

# NOTICE OF REGULAR TELEPHONE/VIDEO CONFERENCE MEETING

May 12, 2020

## MONTGOMERY CITY COUNCIL

STATE OF TEXAS

AGENDA

COUNTY OF MONTGOMERY

CITY OF MONTGOMERY

**NOTICE TO THE PUBLIC IS HEREBY GIVEN** in accordance with the order of the Office of the Governor issued March 16, 2020, the Montgomery City Council will conduct its Regular Meeting scheduled for **6:00 p.m. on Tuesday, May 12, 2020**, at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas via ZoomTeleconferencing.

This meeting will be closed to in person attendance by the public. A temporary suspension of the Open Meetings Act to allow telephone or videoconference public meetings has been granted by Governor Greg Abbott. These actions are being taken to mitigate the spread of COVID-19 by avoiding meetings that bring people into a group setting and in accordance with Section 418.016 of the Texas Government Code. Telephonic and videoconferencing capabilities will be utilized to allow individuals to address the City Council. Emails may also be submitted to [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us) by **3:00 p.m. on May 12, 2020**.

Members of the public are entitled to participate remotely via Zoom Teleconferencing. Citizens may join the Zoom Meeting by logging on at <https://us02web.zoom.us/j/86198686358> and using **Meeting ID: 861 9868 6358**. They may also join by calling (346) 248-7799 and entering the **Meeting ID: 861 9868 6358**. The Meeting Agenda Pack will be posted online at [www.montgomerytexas.gov](http://www.montgomerytexas.gov). The meeting will be recorded and uploaded to the City's website on the next following day.

*Members of the public who wish to submit their written comments on a listed agenda item must submit their comments by email to [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us) by 3:00 p.m. on May 12, 2020.*

### CALL TO ORDER

### INVOCATION

### PLEDGE OF ALLEGIANCE TO FLAGS

### VISITOR/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. Council may not discuss or take any action on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

- State or type your name at the time of making your comment.
- Limit comment to a maximum of three minutes.

### CONSENT AGENDA:

1. Matters related to the approval of minutes of April 28, 2020, Regular Meeting.
2. Consideration and possible action regarding an Escrow Agreement by and between the City of Montgomery and AutoZone Parts, Inc.

### **CONSIDERATION AND POSSIBLE ACTION:**

3. City Administrator to update the City Council on items related to the COVID-19 Disaster Declaration and City sales tax revenue projections.
4. Consideration and possible action regarding a waiver for Hills of Town Creek Section Four for an Economic and Utility Feasibility Study as required by Resolution No. 2015-14.
5. Consideration and possible action regarding variance requests for minimum lot area and lot dimensions for The Hills of Town Creek, Section Four as submitted by Chris Cheatham / The Hills of Town Creek, LLC.
6. Consideration and possible action on calling a Zoning Board of Adjustment Public Hearing regarding a variance request for 5-foot side yard setbacks in lieu of the required 10-foot side yard setback for Hills of Town Creek Section Four, as submitted by Chris Cheatham / The Hills of Town Creek, LLC.
7. Consideration and possible action regarding a variance request for the requirement to provide compensating open space in lieu of minimum lot sizes of 9,000 square feet for The Hills of Town Creek, Section Four, as submitted by Chris Cheatham / The Hills of Town Creek, LLC.
8. Consideration and possible action regarding calling a Public Hearing for a rezoning request from B-Commercial to R1-Single Family Residential for the proposed Hills of Town Creek Section Four, as submitted by Cheatham Management / The Hills of Town Creek, LLC.
9. Consideration and possible action regarding a variance request to allow residential streets serving more than 50 homes to have a 50-foot ROW as allowed in the current Subdivision Ordinance in lieu of the 60-foot ROW as required by the 2002 Subdivision Ordinance that applies to the Buffalo Springs Planned Development, as submitted by LeFevre Development, Inc. for Town Creek Crossing Sections One & Two.
10. Consideration and possible action regarding variance requests for minimum lot area and lot dimensions for Town Creek Crossing Sections One & Two, as submitted by LeFevre Development, Inc.
11. Consideration and possible action regarding proposed compensating open space in lieu of minimum lot sizes of 9,000 square feet for Town Creek Crossing Sections One & Two, as submitted by LeFevre Development, Inc.

