CITY OF NEW BRAUNFELS, TEXAS
SPECIAL CITY COUNCIL MEETING

CITY HALL – CONFERENCE ROOM B
424 S. CASTELL AVENUE

MONDAY, DECEMBER 14, 2009 at 5:30 P.M.

R. Bruce Boyer, Mayor
Richard Zapata, Councilmember (District 1)
Mark Goodner, Councilmember (District 2)
Mike Ybarra, Councilmember (District 3)

Sandy Nolte, Councilmember (District 4)
Kathleen Krueger, Mayor Pro Tem (District 5)
Steven Digges, Councilmember (District 6)
Michael Morrison, City Manager

MISSION STATEMENT
The City of New Braunfels will add value to our community by planning for the future, providing quality services, encouraging community involvement and being responsive to those we serve.

AGENDA

CALL TO ORDER: December 14, 2009 @ 5:30 P.M.

CALL OF ROLL: City Secretary

In accordance with Texas Government Code, Subchapter D, the City Council will convene in a closed session to discuss the following item; any final action or vote taken will be in public.

1. Deliberate pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct in accordance with Section 551.071, of the Texas Government Code.
   (A. Wayland, City Attorney)

2. Deliberate and consider the purchase, exchange, lease or value of real property, in accordance with Section 551.072, of the Texas Government Code.
   (A. Wayland, City Attorney)

ADJOURNMENT

CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the New Braunfels Municipal Building on December 10, 2009 at 2:00 p.m.

Michael A. Resendez, City Secretary

NOTE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at 221-4010 at least two (2) work days prior to the meeting so that appropriate arrangements can be made.
MISSION STATEMENT
The City of New Braunfels will add value to our community
by planning for the future, providing quality services, encouraging
Community involvement and being responsive to those we serve.

AGENDA

CALL TO ORDER: December 14, 2009 @ 6:00 P.M.

CALL OF ROLL: City Secretary

PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG

INVOCATION: Mayor Pro-Tem Kathleen Krueger

RECOGNITIONS: Ravenstar Environmental Honoree – Nathan Pence
Valero Energy and MS 150 Plaque Presentation

REQUEST ALL PAGERS AND PHONES BE TURNED OFF, EXCEPT EMERGENCY ON-CALL PERSONNEL.

1. MINUTES

Consider approving the minutes of the special meeting of November 23, 2009, and the regular meeting of November 23, 2009. Pages 1-7
(M. Resendez, City Secretary)

2. CITIZENS' COMMUNICATIONS Page 9

This time is for citizens to address the City Council on issues and items of concern, not on this agenda. There will be no City Council action at this time.
Mayor Boyer
3. **CONSENT AGENDA**  *Pages 11-12*

All items listed below are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a councilmember or citizen so requests, in which case the item will be removed from the consent agenda and considered as part of the normal order of business.

(A) Approval of the second and final reading of an ordinance amending Chapter 86 “Parks And Recreation,” Article III “Landa Park Golf Course Advisory Board” to change the composition of the board and to revise the role of the Parks and Recreation Department. *Pages 13-15*
(S. Laird Dicke, Parks and Recreation Director)

(B) Approval of the purchase of commercial roll offs for the Solid Waste Division from Wastequip through the Houston Galveston Area Council (HGAC) contract. *(M. Quinones, Purchasing Manager)* *Page 17*

(C) Approval of the renewal of the annual contract with Matera Paper Company for janitorial supplies. *Page 19*
(M. Quinones, Purchasing Manager)

(D) Approval to authorize the City Manager to execute a Change Order with V.K. Knowlton Construction for Street Maintenance Projects Phase 1-06B and appropriate budgetary transfers. *Pages 21-29*
(J. Klein, City Engineer)

(E) Approval to authorize the City Manager to execute an agreement with Rodman LLC related to repairs on the Walnut Avenue Extension Project. *(J. Klein, City Engineer)* *Pages 31-32*

(F) Approval of a budget transfer in the FY 2009-10 Adopted Budget for the Juvenile Case Manager Fund. *Page 33*
(D. Korinchock, Support Services Director)

(G) Approval of the first amendment to an interlocal agreement with Comal County with regard to the Juvenile Case Manager. *Pages 35-37*
(D. Korinchock, Support Services Director)
(H) Approval of a resolution for the purchase of 0.657 acres of right of way for the Walnut Avenue Extension Project from County Line Partnership No. 1 and S & D Development, LLC, New Braunfels, Texas, and authorizing the City Manager to execute all necessary documents. Pages 39-51
(A. Wayland, City Attorney)

(I) Approval of the first reading of an ordinance to amend the Code of Ordinances, Article III. Main Street Advisory Board, Section 38-53, Term; compensation. (S. Mattingly, Planning and Community Development Director) Pages 53-55

(J) Approval of a resolution approving a recommendation of the New Braunfels Industrial Development Corporation to enter into a contract with the Symons Corporation with regard to providing a grant in an amount up to $165,000 for utility upgrades. Pages 57-60
(A. Wayland, City Attorney)

(K) Approval of the appointment of individuals to the following Boards and Commissions:

1. Approve the appointment of two individuals to the Main Street Advisory Board, one for a term ending December 31, 2012, and one for a term ending December 31, 2010. Pages 61-69
2. Approve the appointment of one individual to the Community Development Advisory Committee for a term ending December 13, 2012.
(M. Resendez, City Secretary) Pages 71-77

(L) Approval of a resolution for the purchase of property for the Walnut Avenue expansion project from JP Champion Ranch, Ltd., and authorizing the City Manager to execute all necessary documents. Pages 79-81
(A. Wayland, City Attorney)

(M) Approval of the purchase of a Crafco Super Shot 125 crack sealer with diesel compressor Public Works Department from Crafco, Inc. through the Houston Galveston Area Council (HGAC) contract. Page 83
(M. Quinones, Purchasing Manager)

(N) Approval of a resolution for the purchase of 629 Crest Lane, New Braunfels, Texas, authorizing the City Manager to execute all necessary documents and an appropriate budgetary transfer. Pages 85-87
(A. Wayland, City Attorney)

(O) Approval of a license agreement between the City of New Braunfels and Mill Street Square, LLC. Pages 89-96
(S. Mattingly, Planning and Community Development Director)
(P) Approval of a resolution authorizing the City Manager to submit an application to the Texas Water Development Board for a regional water facility planning grant. (R. Camarena, Assistant City Manager) Pages 97-100

(Q) Approval of a resolution authorizing the City Manager to accept a federal Save America’s Treasures grant in the amount of $150,000 and to act on behalf of the City in all matters related to this grant, including execution of all required documentation associated with the award. Pages 101-102 (V. Brown, Intergovernmental Services Manager)

4. PRESENTATIONS

(A) Presentation on the Comal River and Springs as related to the Edwards Aquifer Recovery Implementation Program. Page 103 (N. Pence, River Activities Manager)

5. INDIVIDUAL ITEMS FOR CONSIDERATION

(A) Update on the Kerlick Fire Station property. Page 105 (M. Ybarra, Councilmember District 3)

(B) Discuss and consider approval of a resolution authorizing the City Manager to execute and submit an application to the Texas Department of Transportation for funding under the Transportation Enhancement Program for the New Braunfels Pedestrian and Bicycle Accessibility Project and the Faust Street Bridge Access and Structure Improvements Project. Pages 107-108 (O. Garza, Assistant City Engineer)

(C) Discuss and consider approval of the first reading of an ordinance amending Ordinance Number 75-10 dated April 28, 1975 to approve installation of the traffic control devices (stop signs) on the northeast and southwest corners of Briarbend Drive at Brockton Drive. Pages 109-111 (S. Digges, Councilmember District 6)

(D) Public hearing and first reading of an ordinance granting a Special Use Permit to allow a wireless telecommunications tower with an overall height of 150 ft. in an “APD Agricultural/Pre-Development District” located at 3570 IH 35 North. (S. Mattingly, Planning and Community Development Director) Pages 113-114 (The Applicant has requested that Agenda Item 5-D be withdrawn)

(E) Public hearing and first reading of an ordinance rezoning Lot 4, W M L Subdivision, located at 6362 IH 35 South, from “M-1 Light Industry District” and “APD Agricultural/Pre-Development” to “M-1A Light Industrial District”. (S. Mattingly, Director of Planning Community Development) Pages 115-135
(F) Discuss and consider approval of the first reading of an ordinance amending Chapter 58, Floods, of the New Braunfels Code of Ordinances. Pages 137-153 (R. Kinsey, Building Official)

(G) Discuss and consider approval of the first reading of an ordinance to amend Chapter 14, Buildings and Building Regulations, Section 14-29, Contractors, items (a) and (h) of the New Braunfels Code of Ordinances. Pages 155-157 (R. Kinsey, Building Official)

(H) Discuss and consider approval of the first reading of an ordinance amending Chapter 106, signs, New Braunfels Code of Ordinance to permit the relocation of off-premise advertising signs under certain conditions. Pages 159-161 (S. Mattingly, Planning and Community Development Director)

6. EXECUTIVE SESSIONS Page 163

In accordance with Texas Government Code, Subchapter D, the City Council may convene in a closed session to discuss any of the following items; any final action or vote taken will be in public.

(A) Deliberate and consider the purchase, exchange, lease or value of real property, in accordance with Section 551.072, of the Texas Government Code. (A. Wayland, City Attorney) Page 163

(B) Deliberate issues regarding economic development negotiations in accordance with Section 551.087, of the Texas Government Code. (A. Wayland, City Attorney) Page 163

(C) Deliberate pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct in accordance with Section 551.071, of the Texas Government Code. Page 163 (A. Wayland, City Attorney)

NOTE: The City Council reserves the right to retire into executive session concerning any of the items listed on this Agenda whenever it is considered necessary and legally justified under the Open Meetings Act (Chapter 551 of the Texas Government Code).

ADJOURNMENT

CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the New Braunfels Municipal Building on December 14, 2009 at 2:00 p.m.

Michael A Resendez, City Secretary
NOTE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary’s Office at 221-4010 at least two (2) work days prior to the meeting so that appropriate arrangements can be made.
MINUTES
SPECIAL CITY COUNCIL MEETING
NOVEMBER 23, 2009

The City Council of the City of New Braunfels, Texas, met in Special Session on November 23, 2009.

City Councilmembers present were: Mayor Bruce Boyer, presiding; Mayor Pro-tem Kathleen Krueger, and Councilmembers Richard Zapata, Mark Goodner, Sandy Nolte, and Steven Digges.

The meeting was called to order by Mayor Boyer in the New Braunfels Municipal Building Conference Room B at 5:35 p.m. All Councilmembers were present, with the exception of Councilmember Ybarra.

Executive Session to deliberate and consider the purchase, exchange, lease or value of real property, in accordance with Section 551.072, of the Texas Government Code: Mayor Boyer read the above and foregoing caption.

At 5:35 p.m., Mayor Boyer announced that City Council would go into executive session in Conference Room B to discuss the above mentioned items.

City Council returned into public session at 6:01 p.m., with no action being taken by City Council during the closed session or public session.

Adjournment: This Special meeting adjourned at 6:01 p.m.

Date Approved: December 14, 2009

By: R. BRUCE BOYER, MAYOR

Attest:

MICHAEL A. RESENDEZ,
CITY SECRETARY
MINUTES
REGULAR CITY COUNCIL MEETING
NOVEMBER 23, 2009

The City Council of the City of New Braunfels, Texas, met in Regular Session on November 23, 2009.

City Councilmembers present were: Mayor Bruce Boyer, presiding; Mayor Pro-tem Kathleen Krueger, and Councilmembers Richard Zapata, Mark Goodner, Sandy Nolte, and Steven Digges.

City Staff present were: City Manager Michael E. Morrison, Assistant City Manager Robert Camarena, City Attorney Alan C. Wayland, Deputy City Secretary Danny S. Batts II, Planning and Community Development Director Shannon Mattingly, Assistant City Engineer Octavio Garza, and Support Services Director Deborah Korinchock.

Public communications: Roger Biggers

The meeting was called to order by Mayor Boyer in the New Braunfels Municipal Building City Council Chambers at 6:01 p.m. All Councilmembers were present, with the exception of Councilmember Ybarra. Mayor Boyer led the Pledge of Allegiance and the Salute to the Texas Flag and Councilmember Nolte gave the invocation.

Proclamations: Mayor Boyer read a proclamation that proclaimed December 3, 2009 as “Wassailfest Day” in the City of New Braunfels.

Ravenstar Environmental Honoree – Nathan Pence: City Manager Morrison noted that the presentation to Mr. Pence would occur on another evening.

Minutes: Councilmembers considered approval of the minutes of the Special Meeting of November 9, 2009 and the Regular Meeting of November 9, 2009.

Councilmember Zapata moved to approve the minutes as presented. Mayor Pro-Tem Krueger seconded the motion which was unanimously approved by City Council.

Citizens’ Communications:

None.

Consent Agenda:

Mayor Boyer read the Consent Agenda as listed below. After the reading of the Consent Agenda, Councilmember Nolte announced that she was abstaining from voting on item 3-L. Councilmember Digges then moved to approve the Consent Agenda as listed below. Mayor Pro-Tem Krueger seconded the motion which was approved by the
following roll call vote; AYES: Councilmembers Zapata, Goodner, Nolte, Krueger, Digges, and Mayor Boyer; NAYS: None.

(A) Approval of the second and final reading of an ordinance annexing 2670 FM 1101, described as a 57.268 acre tract of land situated in Subdivision No. 59 and 60, A.M. Esnaurizar Eleven League Grant, Comal County, Texas.

Ordinance No. 2009-78

(B) Approval of the second and final reading of an ordinance zoning 57.268 acres located at 2670 FM 1101 to “MU-B High Intensity Mixed Use District.”

Ordinance No. 2009-79

(C) Approval of the second and final reading of an ordinance rezoning Lot 40A, River Acres Subdivision, located at 1260 River Acres Drive, from “C-1 Local Business District” and “R-1 Single Family District” to “C-O Commercial Office District.”

Ordinance No. 2009-80

(D) Approval of the second and final reading of an ordinance rezoning 343 Cross Street, from “SND-1 Special Neighborhood District No. 1” to “C-1A Neighborhood Business District.”

Ordinance No. 2009-81

(E) Approval of the second and final reading of an ordinance rezoning of 226 S. Hill Avenue from “SND-1 Special Neighborhood District No. 1” to “C-1A Neighborhood Business District.”

Ordinance No. 2009-82

(F) Approval of the second and final reading of an ordinance designating 148 Ferguson Avenue, to be known as the “Beinhauer-Forres House” as a historic landmark.

Ordinance No. 2009-83

(G) Authorization for the city manager to enter into contracts with Koontz Mccombs and Kimley-Horn Associates regarding construction of Goodwin Lane.

(H) Approval of a fire and/or emergency medical services mutual aid agreement between the City Of New Braunfels and neighboring emergency service agencies.
(I) Approval to authorize the City Manager to execute an agreement with Schultz Engineering Inc. for design of Water Lane Street Reconstruction.

(J) Approval of a resolution to cast sixty eight (68) votes toward the election of members of the Guadalupe Appraisal District Board of Directors.

Resolution No. 2009-R69

(K) Approval to cancel the December 28, 2009 regular City Council meeting.

(L) Approval of a resolution for the purchase of 478 S. Castell Avenue, New Braunfels, Texas, in the amount of $221,500.00 plus other acquisition costs and authorizing the City Manager to execute all necessary documents. *(Councilmember Nolte abstained on this item.)*

Resolution No. 2009-R66

(M) Approval of the purchase of services from Dausin Electric for the Main Plaza electrical upgrade.

(N) Approval of a resolution supporting the restoration of the Comal County Courthouse.

Resolution No. 2009-R67

(O) Approval of the first reading of an ordinance amending Chapter 86 “Parks and Recreation,” Article III “Landa Park Golf Course Advisory Board” to change the composition of the board and to revise the role of the Parks and Recreation Department.

Presentation by the Greater New Braunfels Chamber Of Commerce on the semi-annual report regarding economic development activities: Mayor Boyer read the above and foregoing caption.

Michael Meek, President of the Greater New Braunfels Chamber of Commerce, then presented the Chamber of Commerce’s Semi-Annual Report to City Council. The report detailed the Chamber’s economic development activities and described the general condition of the area economy.

Discuss and consider action authorizing completion of bid documents for the construction of Walnut Avenue Segments 1, 2, and 3 as one project: Mayor Boyer read the above and foregoing caption.

Assistant City Engineer Octavio Garza noted that the Walnut Avenue Projects currently consist of Segment 1 from Business 35 to Katy Street, Segment 2 from IH-35 to
Business 35, and Segment 3 from Katy Street to Landa Street. The projects were developed as three individual projects with 60% design completed in October 2009. He then stated that staff had reviewed the option to bid and construct the three projects as one project to take advantage of current favorable construction market conditions and other benefits, including:

- Minimum construction disruption (optimized construction schedule)
- Single source of contractor responsibility
- Natural transition between segments for entire corridor
- Favorable construction market
- Reduced construction administration
- NBU goal of upgrading water and wastewater infrastructure from Landa St. to IH-35 met
- Deferred maintenance backlog reduced

After the presentation, Director of Support Services Deborah Korinchock discussed the financing of the project.

Roger Biggers, Executive Director of Water Services for New Braunfels Utilities, then expressed his organization's support for the combination of the several projects.

Councilmember Digges then made a motion that the item be approved. The motion was seconded by Mayor Pro-Tem Krueger and carried unanimously.

**Public hearing and a resolution of the City of New Braunfels, Texas, amending the Future Land Use Plan for 0.669 acres, located at 1260 River Acres Drive, and also know as Lot 40A River Acres Subdivision, by changing the designation from “Residential Low Density” to “Commercial.”** Mayor Boyer read the above and foregoing caption.

Planning and Community Development Director Mattingly noted that the property had a land use designation of Low Density Commercial, but was divided between a commercial and a residential zoning district. She also noted that the City Council had approved changing the zoning on the property earlier in the meeting so that it was now all zoned for commercial uses.

Mayor Boyer then opened the floor to public input.

Following no public input, Councilmember Digges moved to close the public hearing. The motion was seconded by Councilmember Nolte and carried unanimously.

Councilmember Digges then moved to approve the resolution as presented. Mayor Pro-tem Krueger seconded the motion which was unanimously approved by City Council.

*Resolution No. 2009-R68*
Discussion and possible approval of the process for amending the City's Home Rule Charter: Mayor Boyer read the above and foregoing caption.

City Manager Michael Morrison noted that City Council had discussed amending the City's Home Rule Charter at a previous meeting and had decided to move forward with developing amendments to the Charter, and that staff now needed direction on the process that Council would like to follow for developing the amendments. Mr. Morrison noted that there were two possibilities for the amendment development process, the first being the formation of a special Charter Review Commission, and the second being for Council and Staff to work together to formulate the amendments. He stated that it was not practical to pursue the Commission process and still be able to place the proposed amendments on the May 2010 ballot.

After discussion, the consensus of the Council was to proceed with having Council and staff develop the amendments.

Deliberate and consider the purchase, exchange, lease or value of real property, in accordance with Section 551.072, of the Texas Government Code.

Deliberate issues regarding economic development negotiations in accordance with Section 551.087, of the Texas Government Code.

Deliberate pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct in accordance with Section 551.071, of the Texas Government Code.

No executive sessions were held.

Adjournment: This Regular meeting adjourned at 6:59 p.m.

