



Memorandum

May 3, 2016

TO: Town Council
Julie Couch, Town Manager

FROM: Israel Roberts, AICP
Planning Manager

SUBJECT: ZONING CHANGE FOR THE FORMER HARPER AND STARFISH INVESTMENTS PROPERTIES (ZA2015-14) AND CONSIDER AND TAKE ACTION ON A DEVELOPER'S AGREEMENT.

CASE STATUS: This case was originally presented to the Town Council on January 5, 2016 at which time a public hearing was held and closed. The Council did not act and tabled action to the March 1, 2016 Town Council Meeting. At the March 1 and April 5, 2016 meeting, the Town Council tabled the request to conduct a site visit and to formalize a developer's agreement.

A developer's agreement has been drafted for council's consideration addressing several issues, mostly related to drainage and the floodplain. The developer's agreement addresses some key items as follows:

- Modification of the Sloan Creek Channel making it narrower and deeper than the original swale
- Improvements in the area where the Sloan Creek Middle School drains onto the property
- HOA and lot owner maintenance responsibilities of drainage easements and the floodplain areas

BACKGROUND: The applicant for this zoning change application is the current property owner, M. Christopher Custom Homes. The current zoning for the subject property is Open Space and Flood Hazard (FH) zone. The subject area is an approximate 32.104 ± acre section of the overall 44.069 acre property. The smaller remaining portion south of the 100 year floodplain line is zoned Two-Acre Ranch Estate District (RE-2). The applicant has submitted a flood plain study and reclamation plan to the Town Engineer who has reviewed the plan and is concurrence with the findings. However, the Town is currently in the process of having a comprehensive

flood study prepared and that data is not completed. The draft study should be completed within 60 days according to the Town’s consultant. Approximately half of this flood plain area can be reclaimed and utilized for the proposed residential development.

Proposed Use

The proposed use for this application is low-density single-family dwellings that conform to the Residential Estate Country land use category. The proposed concept plan indicates 13 lots that would be a continuation (Phase Two) of the Harper’s Landing Addition adjacent to and south of the subject property and 2 additional lots already zoned RE-2. An additional residential street is shown on the concept plan that would connect to Country Club (FM 1378) and Phase One of the Harper’s Landing Addition. The applicant’s letter of intent also states that the “flood plain reclamation” will provide well documented relief to many residents in the Montecito neighborhood as well the future new property owners in Phase One on the development.

Land Use, Zoning, and Entitlements

The subject property is undeveloped and was primarily used for residential (the former Harper Property) and recreational purposes (the former Starfish Investments Property). The subject property is zoned Open Space/Flood Plain (FH) (the former Starfish Investments Property), and is categorized as Floodplain on the Future Land Use Plan in addition to being adjacent to Residential Estate Country as depicted on the Future Land Use Plan. The Residential Estate Country land use allows for maximum residential densities of one dwelling unit/2.0 gross acres and it also can require an open space provision that ranges from no open space to an open space provision that may amount to 10% of the gross area of the property. The Floodplain land use identifies areas that fall within the FEMA 100-year flood zone. If the Floodplain is adjusted by revisions approved by FEMA then the adjacent land use becomes the associated land use for the new reclaimed area. In this case the land use would become Residential Estate Country which supports the proposed RE-2 zoning district.

The land use and zoning of the surrounding properties are as follows:

	Current Zoning	Current Land Use	Future Land Use Plan
North	Planned Center (PC) (Montecito Estates)	Single-Family Estate (0.55 DU/gross acre)	Residential Estate
East	PC (Bluegrass Farms)	Single-Family Estate (0.34 DU/gross acre)	Residential Estate Country
South	AG (Molodow Tract)	Agriculture	Residential Estate Country
West	RE-2 (Countryside)	Single-Family Estate (0.42 DU/gross acre)	Residential Estate Country

If the town were to approve this application, it would require an amendment to the Zoning Map (FH zone to the RE-2 zone). The applicant is requesting the conventional RE-2 zoning classification for the remaining 32.104 acre plan. The concept plan indicates the ability to create 13 lots in this portion of the property yielding a density of 2.46 acres per dwelling unit.

Vehicle Access and Right-of-Way Requirements

Access to this proposed 32.104± acre portion of the development would be provided for at the western boundary of the former Starfish Investments tract, off of FM 1378, with immediate emergency and pedestrian access through Farmstead Road, (Phase One) which currently provides for platted ROW to the western boundary of the former Harper property. The applicant would provide easements to accommodate a future pedestrian connection and emergency access drive to the Molodow property to the south (Phase One). The applicant would also provide for a pedestrian connection to the common boundary with the Blue Grass Farms neighborhood in order to provide a future pedestrian connection to Kentucky Lane. The applicant would also continue that connection west along Sloan Creek in order to accommodate a nature trail on the site. While FM 1378 is not projected to expand, any additional ROW that would be required for this roadway would be dedicated during the platting process.

Utilities, Drainage, and Environmental Concerns

An existing 16" waterline on FM 1378 and 6" and 8" waterlines in Countryside and Bluegrass Farms would provide sufficient water to the proposed development. Like most other Fairview neighborhoods, the proposed development would be served by septic systems.

The applicant prepared a flood study that models the impact of the requested floodplain development. This model indicates that the applicant's proposal will not cause the water surface elevation of the FEMA 100-year floodplain to increase, and in some cases, it would actually result in a small decrease of the water surface elevation of the FEMA 100-year floodplain.

This proposed floodplain recovery would be facilitated by filling in a portion of the Sloan Creek floodplain at the southern limit of the floodplain boundary, and creating a drainage swale that parallels Sloan Creek in order to provide for additional valley storage for floodwaters during flood events. At the western boundary of the drainage swale, the top of swale elevation would be lower than the western bank of Sloan Creek, creating a scenario where flood waters would surge into this swale before flooding the north side of the creek, where there are several existing homes in Montecito Estates that lie within the FEMA 100-year floodplain. During major Sloan Creek flood events, this development would not prevent these properties in Montecito Estates from being inundated with water, however, they would also not make the issue worse as the applicant's flood study demonstrates that the applicant has fully mitigated the impact of their proposed floodplain recovery.

In addition to flooding issues associated with Sloan Creek, the properties to the north and south of Sloan Creek are also impacted by the backwater effects of Wilson Creek. Due to increased development in the Wilson Creek corridor over the last several decades, Wilson Creek has begun to more significantly impact Sloan Creek during flood events. This causes backwaters from Wilson Creek to surge into Sloan Creek and potentially impact land owners adjacent to the creek.

Once again, development of this land is not making this issue worse for property owners in Montecito Estates, as the drainage impacts from this development are fully mitigated. The drainage issues in Montecito Estates are a direct result of those properties being located within the FEMA 100-year floodplain.

With the proposed zoning scenario, the one-hundred year floodplain would not be impacted by future development. However, the Town is currently conducting a comprehensive flood study for the entire community which has not been completed in final form. The study is scheduled to be finalized in early December. The study may yield data that differs from previous years given that a substantial amount of development has occurred in this watershed. The Staff will update the Planning Commission at the meeting on the status of the study and report any preliminary findings that may be considered in moving forward with a recommendation to the City Council.

Landscaping/Tree Preservation/Tree Removal

There is little existing vegetation throughout much of the property, with the exception of the large clustering of trees adjacent to the creek and at the property boundaries. Much of the tree canopy coverage within the site is being preserved with the exception of some removal to accommodate the proposed swale.

Open Space and Trail Requirements

Consistent with past feedback received from citizens and the town council, the applicant has prioritized lot size in lieu of providing for open space or common area that was provided for in previous plans. This has allowed the applicant to provide for much larger lots, however, it has essentially placed a flood control feature that needs to be communally maintained, on the property of private landowners. If this plan is approved, a common maintenance instrument will need to be created during the platting process.

In order to support neighborhood pedestrian connectivity, the applicant will accommodate immediate or future pedestrian connectivity to the Molodow property, Bluegrass Farms, Countryside, and along the bank of Sloan Creek.

Trail and secondary access planning for this portion of the development will be facilitated during the platting process for that site.

Public Input

Staff notified 56 adjacent property owners (and Lovejoy ISD) within 500' of the subject properties associated with the 44.069-acre scenario, in accordance with local and state requirements and, thus far, has received six (6) letters/emails of opposition and no letters of support.

Staff Analysis

The Planning and Zoning Commission has had the opportunity to act on several plans that included this portion of the overall property. Recently, the southern portion of the proposed

development (Harper's Landing Addition) was approved with RE-2 zoning and 13 single family residential lots. While the applicant has presented similar plans that were denied in the recent past, there has been attempt with this application to meet the spirit of the Town's Future Land Use Plan by bringing forward zoning that is in keeping with the surrounding densities and lot sizes. With the adjustment of the 100 year flood plain, the applicant has also made an effort to improve the drainage for the proposed development as well as other surrounding properties.

STAFF RECOMMENDATION: Staff considers this a judgement decision of the Planning Commission & City Council for a request by M. Christopher Custom Homes for a zoning change to the Two-Acre Ranch Estate (RE-2) zone for a 32.104± acres tract of land that is generally located east of Country Club Road (FM 1378) and north of Farmstead Road.

Staff recommends approval of the attached Developer's Agreement.

P&Z ACTION: At their December 10, 2015 meeting, Planning & Zoning Commission was unable to forward a recommendation to the Council (a motion to approve failed by a 2-2 vote and no further motion was made).

BUDGET: N/A

ATTACHMENTS:

- Staff Presentation
- RE-2 Zoning Exhibit
- Legal Description
- Letter of Intent
- Letters of Opposition
- Developer's Agreement

Case # ZA2015-14

Zoning Change Request

Former Starfish Investments and Harper Tracts, 32.104± acres (ZA2015-14)

Applicant: M. Christopher Custom Homes

April 5, 2016

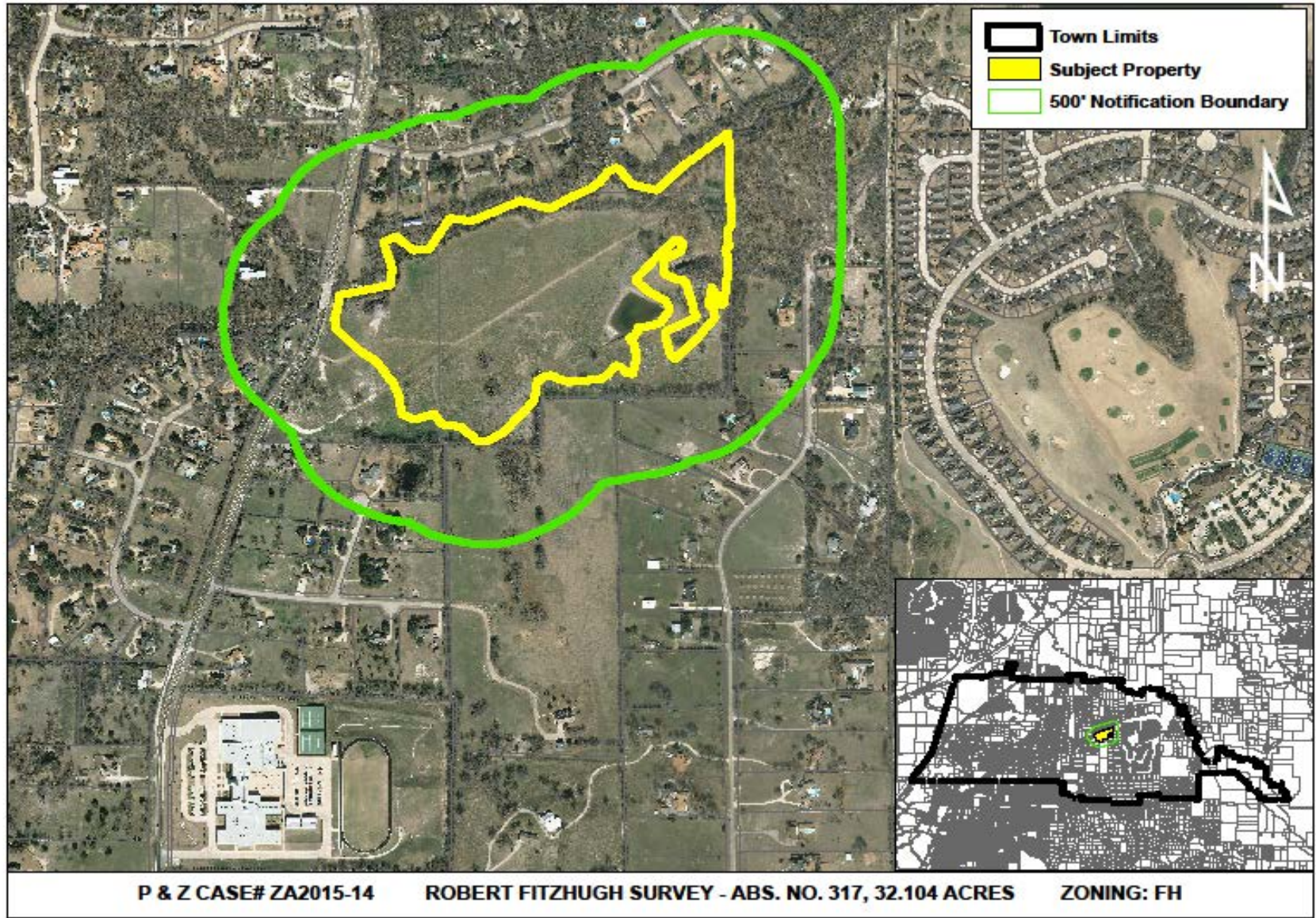




Development Application Summary

- ZA2015-14: Conduct a public hearing, consider, and take any necessary action on a request by Mr. Byron Reid, representing M. Christopher, Custom Home Builder, to rezone a 32.104± acre tract of land being a portion of a 44.069 acre tract of land situated in the Robert Fitzhugh Survey, Abstract No. 317 and the Samuel Sloan Survey, Abstract No. 791 in the Town of Fairview, Collin County, Texas and being Tract 1-13.692 acres, Tract 2-3.06 acres, Tract 3-10.00 acres and Tract 4-17.50 acres described by deed to Starfish Investments, LP according to the deed recorded in cc#20100629000665030 of the Real Property Records of Collin County, Texas, and being generally located adjacent to and east of Country Club Road (FM 1378) and north of Farmstead Street.