### **EXECUTIVE SESSION:**

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas. *(There are no items at this time.)*

**COUNCIL INQUIRY:**

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

**ADJOURNMENT**



A handwritten signature in blue ink, which appears to read "Susan Hensley". The signature is written in a cursive style and is positioned above a horizontal line.

Susan Hensley, City Secretary

I certify that the attached notice of meeting was posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, on the 8th day of May 2020 at 4:15 o'clock p.m. I further certify that the following news media was notified of this meeting as stated above: The Courier

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*This facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary's office at 936-597-6434 for further information or for special accommodations.*

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# MINUTES OF REGULAR TELEPHONE/VIDEO CONFERENCE MEETING

April 28, 2020

## MONTGOMERY CITY COUNCIL

### CALL TO ORDER

Mayor Sara Countryman declared a quorum was present and called the meeting to order at 6:01 p.m.

Present: Sara Countryman Mayor  
John Champagne, Jr. City Council Place # 2  
T.J. Wilkerson City Council Place # 3  
Rebecca Huss City Council Place # 4  
Tom Cronin City Council Place # 5

Absent: Vacant City Council Place # 1

Also Present: Dave McCorquodale Assistant City Administrator  
Susan Hensley City Secretary

### INVOCATION

John Champagne gave the Invocation.

### PLEDGE OF ALLEGIANCE TO FLAGS

### VISITOR/CITIZENS FORUM:

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Mayor Countryman read the following comment into the record, which was received via email, stating that she thought the same email was read at the Montgomery EDC Meeting last week. Mr. McCorquodale stated he thought this was a new comment, but he did not know that for sure.

Mayor Countryman read the following statement by Efrain Lucas, General Manager of the Cozy Grape “if the City really cares about helping why don't you set up a fund to assist financially strapped citizens that are struggling to pay their water and sewer bill. Why doesn't the City waive late fees during this pandemic? The way to help local businesses is to buy their products and support them personally, not tear them down in some want to be newspaper or rag that only cares about destroying reputations. If businesses grow, tax revenues grow and then the City and MEDC can invest in our streets and sidewalks. Right now, some of our streets look like they are in a third world country. Huss and the Mayor don't care about local business in the City of Montgomery, it is obvious from Huss' actions since she accursed the owner of Cozy Grape, two City Council Meetings ago, of taking advantage of his City Council status to enrich himself financially from the parking lot arrangement. If Huss would read the lease there is nothing that benefits Cozy Grape financially from the arrangement, not the rent of dollar annually or the 20- year term, which was 15 years longer than the other property owner that the City leased from. Cozy Grape offered the 20 years lease, not the City Council, not MEDC, then Jack Yates had the audacity to try and tow our customers' cars off our lot during the last Antique Festival. This is why Cozy Grape hired a lawyer for \$7,500 to protect our rights as a business owner, so the City and certain elected officials won't try to screw us in the future. In the eight years that Cozy Grape has been open, I don't remember seeing your faces in there to support us.”

**CONSENT AGENDA:**

1. Matters related to the approval of minutes of the Regular Telephone/Video Conference Meeting held on April 14, 2020.
2. Consideration and possible action regarding approval of an Approval of the Mixed Beverage, Caterer's Permit and Beverage Cartage Permit Application for Karla Throws a Party, LLC dba Chandlers Event Venue and Shindig Event Rentals located at 304-308 Caroline Street, Montgomery, as submitted by Karla Nash.
3. Consideration and possible action regarding completion of a one-year warranty period for the 18-Inch Gravity Sanitary Sewer Line Extension (Phase 1) project.
4. Consideration and possible action regarding completion of a one-year warranty period for The Shoppes at Montgomery Public Infrastructure project and release of the maintenance bond.

John Champagne asked about The Shoppes Public Infrastructure project for clarification. Mr. Roznovsky, City Engineer advised this was a public water and sewer line that was constructed along FM 2854 next to CVS.