Date Approved: December 14, 2009

By: ________________________________

R. BRUCE BOYER, MAYOR

Attest:

MICHAEL A. RESENDEZ,
CITY SECRETARY
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 2
Presenter/Contact – Mayor Boyer

SUBJECT:   CITIZENS' COMMUNICATIONS

BACKGROUND/RATIONALE:

This time is for citizens to address the City Council on issues and items of concern, not on this agenda. There will be no City Council action at this time.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

City Plan/Council Priority:

FISCAL IMPACT:

N/A

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

N/A
## City Council Agenda Item Report
December 14, 2009

**Agenda Item No. 3(A–Q)**
**Presenter/Contact – Various**

**SUBJECT:** CONSENT AGENDA

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Source</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Approval of the second and final reading of an ordinance amending Chapter 86</td>
<td>S. Laird Dicke</td>
<td>Passed unanimously at the 11/23/09 meeting</td>
</tr>
<tr>
<td></td>
<td>&quot;Parks And Recreation,&quot; Article III “Landa Park Golf Course Advisory Board” to change the composition of the board and to revise the role of the Parks and Recreation Department.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Approval of the purchase of commercial roll offs for the Solid Waste Division from Wastequip through the Houston Galveston Area Council (HGAC) contract.</td>
<td>M. Quinones</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>C</td>
<td>Approval of the renewal of the annual contract with Matera Paper Company for janitorial supplies.</td>
<td>M. Quinones</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>D</td>
<td>Approval to authorize the City Manager to execute a Change Order with V.K. Knowlton Construction for Street Maintenance Projects Phase 1-06B and appropriate budgetary transfers.</td>
<td>J. Klein</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>E</td>
<td>Approval to authorize the City Manager to execute an agreement with Rodman LLC related to repairs on the Walnut Avenue Extension Project.</td>
<td>J. Klein</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>F</td>
<td>Approval of a budget transfer in the FY 2009-10 Adopted Budget for the Juvenile Case Manager Fund.</td>
<td>D. Korinchock</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>G</td>
<td>Approval of the first amendment to an interlocal agreement with Comal County with regard to the Juvenile Case Manager.</td>
<td>A. Wayland</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>H</td>
<td>Approval of a resolution for the purchase of 0.657 acres of right of way for the Walnut Avenue Extension Project from County Line Partnership No. 1 and S &amp; D Development, L.L.C., New Braunfels, Texas, and authorizing the City Manager to execute all necessary documents.</td>
<td>A. Wayland</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>I</td>
<td>Approval of the first reading of an ordinance to amend the Code of Ordinances, Section 38-53, membership terms for the Main Street Advisory Board.</td>
<td>S. Mattingly</td>
<td>Non Controversial</td>
</tr>
<tr>
<td>J</td>
<td>Approval of a resolution approving a recommendation of the New Braunfels Industrial Development Corporation to enter into a contract with the Symons Corporation with regard to providing a grant in an amount up to $165,000 for utility upgrades.</td>
<td>A. Wayland</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>K</td>
<td>Approval of the appointment of individuals to the following Boards and Commissions:</td>
<td>M. Resendez</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------</td>
<td>-------------------</td>
</tr>
<tr>
<td></td>
<td>1. Approve the appointment of two individuals to the Main Street Advisory Board, one for a term ending December 31, 2012, and one for a term ending December 31, 2010.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. Approve the appointment of one individual to the Community Development Advisory Committee for a term ending December 13, 2012.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>L</td>
<td>Approval of a resolution for the purchase of property for the Walnut Avenue expansion project from JP Champion Ranch, Ltd., and authorizing the City Manager to execute all necessary documents.</td>
<td>A. Wayland</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>M</td>
<td>Approval of the purchase of a Crafco Super Shot 125 crack sealer with diesel compressor for the Public Works Department from Crafco, Inc. through the Houston Galveston Area Council (HGAC) contract.</td>
<td>M. Quinones</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>N</td>
<td>Approval of a resolution for the purchase of 629 Crest Lane, New Braunfels, Texas, authorizing the City Manager to execute all necessary documents and an appropriate budgetary transfer.</td>
<td>A. Wayland</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>O</td>
<td>Approval of a license agreement between the City of New Braunfels and Mill Street Square, LLC.</td>
<td>S. Mattingly</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>P</td>
<td>Approval of a resolution authorizing the City Manager to submit an application to the Texas Water Development Board for a regional water facility planning grant.</td>
<td>R. Camareno</td>
<td>See Briefing Sheet</td>
</tr>
<tr>
<td>Q</td>
<td>Approval of a resolution authorizing the City Manager to accept a federal Save America’s Treasures grant in the amount of $150,000 and to act on behalf of the City in all matters related to this grant, including execution of all required documentation associated with the award.</td>
<td>V. Brown</td>
<td>See Briefing Sheet</td>
</tr>
</tbody>
</table>

**BACKGROUND/RATIONALE:**
N/A

**ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:**

|   | N/A |

**FISCAL IMPACT:**
N/A

**BOARD/COMMISSION RECOMMENDATION:**
N/A

**STAFF RECOMMENDATION:**
N/A
ORDINANCE NO. 2010-_____

AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING CHAPTER 86 "PARKS AND RECREATION," ARTICLE III. "LANDA PARK GOLF COURSE ADVISORY BOARD" TO CHANGE THE COMPOSITION OF THE BOARD AND TO REVISE THE ROLE OF THE PARKS AND RECREATION DEPARTMENT; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1: (A) That Chapter 86 "Parks and Recreation," Article III. "Landa Park Golf Course Advisory Board," Section 86-66 "Created; composition; terms; appointments; compensation" is hereby amended as follows:

a. Subsection (1) shall hereinafter read as follows:

(1) Five members of such board shall be appointed at-large and the only qualification for these members shall be that they will be residents of the city or the extraterritorial jurisdiction of the city and do not hold membership in a local golf association such as the Landa Park Golf Association or the Landa Park Ladies Golf Association.

b. Subsection (2) shall hereinafter read as follows:

(2) One member of the board shall be a resident of the city or the extraterritorial jurisdiction of the city and a member of the Landa Park Golf Association, if such an association or organization is active. The member of the Landa Park Golf Association must submit an application and be recommended by the Landa Park Golf Association. If the Landa Park Golf Association or organization is not active, such member’s only qualifications will be that he/she be a resident of the city or its extraterritorial jurisdiction.

c. Subsection (4) shall be deleted in its entirety.

d. The last sentence of the Section shall hereinafter read as follows:

The Parks and Recreation Director or his/her designee shall serve in an advisory capacity to the Board.

(B) That Chapter 86 “Parks and Recreation,” Article III. “Landa Park Golf Course Advisory
Board,” Section 86.70 “Minutes. filing of copies” shall be amended to hereinafter read as follows:

One copy of all minutes of the Golf Course Advisory Board as prepared by the secretary and approved by the Board shall be filed with the Parks and Recreation Department.

(C) That Chapter 86 “Parks and Recreation,” Article III. “Landa Park Golf Course Advisory Board,” Section 86-71 “Duties and responsibilities” shall be amended to hereinafter read as follows:

The Golf Course Advisory Board shall not exercise any executive authority or power, but it shall act in an advisory capacity to the Parks and Recreation Department, the City Council and the City Manager in matters pertaining to the golf course, including fees and fee structures, and shall cooperate with other agencies and civic groups in the advancement of sound golf course operations, activities, planning and programming.

SECTION 2: This Ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to the Landa Park Golf Course Advisory Board, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this Ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 3: That if any provisions of this Ordinance shall be held void, illegal, or unconstitutional, it is hereby provided that all other parts of the same which are not held void, illegal or unconstitutional shall remain in full force and effect.

SECTION 4: This Ordinance shall take effect upon the second and final reading of the same.

PASSED AND APPROVED: First reading this ___ day of __________, 2009.

PASSED AND APPROVED: Second reading this ___ day of __________, 2010.

CITY OF NEW BRAUNFELS, TEXAS

__________________________________________
R. Bruce Boyer, Mayor
ATTEST:

________________________________________

Michael A. Resendez, City Secretary

APPROVED AS TO LEGAL FORM:

________________________________________

Alan C. Wayland, City Attorney
City Council Agenda Item Report  
December 14, 2009

Agenda Item No. 3-B  
Presenter/Contact – Mary Quinones  
(830) 221-4389 – mquinones@nbtexas.org

SUBJECT: Approval of the purchase of commercial roll offs for the Solid Waste Division from Wastequip through the Houston Galveston Area Council (HGAC) contract.

BACKGROUND/RATIONALE: 
The Public Works Department has included in their budget funding for the replacement of aging commercial refuse containers. These commercial containers will be distributed by the Solid Waste Division to commercial customers to facilitate collection processes.

These are being purchased through a Houston Galveston Area Council (HGAC) contract with Wastequip. The price for these containers is $103,782.74.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Yes</td>
</tr>
</tbody>
</table>

FISCAL IMPACT: 
The FY 2009-10 Adopted Budget for the Solid Waste Fund includes a budget allocation of $100,000 for commercial refuse containers. The remaining $3,782.74 is available in other line item allocations in this budget; therefore, sufficient funding is available for these containers.

BOARD/COMMISSION RECOMMENDATION: 
N/A

STAFF RECOMMENDATION: 
Approval of the purchase of commercial roll offs for the Solid Waste Division through the Houston Galveston Area Council (HGAC) contract from Wastequip.
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 3-C
Presenter/Contact – Mary Quinones, Purchasing Manager
(830) 221-4389 – mquinones@nbtexas.org

SUBJECT: Approval of the renewal of the annual contract with Matera Paper Company for janitorial supplies.

BACKGROUND/RATIONALE:
The City of New Braunfels entered into a contract with Matera Paper Company for janitorial supplies on April 29, 2009. This contract was effective through December 31, 2009. This contract has an option to renew, in one year increments, for a combined total of five years. Matera Paper Company has opted to renew. Staff has been satisfied with the services provided under this contract.

ADRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>X</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>City Plan/Council Priority:</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
The funding for these supplies is included in each department’s individual FY 2009-10 Adopted Budget. Costs will be charged as invoices for supplies are submitted.

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Approval of the renewal of the annual contract with Matera Paper Company for janitorial supplies.
Approval to authorize the City Manager to execute a Change Order with V.K. Knowlton Construction for Street Maintenance Projects Phase 1-06B and appropriate budgetary transfers.

BACKGROUND/RATIONALE:

The City Council approved award of a contract for construction of street maintenance projects for Phase 1-06B to V.K. Knowlton Construction on May 11, 2009. This project includes construction of sewer and waterlines, street mill and overlay on Edgewater Terrace, Elizabeth Avenue and Country Club Circle and street reconstruction on Allen and Chicago Avenues.

The awarded cost for this work was $987,492.35 with the street improvement part of $405,455.25 and the sanitary sewer and water improvements, which NBU is paying, of $582,037.10. The engineers construction cost estimate for this project was $2,100,000, so the award price was 47% under the estimated price.

A 10 percent contingency ($40,545) for the street maintenance was also included in the Council authorization to facilitate construction modifications required during performance of the contract and the City Manager was authorized to approve change orders to the construction contract up to the amount of the contingency. $25,000 was also allocated to engage a material testing consultant.

The project as awarded included utilities and pavement in Chicago Avenue, Allen Avenue and Edgewater Terrace from Elizabeth Avenue to North Houston Avenue as well as mill and overlay of Elizabeth Avenue from West Torrey Street to the dead end and Country Club Circle. The original project planned by the City was a mill and overlay of Edgewater Terrace, Elizabeth Avenue and Country Club Circle. Chicago Avenue and Allen Avenue were added to the project when NBU indicated they needed to replace their water and sewer lines in these streets. There were no drainage facilities included in the project design.

During construction, it became clear that limited drainage improvements are required. These improvements include a grated inlet at Chicago Avenue and West Edgewater Terrace to capture runoff in the street before it enters private property. Valley gutters to convey water across West Edgewater Terrace at North Union (2), Liberty, Mulberry(2) and Booneville Avenues to facilitate drainage crossing across West Edgewater Terrace were also added. Addition of these drainage improvements resulted in a change order cost which exceeds the $40,545 budgeted. These additional improvements also have an associated cost for material testing and engineering cost.

We established a 10% contingency at award. That totaled $40,545
Change Order 1 was for $15,484.90
Change Order 2 is for $50,174.85
($39,465.45 of this change order #2 is for valley gutters and a grate inlet drain on Edgewater Terrace)

Total construction change orders $65,659.75

Additional Engineering $ 8,808.75
Additional Material testing $15,000.00
\Subtotal Professional Services $23,808.75
Total Additional Costs $89,468.50

Available from project contingency $40,545.00
Available funds in project (uncommitted) $23,436.87
Total Needed $25,486.63

**ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:**

<table>
<thead>
<tr>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

**FISCAL IMPACT:**
As shown above, the project needs an additional $25,486.63 to complete construction. To fund this remaining amount, a budget transfer is needed. The following is the action recommended by staff to provide this additional funding.

2007 Certificates of Obligation Capital Improvement Fund
From: Drainage Improvements ($30,000)
To: Street Maintenance Project – 2006 Phase 1 Project $30,000

**BOARD/COMMISSION RECOMMENDATION:**
N/A

**STAFF RECOMMENDATION:**
Approval to authorize the City Manager to execute a Change Order with V.K. Knowlton Construction for Street Maintenance Projects Phase 1-06B and the appropriate budgetary transfer.
### Construction Change Order

**Project:** Street Maintenance Projects Phase 1-068  
**Contractor:** V.K. Knovilton Construction and Utilities Co., Ltd.  
**Address:** 18225 FM 2252 San Antonio, TX 78266  
**Date:** December 8, 2009  

You are hereby requested to comply with the following changes from the contract plans and specifications. This document shall become an Amendment to the contract and all provisions of the contract shall apply thereto.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Unit Price</th>
<th>Increase in Contract Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Concrete Valley Gutter (7&quot; Thk)</td>
<td>18</td>
<td>SY</td>
<td>$102.45</td>
<td>$1,894.10</td>
</tr>
<tr>
<td>2</td>
<td>Flexible Base (10&quot;) (TY A GR2) (CMP IN PLC) (STREET RECONST)</td>
<td>84</td>
<td>SY</td>
<td>$5.51</td>
<td>$550.20</td>
</tr>
<tr>
<td>3</td>
<td>STREET ECATION (STREET RECONST)</td>
<td>24</td>
<td>CY</td>
<td>$14.60</td>
<td>$350.40</td>
</tr>
<tr>
<td>4</td>
<td>Concrete Valley Gutter (7&quot; Thk)</td>
<td>15</td>
<td>SY</td>
<td>$102.45</td>
<td>$1,536.75</td>
</tr>
<tr>
<td>5</td>
<td>Flexible Base (10&quot;) (TY A GR2) (CMP IN PLC) (STREET RECONST)</td>
<td>85</td>
<td>SY</td>
<td>$5.51</td>
<td>$556.75</td>
</tr>
<tr>
<td>6</td>
<td>STREET ECATION (STREET RECONST)</td>
<td>24</td>
<td>CY</td>
<td>$14.60</td>
<td>$350.40</td>
</tr>
<tr>
<td>7</td>
<td>Concrete Valley Gutter (7&quot; Thk)</td>
<td>16</td>
<td>SY</td>
<td>$102.45</td>
<td>$1,560.00</td>
</tr>
<tr>
<td>8</td>
<td>Flexible Base (10&quot;) (TY A GR2) (CMP IN PLC) (STREET RECONST)</td>
<td>80</td>
<td>SY</td>
<td>$5.51</td>
<td>$524.00</td>
</tr>
<tr>
<td>9</td>
<td>STREET ECATION (STREET RECONST)</td>
<td>23</td>
<td>CY</td>
<td>$14.60</td>
<td>$350.80</td>
</tr>
<tr>
<td>10</td>
<td>Flexible Base (10&quot;) (TY A GR2) (CMP IN PLC) (STREET RECONST)</td>
<td>174</td>
<td>SY</td>
<td>$5.51</td>
<td>$564.55</td>
</tr>
<tr>
<td>11</td>
<td>STREET ECATION (STREET RECONST)</td>
<td>24</td>
<td>CY</td>
<td>$14.60</td>
<td>$350.40</td>
</tr>
<tr>
<td>12</td>
<td>Concrete Valley Gutter (7&quot; Thk)</td>
<td>17</td>
<td>SY</td>
<td>$102.45</td>
<td>$1,741.65</td>
</tr>
<tr>
<td>13</td>
<td>Flexible Base (10&quot;) (TY A GR2) (CMP IN PLC) (STREET RECONST)</td>
<td>80</td>
<td>SY</td>
<td>$5.51</td>
<td>$524.00</td>
</tr>
<tr>
<td>14</td>
<td>STREET ECATION (STREET RECONST)</td>
<td>27</td>
<td>CY</td>
<td>$14.60</td>
<td>$350.80</td>
</tr>
<tr>
<td>15</td>
<td>Concrete Valley Gutter (7&quot; Thk)</td>
<td>18</td>
<td>SY</td>
<td>$102.45</td>
<td>$1,536.75</td>
</tr>
<tr>
<td>16</td>
<td>Flexible Base (10&quot;) (TY A GR2) (CMP IN PLC) (STREET RECONST)</td>
<td>89</td>
<td>SY</td>
<td>$5.51</td>
<td>$502.95</td>
</tr>
<tr>
<td>17</td>
<td>STREET ECATION (STREET RECONST)</td>
<td>30</td>
<td>CY</td>
<td>$14.60</td>
<td>$350.80</td>
</tr>
<tr>
<td>18</td>
<td>Flexible Base (10&quot;) (TY A GR2) (CMP IN PLC) (STREET RECONST)</td>
<td>353</td>
<td>SY</td>
<td>$8.65</td>
<td>$2,953.45</td>
</tr>
<tr>
<td>19</td>
<td>STREET ECATION (STREET RECONST)</td>
<td>23</td>
<td>CY</td>
<td>$14.60</td>
<td>$350.80</td>
</tr>
<tr>
<td>20</td>
<td>Storm Drain Inlet</td>
<td>1</td>
<td>LS</td>
<td>$19,036.70</td>
<td>$19,036.70</td>
</tr>
<tr>
<td>21</td>
<td>Chicago Avenue Mail Box Repair</td>
<td>1</td>
<td>EA</td>
<td>$511.00</td>
<td>$511.00</td>
</tr>
<tr>
<td>22</td>
<td>Elizabeth Avenue Additional Subgrade Repair</td>
<td>1</td>
<td>EA</td>
<td>$511.00</td>
<td>$511.00</td>
</tr>
<tr>
<td>23</td>
<td>Drive Ways (STREET RECONST)</td>
<td>94</td>
<td>SY</td>
<td>$8.65</td>
<td>$7,698.60</td>
</tr>
<tr>
<td>24</td>
<td>Full Depth Patch</td>
<td>29</td>
<td>SY</td>
<td>$8.65</td>
<td>$2,499.80</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Unit Price</th>
<th>Decrease in Contract Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Storm Drain Inlet</td>
<td>1</td>
<td>LS</td>
<td>$19,036.70</td>
<td>$19,036.70</td>
</tr>
<tr>
<td>21</td>
<td>Chicago Avenue Mail Box Repair</td>
<td>1</td>
<td>EA</td>
<td>$511.00</td>
<td>$511.00</td>
</tr>
<tr>
<td>22</td>
<td>Elizabeth Avenue Additional Subgrade Repair</td>
<td>1</td>
<td>EA</td>
<td>$511.00</td>
<td>$511.00</td>
</tr>
<tr>
<td>23</td>
<td>Drive Ways (STREET RECONST)</td>
<td>29</td>
<td>SY</td>
<td>$8.65</td>
<td>$2,499.80</td>
</tr>
</tbody>
</table>

**Justification:**

Item 1-5 is the installation of two concrete valley gutters across Edgewater at its intersection with Mulberry. The installation is intended to aid positive drainage across Edgewater. Item 6-19 is similar to item 1-5 with the exception valley gutters are located at Boonville, Union, and Liberty. Item 20 is an enhancement to the existing drainage system. Item 21 is the restoration of an existing mailbox on Chicago Avenue damaged by an unknown other during the construction of Chicago Avenue. Item 22 reflects additional quantities of pavement repairs required given the size and location of recent utility patches and further degradation of the pavement on Elizabeth Avenue since design. The additional repair areas can be found at Sta. 4+15 to Sta. 4+95 45x10, Sta. 7+15 to Sta. 7+37 22x9, and Sta. 9+10 to Sta. 9+24 14x14. The areas described are approximate; however, the actual locations were marked on 11/10/09 with the Contractor, CONC Inspector and SGI present. Item 23 reflects minor changes to several driveways and the replacement of one small section of sidewalk.
<table>
<thead>
<tr>
<th>Contract Price Including Previous Change Orders: $1,012,180.05</th>
<th>Contract Time (Phase 1-2) Including Previous Change Orders: 180 Calendar Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Increase/Decrease Resulting from this Change Order: $50,153.20</td>
<td>Net Increase/Decrease Resulting from this Change Order:</td>
</tr>
<tr>
<td>Current Contract Price Including this Change Order: $1,062,333.25</td>
<td>Current Contract Time (Phase 1-2) Including this Change Order: 195 Calendar Days</td>
</tr>
</tbody>
</table>

Recommended by: The Schultz Group, Inc.  
Approved by: V.K. Knowlton  
Approved by: City of New Braunfels  
Approved by: New Braunfels Utilities  
Not Required  

Date: 10/1/16
REVISION TO THE INTERSECTION OF MULBERRY AVE. AND W. EDGEWATER TERR. AS SHOWN ON SHEET C6 OF THE 2006 STREET MAINTENANCE PROJECT - PHASE 1-06 B

DRAINAGE SWALE REVISION EXHIBIT "A"

MULBERRY AVE.
STREET MAINTENANCE PROJECT

THE Schultz Group, INC.
CONSULTING ENGINEERS  LAND SURVEYORS
P.O. BOX 310483  NEW BRAUNFELS, TEXAS 78131  (830) 606-3913
FAX (830) 625-2204

DRAWN BY: D.C.  DATE: OCTOBER 2006
CHECKED BY: M.S.  JOB NO: 050707
A REVISION TO THE INTERSECTION OF LIBERTY AVE. AND W. EDGEWATER TERR. AS SHOWN ON SHEET C7 OF THE 2006 STREET MAINTENANCE PROJECT - PHASE 1-06 B

DRAINAGE SWALE REVISION EXHIBIT "B"

LIBERTY AVE.
STREET MAINTENANCE PROJECT

THE Schultz Group, INC.
CONSULTING ENGINEERS  LAND SURVEYORS
P.O. BOX 310483  NEW BRAUNFELS, TEXAS 78131  (830) 605-3913
FAX (830) 625-2204

DRAWN BY: D.C.  DATE: OCTOBER 2008
CHECKED BY: M.S.  JOB NO. 050709
REVISION TO THE INTERSECTION OF BOONEVILLE AVE. AND W. EDEWATER TERR. AS SHOWN ON SHEET C6 OF THE 2006 STREET MAINTENANCE PROJECT - PHASE 1-06 B

DRAINAGE SWALE REVISION EXHIBIT "C"

BOONEVILLE AVE.
STREET MAINTENANCE PROJECT

THE Schultz Group, INC.
CONSULTING ENGINEERS  LAND SURVEYORS
P.O. BOX 310483  NEW BRAUNFELS, TEXAS 78131  (830) 606-3913
FAX (830) 625-2204

DRAWN BY: D.C.  DATE: OCTOBER 2006
CHECKED BY: M.S.  JOB NO: 050767
REVISION TO THE INTERSECTION OF N. UNION AVE. AND W. EDGEWATER TERR. AS SHOWN ON SHEET C7 OF THE 2006 STREET MAINTENANCE PROJECT - PHASE 1-06 B

DRAINAGE SWALE REVISION EXHIBIT "D"

N. UNION AVE.
STREET MAINTENANCE PROJECT

THE Schultz Group, INC.
CONSULTING ENGINEERS   LAND SURVEYORS
P.O. BOX 310483   NEW BRAUNFELS, TEXAS 78131   (830) 606-3913
FAX (830) 625-2204

DRAWN BY: D.C. DATE: DECEMBER 2009
CHECKED BY: M.S. JOB NO: 05707
SECTION A-A

VALLEY GUTTER DETAILS

N.T.S.

DRAINAGE SWALE REVISION

EXHIBIT "E"

STREET MAINTENANCE PROJECT

THE Schultis Group, INC.

CONSULTING ENGINEERS  LAND SURVEYORS
P.O. BOX 310483  NEW BRAUNFELS, TEXAS 78131  (830) 606-3913
FAX  (830) 625-2204

DRAWN BY: D.C.  DATE: DECEMBER 2009
CHECKED BY: M.S.  JOB NO. 050707
Subject: Approval to authorize the City Manager to execute an agreement with Rodman LLC related to repairs on the Walnut Avenue Extension Project.

BACKGROUND/RATIONALE:

The Walnut Avenue Extension Project was constructed by Rodman LLC under a contract with the City of New Braunfels. The awarded cost for this work was $5,940,408. The engineers construction cost estimate for this project was $9,000,000, so the award price was 34% under the estimated price.