Location Map

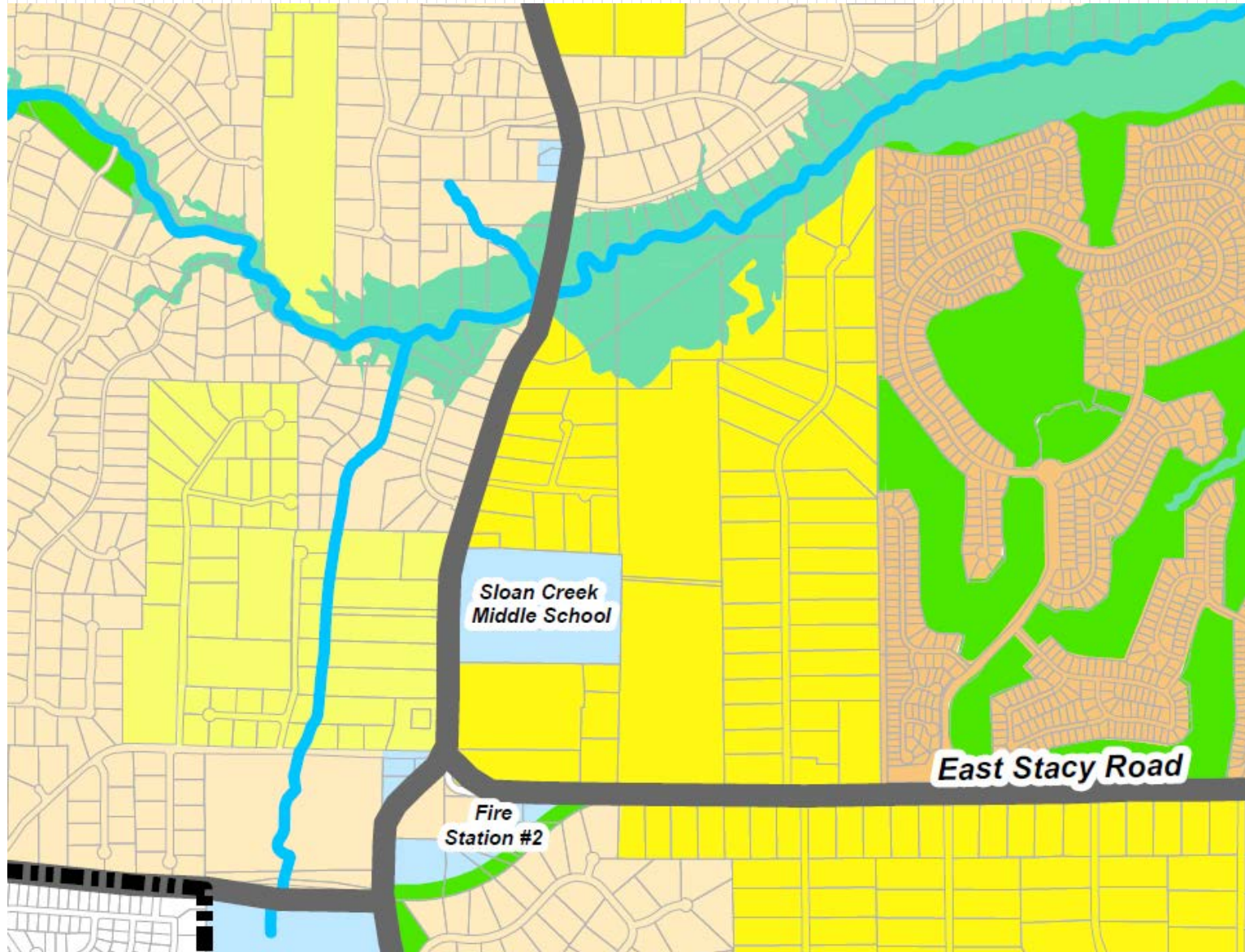




Land Use

- The existing uses on the subject properties are open space, and floodplain
- The projected land use, as provided for in the Future Land Use Plan is Floodplain and is adjacent to Residential Estate Country
 - Development consistent with the Residential Estate Country land use provides for a gross density of one or fewer dwelling units per two acres, while providing for a minimum lot size of one acre, and \pm 10% open space
- The applicant's request conforms to the Residential Estate Country Land Use and the proposed floodplain reclamation would result in a revision to the floodplain boundary delineation on the site

Future Land Use Plan

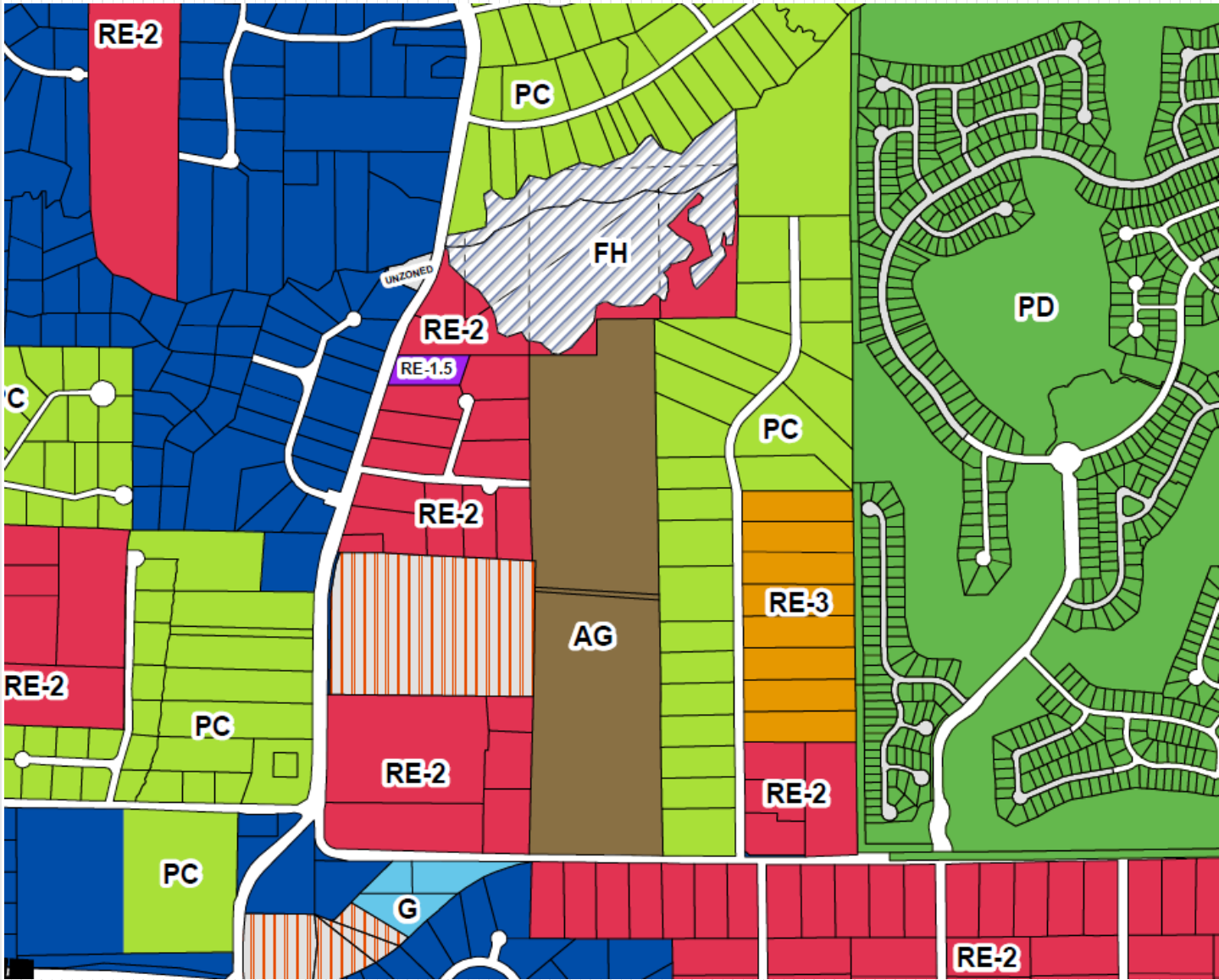




Zoning

- The existing zoning for the subject properties is FH.
 - FH allows for agricultural and open space uses that are not in conflict with flood protection requirements
- Applying RE-2 zoning to the subject property would likely yield 13 lots, depending upon the configuration of the site, 2 proposed lots are already zoned RE-2.

Zoning



Density – Adjacent Development

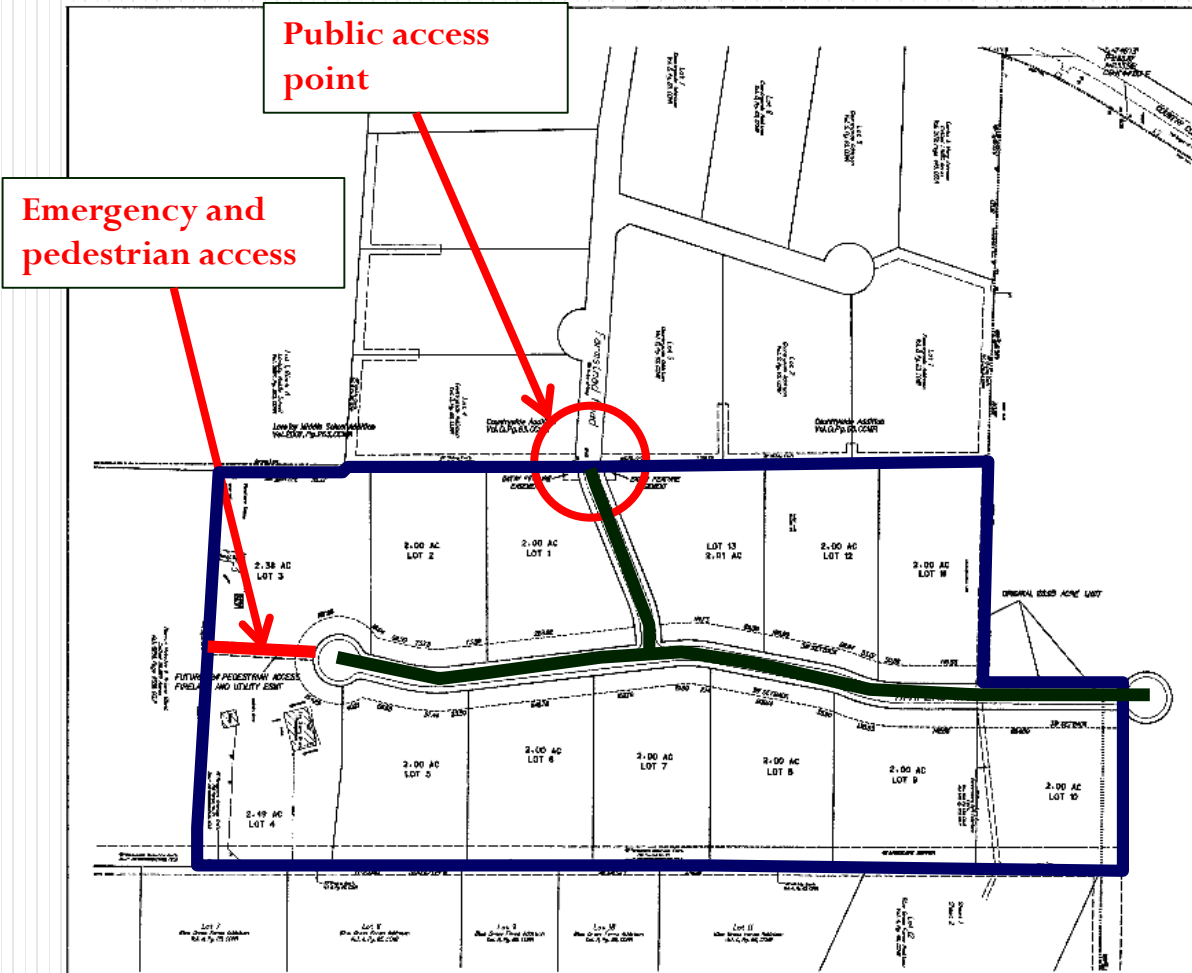


Subdivision Name	Total Residential Lots	Gross Area	Gross Density	Open Space
Fox Glen	50 lots	63.1 acres	0.79 DU/acre	None provided
Montecito Estates - I	56 lots	101.06 acres	0.55 DU/acre	None provided
Summerhill Farms	58 lots	107.76 acres	0.54 DU/acre	6.0 acres
Subject Properties	15 lots	44.069 acres	0.34 DU/acre	None provided
Countryside	9 lots	21.235 acres	0.42 DU/acre	None provided
Bluegrass Farms	27 lots	80.398 acres	0.34 DU/acre	None provided
Ranger Estates	8 lots	24.51 acres	0.33 DU/acre	None provided

ZA2015-14 - Landscape Character / FM 1378



ZA2015-14



Note: This plan is for presentation purposes only. If the town approves this application, the applicant is not legally bound to this plan, just the zoning designation. Modifications can be made to this plan during the platting process, provided that any changes remain in conformance with town zoning and subdivision regulations.

TRINCE with a north line of said 55.80 acre tract, a north line of said parcels, and a south line of said 17.50 acre tract. South 80°23'33" East, 439.47 feet to a 10x10 inch iron found marker (iron) a corner of said 55.80 acre tract, and from a corner of said parcel, and the south east corner of said 17.50 acre tract;

TRINCE with a west line of said 55.80 acre tract, a south line of said parcels, and the east line of said 37.50 acre tract, West 20°23'30" East, 238.77 feet to a 3x6 inch iron bound marker in the west northeast corner of said 55.80 acre tract, the north northeast corner of the lot of said parcel, and an interior corner of said 17.50 acre tract;

TRINCE with the north line of said 55.80 acre tract, the north line of said parcels, and a south line of said 17.50 acre tract, South 89°28'43" East, 257.32 feet to a capped iron rod four feet north of the road north east corner of said 55.80 acre tract, the east corner of a corner corner of said parcel, and the true westerly north east corner of said parcel to a 3x6 inch iron bound marker in the west northeast corner of said 55.80 acre tract, Page 50 of the City of Fairview Map No. 100;

TRINCE with the south line of said 55.80 acre tract, the south line of said parcels, the north line of said 3.00 acre tract, as to the whole, West of said East Gate Farm Addition, South 00°00'00" West, 1,270.00 feet to a 3x6 inch iron rod set on the ground at the south east corner of said 3.00 acre tract, the southeast corner of said parcel, and the southeast corner of the whole parcel of said 55.80 acre tract;

TRINCE with the east line of said 3.00 acre tract, the east line of said parcels, and the north line of said 3.00 acre tract, North 00°00'00" West, 706.24 feet to the point of beginning and containing 28.56 acres of land.

