcel Line/Oil-Gas Pipeline Pad: 75-ft
 - Oil-Gas Pipeline lease/easement area is immediately adjacent to subject tract's southern property line and possesses a Light Industrial Use, which requires 0-ft buffer yard; however, since adjacent southern property also has a Single-Family Use associated with it approximately 270-ft south of the common property line and being approximately 80-ft beyond (south) the Oil-Gas Pipeline Pad the new use area will provide a 75-ft buffer yard along this common property line.
- West Parcel Line/Common Property: 50-ft
 - The Property along the west parcel line is the remaining portion of Parcel 12307 and owned and operated by Brannon Industrial Group and is not being rezoned as the use planed for the old homestead will be office use and consistent with current B1 zoning regulations.

GarzaEMC | 9106 Wheat Cross Drive | Houston, TX 77095 | 713.491.6039

www.garzaemc.com | TBPE No. F-14629



- The office use adjacent to the Heavy Industrial requires a 50-ft buffer yard, however, there are existing structures that will remain onsite and adjacent to the zoning limits and will be allowed within the buffer yard as existing non-conforming structures. The proposed improvements along this common property line will be for parking of equipment and trucks, which conforms to the buffer yard requirements.

We request your favorable review of this application and look forward to working with the City staff on another local business expansion.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Darren Huckert', written over a horizontal line.

Darren Huckert, P.E., LEED AP
Vice President
GarzaEMC, LLC



11/15/2022

V:\113923-00002\Civil\01-Word Docs\Applications\Zoning Request.docx

EXHIBIT "E"
SITE PHOTOS



Looking towards the site from the West across Dixie Rd



Area to the North (Confederate Lane)



**Looking south from Oak Creek Way to the west (Vintage Farms in background.
Phase V under construction in foreground**



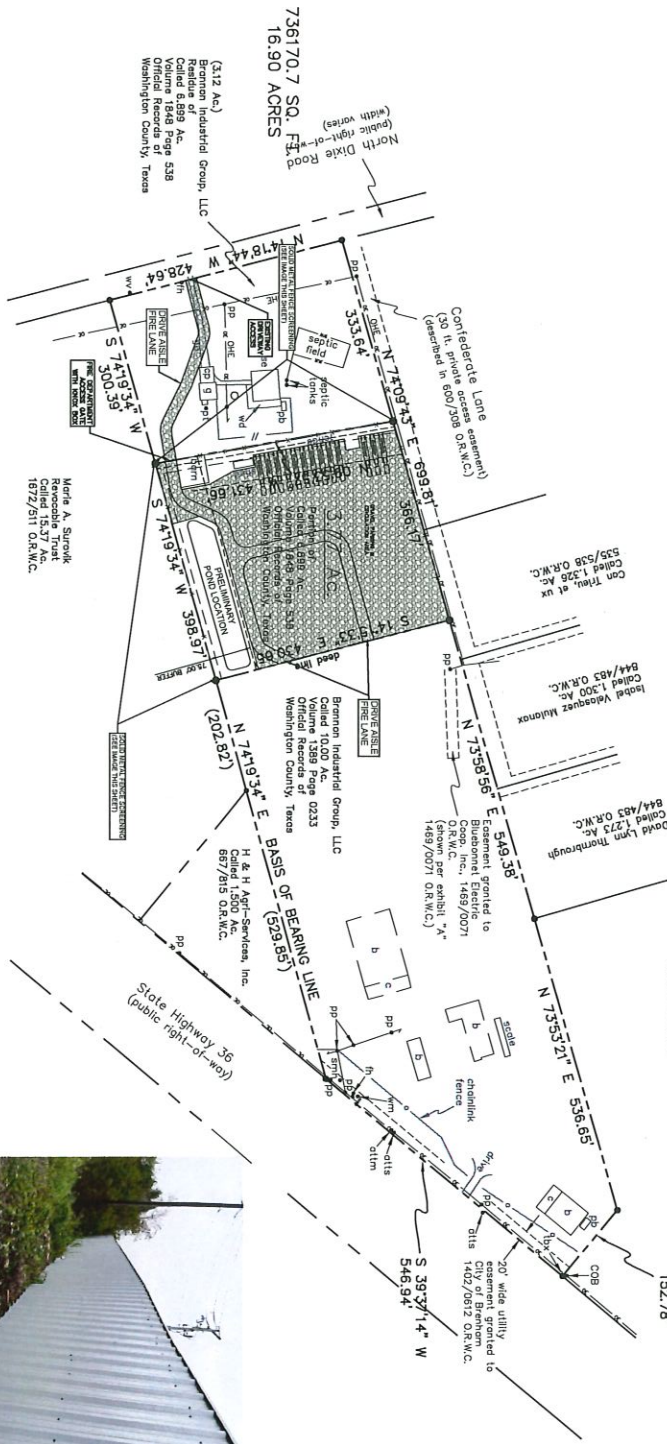
Adjacent Oil/gas easement to the south (part of 1030 Dixie Rd)