Construction of the first phase of the project was completed in August, 2008. In April of 2009 pavement failure was noted in the roadway in several areas between Klein Road and Settlers Crossing. Failure consisted of pavement cracking and Rodman LLC sealed the cracks in an attempt to correct the situation. In May and June 2009 it was evident the attempt at sealing cracks failed to correct the problem, and Rodman LLC was notified that the City considered this a warranty issue. The City's engineer, Klotz and Associates, indicated it appeared that a major contributor to pavement cracking was settlement in the vicinity of the storm sewer pipes and inlets in the area in question. Subsequently Rodman LLC employed a materials testing firm to do testing in the form of core sampling, and in October 2009 testing results came back inconclusive. The testing report by Integrated Testing and Engineering Company of San Antonio, L.P. indicated nine borings were drilled. Testing identified shrinkage of soils underlying the pavement sections likely contributed to the longitudinal cracks and that the subgrade and fill material were of high plasticity.

The City has asked Rodman LLC to provide a cost for permanent correction to the problem by rebuilding the roadway with flowable fill and new asphalt 11 feet wide from approximate station 66+00 to 81+15 (2000 square Yards). Rodman LLC has indicated the cost for the work is $210,406.46. City staff considers pavement cracking potentially to be the result of improper installation and compaction of the backfill around the storm drain pipe. Rodman LLC disagrees that it is a materials and workmanship issue. Because testing was also inconclusive, and in an attempt to stay out of litigation which would delay resolution and may not be settled in favor of the City, it is suggested the cost be shared at 50% contractor and 50% City, at $105,203.23 each.

City staff, in trying to establish correction to this problem, has diligently worked with Rodman LLC in developing a long term solution. We considered the warranty nature of the issue but recognized test results regarding responsibility for cracking were inconclusive. Construction occurred at a time when field conditions were very dry. The City was not notified of weekend work in this area and the contractor was working diligently to meet the tight deadline for Phase 1 construction. Consequently construction inspection and field materials testing at the time of storm sewer and associated backfill construction was not available to verify placement conditions. Staff
also verified the unit pricing and total cost of service is in line with the original bid and current construction market for this type of construction. As such it is felt that Rodman LLC be given authority to proceed with construction at the 50/50 cost share presented.

**ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Yes</td>
</tr>
</tbody>
</table>

City Plan/Council Priority: 3: Implement ongoing program of infrastructure construction and maintenance

**FISCAL IMPACT:**
There is a balance of $107,952.57 in the Walnut Avenue Extension account which is not encumbered. This is sufficient to fund the City’s 50% share ($105,203.23).

**BOARD/COMMISSION RECOMMENDATION:**
N/A

**STAFF RECOMMENDATION:**
Approval to authorize the City Manager to execute an agreement with Rodman LLC related to repairs on the Walnut Avenue Extension Project.
SUBJECT: Approval of a budget transfer in the FY 2009-10 Adopted Budget for the Juvenile Case Manager Fund

BACKGROUND/RATIONALE:
Over the last eighteen months, the City of New Braunfels has shared Juvenile Case Management services with Comal County. The County hired a staff person to provide these services to all four justice of the peace courts as well as to the City’s Municipal Court. The City contributed to the cost of the individual’s salary and benefits. The Juvenile Case Manager works with youth under the supervision of one of these courts for various offenses. The manager works with the juveniles directly, provides referrals to programs needed by the youth when appropriate and reports progress and/or problems to the court of jurisdiction. As the program has progressed, the workload has become more than one individual can handle effectively. To alleviate this situation, the City will, effective December 1, 2009, provide the juvenile case management services for the Municipal Court through the existing Municipal Court administrative staff. The salary of one of the Court Clerk’s will now be paid from the Juvenile Case Manager Fund as a result. This action requires a budget transfer to move the funds from the operations expenses appropriation in the Juvenile Case Manager Fund to the employee expenses. The appropriate budget transfer is shown below.

<table>
<thead>
<tr>
<th>Current Budget</th>
<th>Budget Transfer</th>
<th>Revised Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile Case Manager Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>From: Operations Expenses</td>
<td>$30,000</td>
<td>(25,000)</td>
</tr>
<tr>
<td>From: Appropriated Fund Balance</td>
<td>$122,543</td>
<td>(10,000)</td>
</tr>
<tr>
<td>To: Employee Expenses</td>
<td></td>
<td>$35,000</td>
</tr>
</tbody>
</table>

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

| N/A | Yes | City Plan/Council Priority: Strategic Priorities: Effective Management – Maintain fiscal stability of City operations |

FISCAL IMPACT:
This budget transfer re-allocates existing funding to bring the Juvenile Case Manager services in-house rather than from a contract with the County. Sufficient funds are available in the operations expenses appropriation and the fund balance for this transfer.

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Approval of the appropriate budget transfer in the FY 2009-10 Adopted Budget for the Juvenile Case Manager Fund
SUBJECT: Approval of the first amendment to an Interlocal Agreement with Comal County with regard to the Juvenile Case Manager

BACKGROUND/RATIONALE:

The City and Comal County entered into an interlocal agreement to share the costs of a juvenile case manager for the justice courts and municipal court. Pursuant to the agreement, the City agreed to pay one-third of the salary and benefits costs of the juvenile case manager who is a County employee. The agreement was for a term of one year ending July 31, 2009.

The City continued to use the services of the juvenile case manager for municipal court for the period of August through November, 2009. The First Amendment to the Interlocal Agreement extends the term of the agreement for additional four (4) months, and will allow the City to reimburse the County for its proportionate share of the costs of the juvenile case manager for those four months. The additional cost to the City is $4,998.23. Beginning December 1, 2009, the City will provide juvenile case management services with existing staff positions in Municipal Court.

FISCAL IMPACT:

Sufficient funds are available in the Juvenile Case Manager Fund for this payment to the County as well as the future costs for City staff who will begin providing services December 1, 2009. A budget transfer is presented for Council consideration on this December 14, 2009 agenda to facilitate this change.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of the First Amendment to the Interlocal Agreement.
FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT
BETWEEN COMAL COUNTY AND CITY OF NEW BRAUNFELS
FOR A JUVENILE CASE MANAGER

WHEREAS, the City of New Braunfels, Texas (the "CITY") and Comal County (the "COUNTY") entered into an Interlocal Agreement for Juvenile Case Manager services (the "Agreement") effective November 20, 2008; and

WHEREAS, the Agreement is for a one-year term commencing August 1, 2008 and expiring July 31, 2009; and

WHEREAS, the parties desire to amend the Agreement to extend the term until November 30, 2009;

NOW, THEREFORE, CITY and COUNTY agree to amend the Agreement by amending Section II. as follows:

II.
Term
This Contract shall remain in full force and effect for a period of sixteen (16) months commencing on August 1, 2008 and ending on November 30, 2009 and shall terminate automatically at the end of such period.

All the remaining terms and conditions of the Agreement between the CITY and COUNTY not amended herein continue to be valid and enforceable.

This Amendment shall be effective when duly executed by signature of the authorized representatives of the CITY and COUNTY.

CITY OF NEW BRAUNFELS, TEXAS

By: ____________________________
R. Bruce Boyer, Mayor

ATTEST:

_______________________________
Michael A. Resendez, City Secretary

DATE: __________________________
COMAL COUNTY

By: ________________________
    Honorable Danny Scheel
    Comal County Judge

ATTEST:

Joy Streater, Comal County Clerk

DATE: _______________________

Approved as to Form:

By: ________________________
    Jennifer Tharp, Chief Civil Prosecutor

By: ________________________
    Alan Wayland, City Attorney
SUBJECT: Approval of a resolution for the purchase of 0.657 acres of right of way for the Walnut Avenue extension project from County Line Partnership No. 1 and S & D Development, LLC., New Braunfels, Texas, and authorizing the City Manager to execute all necessary documents.

BACKGROUND/RATIONALE:

The City Council approved a construction contract on April 26, 2008, with Rodman Company for the construction of the Walnut Avenue Extension. Although the City and the landowners could not reach agreement on the value of this parcel at the time, the landowners agreed to allow the City possession and use of the property to complete the project. The City and the landowners have now reached an agreement as to the value of the right-of-way for this parcel. The purchase contract is contingent upon City Council approval within thirty days from November 25, 2009.

FISCAL IMPACT:

$111,464.00

Funds have been included in the Fiscal Year 2009/10 budget to cover these expenditures.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of the Resolution.
RESOLUTION NO. 2009-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, DETERMINING THE PUBLIC NECESSITY FOR CONSTRUCTING THE WALNUT AVENUE EXTENSION; AUTHORIZING THE ACQUISITION OF PROPERTY RIGHTS FROM COUNTY LINE PARTNERSHIP NO. 1 AND S & D DEVELOPMENT, L.L.C. KNOWN AS 0.657 ACRES OF LAND SITUATED IN THE WILLIAM H. PATE SURVEY NO. 22, ABSTRACT NO. 259, GUADALUPE COUNTY, TEXAS; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels, Texas, upon consideration of the matter, has determined that there is a public necessity for the welfare of the City of New Braunfels and the public-at-large, to acquire certain real property for right-of-way for the Walnut Avenue Extension from County Line Road to Klein Road; and

WHEREAS, in accordance with the above, the City Council of the City of New Braunfels, Texas, hereby finds that it is in the public interest to acquire fee simple title to real property for the above stated municipal purpose; and

WHEREAS, the real property to be acquired for such purpose is 0.657 acres of land situated in the William H. Pate Survey No. 22, Abstract 259, Guadalupe County, Texas, and being a portion of a 7.508 acre tract of land called Tract "B", City of New Braunfels, Guadalupe County, Texas, and which is more particularly described in Exhibit "A" attached hereto and made a part hereof by reference (the "Property"); NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1: The City Council hereby finds and determines that it is necessary for the welfare of the City and its citizens and is in the public interest to acquire fee simple title to the Property for right-of-way and associated municipal purposes for the construction of the extension of Walnut Avenue from County Line Road to Klein Road.

SECTION 2: The City Manager, or his designee, is hereby authorized on behalf of the City to execute the necessary documents for the purchase of the property in the amount of $111,464.00 plus closing costs.

SECTION 3: The findings of fact, recitations and provisions set out in the preamble of this Resolution are adopted and made a part of the body of this Resolution, as fully as if the same were set forth herein.

PASSED AND APPROVED this the 14th day of December, 2009.
CITY OF NEW BRAUNFELS, TEXAS

R. Bruce Boyer, Mayor

ATTEST:

Michael A. Resendez, City Secretary
PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “Agreement”) is made and entered into by and between COUNTY LINE PARTNERSHIP NO. 1, a Texas General Partnership and S & D DEVELOPMENT, L.L.C., a Texas limited liability company of Comal County, Texas ("Seller"), and the CITY OF NEW BRAUNFELS, a Texas home-rule municipal corporation, situated in Comal County, Texas ("Purchaser").

WITNESSETH:

ARTICLE 1.

Property

1.1 For the purchase price and upon the terms and conditions hereinafter set forth, Seller does hereby agree to sell to Purchaser, and Purchaser does hereby agree to purchase from Seller:

(a) All that certain property consisting of approximately a 0.657 acres of land situated in the William H. Pate Survey No. 22, Abstract No. 259, Guadalupe County, Texas, and being a portion of a 7.508 acre tract of land called Tract “B” recorded in Volume 1475, page 389, of the Official Records of Guadalupe County, Texas, together with all improvements thereon, if any (the “Improvements”); and being more fully described by metes and bounds in Exhibit A, hereto and made a part hereof (the "Land"), together with all improvements thereon, if any (the “Improvements”), the Land and Improvements, if any, hereinafter collectively referred to as the “Property”; and

(b) All appurtenances ("Appurtenances"), including all the rights, ways, waters, privileges and alleys serving the Land or the Improvements or in anywise appertaining; all right, title and interest of Seller in any land lying in the bed of any street, alley, road, avenue, creek, river or stream, existing or proposed, in front of or adjoining the Land; and any letters of credit, permits, water or wastewater living unit equivalent allocations, contracts, utility taps or connections, and other development rights and benefits associated with the Land or the Improvements.

The Land, Improvements and Appurtenances collectively are called the "Property."

ARTICLE 2.

Purchase Price

2.1 The purchase price of the Property (the “Purchase Price”) shall be ONE HUNDRED ELEVEN THOUSAND, FOUR HUNDRED SIXTY FOUR and NO/100 Dollars ($111,464.00). The Purchase Price shall be paid in cash at closing.

ARTICLE 3.

Earnest Money

3.1 Within Seven (7) business days after the date of this Agreement, Purchaser shall deliver to First American Title Company LLC, 267 W. Mill Street, New Braunfels, Texas 78130
Attn: Janine McAda, Escrow Officer (the "Title Company"), a check in the amount of Five Hundred and No/100 Dollars ($500.00) as an earnest money deposit (the "Earnest Money"). The Title Company shall deposit the Earnest Money in an interest bearing account with all interest payable to Purchaser. All Earnest Money deposited hereunder shall be held and disbursed by the Title Company as herein specified.

ARTICLE 4.
Survey

4.1 A metes and bounds survey and an accompanying sketch of the Property is attached as Exhibit "A".

ARTICLE 5.
Title Matters and Conveyancing Documents

5.1 Within twenty (20) days after the date hereof, Purchaser shall obtain from the Title Company and deliver to Seller a Commitment for Owner's Policy of Title Insurance (the "Commitment") in Purchaser's favor in the amount of the purchase price for the Property and reflecting the ownership of and encumbrances upon the Property, together with copies of all items reflected thereon. If the Commitment reveals defects in title or other conditions not permitted hereunder which Purchaser finds unacceptable, in Purchaser's sole discretion, Purchaser shall give notice to Seller of such unacceptable conditions within twenty (20) days after receipt by Purchaser of the Commitment. Any liens or security interests securing indebtedness, or title defects described on Schedule "C" of the Commitment, shall be deemed unacceptable regardless of Purchaser's failure to object to all such matters as aforesaid. If Seller fails to remove all such unacceptable conditions within twenty (20) days after the date Purchaser delivers such notice, Purchaser may, at Purchaser's sole election, either (i) cancel this Agreement and receive a return of the Earnest Money, (ii) extend up to thirty (30) additional days the time allowed for Seller to remove such unacceptable objections, or (iii) accept such title as Seller can deliver. All matters permitted or approved or accepted by Purchaser hereunder shall be "Permitted Exceptions." The Commitment shall be updated to the time of closing and shall reveal no other exceptions to title than appeared in the Commitment previously approved by Purchaser as aforesaid.

5.2 Seller shall furnish Purchaser at closing a Special Warranty Deed (the "Deed") to the Property in form acceptable to Purchaser and the Title Company. The Deed shall except only to matters affecting the Property which are approved by Purchaser in accordance with Section 5.1 above.

5.3 If the Property is situated within a utility district subject to the provisions of Section 50.301, Texas Water Code, then at or prior to closing Seller shall give Purchaser the written notice required by said Section 50.301 and Purchaser agrees to sign and acknowledge the notice to evidence receipt thereof.

ARTICLE 6.

6.1 Seller shall not take any action nor permit any occurrence which will affect the Property after closing. Without limitation, Seller shall not execute or deliver any easement,
restriction, lien, or other encumbrance affecting the Property. Seller shall not withdraw or allow to lapse any application, permit or approval affecting the Property.

ARTICLE 7.
Representations

7.1 Seller represents to Purchaser that as of the date hereof and as of the date of closing:

(a) Seller has full and complete title to the Property, subject to no liens or encumbrances other than as reflected in the Commitment.

(b) To the best of Seller's knowledge, there are no lawsuits pending or threatened, except for the condemnation suit involving Purchaser and the Property.

All of the above representations shall be true and correct as of closing, and shall survive closing.

ARTICLE 8.
Closing Matters

8.1 The transaction contemplated hereby shall be closed upon Purchaser receiving written release of any of rights of any tenant(s) in the property to be conveyed acceptable to the title company and to the City of New Braunfels.

8.2 Closing shall be at the main office of the Title Company or at such other location acceptable to both Seller and Purchaser within thirty days of the effective date of this contract. The Title Company shall issue the Owner's Title Policy to Purchaser at closing, subject only to the Permitted Exceptions and, at the election and expense of Purchaser, with the rights of parties in possession exception deleted and the survey exception deleted, to the extent permitted by applicable rules. Seller shall deliver sole possession of the Property to Purchaser at closing, subject to the Permitted Exceptions.

8.3 Purchaser agrees to pay at or prior to the time of closing the cost of preparing the Deed. Purchaser shall pay the cost of recording the Deed and the cost of the Owner's Policy of Title Insurance. All other closing costs, except for the cost of obtaining and recording any release of liens on the Property which shall be Purchaser's responsibility, shall be allocated as is customary in Comal County, Texas.

8.4 At closing, real estate and personal property taxes shall be prorated based upon the most recent tax information available. All prorations shall be final. If this sale or Purchaser's use of the Property after closing results in additional assessments for periods before closing, the assessments will become the obligation of Purchaser. This Section 8.4 survives closing.
ARTICLE 9.
Default

9.1 If Seller is in default hereunder, Purchaser, as Purchaser's sole remedies, may enforce specific performance of this Agreement against Seller, or cancel this Agreement and receive a refund of all Earnest Money. Failure to cure title objections shall not be treated as a default by Seller and, in such cases, Purchaser's only remedy shall be to terminate this Agreement and receive a refund of all Earnest Money as provided herein.

9.2 If Purchaser is in default hereunder, Seller, as Seller's sole remedies, may cancel this Agreement and retain all Earnest Money, such amount constituting liquidated damages and not a penalty, it being agreed that such sum is reasonable in view of the difficulty of ascertaining actual damages, or enforce specific performance of this Agreement against Purchaser.

ARTICLE 10.
Broker's Fees

10.1 All obligations of the parties for payment of broker's fees are contained in separate written agreements.

ARTICLE 11.
Attorney's Fees

11.1 If either party brings suit for the breach of any covenant, condition or agreement contained herein, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses in connection therewith.

ARTICLE 12.
Notices

12.1 All of the requirements and provisions herein for notice shall have been met when such notice has been placed in writing and personally delivered, delivered by facsimile transmission, with proof of receipt (with a copy of such notice concurrently delivered by either hand delivery or certified mail), or sent certified United States mail, postage prepaid, return receipt requested to the respective parties hereto at the following addresses:

   to Seller at:  
   County Line Partnership No. 1  
   S & D Development, L.L.C.  
   Attention: Mr. Steven M. Lange  
   215 Courtyard Drive  
   New Braunfels, Texas 78130

   with a copy to:  
   Edward Badouh, Jr.  
   P.O. Box 311240  
   New Braunfels, Texas 78131
with a copy to: James C. Norman
Norman & Oliver, P.C.
7373 Broadway, Suite 540
San Antonio, Texas 78240

and to Purchaser at: City of New Braunfels
424 S. Castell Avenue
New Braunfels, Texas 78130
Attn: Connie Real, Real Estate Manager

with a copy to: Alan C. Wayland
City Attorney
424 S. Castell Avenue
New Braunfels, Texas 78130

The date of receipt shall be the date of actual receipt of such notice if the notice is personally delivered or sent by facsimile transmission (provided that any facsimile transmission not sent on a business day, or sent after 5:00 p.m. on a business day, shall be deemed received on the next business day), or two (2) days after the postmark date, whichever is sooner. Addresses given herein for notice may be changed by either Seller or Purchaser by notification in writing in accordance with the provisions of this Agreement.

ARTICLE 13.
Time is of the Essence

13.1 The obligations and undertakings of the parties hereto shall be performed within the time specified therefor, time being of the essence, and failure to perform within such time shall constitute a breach of this Agreement on the part of the party who fails to perform.

ARTICLE 14.
Binding Effect; Assignment

14.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns. Purchaser may assign this Agreement upon written notice to Seller.

ARTICLE 15.
Other Provisions

15.1 This writing and the exhibits hereto set forth the entire agreement between the parties, and no other statement, agreement or understanding, oral or written, will be recognized or enforced unless the same shall be in writing and signed by both parties subsequent to the date hereof.

15.2 Purchaser may, at Purchaser's option, waive any condition or contingency of this Agreement and proceed to close despite the condition or contingency.
15.3 This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

15.4 This Agreement shall be governed by Texas law and all causes of action in connection herewith shall be maintained in proceedings filed in Comal County, Texas.

15.5 If any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall automatically be extended to the next day which is not a Saturday, Sunday or legal holiday. The term "business days" as used herein shall mean all days which are not a Saturday, Sunday or legal holiday.

15.6 Seller and Purchaser each represent and warrant to the other that they have full authority to execute this Agreement and fulfill all of the terms and conditions hereof. Seller and Purchaser shall present to each other and the Title Company all reasonable evidence of authority which may be requested in connection with this Agreement.

15.7 Seller agrees to furnish to Purchaser prior to closing either (i) an affidavit stating, under penalties of perjury that Seller is not a "foreign person" (as defined in the Tax Reform Act of 1984) and giving Seller's taxpayer identification number or (ii) a Qualifying Statement from the Internal Revenue Service stating that Seller has arranged to pay any tax due by Seller in connection with this transaction. In the event that Seller fails to provide the documentation required by either (i) or (ii) above prior to closing, Purchaser may withhold from the cash due at closing such amounts as Purchaser may be required to withhold from a purchase from a "foreign person" under the Tax Reform Act of 1984.

ARTICLE 16.
Offer; Effective Date

16.1 The offer implied by presentation of this Agreement by Purchaser shall be accepted by Seller delivering an executed copy of this Agreement to Purchaser no later than ten days after execution by Purchaser, failing in which this offer shall automatically terminate. Such offer may be withdrawn by Purchaser at any time prior to acceptance.

16.2 The parties agree to deposit with the Title Company a fully executed copy of this Agreement with all attachments and exhibits hereto. The date of the Title Company's receipt of such fully executed copy of this Agreement as set forth below shall be deemed to be the date of this Agreement and shall be referred to as "the date hereof."

16.3 Notwithstanding anything herein contained to the contrary, this offer (and this Agreement if executed by Seller and Purchaser) is expressly contingent upon approval hereof by the City Council of the City of New Braunfels within thirty (30) days from the date hereof. In the event such approval is not granted within the said 30 day period, then this Agreement shall be null and void and of no further force or effect.