HAVERLAND DEVELOPMENT PLAN: TABLE

LOT 1	2.00 AC
LOT 2	2.00 AC
LOT 3	2.00 AC
LOT 4	2.49 AC
LOT 5	2.00 AC
LOT 6	2.00 AC
LOT 7	2.00 AC
LOT 8	2.00 AC
LOT 9	2.00 AC
LOT 10	2.00 AC
LOT 11	2.00 AC
LOT 12	2.00 AC
LOT 13	2.00 AC

1. AVERAGE LOT DENSITY - 30.88 ACRES/LOT = 0.08 AC/LOT
2. GROSS DENSITY - 20.99 ACRES/ACRE = 1.02 AC/ACRE
3. NET DENSITY - 37.88 ACRES/ACRE = 1.01 AC/ACRE

OWNER:
MORNINGSTAR AND COMPANY
500 S. HIGHWAY 2
FAIRVIEW, TEXAS 75009
940.497.8148
972.246.0277

OWNER:
HELMBERGER ASSOCIATES, INC.
1015 WILSON ROAD
#1212, TEXAS 75069
51 LEMAY AVENUE, SUITE 100
DALLAS, TEXAS 75204
(972) 442-7409

TRINCE INDUSTRIAL DEVELOPMENT

28.93 AC GROSS - 13 SINGLE FAMILY LOT SUBDIVISION
PART OF THE ROBERT FITZHUGH SURVEY NO. 317
AND SAMUAL SLOAN SURVEY NO. 791

27.850 ACRES RECORDED IN VOL 585, PAGE 524
1.085 ACRES RECORDED IN VOLUME 5058, PAGE 5575

PLANNING AND ZONING CASE • ZA2015-04

ZONING EXHIBIT					
HAVERLAND ADDITION					
M. CHRISTOPHER AND COMPANY					
FAIRVIEW, TEXAS					
HELMBERGER ASSOCIATES, INC.					
CIVIL AND SURVEYING ENGINEERS					
1015 WILSON ROAD, SUITE 100, DALLAS, TEXAS 75204					
TEL: 972.442.7409 FAX: 972.442.7409					
WWW.HELMBERGER.COM					
UNBUILT	UNBUILT	DATE	SCALE	METER	FILE NO.
HELM	GED	APRIL 2015	1"=30'	1"=30'	15
					CT

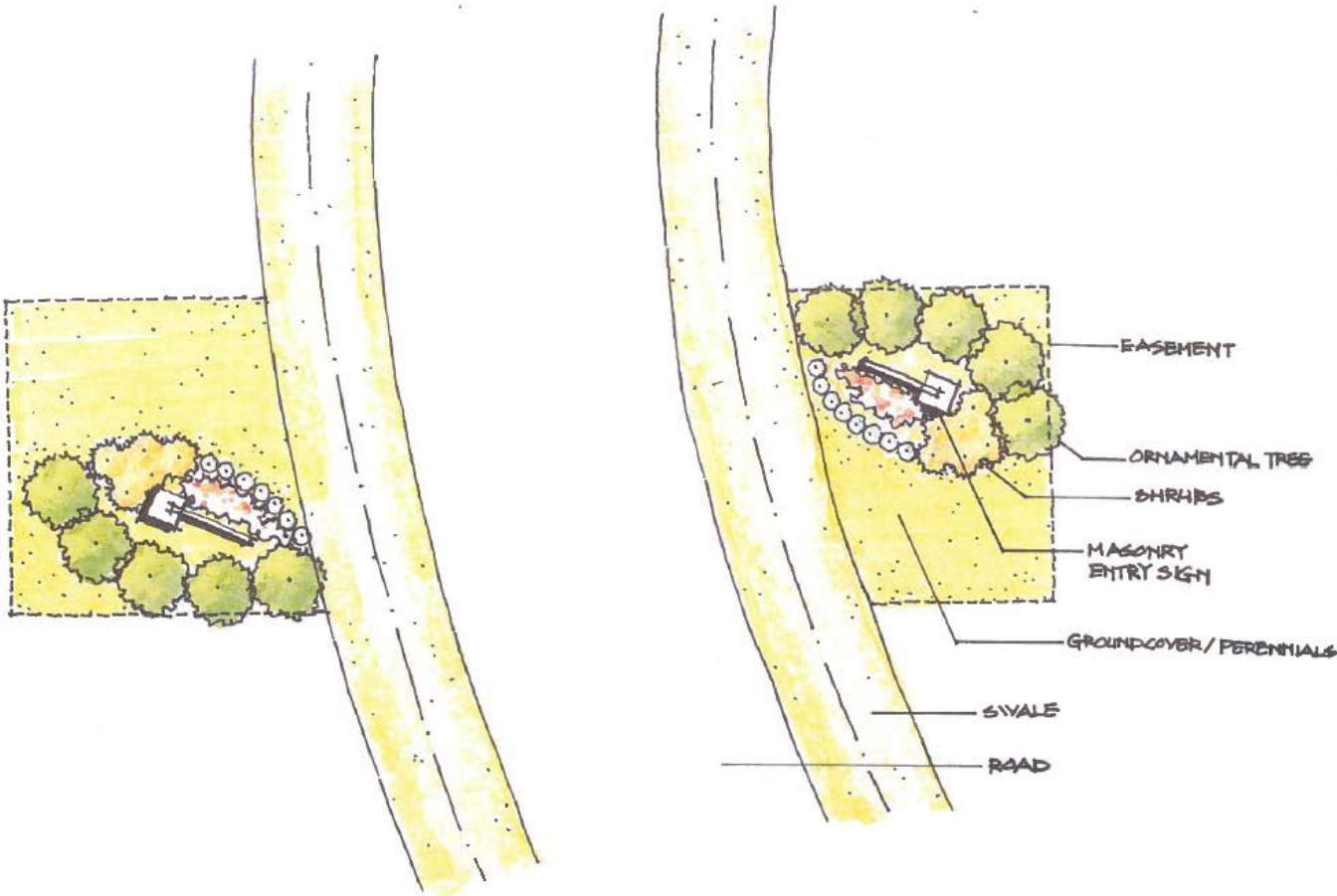


CURRENT ZONING - AGRICULTURAL ZONE (AG)
PROPOSED ZONING - TWO-ACRE RANCH ESTATE (RE-2)

THE PURPOSE OF THIS PLAN IS TO DEPICT THE POTENTIAL DEVELOPMENT OF THIS SITE IN ACCORDANCE WITH THE PROPOSED ZONING. APPROVAL OF THIS ZONING DOES NOT GUARANTEE THAT DEVELOPMENT ON ANY PART OF THE PROPERTY OWNER IS SUBJECT TO THIS COMPASSION AS WITH ANY DEVELOPMENT SHALL BE SUBJECT TO THE TOWN'S PLANNING AND DEVELOPMENT PROCESS.

ZA2015-14 - Landscape Character / Farmstead

DALLAS FORT WORTH HOUSTON



INTERIM REVIEW
APRIL 15, 2015

Public Notification – ZA2015-14

- Staff notified 56 adjacent property owners and Lovejoy ISD in accordance with town and state requirements, and received the following responses:
 - 6 letters/emails of opposition
 - 0 letters of support

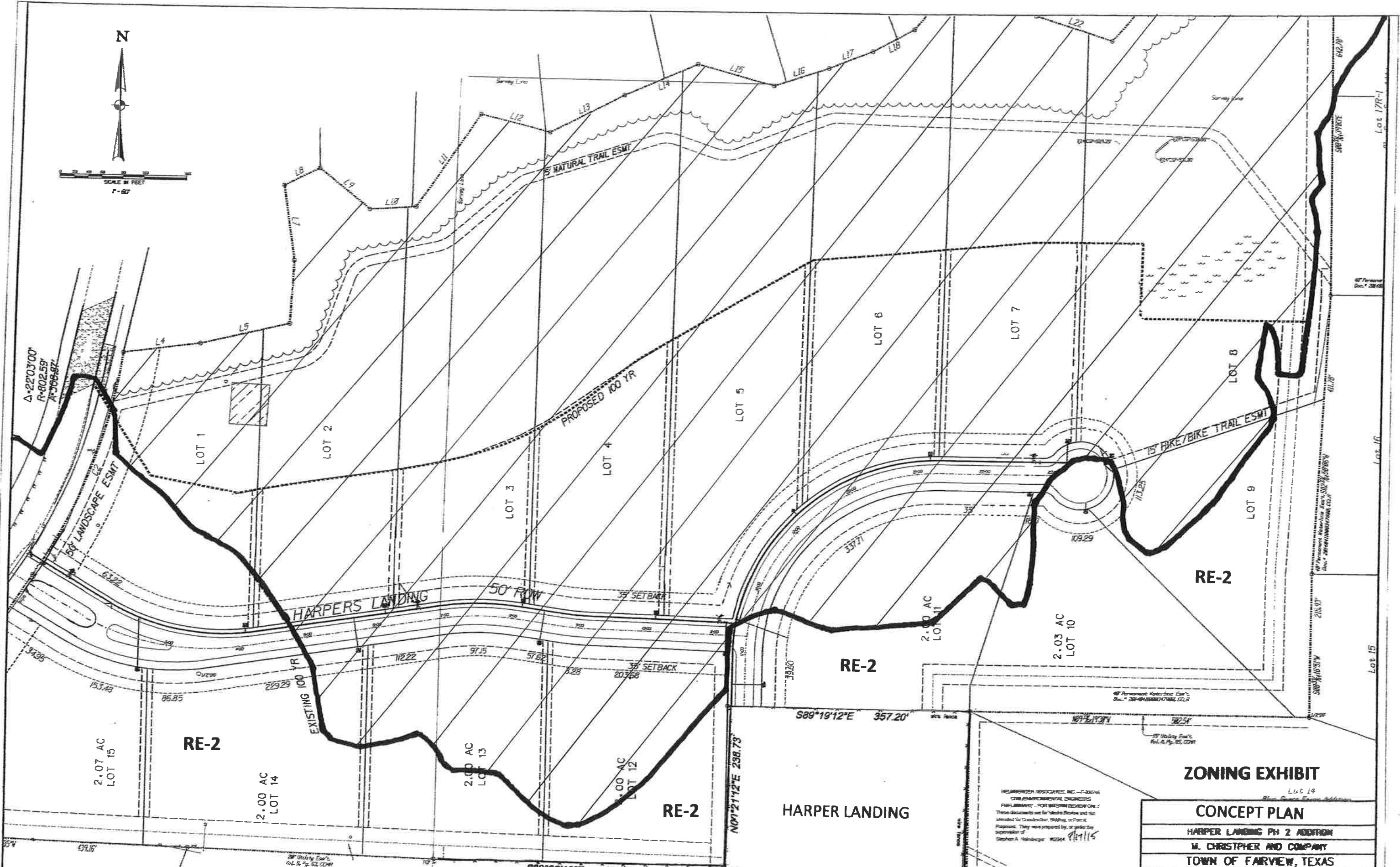
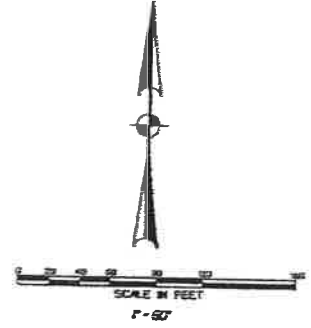




Staff Recommendation

- **Recommend action** on a request by M. Christopher, Custom Home Builder, to rezone a 32.104± acre tract of land being a portion of a 44.069 acre tract of land situated in the Robert Fitzhugh Survey, Abstract No. 317 and the Samuel Sloan Survey, Abstract No. 791 in the Town of Fairview, Collin County, Texas and being Tract 1-13.692 acres, Tract 2-3.06 acres, Tract 3-10.00 acres and Tract 4-17.50 acres described by deed to Starfish Investments, LP according to the deed recorded in cc#20100629000665030 of the Real Property Records of Collin County, Texas, and being generally located adjacent to and east of Country Club Road (FM 1378) and north of Farmstead Street.
- **Staff recommends approval for the Planning Commission & City Council** for a request by M. Christopher Custom Homes for a zoning change for a tract of land comprised of 32± acres and that is generally located east of Country Club Road (FM 1378) and north of Farmstead Street. The subject property is currently zoned Flood Hazard (FH), and the requested zoning change is for the Two-Acre Ranch Estate (RE-2) Zoning District.
- **Action:** At the December 10, 2015 the Planning Commission was unable to forward a recommendation to the Council (a motion to approve failed by a 2-2 vote and no further motion was made).
- **Current Status:** This case was originally presented to the Town Council on January 5, 2016 at which time a public hearing was held and closed. The Council did not act and tabled action to the March 1, 2016, where the Council tabled action again, in order to conduct a site visit.