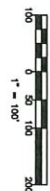
Adjacent Residential to the South (1030 Dixie Road)

Phillip Coe Survey
Abstract No. 31
Washington County, Texas

Recreation Technologies of Texas, Inc.
Caled 220.00 Ac.
779/871 O.R.W.C.



METAL PRIVACY FENCE FOR SCREENING



EXISTING	PROPOSED	DESCRIPTION
1	1	EXISTING PROPERTY LINE
2	2	PROPOSED PROPERTY LINE
3	3	EXISTING LOT
4	4	PROPOSED LOT
5	5	EXISTING EASEMENT
6	6	PROPOSED EASEMENT
7	7	EXISTING FENCE
8	8	PROPOSED FENCE
9	9	EXISTING DRIVE
10	10	PROPOSED DRIVE
11	11	EXISTING UTILITY
12	12	PROPOSED UTILITY
13	13	EXISTING ROAD
14	14	PROPOSED ROAD
15	15	EXISTING RAILROAD
16	16	PROPOSED RAILROAD
17	17	EXISTING AIRPORT
18	18	PROPOSED AIRPORT
19	19	EXISTING MARINA
20	20	PROPOSED MARINA
21	21	EXISTING PORT
22	22	PROPOSED PORT
23	23	EXISTING CANAL
24	24	PROPOSED CANAL
25	25	EXISTING DAM
26	26	PROPOSED DAM
27	27	EXISTING LEVEE
28	28	PROPOSED LEVEE
29	29	EXISTING DIKE
30	30	PROPOSED DIKE
31	31	EXISTING TUNNEL
32	32	PROPOSED TUNNEL
33	33	EXISTING BRIDGE
34	34	PROPOSED BRIDGE
35	35	EXISTING TOWER
36	36	PROPOSED TOWER
37	37	EXISTING LAMP
38	38	PROPOSED LAMP
39	39	EXISTING SIGN
40	40	PROPOSED SIGN
41	41	EXISTING FENCE
42	42	PROPOSED FENCE
43	43	EXISTING DRIVE
44	44	PROPOSED DRIVE
45	45	EXISTING UTILITY
46	46	PROPOSED UTILITY
47	47	EXISTING ROAD
48	48	PROPOSED ROAD
49	49	EXISTING RAILROAD
50	50	PROPOSED RAILROAD
51	51	EXISTING AIRPORT
52	52	PROPOSED AIRPORT
53	53	EXISTING MARINA
54	54	PROPOSED MARINA
55	55	EXISTING PORT
56	56	PROPOSED PORT
57	57	EXISTING CANAL
58	58	PROPOSED CANAL
59	59	EXISTING DAM
60	60	PROPOSED DAM
61	61	EXISTING LEVEE
62	62	PROPOSED LEVEE
63	63	EXISTING DIKE
64	64	PROPOSED DIKE
65	65	EXISTING TUNNEL
66	66	PROPOSED TUNNEL
67	67	EXISTING BRIDGE
68	68	PROPOSED BRIDGE
69	69	EXISTING TOWER
70	70	PROPOSED TOWER
71	71	EXISTING LAMP
72	72	PROPOSED LAMP
73	73	EXISTING SIGN
74	74	PROPOSED SIGN
75	75	EXISTING FENCE
76	76	PROPOSED FENCE
77	77	EXISTING DRIVE
78	78	PROPOSED DRIVE
79	79	EXISTING UTILITY
80	80	PROPOSED UTILITY
81	81	EXISTING ROAD
82	82	PROPOSED ROAD
83	83	EXISTING RAILROAD
84	84	PROPOSED RAILROAD
85	85	EXISTING AIRPORT
86	86	PROPOSED AIRPORT
87	87	EXISTING MARINA
88	88	PROPOSED MARINA
89	89	EXISTING PORT
90	90	PROPOSED PORT
91	91	EXISTING CANAL
92	92	PROPOSED CANAL
93	93	EXISTING DAM
94	94	PROPOSED DAM
95	95	EXISTING LEVEE
96	96	PROPOSED LEVEE
97	97	EXISTING DIKE
98	98	PROPOSED DIKE
99	99	EXISTING TUNNEL
100	100	PROPOSED TUNNEL