IN WITNESS WHEREOF, this Agreement has been duly executed on the dates set forth below.
SELLER:

COUNTY LINE PARTNERSHIP NO. 1, a
Texas general partnership

By: Linde Management, Inc., a Texas corporation,
its General Partner

By: [Signature]
Rebecca L. Hill, Vice President

By: ATH, LTD., a Texas limited partnership,
its General Partner

By: ATH, LLC, a Texas limited liability
company, its General Partner

By: [Signature]
Vicky T. Hollmig, Vice President

Date: 11/09/09

S & D DEVELOPMENT, L.L.C., a Texas limited
liability company

By: [Signature]
Steven M. Lange, President

Date: 11/9/2009
PURCHASER:

CITY OF NEW BRAUNFELS

By: ____________________________
    Michael E. Morrison, City Manager

Date: ____________________________

APPROVED AS TO FORM:

By: ____________________________
    Alan C. Wayland, City Attorney

Receipt of executed copy of this Agreement is hereby acknowledged this ___ day of ________, 2009.

First American Title Insurance Company

By: ____________________________
    Escrow Officer

See Exhibit 'A' Attached
Date: 11-25-09
GF# 1335506

Property Address: 7.5080 Acres - City Lincoln
New Braunfels, TX 78130

Escrow Agent acknowledges receipt of $500.00

Earnest Money in the form of (cash / check #153983) representing earnest money being deposited pursuant to the attached Earnest Money Contract. Escrow Agent (i) has no liability on a check until the check has cleared, (ii) shall not be liable for any interest or other charge on the Earnest money and shall be under no duty to invest or re-invest funds held by it at any time unless otherwise agreed in writing; and (iii) may receive financial benefits from depository institutions based, in whole or in part, on the maintenance of escrow deposits which may or may not include the Earnest Money described herein.

First American Title Insurance Company

By: Carolyn Crim

Janine McAda, Escrow Officer  jmcada@firstam.com
Maggie Howard, Escrow Officer  maggiehoward@firstam.com
Letty Cervantes, Escrow Asst.  leervantes@firstam.com
Carolyn Crim, Escrow Asst.  ccrim@firstam.com
City of New Braunfels
P.O. BOX 311747
NEW BRAUNFELS, TEXAS 78131-1747

VENDOR NUMBER       DATE       CHECK NUMBER       NET AMOUNT
2224       11/25/2009       153983       $****500.00

FIVE HUNDRED AND 00/100 DOLLARS

FIRST AMERICAN TITLE INS COMPANY
480 MILL STREET
NEW BRAUNFELS, TX 78130

[Signature]

BORDER CONTAINS MICROPINTING
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 31
Presenter/Contact – Shannon Mattingly, Planning Director
(830) 221-4055 – smattingly@nbtexas.org

SUBJECT: Approval of the first reading of an ordinance to amend the Code of
Ordinances, Article III. Main Street Advisory Board, Section 38-53, Term;
compensation.

BACKGROUND/RATIONALE:
Article III, Section 38-53 of the City’s code of ordinances reads: “Those members
appointed by city council shall serve a three-year term.”

On May 13, 2009, the Main Street Advisory Board voted to approve amendments to
their Bylaws. The ordinance is proposed to match these changes to the bylaws as
follows: “Those members appointed by the city council shall serve a three year
term except for the DTA designated member which shall serve a one (1) year term
with one-third of the board rotating off each year.”

This proposed change to Article III, Section 38-53 of the City’s code of ordinances
will reflect the same terms of office as the current Main Street Advisory Board Bylaws.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>City Plan/Council Priority:</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
N/A

BOARD/COMMISSION RECOMMENDATION:
The Main Street Advisory Board approved the current by-laws in May of 2009.

STAFF RECOMMENDATION:
Staff recommends approval.
ORDINANCE NO. 2010 - __________

AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING ARTICLE III. MAIN STREET ADVISORY BOARD, CHAPTER 38-53, TERM; COMPENSATION, OF THE NEW BRAUNFELS CODE OF ORDINANCES AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of New Braunfels, Texas is a member of the National Trust for Historic Preservation’s Texas Main Street Program and is required to have a Main Street Advisory Board; and

WHEREAS, the City Council of New Braunfels, Texas has determined that the Main Street Advisory Board shall draft bylaws for operation of the board in the conduct of business; and

WHEREAS, these bylaws shall not be in conflict with the provisions of this article or any ordinance of the City and shall be approved by the City Council, as shall any subsequent amendment; and

WHEREAS, the Main Street Advisory Board met on May 13, 2009 and approved the change in the terms as identified below: now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF NEW BRAUNFELS, TEXAS:

Section 1

THAT, Section 38-53 of the Code of Ordinances of the City of New Braunfels, Texas is hereby amended as follows:

Each member of the Main Street Advisory Board shall serve without compensation and those members appointed by the City Council shall serve a three year term, except for the DTA designated member which shall serve a one (1) year term, with one-third of the board rotating off each year.

Section 2

THAT, all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.
Section 3

THAT, all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

Section 4

THAT, if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

Section 5

This ordinance shall become effective immediately following its passage on the second and final reading.

PASSED AND APPROVED: First reading this the 14th day of December, 2009.

PASSED AND APPROVED: Second reading this the 11th day of January, 2010.

CITY OF NEW BRAUNFELS, TEXAS

By: ____________________________

R. BRUCE BOYER, Mayor

ATTEST:

MICHAEL A. RESENDEZ, City Secretary

APPROVED AS TO FORM:

__________________________

ALAN WAYLAND, City Attorney
SUBJECT: Approval of a resolution approving a recommendation of the New Braunfels Industrial Development Corporation to enter into a contract with the Symons Corporation with regard to providing a grant in an amount up to $165,000 for utility upgrades

BACKGROUND/RATIONALE:

Symons Corporation has an operation in New Braunfels and is expanding the same and moving equipment from San Antonio to New Braunfels. Symons currently employs 125 people in New Braunfels and will add additional positions once the facility expansion at 1155 Church Hill Drive is completed. The expansion should be completed in February, 2010. Symons submitted a grant request to the New Braunfels Industrial Development Corporation ("NBIDC") for assistance with the cost of the utility upgrades as a result of the facility expansion and movement of equipment to New Braunfels.

NBIDC has recommended that it provide a grant up to $165,000 for utility upgrades to Symons’ facility on Church Hill Drive provided that Symons provides additional jobs in New Braunfels and documents through invoices the amount of money spent for utility upgrades. Symons anticipates spending at least one million dollars ($1,000,000) on the expansion construction. Symons has committed to providing at least sixteen (16) additional jobs within 24 months of the date of completion of the expansion. Furthermore, Symons will be obligated to retain these new positions for a minimum of seven (7) years.

The contract with Symons Corporation shall contain clawback provisions if the job levels are not maintained. The IDC Board met on November 19, 2009, and approved submitting this recommendation for approval to the City Council.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>X</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>City Plan/Council Priority:</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:

An amount up to $165,000 from IDC’s funds

BOARD/COMMISSION RECOMMENDATION:
New Braunfels Industrial Development Corporation Board recommends approval.

**STAFF RECOMMENDATION:**

Staff recommends approval of Resolution No. 2009-R ___.

RESOLUTION NO. 2009-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, APPROVING A RECOMMENDATION OF THE NEW BRAUNFELS INDUSTRIAL DEVELOPMENT CORPORATION, TO ENTER INTO A CONTRACT WITH SYMONS CORPORATION WITH REGARD TO PROVIDING IT WITH A GRANT IN THE AMOUNT UP TO $165,000 FOR UTILITY UPGRADES; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of New Braunfels Industrial Development Corporation ("IDC") Board of Directors met on November 19, 2009, to consider a request from Symons Corporation for a grant for utility upgrades with regard to the expansion of its facility located at 1155 Church Hill Drive in New Braunfels; and

WHEREAS, Symons Corporation, as a requirement to receiving the grant for the utility upgrades, has agreed to relocate equipment from its San Antonio operation and add additional jobs at its facility in New Braunfels; and

WHEREAS, the IDC Board of Directors held a public hearing on November 19, 2009, to solicit public comment with regard to Symons Corporation’s grant request; and

WHEREAS, the IDC Board of Directors, after discussing the request, voted to approve entering into a contract with Symons Corporation for a grant in the amount up to $165,000 for utility upgrades with regard to the expansion of its facility located at 1155 Church Hill Drive in New Braunfels;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1: That the recommendation of the New Braunfels Industrial Development Corporation to provide a grant to Symons Corporation in the amount up to $165,000 for utility upgrades with regard to the expansion of its facility located at 1155 Church Hill Drive in New Braunfels is hereby approved with the conditions that:

1. Upon the completion of the expansion and utility upgrades (anticipated to be completed in February, 2010), Symons Corporation will add to its existing local employment of 125 people at least sixteen (16) additional employees within twenty-four (24) months of the date of the completion of the expansion and utility upgrades. The new positions shall be retained for a minimum of seven (7) years; and

2. The grant will be funded by the IDC upon request(s) being submitted by Symons Corporation with invoices attached reflecting the cost of the utility upgrades.
SECTION 2: That this Resolution shall become effective from and after the date of its passage.

PASSED, ADOPTED AND APPROVED this 14th day of December, 2009.

CITY OF NEW BRAUNFELS, TEXAS

By: ____________________________
   R. Bruce Boyer, Mayor

ATTEST:

_______________________________
Michael A. Resendez, City Secretary
SUBJECT: Approve the appointment of two individuals to the Main Street Advisory Board, one for a term ending December 31, 2012, and one for a term ending December 31, 2010

BACKGROUND/RATIONALE:

Notice of three regular vacancies on the Main Street Advisory Board were advertised from November 3, 2009 to December 7, 2009. During the application period, one qualified application was received:

Ross Fortune, 176 Landa St. #233

Additionally, the Downtown Association has nominated Geri Jordan, 1179 Barbarosa, to assume its annually rotating position on the board. The Association’s nomination is attached.

Applicant’s current & prior service on Boards and Commissions

These individuals do not have any current or prior service on City boards and commissions.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>City Plan/Council Priority:</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:

N/A

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends that the City Council consider appointing Ross Fortune to the Main Street Advisory Board for a term ending December 31, 2012, and appointing Geri Jordan to the Main Street Advisory Board for a term ending December 31, 2010.
CITY OF NEW BRAUNFELS
ADVISORY BOARDS & COMMISSIONS QUESTIONNAIRE/APPLICATION

Name: ROSS FORTUNE
Street Address: 170 LANDA ST, #233
City, State & Zip: NEW BRAUNFELS TX 78130
Phone Number: (830) 660-6002 Home (830) 299-4150 Business
E-mail: ross@cheophoenixsaloon.com
Employer: PHOENIX SALOON
Occupation: BUSINESS OWNER/WRITER
Business Address: 193 W. SAN ANTONIO ST, STE 216, NB

How long have you been a resident of New Braunfels? 2 YEARS

Are you a qualified voter of the City? NOT YET (FULL US CITIZENSHIP PENDING)

Please give a brief resume, including education, past employment, any special background or qualifications you have for serving on this board/commission. Use attachments if necessary.

SEE SEPARATE SHEET

Please state why you wish to serve the City of New Braunfels as a member of a board, commission, or committee. Use attachments, if necessary.

SEE SEPARATE SHEET
Do you currently serve on a City board or commission? Yes ___ No __
If yes, which board or commission? ____________________________ __
How long? ____________________________ __
Do you have any relatives who work for the City of New Braunfels? Yes__ No ___
If so, who? ____________________________ __
Do you receive any direct compensation or gain from the City of New Braunfels?
Yes__ No ___
If so, what type? ____________________________ __
Do you receive any direct compensation or gain from any governmental body?
Yes__ No ___
If so, what type? ____________________________ __

If selected by the New Braunfels City Council, on which boards/commission would you be willing to serve? Please be specific. This application will remain active for ninety (90) days, unless you are appointed to a board or commission. You must reapply, if you would like to be considered for another board or commission.

1. ________________________________
2. ________________________________
3. ________________________________

SIGNATURE: __________________ DATE: 12/4/09
Ross Fortune Brief Resume...

2007-2009
Purchased the historic Schmidt Building at 193 W. San Antonio St, New Braunfels in December 2007. The building was home to various saloons from 1871-1918 - most notably the Phoenix Saloon (where chili powder was invented in 1894). I have been working closely with Historic Preservation Officer Cherise Bell on carefully restoring and renovating the building as an historic bar, chili parlor and music venue. The Phoenix Saloon is set to re-open in January 2010.

2006-2007
Commissioned by Adeo Interactive Tours and Austin Convention & Visitors Bureau to produce an audio walking tour of downtown Austin. Commissioned by Adeo and Bristol CVB (in conjunction with The Birthplace of Country Music Alliance and Bristol Main Street Program) to write a self-guided audio walking tour for Historic Downtown Bristol, Virginia-Tennessee. This tour was awarded the top honor for 'Heritage Tourism' at the Virgo Travel & Tourism Awards.

2005-2008
US Bureau Chief for the British Underground, acting as liaison and consultant for those members of the British Music Industry (musicians, record companies, managers, agents, radio, TV, journalists etc) who travel to Austin, Texas for the annual South-By-South-West Music festival and conference.

2004-present
Freelance journalist (specializing in music and travel) writing for publications such as The Times of London newspaper, Mojo magazine, Time Out New York and Time Out Chicago.

2004
Moved from London, England to Austin, Texas.

2001-2005
Contributed to books such as '1001 Albums You Must Hear Before You Die' (Cassell, 2005), 'The Mammoth Rock 'n' Roll Almanac' (Robinson, 2002) and 'The Musician's Bible' (Penguin, 2001).

2001
Commissioned by Penguin Viking to write a biography of Johnny Cash. Spent time with Cash's family in Virginia but withdrew from the project out of respect for Cash's failing health.

1999-2004
Served as elected member of the management committee of the 12 Bar Club in London.

1994-2004
Music Editor, Time Out London magazine

1981-1993
Manager and/or booking agent for various music bars in Manchester, Liverpool and London. Contributor to BBC Radio programs 'Street Life' and 'Rockaround'. Worked in Manchester with producer Martin Hannett on Granada TV music program 'Independent's Day'. Researcher for the music TV show 'The Tube'. Freelance journalist for New Musical Express, Sounds, Melody Maker, Jamming, Zig Zag, City Life and Time Out London. Music and Books editor at Next 14 magazine in Liverpool.

1981
Honors degree in English Literature, University of Lancaster, England.
Ross Fortune Why I wish to serve the City of New Braunfels as a member of a board, commission, or committee...

I am committed to preserving and promoting the historic downtown of New Braunfels. I love the city, value it's people and cherish it's past.

With a passion for history and heritage I have traveled extensively around the USA, witnessing both the rejuvenation and neglect of many similarly historic downtown areas.

New Braunfels is growing fast. Growth and change is inevitable but I believe it is important we respect and protect that which makes the city special, namely it's history, heritage, buildings and culture.

Moving to New Braunfels in December 2007 (to wholeheartedly embrace the historic renovation of the Schmidt Building/Phoenix Saloon), I believe I not only possess a wealth of potentially valuable experience, but also still view the area through an informed outsider's caring but objective eye.

Ever mindful of New Braunfels' history and heritage, I would relish the opportunity to help shape the city's future whilst simultaneously celebrating and preserving it's past.
CITY OF NEW BRAUNFELS
ADVISORY BOARDS & COMMISSIONS QUESTIONNAIRE/APPLICATION

Name: Geraldine (Geri) Jordan
Street Address: 1179 Barbarosa Rd
City, State & Zip: New Braunfels, Tx 78130
Phone Number: 830-608-4806 Home 830-608-4222 Business
E-mail: gnjordan@aol.com
Employer: Chase Bank
Occupation: Branch Manager
Business Address: 111 W San Antonio St New Braunfels Tx 78130

How long have you been a resident of New Braunfels? 57 Years
Are you a qualified voter of the City? yes

Please give a brief resume, including education, past employment, any special background or qualifications you have for serving on this board/commission. Use attachments if necessary.

After graduating New Braunfels High School, I soon after started my career in banking. I have worked in several areas, the last 15 years as Branch Manager. Over the years I have seen a change in the needs of local businesses and feel that with my experience in the financial industry, I would add value to the board.

Please state why you wish to serve the City of New Braunfels as a member of a board, commission, or committee. Use attachments, if necessary.

I am requesting to replace the New Braunfels Downtown Association past President position.
Do you currently serve on a City board or commission? Yes ______  No ______  
If yes, which board or commission? ____________________________________________  
How long? ___________________________________________________________________  
Do you have any relatives who work for the City of New Braunfels? Yes ______  No ______  
If so, who? __________________________________________________________________  
Do you receive any direct compensation or gain from the City of New Braunfels? Yes ______  No ______  
If so, what type? __________________________________________________________________  
Do you receive any direct compensation or gain from any governmental body? Yes ______  No ______  
If so, what type? __________________________________________________________________  

If selected by the New Braunfels City Council, on which boards/commission would you be willing to serve? Please be specific. This application will remain active for ninety (90) days, unless you are appointed to a board or commission. You must reapply, if you would like to be considered for another board or commission.  

1. Main Street/Downtown Development Board 
2. _____________________________________________________________ 
3. _____________________________________________________________ 

SIGNATURE: [Signature]  DATE: 11/20/09
December 8, 2009

Dear New Braunfels City Council:

The Downtown Association supports the appointment of Geri Jordon, 2009 DTA President, to the Main Street Advisory Board. This appointment is to fill the vacancy of the Downtown Association representative, Carol Johnson, on the Main Street Board.

Sincerely,

Nancy Bower, 2010 DTA President
SUBJECT: Approve the appointment of one individual to the Community Development Advisory Committee for a term ending December 13, 2012.

BACKGROUND/RATIONALE:

Notice of three regular vacancies on the Community Development Advisory Committee were advertised from November 3, 2009 to December 7, 2009. During the application period, one qualified application was received:

Barbara Caverly, 2026 Castleberry Ridge

Applicant's current & prior service on Boards and Commissions

Barbara Caverly served on the Library Advisory Board from September 23, 2002 to September 26, 2005. Ms. Caverly's attendance records are no longer available.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

City Plan/Council Priority:

FISCAL IMPACT: N/A

BOARD/COMMISSION RECOMMENDATION: N/A

STAFF RECOMMENDATION:

Staff recommends that the City Council consider appointing Barbara Caverly to the Community Development Advisory Committee for a term ending December 31, 2012.
Barbara Caverly

2024 Castleberry Ridge

New Braunfels, TX 78130

125-4404 Home 512-396-6749 Business

bcaverly01@yahoo.com

Gary Job Corps

Work based Learning Specialist

P.O. Box 967, San Marcos, TX 78667

14 yrs.

Yes

I'm simply interested in serving on the Community Development Board because I care very much for this town and its people. I don't have any special background except a true interest. I have attached my resume.

I was very active in the New Braunfels Band Boosters for 8 yrs. My children no longer live at home. I have the time and interest in serving on a Board for New Braunfels. I want to get back into becoming involved in my community.
Do you currently serve on a City board or commission? Yes ______ No ✓

If yes, which board or commission? ____________________________________________

How long? _________________________________________________________________

Do you have any relatives who work for the City of New Braunfels? Yes__ No ✓

If so, who? _________________________________________________________________

Do you receive any direct compensation or gain from the City of New Braunfels?
Yes__ No ✓

If so, what type? ____________________________________________________________

Do you receive any direct compensation or gain from any governmental body?
Yes__ No ✓

If so, what type? ____________________________________________________________

If selected by the New Braunfels City Council, on which boards/commission would you be
willing to serve? Please be specific. This application will remain active for ninety (90) days,
unless you are appointed to a board or commission. You must reapply, if you would like to be
considered for another board or commission.

1. Community Development

2.______________________________________________________________

3.______________________________________________________________

SIGNATURE: Barbara Canary DATE: 11-11-09
Barbara J. Caverly

2026 Castleberry Ridge
830-625-4404 (home)

New Braunfels, Texas 78130
512-738-1468 (cell)
bcaverly01@yahoo.com

Education:
Bachelor Degree in Applied Arts and Sciences, Texas State University, 1999

Experience:
Work Based Learning Specialist, Gary Job Corps, San Marcos, Texas
March, 2009 to Present
Place students in need of work based learning (internships) for various positions both on and off Center.
   Establish off Center sites in Austin, San Marcos, New Braunfels and San Antonio
   Provide workshops for students about employability skills and expectations of the work based learning program.
   Process and input student information in the data base.

Human Resources Specialist, Gary Job Corps, San Marcos, Texas
October, 2008 to March, 2009
Manage all aspects of job offers, including drug screens, background checks, and reference checks
   Participate in New Employee Orientation including benefit information
   Process and input all new employee information in data base weekly, bi-weekly as well as various monthly reports.

Counselor: Gary Job Corps, San Marcos, Texas
December, 2007 to October, 2008
Case Management of approximately 75 students which included counseling students in personal issues, career options and educational options.
   Performed evaluations of each student on a monthly basis.
   Participated in student behavior review boards when necessary
   Managed case management procedures such as monthly case notes, folder review, personal and emergency leaves, monthly audits of folders
   Completed weekly and monthly reports

Administrative Assistant, Gary Job Corps, San Marcos, Texas
August 2005 - December, 2007
Manage the Career and Technical Department, which includes 3 managers, 56 instructors and 26 trades
   Maintain records of vacation and sick days for each staff member, prepare necessary payroll information on a weekly basis for all department staff
   Supervise 3-4 student workers
   Counsel students on trade choices, educational opportunities and life changing decisions
Maintain many data bases
Manage department budget of $50,000
Order supplies and equipment for department and trades
Process student achievement records
Set up and participate in interviews
Maintain student waiting list and instructor load list
Prepare packets, agendas, handouts for weekly meetings
Proficient in Excel, Word, Outlook, Power Point, Gary data base
Train instructors on computers, programs, data base, procedures
Input information into the Gary data base
Maintain student files
Draft letters and memos
Create and process student awards at bi-monthly meetings
Prepare reports for weekly meetings

Ad Set Supervisor, Kohl’s Dept. Store, New Braunfels, Texas
August 2004 - April 2005
Managed Ad Set team of 12 employees to put up and take down appropriate signs as determined.
Coordinated the Family and Friends program by recruiting and interviewing employees for the grand opening weekend. This included acquiring all necessary information for the hiring process such as background checks, references and employment record.