N



Δ-220300'
R-80259'
A-306887'

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 9

LOT 10

LOT 11

LOT 12

LOT 13

LOT 14

LOT 15

RE-2

2.00 AC
LOT 14

2.00 AC
LOT 13

1.00 AC
LOT 12

RE-2

RE-2

2.00 AC
LOT 11

2.03 AC
LOT 10

RE-2

HARPERS LANDING

HARPER LANDING

PROPOSED 100 YR

EXISTING 100 YR

50' ROW

15' NATURAL TRAIL ESMT

15' BIKE/BIKE TRAIL ESMT

S89°19'12"E 357.20'

N01°21'12"E 238.73'

S89°06'10"E 470.20'

ZONING EXHIBIT

CONCEPT PLAN

HARPER LANDING PH 2 ADDITION
M. CHRISTOPHER AND COMPANY
TOWN OF FAIRVIEW, TEXAS

HELMBERGER ASSOCIATES, INC. - F000795
CIVIL/ENVIRONMENTAL ENGINEERS
PRELIMINARY - FOR WATER REVIEW ONLY
These documents are for informational purposes only and are not intended for construction, permitting, or final approval. They were prepared by, or under the supervision of, Stephen A. Helmsberger, RGS 44, 1/11/15

PERIMETER FIELD NOTE DESCRIPTION

BEING a 44.069 acre tract of land situated in the Robert Fitzhugh Survey, Abstract No. 317 and the Samuel Sloan Survey, Abstract No. 791 in the Town of Fairview, Collin County, Texas and being Tract 1-13.692 acres, Tract 2-3.06 acres, Tract 3-10.00 acres and Tract 4-17.50 acres described by deed to Starfish Investments, LP according to the deed recorded in cc#20100629000665030 of the Real Property Records of Collin County, Texas and being perimeter description around said as follows:

BEGINNING at the southwest corner of said Tract 4 and being located in the east line of Farm Market Road 1378 (Country Club Road) and being in a non-tangent curve to the right having a radius of 1,138.81 feet and a chord bearing of North 23°44'20" East;

THENCE along the east line of said Farm Market Road 1378 with said non-tangent curve to the right through a central angle of 11°46'13" for an arc length of 233.95 feet to a point for corner;

THENCE continuing with said east line, NORTH 29°30'20" EAST a distance of 204.58 feet to the beginning of a curve to the left having a radius of 802.59 feet and a chord bearing of North 18°28'50" East;

THENCE continuing with said east line with said curve to the left through a central angle of 22°03'00" for an arc length 308.88 feet to 5/8 Inch Iron rod set for the northwest corner of said Tract 1-13.692 acres and being located in the south bank Sloan Creek (by description);

THENCE departing the east line of said Farm Market Road 1378 (Country Club Road) and following the meanders of Sloan Creek (by deed description) and the north line of said Tract 1 as follows:

NORTH 71°53'04" EAST a distance of 241.86 feet to a point for corner;
NORTH 02°04'13" WEST a distance of 83.39 feet to a point for corner;
NORTH 13°16'13" WEST a distance of 114.50 feet to a point for corner;
NORTH 58°01'47" EAST a distance of 56.80 feet to a point for corner;
SOUTH 54°34'13" EAST a distance of 95.00 feet to a point for corner;
NORTH 81°45'47" EAST a distance of 67.00 feet to a point for corner;
NORTH 29°10'47" EAST a distance of 167.00 feet to a point for corner;
SOUTH 80°14'13" EAST a distance of 106.50 feet to a point for corner;
NORTH 58°40'47" EAST a distance of 123.00 feet to a point for corner;
NORTH 62°30'47" EAST a distance of 116.00 feet to a point for corner;
SOUTH 88°19'29" EAST a distance of 164.33 feet to the southwest corner of said Tract 2;

THENCE with the meanders of said Sloan Creek (by deed description) and following the north line of said Tract 2 as follows:

NORTH 53°06'15" EAST a distance of 139.94 feet to a point for corner;
NORTH 64°39'41" EAST a distance of 84.20 feet to a point for corner;
NORTH 35°51'41" EAST a distance of 100.76 feet to a point for corner;
NORTH 76°29'41" EAST a distance of 56.14 feet to a point for corner;
SOUTH 33°10'19" EAST a distance of 103.40 feet to a point for corner;
SOUTH 75°19'19" EAST a distance of 104.50 feet to a point for corner;
NORTH 44°07'41" EAST a distance of 181.50 feet to a point for corner;
NORTH 52°58'48" EAST a distance of 248.00 feet to the northeast corner of said Tract 2

THENCE departing the meanders of said Sloan Creek, SOUTH 05°08'19" EAST a distance of 359.50 feet to a 1/2 Inch Iron rod found for the southeast corner of said Tract 2 and being the northeast corner of said Tract 3;

THENCE along the east line of said Tract 3, SOUTH 01°38'24" EAST a distance of 327.45 feet to a point for corner from which a 1/2 Inch Iron rod is located North 28.3°;

THENCE continuing with said east line, SOUTH 00°54'12" WEST a distance of 276.80 feet to a point for corner;

THENCE SOUTH 01°27'48" EAST a distance of 320.90 feet to a 1/2 Inch Iron rod found for the southeast corner of said Tract 3;

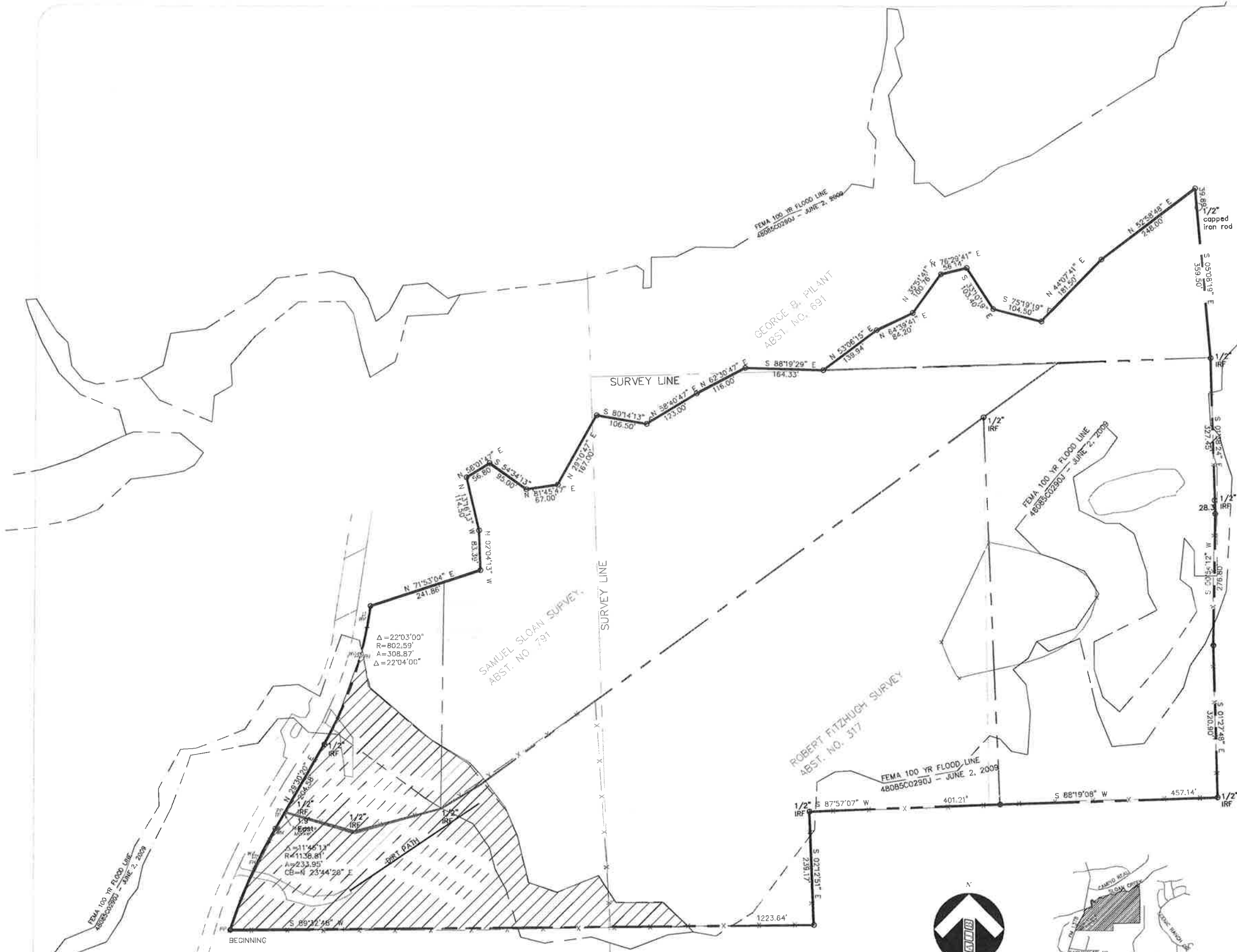
THENCE along an established fence, SOUTH 88°19'08" WEST a distance of 457.14 feet to a point for corner for the southeast corner of said Tract 4 (by location) and being located 23.3' east of the southwest corner of said Tract 3 (23.3' overlap between tracts),

THENCE along the south line of said Tract 4, with said fence line, SOUTH 87°57'07" WEST a distance of 401.21 feet to a 1/2 inch Iron rod found for an L? corner in said south line of Tract 4;

THENCE SOUTH 02°12'51" EAST a distance of 239.17 feet to a 1/2 inch Iron rod found for the southerly southeast corner of said Tract 4;

THENCE along the south line of said Tract 4, SOUTH 89°32'48" WEST a distance of 1,223.64 feet to the POINT OF BEGINNING

CURRENT TITLE REPORT WAS NOT AVAILABLE AT THE TIME OF THIS SURVEY; THEREFORE, IT IS POSSIBLE CONTAINING 44.069 acres or 1,919,644 square feet. THEREFORE, IT IS POSSIBLE THAT ALL EASEMENTS OF RECORD MAY NOT BE SHOWN



PERIMETER FIELD NOTE DESCRIPTION
 BEING a 44.069 acre tract of land situated in the Robert Fitzhugh Survey, Abstract No. 317 and the Samuel Sloan Survey, Abstract No. 791 in the Town of Fairview, Collin County, Texas and being Tract 1-13.692 acres, Tract 2-3.06 acres, Tract 3-10.00 acres and Tract 4-17.50 acres described by deed to Starfish Investments, LP according to the deed recorded in cc#20100629000665030 of the Real Property Records of Collin County, Texas and being perimeter description around said as follows:

BEGINNING at the southwest corner of said Tract 4 and being located in the east line of Farm Market Road 1378 (Country Club Road) and being in a non-tangent curve to the right having a radius of 1,138.81 feet and a chord bearing of North 23°44'20" East;

THENCE along the east line of said Farm Market Road 1378 with said non-tangent curve to the right through a central angle of 11°46'13" for an arc length of 233.95 feet to a point for corner;

THENCE continuing with said east line, NORTH 29°30'20" EAST a distance of 204.58 feet to the beginning of a curve to the left having a radius of 802.59 feet and a chord bearing of North 18°28'50" East;

THENCE continuing with said east line with said curve to the left through a central angle of 22°03'00" for an arc length 308.88 feet to 5/8 inch iron rod set for the northwest corner of said Tract 1-13.692 acres and being located in the south bank Sloan Creek (by description);

THENCE departing the east line of said Farm Market Road 1378 (Country Club Road) and following the meanders of Sloan Creek (by deed description) and the north line of said Tract 1 as follows:

- NORTH 71°53'04" EAST a distance of 241.86 feet to a point for corner;
- NORTH 02°04'13" WEST a distance of 83.39 feet to a point for corner;
- NORTH 13°16'13" WEST a distance of 114.50 feet to a point for corner;
- NORTH 58°01'47" EAST a distance of 56.80 feet to a point for corner;
- SOUTH 54°34'13" EAST a distance of 95.00 feet to a point for corner;
- NORTH 81°45'47" EAST a distance of 67.00 feet to a point for corner;
- NORTH 29°10'47" EAST a distance of 167.00 feet to a point for corner;
- SOUTH 80°14'13" EAST a distance of 106.50 feet to a point for corner;
- NORTH 58°40'47" EAST a distance of 123.00 feet to a point for corner;
- NORTH 62°30'47" EAST a distance of 116.00 feet to a point for corner;
- SOUTH 88°19'29" EAST a distance of 164.33 feet to the southwest corner of said Tract 2;

THENCE with the meanders of said Sloan Creek (by deed description) and following the north line of said Tract 2 as follows:

- NORTH 53°08'15" EAST a distance of 139.94 feet to a point for corner;
- NORTH 64°39'41" EAST a distance of 84.20 feet to a point for corner;
- NORTH 35°51'41" EAST a distance of 100.76 feet to a point for corner;
- NORTH 76°29'41" EAST a distance of 56.14 feet to a point for corner;
- SOUTH 33°10'19" EAST a distance of 103.40 feet to a point for corner;
- SOUTH 75°19'19" EAST a distance of 104.50 feet to a point for corner;
- NORTH 44°07'41" EAST a distance of 181.50 feet to a point for corner;
- NORTH 52°58'48" EAST a distance of 248.00 feet to the northeast corner of said Tract 2

THENCE departing the meanders of said Sloan Creek, SOUTH 05°08'19" EAST a distance of 359.50 feet to a 1/2 inch iron rod found for the southeast corner of said Tract 2 and being the northeast corner of said Tract 3;

THENCE along the east line of said Tract 3, SOUTH 01°38'24" EAST a distance of 327.45 feet to a point for corner from which a 1/2 inch iron rod is located North 28.3°;

THENCE continuing with said east line, SOUTH 00°54'12" WEST a distance of 276.60 feet to a point for corner;

THENCE SOUTH 01°27'48" EAST a distance of 320.90 feet to a 1/2 inch iron rod found for the southeast corner of said Tract 3;

THENCE along an established fence, SOUTH 88°19'08" WEST a distance of 457.14 feet to a point for corner for the southeast corner of said Tract 4 (by location) and being located 23.3' east of the southwest corner of said Tract 3 (23.3' overlap between tracts),

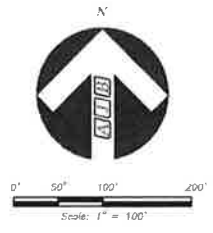
THENCE along the south line of said Tract 4, with said fence line, SOUTH 87°57'07" WEST a distance of 401.21 feet to a 1/2 inch iron rod found for an ?L? corner in said south line of Tract 4;

THENCE SOUTH 02°12'51" EAST a distance of 239.17 feet to a 1/2 inch iron rod found for the southerly southeast corner of said Tract 4;

THENCE along the south line of said Tract 4, SOUTH 89°32'48" WEST a distance of 1,223.64 feet to the POINT OF BEGINNING.

CURRENT TITLE REPORT WAS NOT AVAILABLE AT THE TIME OF THIS SURVEY. THEREFORE, IT IS POSSIBLE CONTAINING 44.069 acres or 1,919,644 square feet of land, more or less.

FLOOD STATEMENT: According to Community Panel No. 48085C0290J, dated June 2, 2009 of the Federal Emergency Management Agency, National Flood Insurance Program Map, Since this property is within Flood Zone ?AE? which is the area of 100-year flood with base flood elevations and flood hazard factors determined. This is for informational purposes only and shall not create liability on the part of the Surveyor.