SITE PLAN

DRAIN BY: DESIGNED BY: QA / QC: PROJECT NO.: 113923-00002	PREMIER METAL BUYERS EXPANSION 1555 HWY 36 N, BRENNHAM, TEXAS BRANNON INDUSTRIAL GROUP
--	--

THIS DOCUMENT IS THE PROPERTY OF GARZA ENGINEERING, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF GARZA ENGINEERING, INC.	RELEASED DATE: _____ BY: _____
--	--------------------------------------

City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:

City of Brenham
Attn: Development Services Dept., Case P-22-026
P.O. Box 1059
Brenham, Texas 77834-1059

Name: MARIE Surovik
(please print)
Address: 1030 Dixie Rd
Brenham, TX 77833
Signature: [Signature]
Date: 11.18.2022

☒ I am FOR the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-22-026. (Please state reasons below)

☐ I am AGAINST the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-22-026. (Please state reasons below)

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

Monday, November 21, 2022, 5:15 PM
City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of **City Council** meeting:

Thursday, December 1, 2022, 1:00 PM
City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

See Attached

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line.
For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.



City Of Brenham

Development Services Department

Re: Rezoning of 1150 Dixie Rd, Brenham, TX

I am AGAINST rezoning 1150 Dixie Rd for industrial use for Premier Metal Buyers (PMB)

Reasons:

When my property was annexed by Brenham, I was told that one of the reasons for annexation would be that I would be protected by the Planning and Zoning board so that Premier Metal Buyers could not expand.

Several times I have called about PMB buying part of my property and the city was adamant that he would not be allowed to expand.

I have been told that my place is the buffer for Vintage Farms. I need a noise buffer between me and PMB.

NOISE:

I have been told that there have been numerous noise complaints. Please report those on KWHI or the paper like you report drug arrests. Who in the city is responsible for those complaints? What is done with the complaints? Are there fines for non-compliance, like when a veteran does not mow their lawn?

The noise level is high at Hohlt Park. What is the decibel level at the elementary school?

They ignore the 7A to 10P time frame and usually start around 6:30.

STENCH/SMOKY HAZE:

There are days when the stench is so bad that it makes me sick to my stomach and I cannot be outside in my own yard. Other days there is a smoky haze over my property.

LAWS/RULES:

It is my understanding that while the property under consideration is still under B1 zoning and should not be used for industrial purposes. However, about for the last 2 weeks (as of 11/18) PMB has been storing piles of pipe and bringing in trucks to carry those pipes off the property. During the middle of the first week, the city told me that they were told to get that stuff off the property. Their response, per the city, is they are working on it. What consequences or fines are they given for ignoring the city?

OTHER ISSUES:

There is an active gas well and gas line next to property line. What protections are in place for that?

PMB is a terrible neighbor. They leave trash, plastic bottles and soda cans, next to my fence where their employees take breaks and it washes into my land. They play a radio in their barn that is so loud, I can hear from my back door. They piled their metal against my fence (complaint on file) and tore my fence up.



From: [Stephanie Doland](#)
Bcc: [Stephanie Doland](#)
Subject: FW: PMB resident letter FW: letter
Date: Tuesday, December 27, 2022 11:56:00 AM

From: daniel Nepveux <john.nepveux@gmail.com>
Sent: Thursday, December 1, 2022 10:51 AM
To: Shauna Laauwe <slaauwe@cityofbrenham.org>
Subject: letter

To whom it may concern,

I would like to express my concerns about the rezoning request by premier metals.

I have lived at 1351 union lane with my wife and family for over 35 years. The last few years have been very unpleasant for us as we have been forced to endure dust, welding fumes, loud noises late at night and contaminated water draining down our road and through my property after heavy rains, all due to the activities of premier metals.

Recently premier metals has expanded their operation by bringing in more caliche to cover what used to be a horse pasture. They use this area to handle steel pipe, resulting in more dust for us. Many times they continue operations late at night past 22:00. The fumes from their cutting torches they use are noticeable any time the wind is out of the south.

I am opposed to allowing any zoning changes that allow premier metals to generate any more noise, dust, and fumes than they currently cause.

Thank you for your consideration.

John Nepveux