Coordinator of Youth Ministry, Sts. Peter and Paul Church, New Braunfels, Texas
June 2002 – August 2004
Directed the High School Religious Education Program, for over 200 students.
- Coordinated the Catholic Youth Day for 450 high school students
- Supervised 22 volunteer teachers and over 50 parent volunteers
- Facilitated student retreats, mission trips and service projects
- Counseled students on educational choices, spiritual issues and personal issues
- Supervised and participated in national and regional youth conferences
- Coordinated Confirmation program including the service and reception
- Managed fund raising projects and budget
- Made presentations to parents and teachers
- Wrote, edited, printed and distributed quarterly newsletters

Sales Representative, Schlitterbahn Waterpark and Resort, New Braunfels, Texas
August 2001 – May 2002
Sold company picnics to corporations in the San Antonio and Austin area.
- Booked and hosted over $110,000 in company picnics
- Participated in hospitality meeting and trade shows

Coordinator of the College and Career Center, New Braunfels High School, New Braunfels, Texas
August 2002 – August 2001
Coordinated the activities of the Center in a computer lab environment.
- Counseled students on career and higher education options
- Maintained computers, resources, books
- Coordinated and implemented the scholarship program
- Organized the senior awards banquet
Volunteer Services:
New Braunfels High School Band Booster President
Religious Education teacher, Sts. Peter and Paul
San Marcos Public Library Board Member
New Braunfels Public Library Board Member
New Braunfels Middle School Site Based team Member
City of New Braunfels Comprehensive Planning Team Member

References will be sent upon request
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 3-L
Presenter/Contact – Alan C. Wayland, City Attorney
(830) 221-4284 – awayland@nbtx.org

SUBJECT: Approval of a resolution for the purchase of property for the Walnut Avenue expansion project from JP Champion Ranch, Ltd., and authorizing the City Manager to execute all necessary documents.

BACKGROUND/RATIONALE:
The City Council approved a resolution on March 23, 2009 authorizing the acquisition of property rights including acquiring the property through the process of eminent domain. The City hired outside legal representation and a Special Commissioner's Hearing was scheduled for November 18, 2009. On November 18th, 2009 a settlement was reached.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>N/A</th>
<th>City Plan/Council Priority:</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Strategic Priority: Infrastructure Objective 3: Implement ongoing program of infrastructure construction and maintenance.</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
$725,000.00
Funds have been included in the Fiscal Year 2009/10 budget to cover these expenditures.

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Staff recommends approval of the Resolution.
RESOLUTION NO. 2009—


WHEREAS, the City Council of the City of New Braunfels, Texas, upon consideration of the matter, has determined that there is a public necessity for the welfare of the City of New Braunfels and the public-at-large, to improve Walnut Avenue between South Business IH-35 and Katy Street within the City by widening and landscaping the same; and

WHEREAS, in accordance with the above, the City Council of the City of New Braunfels, Texas, hereby finds that it is in the public interest to acquire fee simple title to real property for the above stated municipal purpose; and

WHEREAS, the property to be acquired for such purpose consists of a tract of land of approximately 0.23 acres and known as 1096 S. Business IH 35, New Braunfels, Texas; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1: The City Council hereby finds and determines that it is necessary for the welfare of the City and its citizens and is in the public interest to acquire fee simple title to approximately 0.23 acres of land more fully described as Lot 13, Block 1, Subdivision of Blocks 1, 2, and 3, Southwest New Braunfels, New City Block 4050, City of New Braunfels, Comal County, Texas, for right-of-way and associated municipal purposes for the widening of Walnut Avenue between South Business IH-35 and Katy Street, including utility relocation, landscaping, and other improvements in connection with the reconstruction project.

SECTION 2: The City Manager, or his designee, is hereby authorized on behalf of the City to execute the necessary documents for the purchase of the property in the amount of $725,000.00 plus closing costs.

SECTION 3: The findings of fact, recitations and provisions set out in the preamble of this Resolution are adopted and made a part of the body of this Resolution, as fully as if the same were set forth herein.

PASSED AND APPROVED this the 14th day of December, 2009.
CITY OF NEW BRAUNFELS, TEXAS

R. Bruce Boyer, Mayor

ATTEST:

Michael A. Resendez, City Secretary
Agenda Item No. 3-M
Presenter/Contact – Mary Quinones
(830) 221-4389 – mquinones@nbtexas.org

SUBJECT: Approval of the purchase of a Super Shot 125 crack sealer with diesel compressor for the Public Works Department from Crafco, Inc. through the Houston Galveston Area Council (HGAC) contract

BACKGROUND/RATIONALE:
The Public Works Department has included in their budget funding for the purchase of a new crack sealer. This equipment will make the street maintenance crews more efficient and effective, allowing them to complete more street repairs in-house. The FY 2009-10 Adopted Budget anticipated this purchase, funding the equipment and reducing contracts for street maintenance by $100,000. Purchase of this equipment has a positive net impact on the City’s budget.

It is being purchased through a Houston Galveston Area Council (HGAC) contract with Crafco, Inc. The price for this Crafco Super Shot 125 crack sealer with diesel compressor is $47,973.52.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>X Yes</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
The FY 2009-10 Adopted Budget includes funding for this equipment purchase for the Public Works Department. A total of $48,000 is included for this crack sealer. Therefore, sufficient funds are available for this purchase.

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Approval of the purchase of a Super Shot 125 crack sealer with diesel compressor for the Public Works Department from Crafco, Inc. through the Houston Galveston Area Council (HGAC) contract
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 3-N
Presenter/Contact – Alan C. Wayland, City Attorney
(830) 221-4284 – awayland@nbtx.org

SUBJECT: Approval of a resolution for the purchase of 629 Crest Lane, New Braunfels, Texas, authorizing the City Manager to execute all necessary documents and the appropriate budgetary transfer.

BACKGROUND/RATIONALE:

This property is in the flood zone on the Guadalupe River near Common Street. The City owns most of the lots in the area.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>N/A</th>
<th>City Plan/Council Priority:</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Strategic Priority: Quality of Life</td>
</tr>
<tr>
<td></td>
<td>Objective 14b: Review opportunities to protect the Guadalupe River</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:

The cost for the purchase of the proposed property is $65,000. The current budget for acquisition of river front properties in the flood zone is $275,000 and all these funds have been expended on the purchase of other properties. Therefore, a budget transfer is required to fund this purchase. Staff recommends approval of the following transfer.

2007 Certificates of Obligation Capital Improvement Fund
From: Camp Comal Land $65,000
To: River properties $65,000

This transfer still leaves sufficient funds in the Camp Comal project to fully fund the purchase of that property.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of the Resolution and the appropriate budgetary transfer.
RESOLUTION NO. 2009R-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, DETERMINING THE PUBLIC NECESSITY FOR PROTECTING THE FLOOD ZONE OF THE GUADALUPE RIVER; AUTHORIZING THE ACQUISITION OF THE PROPERTY KNOWN AS 629 CREST LANE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels, Texas, upon consideration of the matter, has determined that there is a public necessity for the welfare of the City of New Braunfels and the public-at-large, to protect the flood zone of the Guadalupe River; and

WHEREAS, in accordance with the above, the City Council of the City of New Braunfels, Texas, hereby finds that it is in the public interest to acquire fee simple title to real property for the above stated municipal purpose; and

WHEREAS, the real property to be acquired for such purpose consists of a tract of land known as 629 Crest Lane, New Braunfels, Texas; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1: The City Council hereby finds and determines that it is necessary for the welfare of the City and its citizens and is in the public interest to acquire fee simple title to Lot 16, Block 7, Rivercrest Heights 5A Subdivision, Comal County, Texas, with a property address of 629 Crest Lane, New Braunfels, Comal County, Texas, in order to protect the flood zone of the Guadalupe River.

SECTION 2: The City Manager, or his designee, is hereby authorized on behalf of the City to execute the Land Purchase Agreement which is attached hereto as Exhibit "A" and incorporated herein.

SECTION 3: The findings of fact, recitations and provisions set out in the preamble of this Resolution are adopted and made a part of the body of this Resolution, as fully as if the same were set forth herein.

PASSED AND APPROVED this the 14th day of December 2009.

CITY OF NEW BRAUNFELS, TEXAS

R. Bruce Boyer, Mayor

ATTEST:
Michael A. Resendez, City Secretary
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 3

Presenter/Contact – Shannon Mattingly, Planning Director
(830) 221-4055 – smattingly@nbtexas.org

SUBJECT: Approval of a license agreement between the City of New Braunfels and Mill Street Square, LLC.

BACKGROUND/RATIONALE:
Mill Street Square, LLC, (McAdoo's Restaurant) has installed landscaping and irrigation into what has been determined to be the City of New Braunfels’ right-of-way. In order to allow this landscaping and irrigation to stay in place, it is the recommendation of City staff to request City Council to approve a license agreement to allow for these improvements to exist in the right-of-way. As part of this agreement, Mill Street Square, LLC, understands that the City has the authority at anytime to remove the improvements with no liability to the City. In addition, these improvements cannot be modified in the future without the consent of the City.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>City Plan/Council Priority:</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
N/A

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Staff recommends approval.
LICENSE AGREEMENT

The City of New Braunfels, a municipal corporation and political subdivision of the State of Texas situated in Comal County, Texas ("the City" or "Licensor"), and Mill Street Square, LLC (the "Licensee"), enter into this License Agreement ("Agreement") on this the 1st day of December, 2009, upon the terms and conditions set forth below.

Whereas, Licensor is the owner of the real property (hereinafter, "Property"), which is the public right-of-way as depicted in Exhibit "A", attached hereto and incorporated herein; and

Whereas, the Articles of Incorporation for Mill Street Square LLC were filed with the Secretary of State on 7-28-08; and

Whereas, Licensee desires to exercise certain rights and privileges upon public rights-of-way located within the Property; and

Whereas, Licensor desires to grant Licensee certain rights and privileges upon public rights-of-way within the Property; and

I. PURPOSE OF LICENSE AGREEMENT. The City grants to Licensee permission to use the licensed property for the following purposes only:

Installation, construction, operation, maintenance, upgrade, and repair approved City Right of Way along Mill Street at 139 N. Castell, landscaping and irrigation systems in, over and upon public rights-of-way abutting W. Mill Street as indicated in Exhibit "A" attached hereto (the "Improvements").

The above-described property, hereinafter referred to as the "licensed property," is further shown in Exhibit "A" attached to this Agreement and incorporated by reference for all purposes.

The City makes this grant solely to the extent of its right, title and interest in the licensed property, without any express or implied warranties.

Licensee agrees that: (A) the maintenance of the Improvements permitted by this Agreement shall be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted; (B) Licensee will not enlarge, reconstruct or replace the Improvements on the licensed property without the express written consent of the Licensor; and (C) Licensee will not construct any additional Improvements, structures or facilities on the licensed property without the express written consent of the Licensor.

Any provision herein to the contrary notwithstanding, Licensee shall be liable for, and shall indemnify and hold the City harmless from all damages, causes of action, and claims arising out of or in connection with Licensee's installation, operation, maintenance or removal of the improvements permitted under this Agreement.

II. ANNUAL FEE. No annual fee, save and except any permit fees required under ordinance of
the City shall not be waived, shall be due in connection with this License Agreement.

III. THE CITY'S RIGHTS TO LICENSED PROPERTY. This Agreement is expressly subject and subordinate to the present and future right of the City, its successors, assigns, lessees, grantees, and Licensee, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, franchised public utilities, rights-of-way, roadways, or streets on, beneath, or above the surface of the licensed property.

Said uses of the licensed property by the City are permitted even though such use may substantially interfere with or destroy Licensee's use of the licensed property, or the Improvements. In case of a declared emergency, damage to or destruction of Licensee's property shall be at no charge, cost, claim, or liability to the City, its agents, contractors, officers, or employees.

Notwithstanding any provisions in this Agreement to the contrary, the City retains the right to enter upon the licensed property, at any time and without notice, assuming no obligation to Licensee, to remove any of the licensed improvements or alterations thereof whenever such removal is deemed necessary for: (a) exercising the City's rights or duties with respect to the licensed property; (b) protecting persons or property; or (c) the public health or safety with respect to the licensed property.

IV. INSURANCE. Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than $600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall specifically name the City of New Braunfels as an additional-insured. This insurance coverage shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement. Licensee shall be responsible for any deductibles stated in the policy. A true copy of each such policy shall be delivered to the City Manager of City within thirty (30) days of the effective date of this Agreement.

Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until forty-five (45) days after the City has received written notice as evidenced by a return receipt of registered or certified mail.

V. INDEMNIFICATION. Licensee shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by the Licensee's construction, maintenance or use of the licensed property. This indemnification provision, however shall not apply to any claims, suits, damage, costs, losses, or expenses arising solely from the negligent or willful acts of the City; provided that for the purposes of the foregoing the City's act of entering into this Agreement shall not be deemed to be a "negligent or willful act."
VI. CONDITIONS.

A. Licensee's Responsibilities. Licensee will be responsible for any damage to or relocation of the Improvements. Further, Licensee shall reimburse the City for all costs of replacing or repairing any property of the City or of others which was damaged or destroyed as a result of activities under this Agreement by, or on behalf of, Licensee.

B. Maintenance. Licensee shall maintain the licensed property by keeping the area free of debris and litter. Licensee shall maintain the landscaping and irrigation system at Licensee's sole expense according to the minimum standards established by the City; noncompliance shall be corrected within seven (7) days following receipt of a written request by the City. Removal of dead or dying plants shall also be handled by Licensee at its expense, as required by the City; such removal shall be completed within ten (10) days following receipt of a written request by the City.

C. Removal or Modification. Licensee agrees that removal or modification of the Improvements shall be a Licensee's expense. Said removal shall be at Licensee's sole discretion, except where otherwise provided by this Agreement. Any modifications shall be made based on an approved detailed site plan. This Agreement, until its expiration or revocation shall run as a covenant on the land adjoining the above-described real property, and the terms and conditions of this Agreement shall be binding on any subsequent owners or holders of the property. Licensee shall cause any immediate successors-in-interest to have actual notice of this agreement.

D. Assignment. This license granted in this Agreement is personal to Licensee or any property owners association created to maintain Licensee or any property owners association created to maintain Licensee's Improvements. This Agreement is not assignable. Any assignment of this agreement will automatically terminate the license.

E. Default. In the event that Licensee fails to maintain the licensed property or otherwise comply with the terms or conditions as set forth herein, then the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, unless a shorter time frame is provided herein, and, if Licensee does not satisfactorily remedy the same within the thirty (30) day period, the City may perform the work or contract for the completion of the work. and Licensee agrees to pay within thirty (30) days of written demand by the City, all reasonable costs expenses incurred by the City in completing the work.

Licensee Address
Mill Street Square LLC
C/O Patrick J. Wiggins
130 N. Castell

Licensor Address
City of New Braunfels
P. O. Box 311747
New Braunfels, Texas 78131-1747
Attention: City Manager
VII. COMMENCEMENT AND TERMINATION BY ABANDONMENT. This Agreement shall begin with the effective date and continue thereafter for so long as the licensed property shall be used for the purposes set forth herein. If Licensee abandons the use of all or any part of the licensed property for such purposes set forth in this Agreement, then this Agreement, as to such portion or portions abandoned, shall expire and terminate following thirty (30) days written notice to the Licensee if such abandonment has not been remedied by Licensee within such period; the City shall thereafter have the same complete title to the licensed property so abandoned as though this Agreement had never been made and shall have the right to enter on the licensed property and terminate the rights of Licensee, its successors and assigns hereunder. All installations of Licensee not removed shall be deemed property of the City as of the time abandoned.

VIII. TERMINATION.

A. Termination by Licensee. This Agreement may be terminated by Licensee by delivering written notice of termination to the City not later than ninety (90) days before the effective date of termination. If Licensee so terminates, then it shall remove all installations that it made from the licensed property within the thirty day notice period at its sole cost and expense. Failure to do so shall constitute a breach of this Agreement.

B. Termination by City. Subject to prior written notification to Licensee or its successor-in-interest, this Agreement is revocable by the City if:

1. The licensed improvements, or a portion of them, interfere with the City's right-of-way;

2. Use of the right-of-way area becomes necessary for a public purpose;

3. The licensed improvement, or a portion of them, constitute a danger to the public which the City deems not be remediable by alteration or maintenance of such improvements;

4. Despite thirty (30) days written notice to Licensee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or

5. Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to any insurance or license fee requirements specified herein.

If Licensee abandons or fails to maintain the licensed property, and the City receives no substantive response within thirty (30) days following written notification to Licensee, then the City may remove and/or replace the Improvements and collect from Licensee the City's actual expenses incurred in connection therewith.

IX. EMINENT DOMAIN. If eminent domain is exerted on the licensed property by paramount authority, then the City will, to the extent permitted by law, cooperate with Licensee to
effect the removal of Licensee's affected installations and improvements thereon, at Licensee's sole expense. Licensee shall be entitled to retain all monies paid by the condemning authority to Licensee for Licensees's installations taken, if any.

X. INTERPRETATION. Although drawn by the City, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

XI. APPLICATION OF LAW. This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

XII. VENUE. Venue for all lawsuits concerning this Agreement will be in the Williamson County, Texas.

XIII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT. This Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

XIV. ASSIGNMENT. Licensee shall not assign, sublet or transfer its interest in this Agreement without the written consent of the City, which consent shall not be unreasonably withheld. Subject to the assignee's compliance with the insurance requirements set forth herein, if any, Licensee shall furnish to the City a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, address, and contact person of the assignee, along with the date of assignment or transfer.

ACCEPTED, this the _____ day of ______, 2009.

LICENSOR  City of New Braunfels

By: ________________________________
Name: R. Bruce Boyer
Title: Mayor

LICENSEEE, Patrick J. Wiggins

By: ________________________________
Name: Patrick J. Wiggins
Title: Managing Member

THE STATE OF TEXAS

COUNTY OF Comal

This instrument was acknowledged before me on this the ___ day of ____________ 2009, by R. Bruce Boyer, Mayor, City of New Braunfels, Texas, on behalf of the City.

Notary Public - State of Texas

THE STATE OF TEXAS

COUNTY OF COMAL

This instrument was acknowledged before me on this the ___ day of DEC., 2009, by ________, Patrick J. Wiggins.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:
City of New Braunfels
P. O. Box 319
New Braunfels, Texas 78646-0319
Attn: City Secretary

Johanna L. Bender
Notary Public
State of Texas
Com. Expires: 09/29/2013
Mill Street

licensed property

Exhibit "A"

Castell Ave.
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 3-P
Presenter/Contact – Robert Camarena, Assistant City Manager
(830) 221-4280 – rcamareno@nbtexas.org

SUBJECT: Approval of a resolution authorizing the City Manager to submit an application to the Texas Water Development Board for a regional water facility planning grant.

BACKGROUND/RATIONALE:

The City of New Braunfels CIP includes plans for over $60 million in improvements to the city’s parks system. Developing and maintaining the city’s parks requires water for irrigation. The city’s Comal River water rights are a valuable resource, but can be restricted during extended drought conditions and are adequate only for the city’s golf course. The recent drought has shown that irrigation of the city’s growing parks system with potable water may not be practical or consistent with the city’s commitment to water conservation.

The Texas Water Development Board (TWDB) manages an annual competitive grants process for entities that wish to initiate water facility planning studies that are of a regional nature. Staff proposes that the City of New Braunfels submit an application for a TWDB Regional Water Facility Planning Grant to conduct a study of the feasibility of the use of recycled water for irrigation of public parks. The primary objectives to the proposed planning that require careful integration and coordination are: 1) identify viable means of implementing the regional objective of conserving the Edwards Aquifer groundwater resources and Comal River surface water resources through water recycling and reuse 2) provide sustainable recreational resources for the citizens of New Braunfels; and 3) protect the community’s capital investment in public parks by providing a sustainable source of irrigating public parklands.

Both the South Central Texas Regional Water Plan and the Edwards Aquifer Authority’s Comprehensive Water Management Plan acknowledge the use of recycled water for irrigation as a viable water conservation technology. This study will evaluate the feasibility of transporting effluent from NBU’s wastewater treatment plants for irrigation of public parklands. The requested TWDB assistance will advance the regional evaluation of recycled water as a regional water conservation strategy. The San Antonio Water System’s (SAWS) recycled water system is an example of recycled water as a viable water supply management strategy. State funding of this proposed planning effort will provide valuable information regarding technical alternatives, capital and operating costs.
**ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:**

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
<th>City Plan/Council Priority:</th>
</tr>
</thead>
<tbody>
<tr>
<td>√</td>
<td>Yes</td>
<td>Strategic Priorities:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Objective 1b) - Identify facility needs in</td>
</tr>
<tr>
<td></td>
<td></td>
<td>anticipation of increasing service demands</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Objective 1c) – Seek opportunities for co-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>location of city facilities within the organization</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and with other public entities.</td>
</tr>
</tbody>
</table>

**FISCAL IMPACT:**

The proposed grant requires local matching funds of 50% of the proposed project cost that is offset by local in-kind services. The city’s commitment of cash funding is $65,768 which is 50% of the engineering proposal for the study. The total project budget of $174,721 includes $131,536 in engineering costs, plus $43,185 in in-kind services from the City and other partners. Requests have been made to EAA, GBRA, and NBU for in-kind services as part of the city’s local commitment. In-kind services are a commitment of staff time in the development and review of the proposed study. Funding for the city’s cash commitment of $65,768 would be the General Fund’s Non-Departmental Funds for Matching Grants in the approved 2009-2010 Budget.

**BOARD/COMMISSION RECOMMENDATION:**

N/A

**STAFF RECOMMENDATION:**

Staff recommends approval of the Resolution authorizing the city manager to submit an application to the Texas Water Development Board for a Regional Water Facility Planning Grant, authorizing the city manager to execute a contract resulting from said application, committing an amount not-to-exceed $65,768 from the adopted FY2009-2010 Budget as local matching funds, committing staff time as in-kind services in an amount of $20,185 for developing, reviewing, and administering the proposed study.
RESOLUTION NO. 2009R-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS AUTHORIZING THE CITY MANAGER TO SUBMIT A GRANT APPLICATION TO THE TEXAS WATER DEVELOPMENT BOARD FOR REGIONAL WATER SUPPLY PLANNING AND TO EXECUTE NECESSARY DOCUMENTS IF THE GRANT IS AWARDED TO THE CITY; COMMITTING MATCHING FUNDS FROM THE ADOPTED FY2009-10 CITY BUDGET; AUTHORIZING LOCAL IN-KIND SERVICES FOR THE STUDY; AND REQUESTING THE PARTICIPATION OF OTHER ENTITIES.