Client: _____
 Scale: 1" = 100'
 Date: 06-01-2011
 Technician: Larry
 Drawn By: bedford
 Checked By: _____
 File: txcas 44-06-03-2011
 Job, No. 534-01-2011
 GF No. N/A



September 1, 2015

Town of Fairview Planning Department
372 Town Place, Fairview, TX, 75069

M. Christopher Custom Homes requests a zoning change for the property (44.069 acres) located at Runway and Country Club in Fairview to be viewed as Phase 2 of Harper Landing. We are combining it with Phase 1 to provide a beautiful R-2 two acre community which will blend with neighboring properties. The flood plain reclamation will provide well documented relief to many residents in Montecito, and by allowing this Phase 2 rezoning, the project will be designed to be of benefit to the new residents of the subdivision as well as all of the residents surrounding our community and will remain true to the overall Residential Estate Land Use Plan.

Sincerely,

Bryon Reid

President

M. Christopher and Company

Robert LaCroix

From: Ken Hardison [REDACTED]
Sent: Monday, November 02, 2015 10:06 AM
To: Robert LaCroix
Subject: Re zoning

I just received a notice of the re zoning meeting concerning the property located adjacent to and east of country club Rd and north of farmstead at owned by developer m Christopher. This piece of property was discussed just a few months ago and city council unanimously said no to building in this flood plane. Many citizens attended the meeting and voiced much opposition to any development of this flood control area and noted the severe flooding just experienced, yet here we are again. How many times do we have to say no!! I am very much opposed to this re zoning. It was zoned flood hazard for a reason.

Sent from my iPhone



October 28, 2015

TO WHOM IT MAY CONCERN:

Notice is hereby given that the Planning and Zoning Commission for the Town of Fairview, Texas, will convene for a public hearing on Thursday, November 12, 2015 at 7:00 PM at Town Hall, 372 Town Place, Fairview, Texas. At such time and place the Commission will hold a public hearing and take appropriate action regarding the following:

- Conduct a public hearing, consider, and take any necessary action on a request by Mr. Byron Reid, representing M. Christopher, Custom Home Builder, to rezone a 32.104± acre tract of land being a portion of a 44.069 acre tract of land situated in the Robert Fitzhugh Survey, Abstract No. 317 and the Samuel Sloan Survey, Abstract No. 791 in the Town of Fairview, Collin County, Texas and being Tract 1-13.692 acres, Tract 2-3.06 acres, Tract 3-10.00 acres and Tract 4-17.50 acres described by deed to Starfish Investments, LP according to the deed recorded in cc#20100629000665030 of the Real Property Records of Collin County, Texas, and being generally located adjacent to and east of Country Club Road (FM 1378) and north of Farmstead Street from Open Space and Flood Hazard (FH) Zone to Two-Acre Ranch Estate (RE-2) Zone. (ZA2015-14).

All interested citizens and property owners are invited to attend and participate in this meeting. For questions and/or comments please contact Robert LaCroix, Planning Manager, at 972-562-0522, extension 5094; or via email: rlacroix@fairviewtexas.org. Citizens may also visit Town Hall, Monday-Friday from 8:30-4:30 PM to obtain more information on this matter prior to the public hearing.

If you wish to communicate your support or opposition for this proposed CUP to the Planning and Zoning Commission and town staff, please respond to the queries below and return it to Mr. LaCroix via mail, email, fax, or hand delivery.

Name: Brian Mauer

Address: 1210 Camino Real

Support

Signature:

Oppose

Date: 11/4/2015

Comments:



October 28, 2015

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Name: GREG & LISA TAYLOR Address: 1180 CAMINO REAL

Support

Oppose

Signature: 

Date: 10/31/2015

Comments:



October 28, 2015

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If you wish to communicate your support or opposition for this proposed CUP to the Planning and Zoning Commission and town staff, please respond to the queries below and return it to Mr. LaCroix via mail, email, fax, or hand delivery.

Name: Jerome & Terri Eck Address: 1190 Camino Real

Support

Oppose

Signature: Jerome Eck

Date: 11-4-15

Comments:

Robert LaCroix

From: Uli Gienger <ugienger@gmail.com>
Sent: Thursday, November 12, 2015 10:54 AM
To: Robert LaCroix
Subject: Opposed to rezoning ZA2015-14

Dear mr. Lacroix: I live at 7146 Wildbriar. I'm opposed to rezoning the land east of Country Club Road and north of farmstead Street to 2 acre ranch estates. Building in this area will only make flooding on the opposite side of the creek worse. We already had the creek coming out of its banks and close to our house earlier this year, and it happens more frequently now than before.



October 28, 2015

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All interested citizens and property owners are invited to attend and participate in this meeting. For questions and/or comments please contact Robert LaCroix, Planning Manager, at 972-562-0522, extension 5094; or via email: rlacroix@fairviewtexas.org. Citizens may also visit Town Hall, Monday-Friday from 8:30-4:30 PM to obtain more information on this matter prior to the public hearing.

If you wish to communicate your support or opposition for this proposed CUP to the Planning and Zoning Commission and town staff, please respond to the queries below and return it to Mr. LaCroix via mail, email, fax, or hand delivery.

Name: Page + Caryetta Thomas Address: 1231 Camino Real
Fairview, Tx 75069-9795

Support Signature: Caryetta Thomas

Oppose Date: 10/30/15

Comments:

TOWN OF FAIRVIEW, TEXAS

ORDINANCE NO.

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CHAPTER 14 (ZONING), AND THE ZONING MAP OF THE TOWN OF FAIRVIEW, TEXAS FOR THE REZONING OF 32.104± ACRES OF LAND BEING A PORTION OF A 44.069 ACRE TRACT OF LAND SITUATED IN THE ROBERT FITZHUGH SURVEY, ABSTRACT NO. 317 AND THE SAMUEL SLOAN SURVEY, ABSTRACT NO. 791 IN THE TOWN OF FAIRVIEW, COLLIN COUNTY, TEXAS AND BEING TRACT 1- 13.692 ACRES, TRACT 2 – 3.06 ACRES, TRACT 3 – 10.00 ACRES AND TRACT 4 – 17.50 ACRES DESCRIBED BY DEED TO STARFISH INVESTMENTS, LP ACCORDING TO THE DEED RECORDED IN CC#20100629000665030 OF THE REAL PROPERTY RECORDS OF COLLIN COUNTY, TEXAS AND BEING GENERALLY LOCATED ADJACENT TO AND EAST OF COUNTRY CLUB ROAD (FM 1378) AND NORTH OF FARMSTEAD STREET FROM OPEN SPACE AND FLOOD HAZARD (FH) ZONE, TO TWO-ACRE RANCH ESTATE (RE-2) ZONE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, notice of a public hearing before the Town of Fairview Planning and Zoning Commission was sent to real property owners within 500 feet of the property herein described at least ten (10) days before such hearing; and

WHEREAS, notice of a public hearing before the Town of Fairview Town Council (“Town Council”) was published in a newspaper of general circulation in the Town of Fairview at least sixteen (16) days before such hearing; and

WHEREAS, public hearings to adopt zoning on the property herein described were held before both the Planning and Zoning Commission and the Town Council, and the Planning and Zoning Commission has heretofore made a recommendation concerning the zoning; and

WHEREAS, the Town Council finds that the zoning herein effectuated furthers the purpose of zoning in the town and that it is in the public interest to approve said zoning described herein; now, therefore,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FAIRVIEW, TEXAS:

Section 1. That the Code of Ordinances, Chapter 14 (Zoning), and the Zoning Map of the Town of Fairview, Texas is hereby amended for the rezoning of 32.104± acres, more fully described on Exhibits “A” and “B” attached hereto and incorporated herein, and generally located adjacent to and east of Country Club Road (FM 1378) and north of Farmstead Street, from Open Space and Flood Hazard (FH) zone to Two-Acre Ranch Estate (RE-2) zone, in accordance with the provisions of Chapter 14 (Zoning), Article 14.02, Division 1 (Generally), Section 14.02.002 and Division 6 (Two-Acre Ranch Estate Zone), Section 14.02.251 et seq., of the Code of Ordinances, Town of Fairview, Texas (“Fairview Code”).

Section 3. That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a class C misdemeanor and upon conviction be subject to a fine in accordance with the general provisions of the Fairview Code.

Section 4. That the sections, paragraphs, sentences, phrases, clauses and words of this ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this ordinance or application thereof to any person, firm or corporation, or to any circumstance is held invalid or unconstitutional by a Court of

competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the Town Council hereby declares that it would have adopted such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. That this ordinance shall take effect upon passage and publication, and it is accordingly so ordained.

PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FAIRVIEW, TEXAS, THIS 3rd DAY OF MAY, 2016.

Darion Culbertson, Mayor
Town of Fairview

ATTEST:

Elizabeth Cappon, Town Secretary

APPROVED AS TO FORM:

Clark McCoy, Town Attorney

EXHIBIT "A"

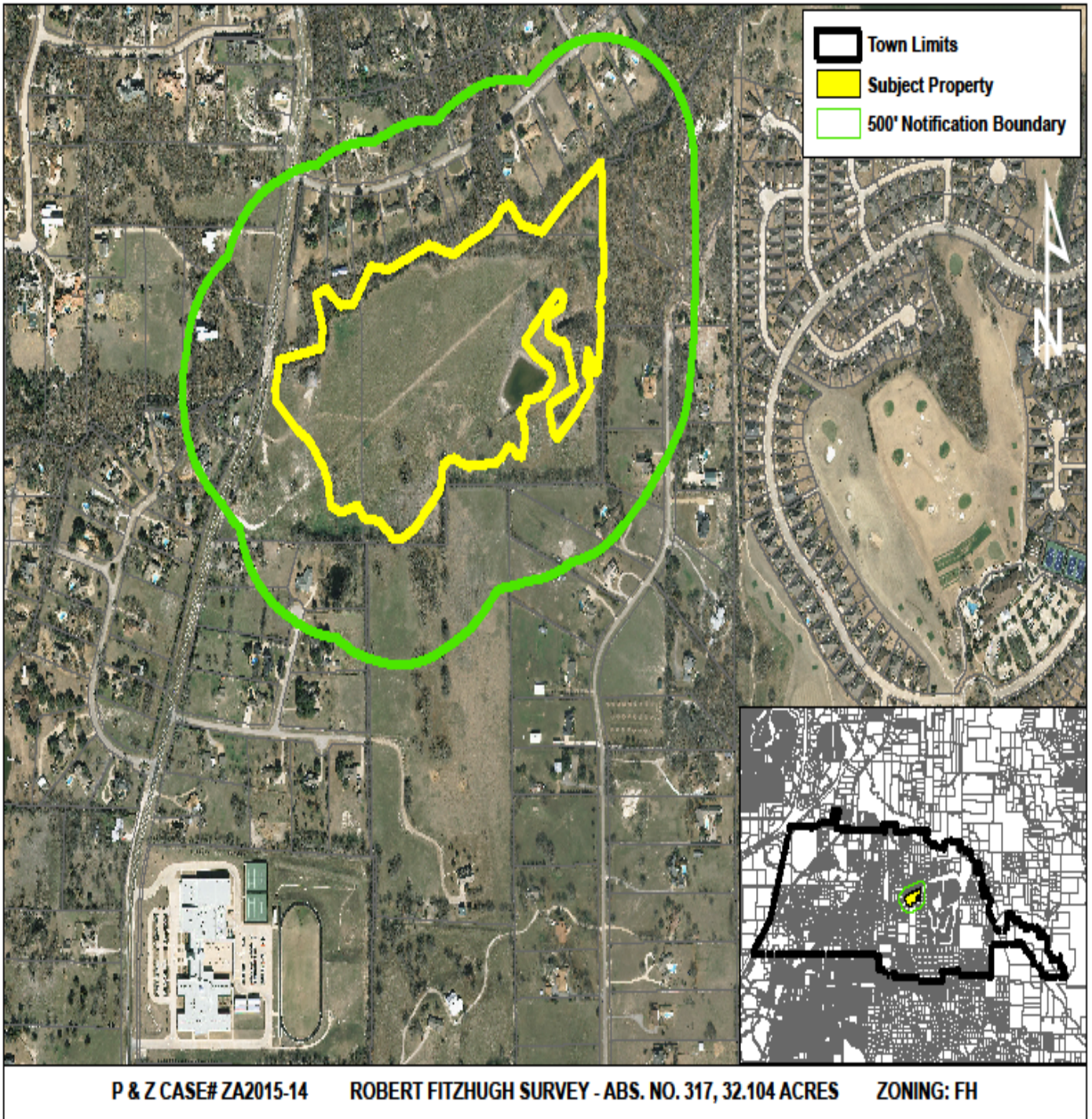


EXHIBIT "B"

PERIMETER FIELD NOTE DESCRIPTION

BEING a 44.069 acre tract of land situated in the Robert Fitzhugh Survey, Abstract No. 317 and the Samuel Sloan Survey, Abstract No. 791 in the Town of Fairview, Collin County, Texas and being Tract 1-13.882 acres, Tract 2-3.06 acres, Tract 3-10.00 acres and Tract 4-17.80 acres described by deed to Standard Investments, LP according to the deed recorded in case#20100820000889030 of the Real Property Records of Collin County, Texas and being perimeter description ground sold as follows:

BEGINNING at the southwest corner of said Tract 4 and being located in the east line of Farm Market Road 1378 (Country Club Road) and being in a non-tangent curve to the right having a radius of 1,138.61 feet and a chord bearing of North 29°44'20" East;

THENCE along the east line of said Farm Market Road 1378 with said non-tangent curve to the right through a central angle of 11°46'13" for an arc length of 231.93 feet to a point for corner;

THENCE continuing with said east line, NORTH 29°30'20" EAST a distance of 204.58 feet to the beginning of a curve to the left having a radius of 802.68 feet and a chord bearing of North 18°28'50" East;

THENCE continuing with said east line with said curve to the left through a central angle of 22°03'00" for an arc length 306.88 feet to $\frac{3}{8}$ inch iron rod set for the northwest corner of said tract 1-13.882 acres and being located in the south bank Sloan Creek (by description);

THENCE departing the east line of said Farm Market Road 1378 (Country Club Road) and following the meanders of Sloan Creek (by deed description) and the north line of said Tract 1 as follows:

NORTH 71°55'04" EAST a distance of 241.68 feet to a point for corner;
NORTH 02°04'13" WEST a distance of 83.38 feet to a point for corner;
NORTH 13°16'13" WEST a distance of 114.50 feet to a point for corner;
NORTH 58°04'47" EAST a distance of 58.80 feet to a point for corner;
SOUTH 04°34'13" EAST a distance of 85.00 feet to a point for corner;
NORTH 81°45'47" EAST a distance of 87.00 feet to a point for corner;
NORTH 28°10'47" EAST a distance of 162.00 feet to a point for corner;
SOUTH 06°14'13" EAST a distance of 108.50 feet to a point for corner;
NORTH 58°43'47" EAST a distance of 123.00 feet to a point for corner;
NORTH 82°32'47" EAST a distance of 116.00 feet to a point for corner;
SOUTH 88°18'28" EAST a distance of 184.33 feet to the southwest corner of said Tract 2;

THENCE with the meanders of said Sloan Creek (by deed description) and following the north line of said Tract 2 as follows:

NORTH 53°08'18" EAST a distance of 138.94 feet to a point for corner;
NORTH 04°38'41" EAST a distance of 84.20 feet to a point for corner;
NORTH 35°31'41" EAST a distance of 100.78 feet to a point for corner;
NORTH 78°20'41" EAST a distance of 96.14 feet to a point for corner;
SOUTH 33°10'18" EAST a distance of 103.40 feet to a point for corner;
SOUTH 75°18'18" EAST a distance of 104.30 feet to a point for corner;
NORTH 44°07'41" EAST a distance of 181.50 feet to a point for corner;
NORTH 52°58'48" EAST a distance of 248.00 feet to the northeast corner of said Tract 2;

THENCE departing the meanders of said Sloan Creek, SOUTH 03°08'18" EAST a distance of 309.60 feet to a $\frac{1}{2}$ inch iron rod found for the southeast corner of said Tract 2 and being the northeast corner of said Tract 3;

THENCE along the east line of said Tract 3, SOUTH 01°38'24" EAST a distance of 327.43 feet to a point for corner from which a $\frac{1}{8}$ inch iron rod is located North 28.3°;

THENCE continuing with said east line, SOUTH 00°54'17" WEST a distance of 276.80 feet to a point for corner;

THENCE SOUTH 01°27'48" EAST a distance of 320.80 feet to a $\frac{1}{2}$ inch iron rod found for the southeast corner of said Tract 3;

THENCE along an established fence, SOUTH 88°19'09" WEST a distance of 457.14 feet to a point for corner for the southeast corner of said Tract 4 (by location) and being located 23.3' east of the southwest corner of said Tract 3 (23.3' overlap between tracts);

THENCE along the south line of said Tract 4, with said fence line, SOUTH 87°57'07" WEST a distance of 401.21 feet to a $\frac{1}{2}$ inch iron rod found for an 2L' corner in said south line of said Tract 4;

THENCE SOUTH 02°12'51" EAST a distance of 238.17 feet to a $\frac{1}{2}$ inch iron rod found for the southerly southeast corner of said Tract 4;

THENCE along the south line of said Tract 4, SOUTH 89°32'48" WEST a distance of 1,223.84 feet to the POINT OF BEGINNING;

CURRENT TITLE REPORT WAS NOT AVAILABLE AT THE TIME OF THIS SURVEY. THEREFORE, IT IS POSSIBLE THAT NOT ALL RIGHTS OF RECORD MAY NOT BE SHOWN

STATE OF TEXAS §
§ DEVELOPMENT AGREEMENT
COUNTY OF COLLIN §

This Development Agreement (“Agreement”) is made by and between the Town of Fairview, Texas (“Town”) and Harper Landing Development LLC, (“Developer”) collectively referred to as “Parties” and individually as a “Party” acting by and through their respective representatives.

RECITALS

WHEREAS, Developer is the sole owner of certain real property described by metes and bounds in attached Exhibit “A” (the “Property”) and Harper Landing Addition described in attached Exhibit “C”; and

WHEREAS, Developer intends to develop the Property in general conformance with the concept plan (“Concept”) attached as Exhibit “B” as modified as described by this Agreement including but not limited to the proposed modifications to the Sloan Creek Channel and other improvements as hereinafter defined, on the Property; and

WHEREAS, the Developer also wishes to preserve more of the trees and vegetation adjacent to Sloan Creek by narrowing its width and deepening its channel thus preserving privacy for the residents on Camino Real and future residents of the Property; and

WHEREAS, the Developer intends to carry runoff water generated by Sloan Creek Middle School (“School”) through Harper Landing Phase 1 (“Harper”) and the Property; and

WHEREAS, the Developer intends to repair the drainage berms on the east side of Countryside Estates (“Countryside”) where it adjoins Harper and to facilitate drainage to Sloan Creek to benefit the residents of Countryside; and

WHEREAS, the Parties desire to establish obligations for perpetual maintenance of certain improvements; and

WHEREAS, it is Parties intent that all such maintenance shall be the sole obligation of a homeowners association, but that the Town should have an option to periodically maintain certain improvements if the Town deems it necessary due to unforeseen circumstances; and

WHEREAS, the Parties desire to obtain the benefits of certainty and predictability that can be provided by a development agreement;

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the Town and Developer agree as follows:

Article I Term

This Agreement shall commence on the last date the Parties have executed the Agreement (“Effective Date”) and shall terminate only in accordance with this Agreement.

Article II Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Town” shall mean the Town of Fairview, Texas.

“Developer” shall mean the owner(s) of the Property, including without limitation Harper Landing Development LLC, and or its assigns, but shall not include the End User of a finished lot.

“Effective Date” shall mean the last date of execution hereof.

“End User” shall mean the homeowner of a finished lot or a single family home within the Property, but shall not include the Developer or a homebuilder.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of Developer, as applicable, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental action or inaction (unless caused by negligence or omissions of Developer), fire, explosions, strikes, slowdowns or work stoppages, shortage of materials and labor, or delays by the Town.

“Property” shall mean the real property described by meets and bounds in the attached Exhibit “A”.

“Harper” shall mean the real property known as Harper Landing Addition, described by the Final Plat attached as Exhibit “C”.

“HOA” or “Homeowners Association” – shall mean the homeowners association to be established and governed under the Restrictive Covenants which shall apply to both the Property and Harper.

“Town Maintenance Escrow” shall mean an account required under the Property’s restrictive covenants as follows: the Town shall have control over the account, which shall be funded initially by the Developer in the lump sum amount of \$15,000 and then supplemented by the HOA by directing \$200 of each \$1200 regular annual assessment into the Sloan Creek Escrow Assessment due to be paid into the account at the same intervals that lot owners are otherwise required to remit assessments to the HOA—provided, however, that if the HOA should fail to

collect and deliver such amounts to the Town then the Town may assess lot owners in an annual amount not to exceed \$200 until the account is funded to a maximum amount of \$25,000 as further set forth in this Agreement.

“Countryside” shall mean the real property known as Countryside subdivision that shares the western border of Harper.

“Initial Concept” shall mean the initial proposed design for the Property, as partially depicted in Exhibit “B”.

“Restrictive Covenants” shall mean the restrictions, obligations and other matters set forth in the document title “Declaration of Covenants, Conditions, Restrictions and Easements” attached as Exhibit “G”.

“Sloan Creek” shall mean the natural watercourse bordering the south side of the Property as depicted in Exhibit “F”.

“Sloan Creek Channel” shall mean the channel to be constructed under this Agreement, running parallel to Sloan Creek on the Property reduce the rise of the 100 year flood plain elevation due to the installation of fill within the FEMA defined flood plain boundary increasing the valley storage adjacent to Sloan Creek as depicted in Exhibit “D”.

“School” shall mean Sloan Creek Middle School.

Article III Sloan Creek Channel

3.01 Channel Improvement. Recordation of any final plat for the property shall not be permitted until Developer designs and installs the Sloan Creek Channel in accordance with the applicable standards, ordinances, and regulations adopted by the Town and to modify the Initial Concept to reflect a longer and deeper channel that will enter from Sloan Creek at the western end of the Property and from Sloan Creek toward the eastern end of the Property, as approved by the Town engineer. To the extent that the design plans for the Sloan Creek Channel that are approved by the Town engineer (“Approved Channel Design Plans”) conflict with the Town’s applicable standards, ordinances, and regulations, the Approved Channel Design Plans shall control. The Sloan Creek Channel proposed design revisions will supercede the Initial Concept to the extent of any conflict. Said proposed design revisions are as shown in the attached Exhibit “D” and are subject to further revisions if approved by the Town engineer after his review of Developer’s detailed design and construction plans. The Sloan Creek Channel shall perform its intended function to fully account for the recovery of certain flood areas removed from the Flood Hazard area as defined by FEMA and to, at a minimum, further reduce the flood impact to adjacent properties on the north side of Sloan Creek as referenced in the study designed by Michael Boyd, PE dated November 2014 and submitted to the Town. Developer shall submit plans for the design and construction of the Sloan Creek Channel as soon as is reasonably practicable after the Effective Date. Developer agrees, at Developer’s sole cost, to construct or have constructed the Sloan Creek Channel.

3.02 Drought Resistance Seeding for Erosion Control in the Channel. Seeding is to be broadcasted with African Love Grass (or other approved seed mix) that does not require an irrigation system or frequent mowing. The developer will be responsible for the reestablishment of the grass and a town inspection of the area will be made, prior to the delegation of maintenance responsibility to the HOA, any deficiencies corrected.

Article IV Drainage

4.01 Sloan Middle School Water Runoff. It is agreed upon by Developer to allow the runoff water generated by School to drain through Harper and the Property, but the Developer does not waive any of Developer rights under Texas Property Code and Statutes.

4.02 Countryside Estates Berm Improvements. Recordation of any final plat for the property shall not be permitted until Developer (assuming written permission is given by the property owners within Countryside), improves or expands the existing berms that protect Countryside from School water runoff to eliminate the potential of runoff water overtopping said berms by ensuring the water runoff from School will be deposited in the Harper drainage channels. Developer also agrees to modify the existing drainage system in Countryside where it adjoins Harper to construct flow channels that facilitate adequate drainage adjacent to the improved berms. Such improvements are further defined on Exhibit "E".

4.03 Repair of damaged trees; removal of debris. Recordation of any final plat for the property shall not be permitted until Developer repairs any damaged or removed trees caused by the improvement of the berms or the construction of the drainage channel in Harper to the satisfaction of the Town. As part of the construction of the development on the Property, Developer agrees to clean out the Sloan Creek primary channel of all large debris along the length of the Property as shown in Exhibit "F".

Article V Drainage Maintenance

5.01 Drainage easements. Developer shall cause the establishment of an HOA in accordance with the Town's applicable regulations and this Agreement. Developer shall include in the HOA restrictive covenants, without limitation, the requirement of lot owners to perpetually maintain any drainage easements running across their property to include without limitation all drainage easements as shown on the recorded final plats for Harper and the Property. Maintenance refers to the traditional mowing and landscape care that is typically used on the remainder of the lot in and around the residence as well as continuous removal from all easements constructed or modified under this Agreement excessive sediment or other debris obstruct the original water carrying capacity through such easements.

5.02 Sloan Creek Channel maintenance. It is agreed upon by Developer to include in the Restrictive Covenants the requirement that the HOA maintain in perpetuity the Sloan Creek Channel, and to strictly prohibit fencing or any other improvements or development that could

catch debris or otherwise reduce the flood carrying capacity of the Sloan Creek Channel. This maintenance includes any regular mowing/vegetation care, continuous removal of any excessive silt/sediment buildup and any other condition that reduces the flood carrying capacity of the Sloan Creek Channel. The Restrictive Covenants shall expressly: (1) require the establishment and funding of the Town Maintenance Escrow in accordance with this Agreement with reasonable terms and conditions required by the Town for the purpose of timely and adequate funding of said escrow account and ensuring the Town's control over and sole use of said escrow account; (2) specify that dissolution of the HOA cannot occur without approval of the Town Council; (3) specify that solely in the event that the HOA ever ceases to exist or function or should the HOA fail in its duty to properly maintain the Sloan Creek Channel in accordance with this Agreement and the Restrictive Covenant—as and when determined by the Town in its sole discretion—then the Town may, but is not obligated to, take all actions reasonable and necessary to provide such maintenance or cause such maintenance to be provided and shall be entitled to reimbursement for the costs of such maintenance first from the Town Maintenance Escrow, and, if necessary to fully reimburse the Town, the Town shall be entitled to assess an additional fee due from each lot owner within the Property (in equal amounts per lot) that cumulatively provide for such full reimbursement; (4) grant a permanent access and maintenance easement to the Town in and over the entirety of the Property to the extent reasonably necessary for the Town—if it so chooses—to perform any maintenance to the Sloan Creek Channel; and (5) require Town Council approval of any amendments or modifications to the Restrictive Covenants that would in any way alter **[insert reference to relevant section numbers in CCR]**.

Prior to exercising Town's right to access Town Maintenance Escrow, Town agrees to give 30 days' notice of non-compliance and a 15 day cure period.

5.03 In addition to the funding required under Section 5.02, the Developer—before being permitted to record any final plat for the Property—must make a one-time contribution to the Town Maintenance Fund in the amount of \$15,000. This contribution shall be nonrefundable but may only be used for Town maintenance of the Sloan Creek Channel or be released after petition to the HOA or lot owners as set forth below. The Town Maintenance Escrow shall be capped at an amount not to exceed \$25,000 (the “Capped Amount”). Payment by the HOA and/or lot owners into said escrow shall be prorated or suspended as necessary and appropriate to avoid exceeding the Capped Amount. Should the Town be reimbursed from the Town Maintenance Escrow for costs of maintenance to the Sloan Creek Channel, payments into said escrow shall resume to allow continual replenishment of the escrow not to exceed the Capped Amount. Not earlier than 15 years after the Effective Date, and no more frequently than once per calendar year, the HOA or a majority of the owners of lots in the Property and Harper may petition the Town to release all or part of the Town Maintenance Escrow or to reduce the Capped Amount. The Petition shall include all supporting documents and reasons justifying such release or reduction. The Town may consider and approve or deny any such petition.