WHEREAS, The City of New Braunfels is a home-rule municipality with all powers enabled to it by the State Legislature under Chapter 51 of the Local Government Code; and,

WHEREAS, The City of New Braunfels receives water and wastewater utility services from New Braunfels Utilities (NBU) for the public health and safety of the Citizens of New Braunfels that are, in part, dependent upon the reliability of the Edwards Aquifer; and,

WHEREAS, The City of New Braunfels owns, operates, and maintains a system of public parklands for the recreational and economic benefit of the Citizens of, and visitors to, New Braunfels and Comal County; and,

WHEREAS, the City has used a comprehensive capital program approach for managing the improvements to and expansion of the City of New Braunfels parks system, and,

WHEREAS, the City owns certain water rights to the Comal River, and,

WHEREAS, the City now desires to evaluate alternatives to its reliance on the Comal River and Edwards Aquifer for irrigation of existing and future parklands, and,

WHEREAS, the Texas Water Development Board offers grants to political subdivisions of the State of Texas for the evaluation of the most feasible alternatives to meet water supply facility needs, estimate the costs associated with implementing feasible water supply facility alternatives, and identify institutional arrangements to provide water supply services, and,

WHEREAS, the City of New Braunfels parks system is a critical part of the area economy beyond the jurisdiction of the City of New Braunfels; and

WHEREAS, the City of New Braunfels recognizes the importance of conservation in the use of water from the Comal River and groundwater from the Edwards Aquifer; and,
WHEREAS, the City of New Braunfels recognizes the need to offer New Braunfels Utilities (NBU), Guadalupe-Blanco River Authority (GBRA), and Edwards Aquifer Authority (EAA) a participating role in the grant application, and,

WHEREAS, the City of New Braunfels’ Adopted FY 2009-10 Budget includes funds which are dedicated for the purposes of expanding and improving the City’s parklands;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS THAT:

1) The City Manager is hereby authorized on behalf of the City to execute such applications as are necessary to be made to the Texas Water Development Board to apply for a Regional Water Facility Planning Grant from the Texas Water Development Board;
2) If awarded, the City Manager is hereby authorized on behalf of the City to execute such contract(s) with the Texas Water Development Board with regard to the grant;
3) Funds in an amount not-to-exceed $65,768 from the adopted FY2009-2010 Budget are hereby designated as local matching funds;
4) In-kind services of the City, representing staff time to develop, review and administer the proposed study of $20,185, are hereby authorized;
5) The City Manager is directed to contact NBU, GBRA, and EAA and offer them the opportunity to participate in the grant application and the grant activities if same is awarded; and
6) The findings of fact, recitations, and provisions set out in the preamble of this Resolution are adopted and made a part of the body of this Resolution, as fully as if the same were set forth herein.

PASSED AND APPROVED on this 14th day of December 2009,

CITY OF NEW BRAUNFELS, TEXAS

By: ____________________________
R. BRUCE BOYER, MAYOR

ATTEST:

Michael A. Resendez, City Secretary
SUBJECT: Approval of a resolution authorizing the City Manager to accept a federal Save America’s Treasures grant in the amount of $150,000 and to act on behalf of the City in all matters related to this grant, including execution of all required documentation associated with the award.

BACKGROUND/RATIONALE: Council’s Strategic Priorities identified the City’s legislative priorities, which include the pursuit of available federal appropriations funding for priority projects. The City’s efforts to secure such funding resulted in a $150,000 Save America’s Treasures award from 2009 federal appropriations. This grant will be used to fund a portion of the preservation/restoration of the Comal County Courthouse through an interlocal agreement with Comal County. Securing this grant is one element in the collaboration between the City and County to ensure the preservation and restoration of Courthouse, which is a National Register listed property and the anchor architectural feature of the City’s historic downtown.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>City Plan/Council Priority:</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>Strategic Priorities – Effective Management, Objective 10a – Develop an active Federal and State Legislative program</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:

This grant requires a dollar-for-dollar non-Federal match, which can be cash, donated service or use of equipment. Comal County has sufficient funding available from 2007 Certificates of Obligation to meet the match requirement and there will be no fiscal impact to the City.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends that the City Manager be authorized to accept this grant and to execute any and all documentation pertaining to it.
RESOLUTION NO. 2009-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AUTHORIZING THE CITY MANAGER TO ACCEPT A FEDERAL SAVE AMERICA’S TREASURES GRANT IN THE AMOUNT OF $150,000 AND TO ACT ON BEHALF OF THE CITY OF NEW BRAUNFELS IN ALL MATTERS RELATED TO THIS GRANT, INCLUDING EXECUTION OF ALL REQUIRED DOCUMENTATION ASSOCIATED WITH THE AWARD.

Whereas, the City of New Braunfels has sought project funding through the 2009 federal appropriations process, and;

Whereas, a request for funding in the amount of $150,000 for the project, Preservation and Restoration of the Comal County Courthouse, was included in the 2009 appropriations bill for funding from the National Park Service Save America’s Treasures Grants, and;

Whereas, proceeds from this award will be used to fund a portion of the preservation/restoration of the Comal County Courthouse through an interlocal agreement between the City and County, and;

Whereas, Comal County has sufficient funding available to meet the dollar-for-dollar non-Federal match requirements of this award;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

THAT, the City Council hereby authorizes the City Manager or his designee to accept a Federal Save America’s Treasures Grant in the amount of $150,000 for the purpose of preservation and restoration of the Comal County Courthouse and to act on behalf of the City of New Braunfels in all matters related to this award, including execution of all required documentation.

PASSED, APPROVED AND ADOPTED this 14th day of December, 2009.

CITY OF NEW BRAUNFELS, TEXAS

BY: _________________________
R. BRUCE BOYER, Mayor

ATTEST:

MICHAEL A. RESENDEZ, City Secretary
City Council Agenda Item Report  
December 14, 2009

Agenda Item No. 4-A
Presenter/Contact – Nathan Pence, River Activities Manager
Ph. 830-608-2166 / E-mail: npence@nbtexas.org

SUBJECT: Presentation on the Comal River and Springs as related to the Edwards Aquifer Recovery Implementation Program.

BACKGROUND/RATIONALE:
Nathan Pence will give a presentation on the Comal River and Springs as related to the Edwards Aquifer Recovery Implementation Program.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>City Plan/Council Priority:</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
N/A

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 5-A
Presenter/Contact – Mike Ybarra, Councilmember, District 3

SUBJECT: Update on the Kerlick Fire Station property.

BACKGROUND/RATIONALE:
Councilmember Ybarra has requested that this item be placed on the agenda.
Staff will be present to answer questions.

ADDRESS A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>City Plan/Council Priority:</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:

BOARD/COMMISSION RECOMMENDATION:

STAFF RECOMMENDATION:
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 5-B
Presenter/Contact – Octavio Garza, Assistant City Engineer
(830) 221-4025 – ogarza@nbtexas.org

SUBJECT: Discuss and consider approval of a resolution authorizing the City Manager to execute and submit an application to the Texas Department of Transportation for funding under the Transportation Enhancement Program for the New Braunfels Pedestrian and Bicycle Accessibility Project and the Faust Street Bridge Access and Structure Improvements Project.

BACKGROUND/RATIONALE:
The Texas Department of Transportation issued a call for project nominations for the Texas Enhancement Program (TEP) in September 2009. City staff reviewed ongoing and proposed City projects and determined the New Braunfels Pedestrian and Bicycle Accessibility Project and the Faust Street Bridge Access and Structure Improvements Project are viable TEP candidates.

The TEP application requires City Council support of a 20% cash or in-kind contribution, thereby committing to developing, implementing, constructing, maintaining, managing and financing the projects. Preliminary project cost estimates are provide in the following table:

<table>
<thead>
<tr>
<th></th>
<th>New Braunfels Pedestrian and Bicycle Accessibility Project</th>
<th>Faust Street Bridge Access and Structure Improvements Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>State (80%)</td>
<td>$3,772,231</td>
<td>$2,411,252</td>
</tr>
<tr>
<td>City (20%)</td>
<td>$943,058</td>
<td>$602,813</td>
</tr>
<tr>
<td>Total</td>
<td>$4,715,289</td>
<td>$3,014,065</td>
</tr>
</tbody>
</table>

Project nominations are due December 11, 2009 and selection is anticipated by the end of 2010.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>N/A</th>
<th>City Plan/Council Priority:</th>
<th>Strategic Priorities: (Infrastructure)</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Yes</td>
<td></td>
<td>Continue an ongoing program of infrastructure construction and maintenance</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
The funding provided by this program is on a cost reimbursement basis. Projects undertaken with enhancement funds are eligible for reimbursement of up to 80% of allowable costs. Staff will identify funding sources and in-kind services for the match for Council’s consideration at a later date if one or both of the projects are selected.

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Staff recommends authorizing the City Manager to execute the application for funding for the two projects under the Texas Transportation Enhancement Program.
RESOLUTION NO. 2009-R____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE AND SUBMIT AN APPLICATION TO THE TEXAS DEPARTMENT OF TRANSPORTATION FOR FUNDING UNDER THE TRANSPORTATION ENHANCEMENT PROGRAM FOR THE NEW BRAUNFELS PEDESTRIAN AND BICYCLE ACCESSIBILITY PROJECT AND THE FAUST STREET BRIDGE ACCESS AND STRUCTURE IMPROVEMENTS PROJECT.

WHEREAS, the Texas Department of Transportation issued a call for project nominations for the Texas Enhancement Program (TEP) in September 2009.

WHEREAS, the City of New Braunfels, Texas, desires to enter into a Local Transportation Project Advance Funding Agreement for the development, design, and construction of sidewalks, crosswalks, bicycle lanes, and river access facilities linking community centers, schools, parks, and sport complexes to the city-wide hike and bike trail system to enhance safety and provide alternative transportation methods encouraging a healthy, active, pedestrian and bicycle City; and

WHEREAS, the City will prepare and submit to the State two applications for consideration under the Transportation Enhancement Program for the following projects;

1.) New Braunfels Pedestrian and Bicycle Accessibility Project
2.) Faust Street Bridge Access and Structure Improvements Project

WHEREAS, the City commits to the project’s development, implementation, construction, maintenance; and,

WHEREAS, the City commits to a 20% cash or in-kind match to fund the projects;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

THAT, the City Manager is authorized to execute submit an application to the Texas Department of Transportation for funding under the Transportation Enhancement Program for the New Braunfels Pedestrian and Bicycle Accessibility Project and the Faust Street Bridge Access and Structure Improvements Project.

PASSED, ADOPTED AND APPROVED this 14th day of December 2009.

City of New Braunfels, Texas

Attest:

R. BRUCE BOYER, Mayor

MICHAEL A. RESENDEZ, City Secretary
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 5-C
Presenter/Contact – Steven Digges, Councilmember, District 6

SUBJECT: Discuss and consider approval of the first reading of an ordinance amending Ordinance Number 75-10 dated April 28, 1975 to approve installation of the traffic control devices (stop signs) on the northeast and southwest corners of Briarbend Drive at Brockton Drive.

BACKGROUND/RATIONALE:
Councilman Steven Digges has requested Council to consider installation of an all-way stop at the intersection of Briarbend Drive and Brockton Drive.

Staff will be present to answer questions.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>N/A</th>
<th>City Plan/Council Priority:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
None.

BOARD/COMMISSION RECOMMENDATION:
None

STAFF RECOMMENDATION:
ORDINANCE NO. 2010-____

AN ORDINANCE AMENDING ORDINANCE NUMBER 75-10 DATED APRIL 28, 1975 TO APPROVE INSTALLATION OF THE TRAFFIC CONTROL DEVICES (STOP SIGNS) ON THE NORTHEAST AND SOUTHWEST CORNERS OF BRIARBEND DRIVE AT BROCKTON DRIVE

WHEREAS, after engineering and field investigation, the Public Works Department has recommended that traffic control signs be installed on certain streets, avenues, thoroughfares and boulevards within the corporate limits of the City of New Braunfels in order to protect the health, safety and welfare of the citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

I.

THAT Ordinance Number 75-10 dated April 28, 1975, is hereby amended to authorize the installation of additional Traffic Control signs at the following locations in the corporate limits of the City of New Braunfels, Texas:

STOP SIGNS:
1059 On the SW corner of BRIARBEND DRIVE at the intersection of BROCKTON DRIVE to stop traffic prior to entering onto BROCKTON DRIVE

1060 On the NW corner of BRIARBEND DRIVE at the intersection of BROCKTON DRIVE to stop traffic prior to entering onto BROCKTON DRIVE

II.

THAT the Public Works Department is directed to obtain and install the traffic control signs in the locations as set forth in this ordinance, and is directed to maintain the signs in a manner that provides for the health, welfare and safety of the citizens of New Braunfels.

III.

THAT all provisions as set forth in Ordinance Number 75-10 dated April 28, 1975, will be and remain in full force and effect as though written in full in this ordinance.
IV.

THAT all provisions hereof are hereby declared to be severable and if any provisions hereof is declared to be invalid or unconstitutional, such shall not invalidate or affect the remaining provisions hereof which will be and remain in full force and effect.

V.

This Ordinance shall take effect after its second and final reading and ten days after publication pursuant to city charter.

PASSED AND APPROVED: First reading this the day of December 14, 2009.

PASSED AND APPROVED: Second reading this the day of January 11, 2010.

CITY OF NEW BRAUNFELS, TEXAS

________________________________________
R. BRUCE BOYER, MAYOR

ATTEST:

________________________________________
MICHAEL A. RESENDEZ, CITY SECRETARY

APPROVED AS TO FORM:

________________________________________
ALAN C. WAYLAND, CITY ATTORNEY
City Council Agenda Item Report  
DECEMBER 14, 2009

Agenda Item No. 5

Presenter / Contact – Shannon Mattingly, Planning Director  
(830) 221-4055 – smattingly@nbtexas.org

SUBJECT:  Public hearing and first reading of an ordinance granting a Special Use Permit to allow a wireless telecommunications tower with an overall height of 150 ft. in an “APD Agricultural/Pre-Development District” located at 3570 IH 35 North.

1715 S. Capital of Texas Hwy., Suite 207  
Austin, TX 78746

APPLICANT/OWNER:  Mary Ann Scott, Etal  
152 Prairie View  
New Braunfels, TX 78130

BACKGROUND/RATIONALE:  
This property is located on the east side of IH 35 and is adjacent to the Wal-Mart distribution center. The first 330’ of the subject property is zoned C-1 and the remainder is zoned APD. The proposed site for the tower is located within the APD portion of the tract. The overall height of the tower will be 150’.

The tower will be utilized by Verizon. According to the applicant, the site was chosen because there are no alternative towers, structures, or willing landowners that meet the necessary desired coverage area. The FAA has completed an aeronautical study on the proposed tower and has determined that there is no hazard to air navigation (see attachment 8). The applicant is also requesting that no landscaping be required since the tower will be setback over 800’ from the road.

The proposed site is less than 2 miles away from the New Braunfels Municipal Airport runway. The tower and the site must meet all aviation regulations. Staff is concerned about the proximity of the proposed tower in relation to the airport and its proposed expansion (see attachment 9).

The Planning Commission held a public hearing for the SUP on October 13, 2009 and unanimously recommended denial. The applicant requested a postponement of the first reading at City Council which was to be held November 9, 2009. The applicant submitted a request to withdraw on December 9, 2009.
GENERAL INFORMATION:

Case No.: PZ09-38
Size: Approximately 40.573 acres
Surrounding Zoning and Land Use:
- North – M-1 / Vacant and Commercial
- South - M-1Ar71 / Commercial
- East – Outside City Limits/Industrial
- West - APD/Commercial

Comprehensive Plan/ Future Land Use Designation: Commercial/Light Industrial
Improvement(s): Agricultural outbuildings and a billboard.

NOTIFICATION:
Public hearing notices were sent to 2 property owners located within 200 feet of the property. No responses have been received.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>Yes</th>
<th>City Plan/Council Priority:</th>
<th>Pros:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2006 Comprehensive Plan</td>
<td>Objective 1A: Evaluate proposed zone changes to maintain land use compatibility, as well as the integration of mixed land uses as a component of achieving better places to live. The Future Land Use designation for the property is “Commercial.”.</td>
</tr>
<tr>
<td></td>
<td>Pros and Cons Based on Policies Plan</td>
<td>Cons:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Objective 1C: Consider rezoning, as necessary, to ensure existing and future land use compatibility. A 150’ communications tower is not compatible with the plans for the future expansion of the New Braunfels Municipal Airport.</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
N/A

STAFF RECOMMENDATION:
Staff does not recommend approval of the tower due to the close proximity to the airport.

BOARD/COMMISSION RECOMMENDATION:
The Planning Commission held a public hearing on October 13, 2009 and unanimously recommended denial of the SUP by a vote of 6-0-0.
City Council Agenda Item Report
DECEMBER 14, 2009

Agenda Item No. 5E
Presenter/Contact – Shannon Mattingly, Planning Director
(830) 221-4055 smattingly@nbtexas.org

SUBJECT: Public hearing and first reading of an ordinance rezoning Lot 4, W M L Subdivision, located at 6362 IH 35 South, from “M-1 Light Industrial District” and “APD Agricultural/Pre-Development” to “M-1A Light Industrial District.”

APPLICANT: John F. Svoboda
P.O. Box 311021
New Braunfels, TX 78131

OWNER: John F. Svoboda
P.O. Box 311021
New Braunfels, TX 78131

BACKGROUND/RATIONALE:
The subject property is located just inside the City Limits on South Interstate 35. The front portion of the property was annexed in 1981 and was given the zoning of M-1 because of its location along the interstate. When the remainder of the property was annexed in 2001, zoning of “APD” was applied. Currently, a steel building retailer is located at this property. A building stone and outdoor furniture retail business is proposed for this location.

The M-1 zoning district is one of the “old” districts that was replaced in 1987, and is no longer an option for new requests. M-1A is the most similar to M-1, and appropriate for the proposed use and location. M-1A allows for a variety of uses. It is intended primarily for the conduct of light manufacturing, assembling and fabrication activities as well as for distribution, and warehousing. The applicant is seeking to rezone the entire property to M-1A in order to correct the split zoning of the property.

GENERAL INFORMATION:
Case No.: PZ09-45
Size: 5.206 acres
Surrounding Zoning and Land Use:
North – APD / Vacant
South – Outside City limits/Vacant
East – APD / Vacant
West – APD / Commercial

Comprehensive Plan/ Future Land Use Designation: Commercial Industrial
Improvement(s): Existing commercial structure
NOTIFICATION:
Notices were sent to two property owners within 200 ft. To date, no responses have been received in favor. Two responses from #1 on the notification map have been received, one from the property owner and one from the property owner’s attorney.

ADDRESSSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>Yes</th>
<th>City Plan/Council Priority: 2006 Comprehensive Plan</th>
<th>Pros:</th>
<th>Cons:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pros and Cons Based on Policies Plan</td>
<td><strong>Goal 1A</strong> Evaluate proposed zone changes to maintain land use compatibility, as well as the integration of mixed land uses as a component of achieving better places to live. The properties fronting IH 35 in this area are primarily commercial and industrial in use. A light industrial business at this location will provide for integrated mixed land use.</td>
<td><strong>Goal 1C</strong> Consider rezoning, as necessary, to ensure existing and future land use compatibility. The Comprehensive Future Land Use Plan has this property designated as commercial / light industrial, which is consistent with the applicant’s request.</td>
<td><strong>Goal 20A</strong> Protect and improve each neighborhood of the City to be a desirable and attractive residential environment. The light industrial business lies adjacent to Magnolia Springs Subdivision Units 4, 5, and 6 as shown in the subdivision’s Master Plan, which currently has APD zoning.</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
N/A

PLANNING COMMISSION RECOMMENDATION:
The Planning Commission held a public hearing on November 10, 2009 and recommended approval. The motion carried (9-0-0).
STAFF RECOMMENDATION:
Two different zoning designations on one property should be avoided when possible. Staff recommends approval of the request because it will provide one zoning for the property and it is consistent with the surrounding land uses as well as the future land use plan.

ATTACHMENTS:
1. Application
2. Zoning & Existing Land Use Map
3. Future Land Use Map
4. Aerial Map
5. Notification Map
6. Sec. 3.4-18, Chapter 144 – M-1A Light Industrial District
7. Excerpt from the minutes of the November 10, 2009 Planning Commission meeting
8. Ordinance
APPLICATION FOR
ZONE CHANGE
424 S. CASTELL AVENUE
NEW BRAUNFELS TX 78130
E-MAIL: plango@ubc.gov
PHONE: (830) 221-4050 FAX: (830) 608-2109

1. Applicant - If owner(s), so state; if agent or other type of relationship, a letter of authorization must be furnished from owner(s) at the time submitted.

Name: John F. Svoboda
Mailing Address: P.O. Box 311021
Telephone: (830) 481-0477 Fax: Mobile: Email: johnfsvoboda@yahoo.com

2. Property Address/Location: 6362 S. IH 35

3. Legal Description:
   Name of Subdivision: WML
   Lot(s): 4
   Block(s): 1
   Acreage: 5.206

4. Existing Use of Property: METAL BUILDING DISPLAY AND SALES

5. Proposed Use of Property (attach additional or supporting information if necessary):
   BUILDING STONE AND OUTDOOR FURNITURE RETAIL, FRONT M-1

6. Zoning Change Request: Current Zoning: M-10 AG PRE-DEV Proposed Zoning: M-1A
   If "PDD Planned Development District", check if: Concept Plan OR Detail Plan

7. Reason for request (please explain in detail and attach additional pages if needed):
   ZONE ENTIRE TRACT M-1A FOR ABOVE USE

8. ATTACHMENTS:
   [ ] Metes and bounds description or survey and map if property is not platted.
   [ ] Location In 100-year floodplain: Please provide a map of the floodplain overlaying the property proposed for zoning or, at a minimum, a copy of the proper FEMA flood map, with panel number. (Current floodplain maps are those most recently adopted by the City Council.)
   [ ] Map of property in relation to City limits/major roadways or surrounding area.
   [ ] If requesting a Planned Development (PD), applicant must provide development standards on the detail plan and/or provide the standards in a separate document as described in the Zoning Ordinance, Section 3.6. Provide 14 copies of the 1:200 for distribution with 4 copies of 1:200 and one legible 11x17 of the revisions.