5.04 Survival of Article. This Article V shall apply to all common areas and lots in all phases of development of the Property and Harper and shall survive the term of this Agreement for as long as the Town determines that maintenance of Sloan Creek Channel may be necessary. This Article shall run with the land and shall bind all subsequent owners, jointly and severally, to

be bound by the Developer's obligations herein and to the restrictive covenants described in the Article and any other part of this Agreement.

Article VI Floodplain Development

6.01 Floodplain Development Permit. Developer shall timely submit all the required information and documentation for the town's floodplain administrator to issue a floodplain development permit for floodplain reclamation in accordance with the Town's applicable regulations, the approved civil engineer plans and all other applicable law.

6.02 FEMA documentation submittal. It is agreed upon by the Developer to submit the required letter(s) of map change to FEMA and all other required documentation to have the flood insurance rate maps revised in all applicable of or near the Property to reflect the reclaimed areas and flood elevations affected by the Sloan Creek Channel and the fill added for reclamation.

Article VII Notice

Any notice to be given or to be served upon a Party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, and if given otherwise than by certified or registered mail, it shall be deemed to have been given and delivered to and received by the Party (or such Party's agent or representative) to whom it is addressed when actually received by the intended recipient. Such notice shall be given to the Parties hereto at the address set forth below. Any Party hereto may, at any time by giving two (2) days written notice to the other Party, designate any other address in substitution of the foregoing address to which such notice shall be given.

If Notice to Developer:

M. Christopher Investments 2011 LLC.
550 S. Highway 5
Fairview, TX 75495

If Notice to Fairview:

Julie Couch, Town Manager
Town of Fairview
372 Town Place,
Fairview, TX 75069

Article VIII Termination and Breach

8.01 This Agreement may be terminated by the mutual written agreement of the Parties or their respective successors or assigns or as otherwise expressly set forth in this Agreement.

8.02 If the appropriate zoning of Property is not obtained on or before August 5, 2016 by the Developer, the Developer shall have the right upon written notice to terminate this Agreement with no further obligations between the Parties hereto. Approval of this Agreement does not obligate the Town to approve RE-2 zoning or any other zoning or development application as relates to the Property.

8.03 If Developer shall be in material breach of any provision of this Agreement or otherwise fail to fulfill its obligations hereunder, then the City shall have no obligation to issue building permits or certificates of occupancy for any lot in any phase of the development of the Property.

Dispute resolution using AAA. [IF DEVELOPER IS PROPOSING ARBITRATION, THE TOWN WILL NOT AGREE].

Article IX Town Approvals

Approval of Plats/Plans. Approval by the Town, the Town's Engineer or other Town employee or representative, of any plats, plans, designs, specifications, studies or other materials submitted by Developer pursuant to this Agreement or pursuant to applicable standards, ordinances, or regulations adopted by the Town shall not constitute or be deemed to be a release of the responsibility and liability of Developer, its engineer, employees, officers or agents for the accuracy, adequacy and competency of their design and specifications. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the Town for any defect in the design and specifications prepared by Developer or Developer's engineer, or engineer's officers, agents, servants or employees, it being the intent of the parties that approval by the Town or its engineer or other employee or representative signifies the Town's approval on only the general design concept of the improvements to be constructed.

Article X Miscellaneous

9.01 Assignment of Agreement. This Agreement may be assigned by Developer to an owner of the Property with the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed; provided however, that before such assignment

can be effective Developer must provide the Town with notice of the assignment and a full and complete copy of same demonstrating that the assignment binds the assignee to all of Developer's obligations under this Agreement as to the portion of the Property being acquired by the assignee. This Agreement may not be assigned, in whole or in part, by the Town.

9.02 Venue. This Agreement shall be construed under and in accordance with the laws of the State of Texas and is specifically performable in Collin County, Texas. Exclusive venue shall be in state district court in Collin County, Texas.

9.03 Legal Construction. In case any one or more provisions contained in this Agreement shall be for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

9.04 Savings / Severability. In case any one or more provisions contained in this Agreement shall be for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

9.05 Authority. Each of the Parties represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement.

9.06 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except under the provisions hereof or by the mutual written agreement of the Parties to this Agreement.

9.07 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

9.08 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes.

9.09 Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed, and that such Party has had an opportunity to confer with it legal counsel.

9.10 Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is

to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

9.11 Binding Effect. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and authorized assigns. This Agreement only inures to the benefit of, and may only be enforced by, the Parties, assignees, lender, successors, and the Town. No other person or entity is a third-party beneficiary of this Agreement.

9.12 Authority. The Town represents and warrants that this Agreement has been approved by the Town Council of the Town in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the Town has been authorized to do so. Developer represents and warrants that this Agreement has been approved on behalf of Developer and that the individual executing this Agreement on behalf of Developer has been authorized to do so. Each assignee, lender, or successor who becomes a party to this Agreement represents and warrants that this Agreement has been approved by appropriate action of such assignee, lender, or successor and that the individual executing this Agreement on behalf of such assignee, lender, or successor has been authorized to do so.

9.13 Governmental Powers; Waiver of Immunity. By its execution of this Agreement, Town does not waive or surrender any of its governmental powers, immunities, or rights except as to the enforcement of this Agreement to the extent provided for by applicable law.

9.14 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties, nor to cause Town to be deemed to be a constituent partner of the Developer.

9.15 Indemnification and Hold Harmless. THE DEVELOPER, INCLUDING ITS RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY COVENANT AND AGREE TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY THE TOWN AND ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ALL THIRD-PARTY CLAIMS, SUITS, JUDGMENTS, DAMAGES, AND DEMANDS (TOGETHER, "CLAIMS") AGAINST THE TOWN, WHETHER REAL OR ASSERTED INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES, RELATED EXPENSES, EXPERT WITNESS FEES AND RELATED EXPENSES, CONSULTANT FEES AND RELATED EXPENSES, AND OTHER COSTS ARISING OUT OF THE NEGLIGENCE, GROSS NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF THE DEVELOPER, INCLUDING WITHOUT LIMITATION THE NEGLIGENCE, GROSS NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF DEVELOPER'S RESPECTIVE EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, AND/OR AGENTS, IN CONNECTION WITH THE DESIGN OR CONSTRUCTION OF ANY PUBLIC OR PRIVATE INFRASTRUCTURE, STRUCTURES, DRAINAGE FACILITIES, CHANNELS, BERMS OR OTHER FACILITIES OR IMPROVEMENTS TO THE PROPERTY; **AND IT IS EXPRESSLY UNDERSTOOD THAT SUCH CLAIMS SHALL, EXCEPT AS MODIFIED BELOW, INCLUDE CLAIMS EVEN IF CAUSED BY THE CITY'S OWN CONCURRENT**

NEGLIGENCE SUBJECT TO THE TERMS OF THIS SECTION. THE DEVELOPER SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY THE CITY'S SOLE NEGLIGENCE. IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF THE DEVELOPER AND THE CITY, THE DEVELOPER'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE DEVELOPER'S OWN PERCENTAGE OF RESPONSIBILITY. THE DEVELOPER, INCLUDING ITS RESPECTIVE SUCCESSORS AND ASSIGNS, FURTHER COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY, THE CITY AGAINST ANY AND ALL CLAIMS BY ANY PERSON CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY WHO HAS NOT SIGNED THIS AGREEMENT IF SUCH CLAIMS RELATE IN ANY MANNER OR ARISE IN CONNECTION WITH: (1) OWNERSHIP OF THE PROPERTY; OR (2) THE CITY'S APPROVAL OF OR INACTION ON ANY TYPE OF DESIGN, PLAN, PLAT, DEVELOPMENT APPLICATION OR OTHER SUBMISSION WITH RESPECT TO THE PROPERTY. At no time shall the Town have any control over or charge of the Developer's design, construction or installation of any of the Public Infrastructure that is the subject of this Agreement, nor the means, methods, techniques, sequences or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise or venture between the City and Developer.

9.16 Recordation. This Agreement shall be binding on the parties' respective successors and assigns to the extent set forth in this Agreement and may be recorded in the official property records of Collin County, Texas.

9.17 Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or enforceability shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(signature page to follow)

EXECUTED on this _____ day of _____, 2016.

Town of Fairview, Texas

By: _____
Darion Culbertson, Mayor

Approved as to Form:

By: _____
Clark McCoy, Town Attorney

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Darion Culbertson, Mayor of the Town of Fairview, a municipal corporation existing under the laws if the State of Texas, in such capacity on behalf of such municipal corporation.

Notary Public, State of Texas

EXECUTED on this _____ day of _____, 2016.

Harper Landing Development LLC

By: _____
Name: Rudolph E. Rivas
Title: CEO

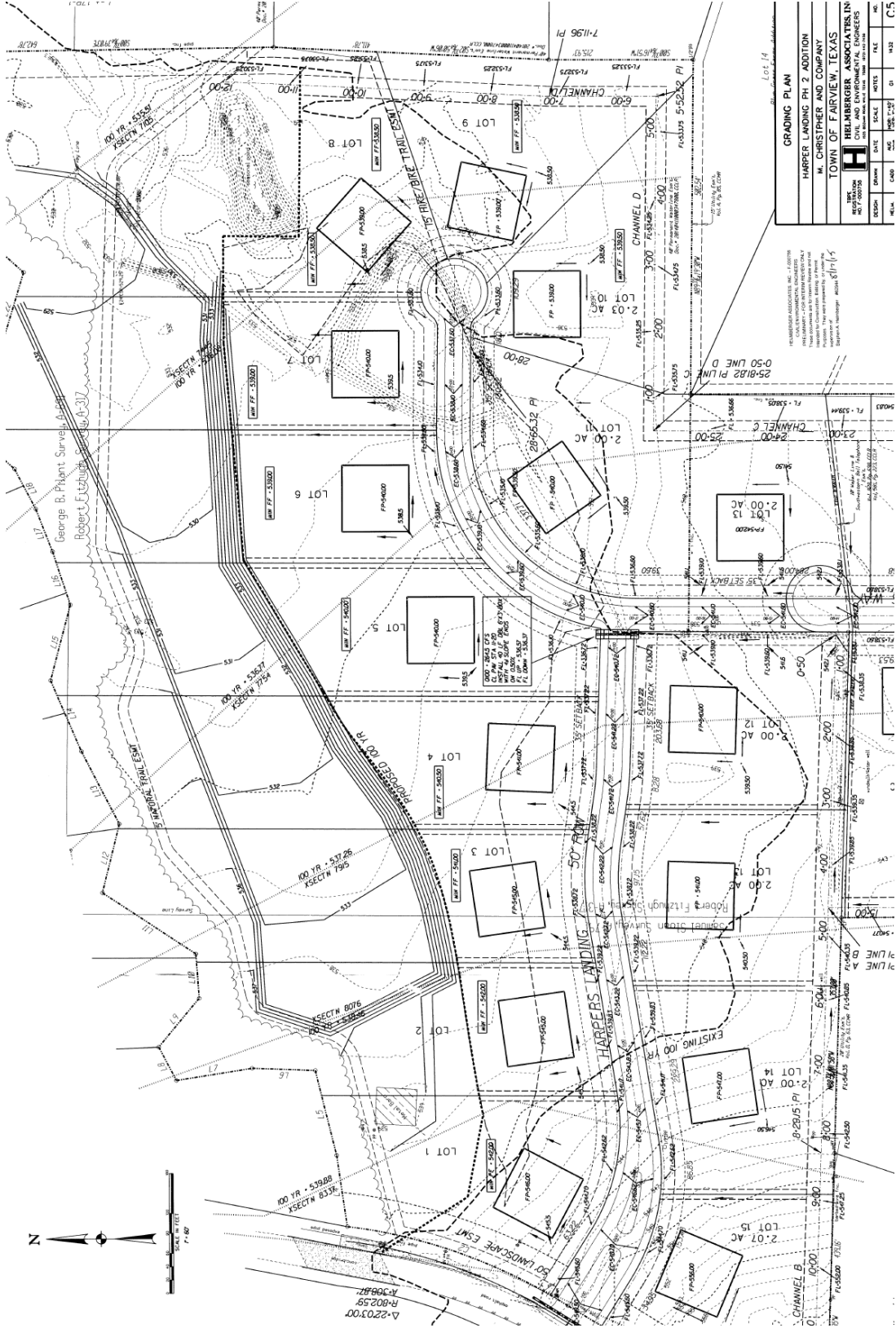
STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2016,
by Rudolph E. Rivas, as CEO of Harper Landing Development LLC, a Texas corporation.