The undersigned hereby requests rezoning of the above described property as indicated.

Signature of Owner(s)/Agent

Date

For Office Use Only

Fee Received By: S. Sanske Amount: $155.00 Receipt No.: 14271
Date Received: 10/8/09 Zoning signs issued: Date: 10/23/09 No.: 5
Cash/Check Number: 500 Case Number: PZ 09-45
Zoning and Existing Land Use Map

Legend
- Zoning
- SUBJECT

Land Use
- Residential Low Density
- Commercial
- Open Space
- City Limits

City of New Braunfels

PZ09-45
John F. Svoboda
M-1 and APD to M-1A

Map Created On 10/16/09
Applicant: John Svoboda
Address/Legal Description: 6362 IH 35 South / Lot 4, WML Subdivision
Owner: John Svoboda

REQUEST FOR REZONING – CASE #PZ09-45

The circled numbers on the map correspond to the property owners listed below. All information is from the Comal Appraisal District Records. The property under consideration is marked as "SUBJECT".

1. Magnolia Springs Associates
2. Poole, Jim F.

SEE MAP ON REVERSE
3.4-18. "M-1A" light industrial district.

Purpose. The M-1A light industrial district is intended primarily for the conduct of light manufacturing, assembling and fabrication activities, distribution, and for warehousing, research and development, wholesaling and service operations that do not typically depend upon frequent customer or client visits. Such uses generally require accessibility to major thoroughfares, major highways, and/or other means of transportation. The following regulations shall apply in all "M-1A" districts:

(a) Authorized uses. Uses permitted by right shall be those set forth in the Land Use Matrix in Section 4 of this Chapter. The allowed uses in the district, which are intended to be identical with those listed in the Land Use Matrix, are as follows:

(1) Uses permitted by right:

Residential uses:
- Accessory building/structure
- Bed and breakfast inn (see Sec. 5.5)
- Boardinghouse/lodging house
- Community home (see definition)
- Dormitory (in which individual rooms are for rental)
- Multifamily (apartments/condominiums – at least five units)
- Residential use in buildings with the following non-residential uses

Non-residential uses:
- Accounting, auditing, bookkeeping, and tax preparations
- Adult day care (no overnight stay)
- Adult day care (with overnight stay)
- Aircraft support and related services
- Airport
- All terrain vehicle (ATV) Dealer / Sales
- Ambulance service (private)
- Amphitheater
- Amusement devices/arcade (four or more devices)
- Amusement services or venues (indoors) (see Sec. 5.12)
- Amusement services or venues (outdoors)
- Animal grooming shop
- Answering and message services
- Antique shop
- Appliance repair
- Archery range
- Armed services recruiting center
- Art dealer / gallery
- Artist or artisan's studio
- Assembly/exhibition hall or areas
- Athletic fields
- Auction sales (non-vehicle)
- Auto body repair, garages (see Sec. 5.10)
- Auto glass repair/tinting (see Sec. 5.10)
- Auto interior shop / upholstery (see Sec. 5.10)
- Auto leasing
- Auto muffler shop (see Sec. 5.10)
- Auto or trailer sales rooms or yards (see Sec. 5.11)
- Auto or truck sales rooms or yards - primarily new (see Sec. 5.11)
- Auto paint shop
- Auto repair as an accessory use to retail sales
- Auto repair garage (general) (see Sec. 5.10)
Auto supply store for new and factory rebuilt parts
Auto tire repair /sales (indoor)
Automobile driving school (including defensive driving)
Bakery (retail)
Bank, savings and loan, or credit union
Barber/beauty college (barber or cosmetology school or college)
Barber/beauty shop, haircutting (non-college)
Barns and farm equipment storage (related to agricultural uses)
Battery station
Bicycle sales and/or repair
Billiard / pool facility
Bio-medical facilities
Blacksmith or wagon shops
Book binding
Book store
Bottling or distribution plants (milk)
Bottling works
Bowling alley/center (see Sec. 5.12)
Broadcast station (with tower) (see Sec. 5.6)
Bus barns or lots
Bus passenger stations
Cafeteria / café / delicatessen
Campers' supplies
Campground
Car wash (self service; automated)
Car wash, full service (detail shop)
Carpenter, cabinet, or pattern shops
Carpet cleaning establishments
Caterer
Cemetery and/or mausoleum
Check cashing service
Chemical laboratories (not producing noxious fumes or odors)
Church/place of religious assembly
Civic/conference center and facilities
Cleaning, pressing and dyeing (non-explosive fluids used)
Clinic (dental)
Clinic (emergency care)
Clinic (medical)
Club (private)
Coffee shop
Cold storage plant
Commercial amusement concessions and facilities
Communication equipment - installation and/or repair
Community building (associated with residential use)
Computer and electronic sales
Computer repair
Confectionery store (retail)
Consignment shop
Contractor's office/sales, with outside storage including vehicles
Contractor's temporary on-site construction office (only with permit from Building Official; see Sec. 5.9)
Convenience store with gas sales
Convenience store without gas sales
Credit agency
Curio shops
Custom work shops
Dance hall / dancing facility (see Sec. 5.12)
Day camp
Department store
Drapery shop / blind shop
Driving range
Drug sales/pharmacy
Electrical repair shop
Electrical substation
Electronic assembly/high tech manufacturing
Electroplating works
Engine repair/motor manufacturing re-manufacturing and/or repair
Exterminator service
Fair ground
Farmers market (produce market - wholesale)
Farms, general (crops) (see Chapter 6, Municipal Code and Sec. 5.8)
Farms, general (livestock/ranch) (see Chapter 6, Municipal Code and Sec. 5.8)
Feed and grain store
Filling station (gasoline tanks must be below the ground)
Florist
Food or grocery store with gasoline sales
Food or grocery store without gasoline sales
Food processing (no outside public consumption)
Forge (hand)
Forge (power)
Fraternal organization/civic club (private club)
Freight terminal, rail/truck (when any storage of freight is outside an enclosed building)
Freight terminal, truck (all storage of freight in an enclosed building)
Frozen food storage for individual or family use
Funeral home/mortuary
Furniture manufacture
Furniture sales (indoor)
Galvanizing works
Garden shops and greenhouses
Golf course (public or private)
Golf course (miniature)
Governmental building or use (state/federally owned and operated)
Greenhouse (commercial)
Handicraft shop
Hardware store
Health club (physical fitness; indoors only)
Heating and air-conditioning sales / services
Heavy load (farm) vehicle sales/repair (see Sec. 5.13)
Heliport
Home repair and yard equipment retail and rental outlets
Hospital, general (acute care/chronic care)
Hospital, rehabilitation
Hotel/motel
Hotels/motels - extended stay (residence hotels)
Ice delivery stations (for storage and sale of ice at retail only)
Ice plants
Industrial laundries
Kiosk (providing a retail service)
Laboratory equipment manufacturing
Laundromat and laundry pickup stations
Laundry, commercial (w/o self serve)
Laundry/dry cleaning (drop off/pick up)
Laundry/washateria (self serve)
Lawnmower sales and/or repair
Leather products manufacturing
Light manufacturing
Limousine / taxi service
Locksmith
Lumberyard (see Sec. 5.14)
Lumberyard or building material sales (see Sec. 5.14)
Machine shop
Maintenance/ janitorial service
Major appliance sales (indoor)
Manufactured home sales
Manufacturing and processes
Market (public, flea)
Martial arts school
Medical supplies and equipment
Metal fabrication shop
Micro brewery (onsite manufacturing and sales)
Mini-warehouse/self storage units (no outside boat and RV storage permitted)
Mini-warehouse/self storage units with outside boat and RV storage
Motion picture studio, commercial film
Motion picture theater (indoors)
Motion picture theater (outdoors, drive-in)
Motorcycle dealer (primarily new / repair)
Moving storage company
Moving, transfer, or storage plant
Municipal use owned or operated by the City of New Braunfels, including libraries
Museum
Needlework shop
Non-bulk storage of gasoline, petroleum products and liquefied petroleum
Nursing/ convalescent home/sanitarium
Offices, brokerage services
Offices, business or professional
Offices, computer programming and data processing
Offices, consulting
Offices, engineering, architecture, surveying or similar
Offices, health services
Offices, insurance agency
Offices, legal services - including court reporting
Offices, medical offices
Offices, real estate
Offices, security/ commodity brokers, dealers, exchanges and financial services
Outside storage (as primary use)
Park and/or playground (private)
Park and/or playground (public)
Parking lots (for passenger car only) (not as incidental to the main use)
Parking structure / public garage
Pawn shop
Personal watercraft sales (primarily new / repair)
Pet shop / supplies (10,000 sq. ft. or less)
Pet store (more than 10,000 sq. ft.)
Photo engraving plant
Photographic printing/duplicating/copy shop or printing shop
Photographic studio (no sale of cameras or supplies)
Photographic supply
Plant nursery
Plant nursery (growing for commercial purposes with retail sales on site)
Plastic products molding/reshaping
Plumbing shop
Portable building sales
Propane sales (retail)
Public recreation/services building for public park/playground areas
Publishing/printing company (e.g., newspaper)
Quick lube/oil change/minor inspection
Radio/television shop, electronics, computer repair
Rappelling facilities
Recreation buildings (private)
Recreation buildings (public)
Recycling kiosk
Refreshment/beverage stand
Research lab (non-hazardous)
Restaurant
Restaurant/prepared food sales
Retail store and shopping center (more than 50,000 sq. ft. bldg.)
Retail store and shopping center without drive thru service (50,000 sq. ft. bldg. or less)
Rodeo grounds
RV park
RV/travel trailer sales
School, K-12 (public or private)
School, vocational (business/commercial trade)
Security monitoring company
Security systems installation company
Sheet metal shop
Shoe repair shops
Shooting gallery - indoor (see Sec. 5.12)
Shopping center
Sign manufacturing/painting plant
Specialty shops in support of project guests and tourists
Storage - exterior storage for boats and recreational vehicles
Storage in bulk
Studio for radio or television (with tower) (see Sec. 5.6)
Studios (art, dance, music, drama, reducing, photo, interior decorating, etc.)
Tailor shop
Tattoo or body piercing studio
Taxidermist
Telemarketing agency
Telephone exchange (office and other structures)
Tennis court (commercial)
Theater (non-motion picture; live drama)
Tire sales (outdoor)
Tool rental
Tourist court
Transfer station (refuse/pick-up)
Travel agency
Truck garden (with retail sales)
Truck or transit terminal (with outside storage)
University or college (public or private)
Upholstery shop (non-auto)
Used or second hand merchandise/furniture store
Vacuum cleaner sales and repair
Veterinary hospital (no outside animal runs or kennels)
Veterinary hospital (with outdoor animal runs or kennels)
Video rental / sales
Warehouse / office and storage / distribution center
Waterfront amusement facilities - berthing facilities sales and rentals
Waterfront amusement facilities - boat fuel storage / dispensing facilities
Waterfront amusement facilities - boat landing piers/launching ramps
Waterfront amusement facilities - swimming / wading pools / bathhouses
Water storage (surface, underground or overhead), water wells and pumping stations
    that are part of a public or municipal system
Welding shop
Wholesale sales offices and sample rooms
Woodworking shop (ornamental)

Any comparable business or use not included in or excluded from any other district
described herein, provided that such use is not noxious or offensive by reason of
vibration, noise, odor, dust, smoke or gas.

(2) Only the following manufacturing and processes are permitted when they meet the following
requirements:

No use is permitted that would emit or cause radiation, dust, odor, smoke, gas or fumes
objectionable to persons of ordinary sensitivity or reasonably hazardous to health,
beyond the boundary property lines of the lot or tract upon which the use is located, and
which do not generate noise or vibration at the boundary of the M-1A district which is
generally perceptible in frequency or pressure above the ambient level of noise in the
adjacent areas.

Assaying works
Cooperage works
Foundries (iron, brass, bronze, aluminum).
Hides and skins (storage and curing).
Manufacture of adding machines, cash registers, typewriters, basket material, boxes,
electric lamps, clay, shale and glass products, cutlery tools, bicycles, electrical
machinery, tools, fiberglass products, and piping subassemblies
Metal stamping, shearing, punching, forming, cutting, cleaning, heat treating, etc.
Sheet metal shops
Welding

(3) Conflict. In the event of conflict between the uses listed in the Land Use Matrix and those
listed in subsection (1), the uses listed in this subsection shall be deemed those authorized in
the district.

(b) Maximum height, minimum area and setback requirements:

(1) Non-residential uses.

(i) Height. 120 feet.

(ii) Front building setback. 25 feet.

(iii) Side building setback. No side building setback is required.

(iv) Corner lots. Buildings on corner lots shall have 15-foot side building setbacks
adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot
lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building
setbacks adjacent to the street where the rear lines of the corner lots coincide with the side lot lines of the adjacent lots. Where a minimum 25-foot setback is required, a canopy at least eight feet in height, attached to the main building, may be built within 15 feet of the property line so long as such construction will not obstruct the vision of vehicular or pedestrian traffic.

Garage setback. Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)

(v) Residential setback. Where a non-residential building abuts a one or two family use or zoning district, the setback from the residential property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.

(vi) Rear building setback. 20 feet.

(vii) Width of lot. 60 feet.

(viii) Lot depth. 100 feet.

(ix) Parking. See Sec. 5.1 for permitted uses’ parking.

(2) Multifamily dwellings.

(i) Height. 35 feet.

(ii) Front building setback. 25 feet.

(iii) Side building setback. A side building setback six feet shall be provided. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lines of the corner lots coincide with the side lot lines of the adjacent lots.

Garage setback. Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)

(iv) Rear building setback. 25 feet.

(v) Residential setback. Effective November 8, 2006, where a multifamily dwelling abuts a one or two family use or zoning district, the setback from the one or two family property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.

(vi) Accessory uses. Accessory uses such as swimming pools, tennis courts and playgrounds will not be permitted within any required yard.

(vii) Width of lot. The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 72 feet.

(viii) Density. 24 units per acre.

(ix) Lot area. 20,000 square feet.
(x) Lot coverage. The combined area of all yards shall be at least 50 percent of the total lot or tract; provided however, that in the event enclosed or covered parking is provided, the minimum total yard area requirement shall be 40 percent of the total lot or tract.

(xi) Distance between structures. There shall be a minimum of 10 feet between structures side by side; a minimum of 20 feet between structures side by front or rear; a minimum of 40 feet between structures front to front; and a minimum of 20 feet between structures backing rear to rear, and a minimum of 20 feet between structures front to rear. (See Illustration 1)

(xii) Minimum number of units. Five.

(xii) Parking. For apartments, apartment hotel units and other multifamily dwellings, off-street parking spaces shall be provided in accord with the following schedule:

1. One-bedroom apartment or unit . . . 1 1/2 spaces
2. Two-bedroom apartment or unit . . . 2 spaces
3. Each Additional bedroom . . . 1/2 space
4. Each dwelling unit provided exclusively for low income elderly occupancy . . . 3/4 space

(“Low income elderly” is defined as any person 55 years of age or older with low or moderate income, according to HUD standards.)

See Section 5.1 for other permitted uses’ parking.
PUBLIC HEARINGS
Hold a public hearing and make a recommendation to City Council regarding Case #PZ09-45, the proposed rezoning of 6362 IH 35 South, from "APD Agricultural/Pre-Development District" and "M-1 Light Industry District" to "M-1A Light Industrial District". (John Svoboda)
Ms. Brake said the front portion of the property was zoned "M-1" after annexation in 1981 while the remaining part was annexed in 2007 and remained zoned "APD". She explained that the property was currently being used by a steel building retailer but a building stone and outdoor furniture retail business was proposed for the location. She noted that notices were sent out to two property owners within 200 ft. of the property; no responses were received in favor and one was received in opposition (#1). She said staff recommended approval because the rezoning would provide one zoning district for the entire property and was consistent with the City's Future Land Use Plan.

Chair Casteel asked if there was anyone in the audience who wished to speak in favor of the rezoning.

Steve Taylor, Attorney at Law, 268 Comal Ave., said he represented the property owner, John Svoboda. He asked Commissioners to note the significant drainage channel that bisected the property, making a large portion unusable. He stated he and representatives of Magnolia Springs Subdivision had communicated, but given the size and shape of the subject property, his client did not wish to encumber his property any further by agreeing to additional height or setback restrictions.

Commissioner Myrick asked if the property was located in the floodplain. Ms. Brake said it was not.

Tex Speck, 2738 Chimney Rock Lane, San Angelo, explained the proposed use of the property.

Chair Casteel asked if there was anyone in the audience who wished to speak in opposition to the rezoning.

Rick Hightower, Attorney at Law, 3006 Bee Caves, #D-20, Austin, said he represented the developers of Magnolia Springs Subdivision, located adjacent to the subject property. He noted that the Commission approved a Master Plan for the subdivision several years previously. He said his clients were not opposed to the current or proposed use of the property, but since the request was for an outright rezoning and not a Special Use Permit, the maximum height standard as well as many of the permitted uses in the M-1A district could not be considered compatible adjacent to residential property. He listed some of the uses that his client objected to, such as auto body repairs/garages, electroplating works, sheet metal shops, to name a few.

Dick Hoover, 3929 Balcones Dr. Suite 304, Austin, with Magnolia Springs Associates, stated his concerns with many of the uses permitted in M-1A, as well as possible noise problems in the future. He asked the Commission members to note that the Future Land Use Plan showed the entire area, including the subdivision, as Commercial/Industrial, and asked that the plan be updated to accurately reflect the residential subdivision.

Mr. Taylor noted that the 20 ft. drainage easement running along the shared property line could act as a buffer between the two uses.

Motion by Vice Chairman Heimer, seconded by Commissioner Seidel, to close the public hearing. The motion carried unanimously. (9-0-0)

Chair Casteel noted that because the property behind the subject tract was still zoned APD and undeveloped, a structure on the subject tract could be built 120 ft. in height as long as the rear setback requirement was met. Ms. Mattingly agreed with the statement.

Motion by Commissioner Vann, seconded by Vice Chair Heimer, that Case #PZ09-45, the proposed rezoning of 6362 IH 35 South, from "APD Agricultural/Pre-Development District" and "M-1 Light Industry District" to "M-1A Light Industrial District", be forwarded to City Council with a recommendation to approve. The motion carried unanimously. (9-0-0)
ORDINANCE NO. 2010-

AN ORDINANCE REZONING LOT 4, W M L SUBDIVISION, LOCATED AT 6362 IH 35 SOUTH, FROM “M-1 LIGHT INDUSTRIAL DISTRICT” AND “APD AGRICULTURAL/PRE-DEVELOPMENT” TO “M-1A LIGHT INDUSTRIAL DISTRICT”; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels has complied with all requirements of notice of public hearing as required by the Zoning Ordinance of the City of New Braunfels; and

WHEREAS, in keeping with the spirit and objectives of the “M-1A Light Industrial District,” the City Council has given due consideration to all components of said district; and

WHEREAS, it is the intent of the City Council to provide harmony between existing zoning districts and proposed land uses; and

WHEREAS, the City Council desires to amend the Zoning Map by changing Lot 4, W M L Subdivision, located at 6263 IH 35 South, from “M-1 Light Industrial District” and “APD Agricultural/Pre-Development” to “M-1A Light Industrial District” now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT Sections 1.2-1 and 1.2-2, Chapter 144, of the New Braunfels Code of Ordinances and particularly the Zoning Map of the City of New Braunfels, are amended by changing the following described tract of land from “M-1 Light Industrial District” and “APD Agricultural/Pre-Development” to “M-1A Light Industrial District”:

"Lot 4, W M L Subdivision, located at 6263 IH 35 South, and as delineated on Exhibit 'A' attached."

SECTION 2

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 3

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

SECTION 4

THAT if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.
SECTION 5

THIS ordinance will take effect upon the second and final reading of same.

PASSED AND APPROVED: First Reading this the 14th day of December, 2009.

PASSED AND APPROVED: Second and Final Reading this the 11th day of January, 2010.

CITY OF NEW BRAUNFELS

R. BRUCE BOYER, Mayor

ATTEST:

MICHAEL A. RESENDEZ, City Secretary

APPROVED AS TO FORM:

ALAN C. WAYLAND, City Attorney
SUBJECT: Discuss and consider approval of the first reading of an ordinance amending Chapter 58, Floods, of the New Braunfels Code of Ordinances

APPLICANT/OWNER: City of New Braunfels

BACKGROUND/RATIONALE:

The proposed Flood Ordinance is updated with FEMA’s suggestions which includes clarification of requirements. In addition, the significant changes with the updated ordinance are the increase of required freeboard from an elevation of one foot above the base flood elevation to two feet above the base flood elevation and the total value of improvements, repairs, modifications, and additions to existing buildings are counted cumulatively. The passing of this updated ordinance will prepare the City of New Braunfels to obtain a favorable Community Rating System (CRS) review which will in turn lower insurance premiums for the citizens of New Braunfels.

GENERAL INFORMATION:
N/A

NOTIFICATION:
N/A

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>No</th>
<th>City Plan/Council Priority</th>
</tr>
</thead>
</table>

FISCAL IMPACT:
Although there is no fiscal impact to the City, property owners will see reductions in their insurance as shown on attachment 1.

STAFF RECOMMENDATION:
Staff recommends approval.

BOARD/COMMISSION RECOMMENDATION:
N/A

ATTACHMENTS:
1. Rate Comparisons
2. Updated Flood Ordinance
<table>
<thead>
<tr>
<th>Pre or Post</th>
<th>Dwelling Type &amp; # of Floors</th>
<th>Amount of Coverage Build/Content (in thousands)</th>
<th>Deductible Build/Content</th>
<th>Flood Zone</th>
<th>Elevation Difference of Lowest Floor and BFE (Feet)</th>
<th>Cost of Flood Insurance (per year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre</td>
<td>Single Family/ One Floor No Basement</td>
<td>$200/$80</td>
<td>$2,000/$2,000</td>
<td>A1-30, AE, AO, AH, A</td>
<td>Not Needed (Pre-FIRM)</td>
<td>$2,171</td>
</tr>
<tr>
<td>Pre- or Post</td>
<td>Single Family/ One Floor No Basement</td>
<td>$200/$80</td>
<td>$1,000/$1,000</td>
<td>B, C or X</td>
<td>Not Needed</td>
<td>$1,307 Standard Flood Ins. Policy</td>
</tr>
<tr>
<td>Pre- or Post</td>
<td>Single Family/ One Floor No Basement</td>
<td>$200/$80</td>
<td>$1,000/$1,000</td>
<td>B, C or X</td>
<td>Not Needed</td>
<td>$326 Preferred Risk Policy (Eligibility Requirements*** )</td>
</tr>
<tr>
<td>Post</td>
<td>Single Family/ One Floor No Basement</td>
<td>$200/$80</td>
<td>$1,000/$1,000</td>
<td>A1-30, AE</td>
<td>+3 or more</td>
<td>$429</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>+2</td>
<td>$548</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>+1</td>
<td>$777</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>At BFE</td>
<td>$1,429</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-1 Below</td>
<td>$5,615</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-2 or more</td>
<td>Submit for Rate</td>
</tr>
<tr>
<td>Post</td>
<td>Single Family/ One Floor No Basement</td>
<td>$200/$80</td>
<td>$1,000/$1,000</td>
<td>Unnumbered A Zone (No Estimated BFE)</td>
<td>+5**</td>
<td>$610</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>+2 to +4</td>
<td>$1,180</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>+1**</td>
<td>$2,853</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>At Ground or Below</td>
<td>Submit for Rate</td>
</tr>
<tr>
<td>Post</td>
<td>Single Family/ One Floor No Basement</td>
<td>$200/$80</td>
<td>$1,000/$1,000</td>
<td>Unnumbered A Zone (With Estimated BFE)</td>
<td>+2</td>
<td>$584</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0 to +1</td>
<td>$1,137</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-1</td>
<td>$4,967</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-2 or Below</td>
<td>Submit for Rate</td>
</tr>
<tr>
<td>Post</td>
<td>Single Family/ One Floor No Basement</td>
<td>$200/$80</td>
<td>$1,000/$1,000</td>
<td>Unnumbered A Zone (No Elevation Certificate)</td>
<td>Unknown</td>
<td>$5,805</td>
</tr>
</tbody>
</table>

*Pre-FIRM – Construction before Dec. 31, 1974 or before the effective date of the Initial FIRM for the community, which ever is later
* Rates As of October 1, 2009, including the Federal Policy Fee and Increased Cost of Compliance Fee
** Rates based on the building being insured for 75% or more of replacement cost.
***Preferred Risk Eligibility: To be eligible for building/contents coverage or contents-only coverage under the PRP, the building must be in a B, C, or X Zone on the effective date of the policy. For the purpose of determining the flood zone, the agent may use the FIRM in effect at the time of application and presentment of premium. Check Flood Insurance Manual for Loss History eligibility.
AN ORDINANCE AMENDING CHAPTER 58, FLOODS, CODE OF ORDINANCES, BY ADOPTING A NEW FLOOD DAMAGE PREVENTION ORDINANCE; REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that due to catastrophic floods in 1998 and 2002, there have been millions of dollars of damage, very significant risk of loss of life and injury, individual and family trauma, and millions of dollars of public funds expended to deal with flood emergency situations and cleanups; and

WHEREAS, the City Council has determined that these losses and trauma should be minimized; and

WHEREAS, it is the intent of the City Council to comply with the rules and regulations pertaining to flood hazard reduction and with Federal Emergency Management Agency base flood elevations; and

WHEREAS, it is the intent of the City Council to strengthen such regulations by requiring an additional one (1) foot above base flood elevations; and

WHEREAS, it is the intent of the City Council to further strengthen regulations by requiring that the total value of improvements, repairs, modifications, and additions to existing buildings are counted cumulatively; and

WHEREAS, the City Council of the City of New Braunfels has complied with all requirements of notice of public hearing as required by the Code of Ordinances of the City of New Braunfels; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1.

THAT, Chapter 58, Floods, of the Code of Ordinances City of New Braunfels, Texas is amended as follows:

a. Article II, Flood Damage Prevention, is deleted in its entirety.

b. A new Article II, Flood Damage Prevention, is added which section reads as follows:

ARTICLE II. FLOOD DAMAGE PREVENTION


The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City of New Braunfels, Texas does ordain as follows:
Sec. 58-26.2. Findings of Fact.
(1) The flood hazard areas of the City of New Braunfels are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

Sec. 58-26.3. Statement of Purpose.
It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
(1) Protect human life and health;
(2) Minimize expenditure of public money for costly flood control projects;
(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
(4) Minimize prolonged business interruptions;
(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
(6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
(7) Insure that potential buyers are notified that property is in a flood area.

In order to accomplish its purposes, this ordinance uses the following methods:
(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
(4) Control filling, grading, dredging and other development which may increase flood damage;
(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 58-27. Definitions.
Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.
Alluvial Fan Flooding - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant Structure – means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

Area of Future Conditions Flood Hazard – means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

Area of Shallow Flooding - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard - is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base Flood - means the flood having a 1 percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway Wall – means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical Feature - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development - means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated Building – means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing Construction - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975,
for FIRM effective before that date. "Existing construction" may also be referred to as "existing structures."

**Existing Manufactured Home Park or Subdivision** - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Expansion to an Existing Manufactured Home Park or Subdivision** - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Flood or Flooding** - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. the overflow of inland or tidal waters.
2. the unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Elevation Study** - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Flood Insurance Rate Map (FIRM)** - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS)** - see **Flood Elevation Study**

**Floodplain or Flood-Prone Area** - means any land area susceptible to being inundated by water from any source (see definition of flooding).

**Floodplain Management** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**Floodplain Management Regulations** - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Flood Protection System** - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**Flood Proofing** - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Floodway** - see **Regulatory Floodway**
**Functionally Dependent Use** - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Highest Adjacent Grade** - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic Structure** - means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places which have been approved by the Secretary of the Interior; or

4. Individually listed on a local inventory or historic places in communities with historic preservation programs which have been certified by the Secretary of the Interior or:
   - By an approved state program as determined by the Secretary of the Interior; or
   - Directly by the Secretary of the Interior in states without approved programs.

**Levee** - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**Levee System** - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**Lowest Floor** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

**Manufactured Home** - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**Manufactured Home Park or Subdivision** - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level** - means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**New Construction** - means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which
the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**New Manufactured Home Park or Subdivision** - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**Recreational Vehicle** - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory Floodway** - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Riverine** – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area** – see Area of Special Flood Hazard

**Start of Construction** - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act [Pub. L. 97-348]), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure** – means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**Substantial Damage** - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."
Variance – means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

Violation - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation - means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Sec. 58-28.1. Lands to Which This Ordinance Applies.
The ordinance shall apply to all areas of special flood hazard with the jurisdiction of the City of New Braunfels, Texas.

Sec. 58-28.2. Basis for Establishing the Areas of Special Flood Hazard.
The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Comal County, Texas and Incorporated Areas," dated September 2, 2009, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) dated September 2, 2009, and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

AND
The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Guadalupe County, Texas and Incorporated Areas," dated November 2, 2007, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) dated November 2, 2007, and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

Sec. 58-28.5. Abrogation and Greater Restrictions.
This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 58-28.6. Interpretation.
In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

Sec. 58-28.7. Warning and Disclaimer or Liability.
The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater
floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Sec. 58-29. Administration.

Sec. 58-29.1. Designation of the Floodplain Administrator.
The City's Building Official is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

Sec. 58-29.2. Duties and Responsibilities of the Floodplain Administrator.
Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.

2. Review permit applications to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

3. Review, approve or deny all applications for development permits required by adoption of this ordinance.

4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

6. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

8. When base flood elevation data has not been provided in accordance with Sec. 58-28.2, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.

9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
(10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required by Section 65.12.

(11) Any requirements necessary for the strength, stability or proper operation of an existing or proposed building, structure, electrical, gas, mechanical or plumbing system, or for the public safety, health and general welfare, not specifically covered by this chapter or the other technical codes, shall be determined by the Floodplain Administrator. In addition, other requirements to implement, clarify or set procedures to accomplish the intent of this chapter may be set in writing by the Floodplain Administrator official and may be posted electronically for public access.

Sec. 58-29.3. Permit Procedures.

(1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
(a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
(b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
(c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Sec. 58-30.2. (2);
(d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
(e) Maintain a record of all such information in accordance with Sec. 58-29.2. (1);

(2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
(a) The danger to life and property due to flooding or erosion damage;
(b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
(c) The danger that materials may be swept onto other lands to the injury of others;
(d) The compatibility of the proposed use with existing and anticipated development;
(e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
(f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
(g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(h) The necessity to the facility of a waterfront location, where applicable;

(i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

Sec. 58-29.4. Variance Procedures.

(1) The Construction Board of Appeals, as established by the community, shall hear and render judgment on requests for variances from the requirements of this ordinance.

(2) The Construction Board of Appeals shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

(3) Any person or persons aggrieved by the decision of the Construction Board of Appeals may appeal such decision in the courts of competent jurisdiction.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.

(6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Sec 58-29.3. (2) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this ordinance, the Construction Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Sec. 58-26.3.)

(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(10) Prerequisites for granting variances:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(b) Variances shall only be issued upon:

(i) showing a good and sufficient cause;

(ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and

(iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create
nuisances, cause fraud on or victimization of the public, or conflict with existing local
laws or ordinances.

(c) Any application to which a variance is granted shall be given written notice that the
structure will be permitted to be built with the lowest floor elevation below the base flood
elevation, and that the cost of flood insurance will be commensurate with the increased
risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by a community for new construction and substantial
improvements and for other development necessary for the conduct of a functionally dependent use provided
that:

(i) the criteria outlined in Sec. 58-29.4. (1) – (9) are met, and

(ii) the structure or other development is protected by methods that minimize flood
damages during the base flood and create no additional threats to public safety.

Sec. 58.30. Provisions for Flood Hazard Reduction.
Sec. 58-30.1. General Standards.
In all areas of special flood hazards the following provisions are required for all new construction
and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and
adequately anchored to prevent flotation, collapse or lateral movement of the structure
resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and
practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant
to flood damage;

(4) All new construction or substantial improvements shall be constructed two feet above the
base flood elevation with electrical, heating, ventilation, plumbing, and air conditioning
equipment and other service facilities that are designed and/or located so as to prevent water
from entering or accumulating within the components during conditions of flooding;

(5) The total value of improvements, repairs, modifications, and additions to existing buildings are
counted cumulatively;

(6) All new and replacement water supply systems shall be designed to minimize or eliminate
infiltration of flood waters into the system;

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate
infiltration of flood waters into the system and discharge from the systems into flood waters;
and,

(8) On-site waste disposal systems shall be located to avoid impairment to them or contamination
from them during flooding.

Sec. 58-30.2. Specific Standards.
In all areas of special flood hazards where base flood elevation data has been provided as set forth
in (i) Sec. 58-28.2, (ii) Sec. 58-29.2.(8), or (iii) Sec. 58-30.3 (3), the following provisions are required:

(1) Residential Construction - new construction and substantial improvement of any residential
structure shall have the lowest floor (including basement), elevated to a minimum of two feet
above the base flood elevation together with attendant utility and sanitary facilities. A
registered professional engineer, architect, or land surveyor shall submit a certification to the
Floodplain Administrator that the standard of this subsection as proposed in Sec. 58-29.3 (1)(a), is satisfied.

(2) **Nonresidential Construction** - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to minimum of two feet or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) **Enclosures** - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(a) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all openings shall be no higher than 1 foot above grade.

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) **Manufactured Homes** -

(a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to minimum of two feet or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:
(i) the lowest floor of the manufactured home is at minimum of two feet or above the base flood elevation, or

(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) Recreational Vehicles - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Sec. 58-29.3 (1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.


(1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sec. 58-26.2, Sec. 58-26.3 and Sec. 58-26.4 of this ordinance.

(2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Sec. 58-28.3; Sec. 58-29.3; and the provisions of Sec. 58-30 of this ordinance.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Sec. 58-28.2 or Sec. 58-29.2 (8) of this ordinance.

(4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

Sec. 58-30.4. Standards for Areas of Shallow Flooding (AO/AH Zones).

Located within the areas of special flood hazard established in Sec. 58-28.2, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified).

(2) All new construction and substantial improvements of non-residential structures;

(a) have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified), or

(b) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone,
level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Sec. 58-29.3 are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

Sec. 58-30.5. Floodways.
Floodways - located within areas of special flood hazard established in Sec. 58-28.2, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If Sec. 58-30.5 (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sec. 58-30.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulation, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Sec. 58-30.7. Penalties for Non-Compliance.
No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this court order and other applicable regulations. Violation of the provisions of this court order by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Each and every day or portion thereof during which any violation or failure to comply is committed or continued shall be deemed a separate offense subject to a fine of not more than $2000.00 for each day. And each offense upon conviction in a court of competent jurisdiction, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of New Braunfels, Texas from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 2.

THAT, it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases to this ordinance are severable and, if any phrase, clause, sentence, paragraph or sections of this ordinance should be declared invalid by the final judgment or decree of any
court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

SECTION 3.

THAT, all ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 4.

THAT, in accordance with the provisions of section 3.10 of Article III of the City Charter and State law, this ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that proper notice was given as required by law or the charter; and this ordinance may be read and published by descriptive caption only.

SECTION 5.

THAT, this ordinance will take effect upon the second and final reading of same.

PASSED AND APPROVED: First Reading this the 14th day of December, 2009.
PASSED AND APPROVED: Second and Final Reading this the 11th day of January, 2010.

CITY OF NEW BRAUNFELS

R. BRUCE BOYER, Mayor

ATTEST:

MICHAEL A. RESENDEZ, City Secretary

APPROVED AS TO FORM:

ALAN C. WAYLAND, City Attorney

U:\Planning\Ordinances\Chapter 58 Article 2 10-2009.doc
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 5
Presenter/Contact – Robert Kinsey, Building Official
(830) 221-4062 – rkinsey@nbtexas.org

SUBJECT: Discuss and consider approval of the first reading of an ordinance to amend Chapter 14, Buildings and Building Regulations, Section 14-29, Contractors, items (a) and (h) of the New Braunfels Code of Ordinances.

BACKGROUND/RATIONALE:
The City of New Braunfels amended Chapter 14 on June 9, 2008 to have building standards consistent with other municipalities in the State. Since that date, circumstances concerning the referenced items have changed. The Texas Residential Construction Commission (TRCC) has been dissolved; therefore, registration with this State agency is no longer required (item a). In addition, it was never intended for Residential Contractors to carry the same insurance requirements as Commercial Contractors; therefore, Residential Contractor insurance requirements can be lowered to $300,000.00 (item h).

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:
No fiscal impact to the City.

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Staff recommends approval of the ordinance amendment.
ORDINANCE NO. 2010 - 

AN ORDINANCE AMENDING SECTION 14-29 ITEMS (a) AND (h) OF THE CODE OF ORDINANCES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council, finds it necessary to establish rules and regulations prescribing to and governing conditions for the registration of contractors desiring to do work in the City of New Braunfels and,

WHEREAS, the City Building Division of the City of New Braunfels recommends adopting, with deletions, modifications and amendments to items (a) and (h) and,

WHEREAS, the City Building Division, has advised local builders and contractors of the City's intention to correct the aforementioned items; and

WHEREAS, the City Building Division recommends amending Chapter 14, "Buildings and Building Regulations" of the Code of Ordinances, City of New Braunfels, Texas to establish the corrections to items (a) and (h); and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

The findings and recitations set out in the preamble to this ordinance are found to be true and correct and they are hereby adopted by the City Council and made apart hereafter for all purposes.

SECTION 2

1. THAT Section 14-29 (a) and (h) of the Code of Ordinances, City of New Braunfels, Texas is repealed, and

2. THAT a new Section 14-29 (a) and (h) is adopted, which subsections shall read as follows:

(a) General Contractor-Local registration shall expire on February 28th of each year. The term "general contractor" shall mean and include every person who is engaged in the business of working on, or causing to be worked on, or accepting orders or contracts for work on any building, structure, or property, whether compensated or not compensated, under the IRC 2006 R101.2 Scope. The provisions of the IRC for One- and Two-Family Dwellings shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures except for the following:

(1) The term "general contractor-residential" shall not apply to specific trades such as foundation and flatwork, framing, cabinetry, painting, roofing, and paving as long as such work is performed under subcontract to a licensed general contractor;

(2) The term "general contractor-residential" shall not apply to the trade of electricians who are licensed separately under city ordinances, nor to plumbing and mechanical trades which are regulated by the state; and

(3) The term "general contractor-residential" shall not apply to any person performing work on any building, structure, or property where a preemptive state or federal law prevents the city from requiring licensing.
Insurance required. Before any person shall engage in the business of a general or limited contractor or be granted a registration to do so, he shall first provide the city proof of $1,000,000 liability insurance for general contractor-commercial and $300,000 for limited contractor and general contractor-residential.

SECTION 3

THAT all provisions of the Code of Ordinances of the City of New Braunfels, Texas not herein amended or repealed shall remain in full force and effect.

SECTION 4

THAT all other ordinances or parts of ordinances, in conflict herewith are hereby repealed to the extent that they are in conflict.

SECTION 5

THAT if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

SECTION 6

THIS ordinance will take effect upon the second and final reading of same.

PASSED: First Reading this the 14th day of December 2009.

PASSED AND APPROVED: Second Reading this the 11th day of January 2010.

CITY OF NEW BRAUNFELS

By: __________________________

R. BRUCE BOYER, Mayor

ATTEST:

MICHAEL A. RESENDEZ, City Secretary

APPROVED AS TO FORM:

ALAN C. WAYLAND, City Attorney
City Council Agenda Item Report
December 14, 2009

Agenda Item No. 5-H
Presenter/Contact – Shannon Mattingly, Director of Planning
(830) 221-4055 – smattingly@nbtexas.org

SUBJECT: Discuss and consider approval of the first reading of an ordinance amending Chapter 106, signs, New Braunfels Code of Ordinance to permit the relocation of off-premise advertising signs under certain conditions.

BACKGROUND/RATIONALE:
The City of New Braunfels regulates signs under Chapter 106 of the Code of the City of New Braunfels and from time to time reviews and amends the Sign Ordinance. At the direction of City Council, staff has prepared an amendment to the sign ordinance to allow for billboards to be relocated onto the remainder of the property along the portions of SH 46 that are under construction by TxDOT in order to not hold up the roadway project. These signs can only be relocated onto the remainder of the property and with the existing sign and construction materials. The signs can not be reinstalled if they are damaged or taken down after this one relocation.

ADRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>N/A</th>
</tr>
</thead>
</table>

FISCAL IMPACT:
N/A.

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Staff recommends approval.
ORDINANCE NO. 2010-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS AMENDING SECTION 106-11 “PROHIBITED SIGNS” OF THE CODE OF ORDINANCES TO PERMIT THE RELOCATION OF OFF-PREMISE ADVERTISING SIGNS UNDER CERTAIN CONDITIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the State of Texas through the Texas Department of Transportation (“TxDOT”) has the occasion to acquire right-of-way for roadway purposes within the City of New Braunfels; and

WHEREAS, normally TxDOT and the City share the cost of acquiring right-of-way; and

WHEREAS, TxDOT will not share in the cost of acquiring off-premise advertising signs if the relocation of same is not permitted by the City; and

WHEREAS, the City is desirous of amending its ordinance regulating off-premise advertising signs to allow the relocation of any such sign on a remainder tract of land when property is acquired by TxDOT for state roadway purposes; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1: That Chapter 106 “Signs,” Section 106-11 “Prohibited Signs,” Subsection (e) is amended to hereinafter read as follows:

Sec. 106-11 Prohibited Signs.

Except as provided herein, the following signs are prohibited:

(e) Off-premise advertising signs except (1) as expressly permitted in Section 106-13 or (2) in those situations where the Texas Department of Transportation (“TxDOT”) is acquiring right-of-way for the construction or expansion of a state roadway and an existing off-premise advertising sign can be relocated on the remainder of the tract of land being acquired by TxDOT without changing or replacing the existing construction materials of the sign.

SECTION 2: This Ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to off-premise advertising signs within the city limits, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this Ordinance, in which instance or instances those provisions shall be and they are hereby repealed.
SECTION 3: That if any provisions of this Ordinance shall be held void, illegal, or unconstitutional, it is hereby provided that all other parts of the same which are not held void, illegal or unconstitutional shall remain in full force and effect.

SECTION 4: This Ordinance shall take effect upon the second and final reading of the same.

PASSED AND APPROVED: First reading this 14th day of December, 2009.
PASSED AND APPROVED: Second reading this 11th day of January, 2010.

CITY OF NEW BRAUNFELS, TEXAS

________________________
R. Bruce Boyer, Mayor

ATTEST:

________________________
Michael A. Resendez, City Secretary

APPROVED AS TO LEGAL FORM:

________________________
Alan C. Wayland, City Attorney
City Council Agenda Item Report  
December 14, 2009  

Agenda Item No. 6 (A – C)  
Presenter/Contact – Alan C. Wayland

SUBJECT: EXECUTIVE SESSIONS

(A) Deliberate and consider the purchase, exchange, lease or value of real property, in accordance with Section 551.072, of the Texas Government Code.  
(A. Wayland, City Attorney)  

(B) Deliberate issues regarding economic development negotiations in accordance with Section 551.087, of the Texas Government Code.  
(A. Wayland, City Attorney)  

(C) Deliberate pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct in accordance with Section 551.071, of the Texas Government Code.  
(A. Wayland, City Attorney)  

In accordance with Texas Government Code, Subchapter D, the City Council may convene in a closed session. After the Executive Session discussion on the above noted item, any final action or vote taken will be in public.

BACKGROUND/RATIONALE:  
N/A

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<table>
<thead>
<tr>
<th>✓</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>City Plan/Council Priority:</td>
</tr>
</tbody>
</table>

FISCAL IMPACT:  
N/A

BOARD/COMMISSION RECOMMENDATION:  
N/A

STAFF RECOMMENDATION:  
N/A