Notary Public, State of Texas

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B" INITIAL CONCEPT PLAN



GRADING PLAN	
HARPER LANDING PH 2 ADDITION	
M. CHRISTOPHER AND COMPANY	
TOWN OF FAIRVIEW, TEXAS	
HELMBRIGER ASSOCIATES, INC.	
CIVIL AND LAND SURVEYING ENGINEERS	
DATE	NOV 15 2011
SCALE	AS SHOWN
FILE	C.5

EXHIBIT "C"
HARPER LANDING ADDITION FINAL PLAT

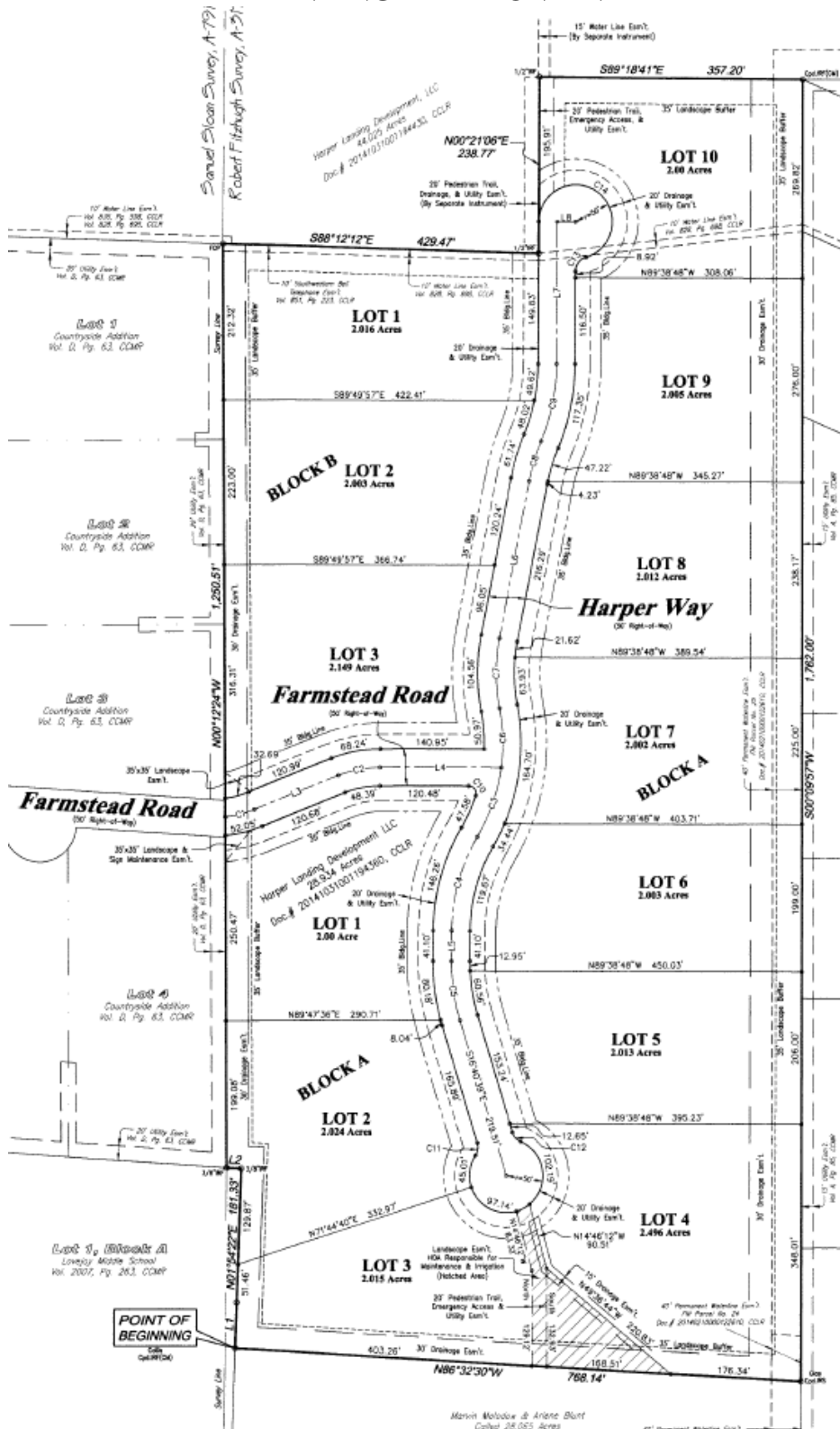
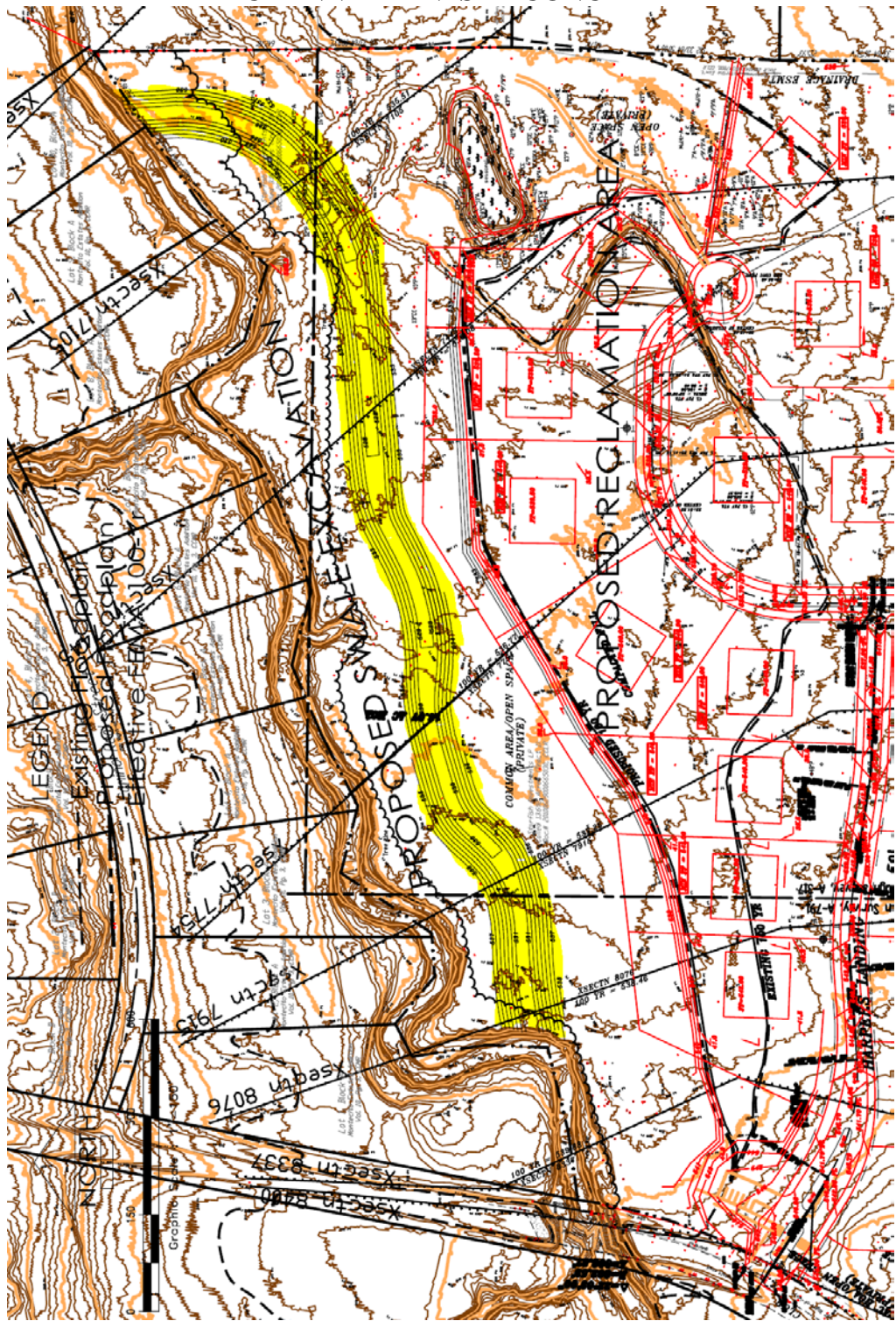


EXHIBIT "D"
CHANNEL REVISED CONCEPT



**EXHIBIT "E"
DRAINAGE IMPROVEMENTS**

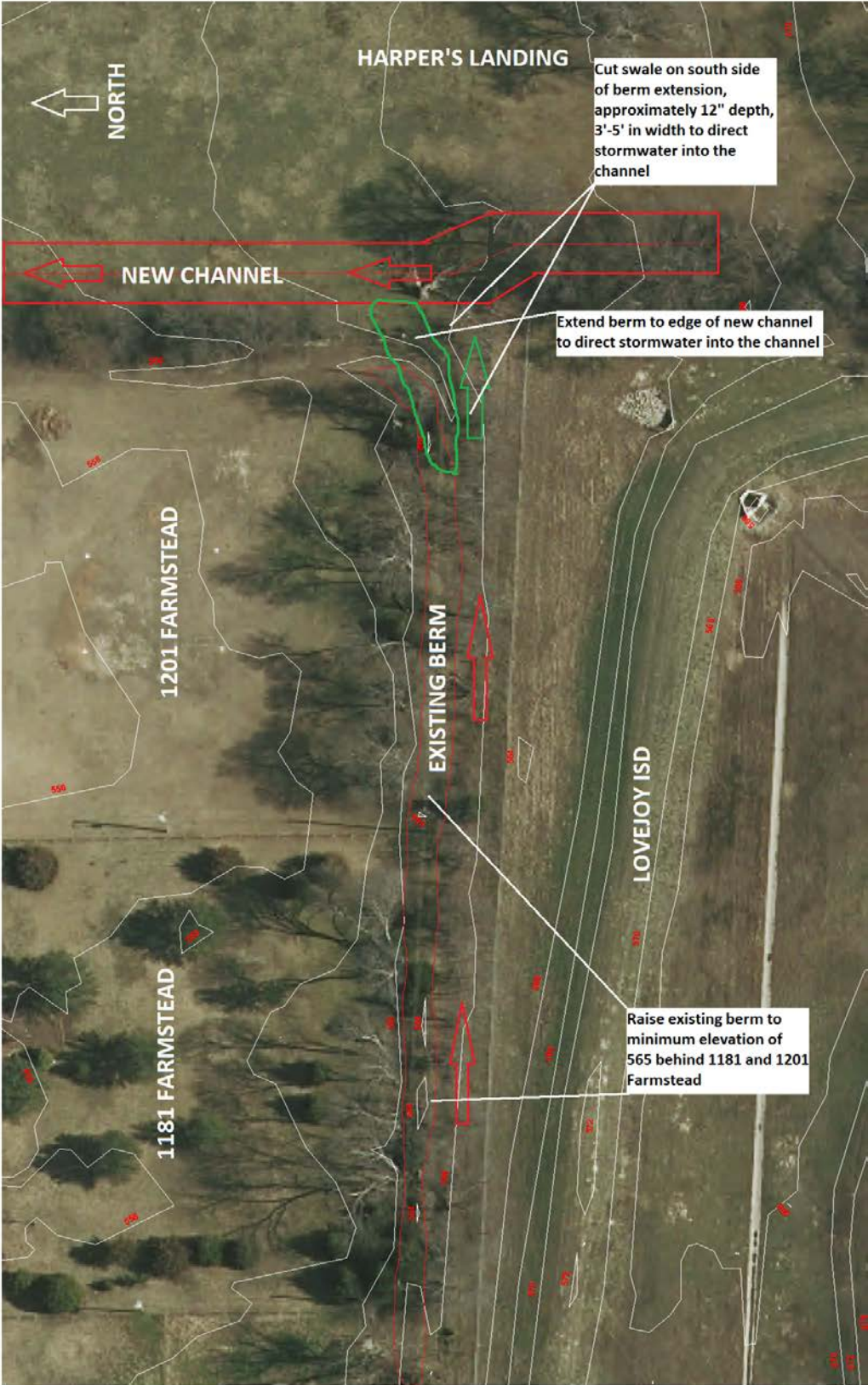


EXHIBIT "F"
SLOAN CREEK

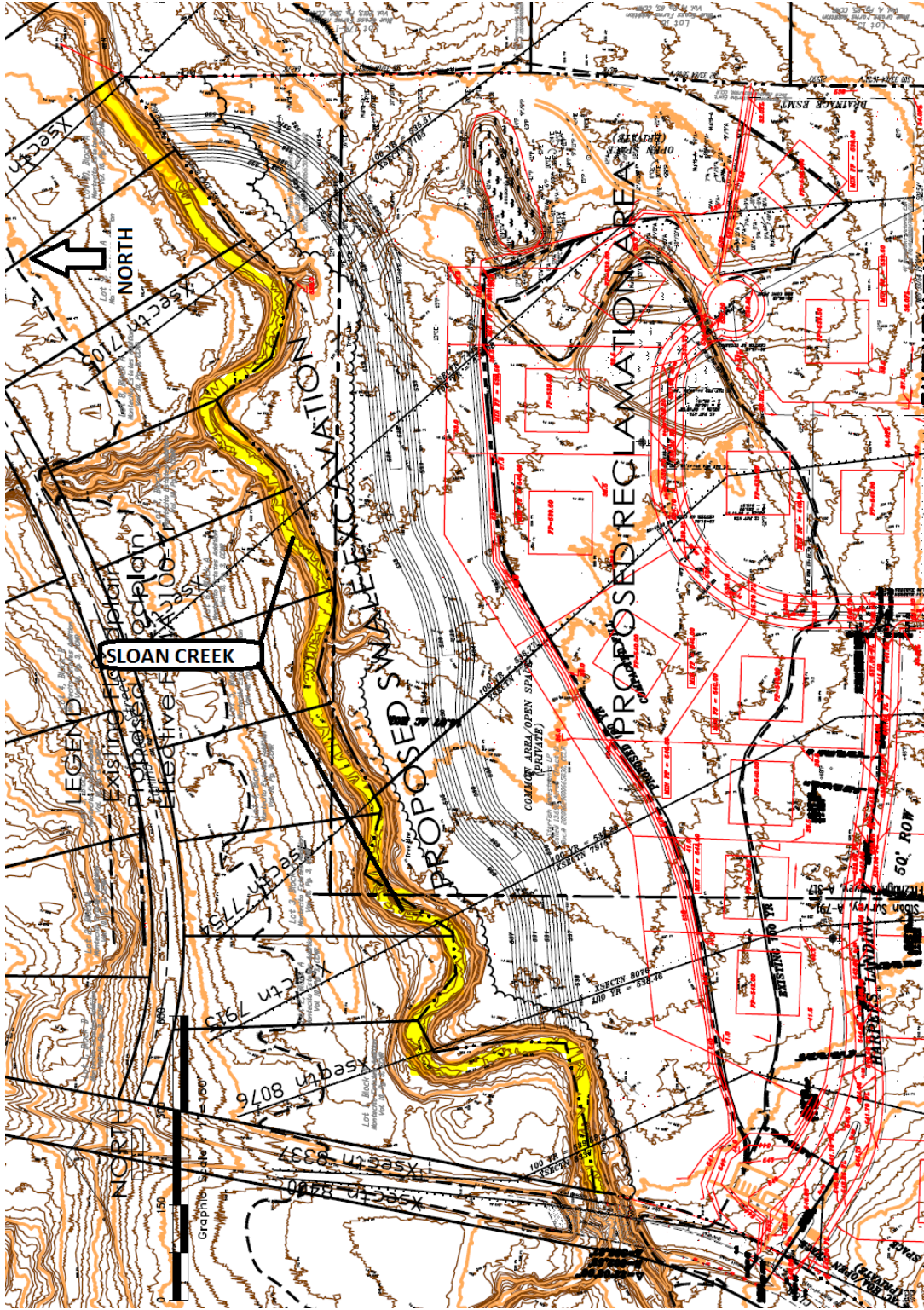


EXHIBIT "G"
RESTRICTIVE COVENANTS