T.J. Wilkerson moved to accept the Consent Agenda items as presented. Tom Cronin seconded the motion, the motion carried unanimously. (4-0)

**CONSIDERATION AND POSSIBLE ACTION:**

5. Consideration and possible action on Department Reports.

- A. City Administrator's Report and COVID-19 Update – Mr. McCorquodale stated he would be presenting the Departmental Reports except for the Finance Report and the Water Report. Mr. McCorquodale advised Mr. Tramm, City Administrator, asked him to let City Council know that in May he plans to come back to City Council with a budget amendment that will take into account the point that John Champagne had raised about some of the existing numbers in the budget, as well as having data from the COVID-19 situation and seeing some of the sales tax revenue numbers. Mr. McCorquodale said there would be either a budget amendment or at least discussion of a budget amendment. Mr. McCorquodale said Mr. Tramm is monitoring what other cities are doing and staying in tune with what the State is putting out as they start this process of reopening various segments of the economy and they look forward to getting things back up and going.

Mr. McCorquodale said one thing they did want to mention, they have approximately \$47,000 in the budget for repaving streets, with the arrangement with Precinct 1, using their labor and the City supplies the materials. Mr. McCorquodale said Precinct 1 can get the City on the schedule in early May 2020, and one thing they want to do is come back to City Council and get their position as to whether or not they should delay some of the repaving of various streets around the City or whether they should move forward. Mr. McCorquodale said if left to Mr. Tramm, he would probably hold off until they see what the implications were on the City budget regarding COVID-19, but he did want to get some direction from City Council.

John Champagne said his position was that any essential items that are in the budget that have been approved should be done, and in his opinion, the streets are essential. John Champagne said for the sake of what Mr. McCorquodale said, he stated he wants the streets fixed. Rebecca Huss said she would have to say that she disagreed, and said she thought they need to look at the full scope of what our priorities are and what has to be paid, and what they would like to pay, and unfortunately while the streets are high

on the priority list, they are not a must. Rebecca Huss said when they are looking at how much the revenues are going to contract and what their cuts are going to have to be, she thought they need to look at the matter in totality. Rebecca Huss said she felt the need to wait until they know the full scope of what they are looking at. John Champagne asked Rebecca Huss what would be higher on her priority list. Rebecca Huss said paying essential employees. John Champagne said that would be wrong because the stockholders in the City have paid for services, and to be in balance in terms of expenditures on employees and services rendered to the stockholders, that being the citizens, is the imbalance. John Champagne said the employees do not trump the citizens, in his opinion. Rebecca Huss said the employees provide services that the citizens value, so when they are looking at it again in totality they have to weigh what priorities there are and how to make our revenues line up as best they can with the expenditures. Rebecca Huss said they cannot make a decision about one item in a vacuum. John Champagne said that was wrong, this is not a vacuum. Rebecca Huss said it is because you do not know what other things are on the cutting block. John Champagne said he does know that a 50% reduction in revenue is what he knows, and it is coming. Rebecca Huss said they need to look at all the expenditures together at the same time. John Champagne said their mandate is to provide services to the citizens that have paid for the services, he is talking about balance, which is what he has always talked about. John Champagne said the employees do not trump the services to be rendered to the citizens. Rebecca Huss said it depends on what services they are providing. John Champagne said it is all services. Rebecca Huss said she did not think so and she was trying to present that in a slightly more balanced fashion. Rebecca Huss said Mr. McCorquodale was asking for an opinion and John Champagne provided his, and she was providing hers, and perhaps the other members of City Council would provide theirs. Tom Cronin said he felt also that as much as they need the City employees, the citizens elected City Council, not the City employees. Tom Cronin said they did the same thing last year; they blew off streets and they are blowing off sidewalks and making excuses for not getting it done. Mayor Countryman said she thought that was part of the overall master plan that they have been working on, and those were definitely on the priority list, and they were also waiting to see what TxDOT did in the overall Master Plan and Comprehensive Plan, which she did not know when now because of COVID-19. John Champagne asked Rebecca Huss if it were coming

out of her hip pocket, how would she do it. Rebecca Huss said it would depend on the specific services they are talking about. Rebecca Huss said she lives on a street that she has actually, since she has been on City Council, pushed to not have repaved because she does not see the value in it, so she is putting her money where her taxpayer dollars are. John Champagne said their mandate is to do very few things in terms of government, it is not to hold hands and coddle people, it is to provide services. Rebecca Huss said it is to provide toilets and to provide safety is two of those services, so if it comes down to it and those services require people in order to get it right. Rebecca Huss said those two services are the ones she is thinking of that they need to look at when you look at what must be done to cut one million dollars out of their budget. Rebecca Huss said she was elected by the most people voting ever on the slogan that she cared about how much it costs to flush your toilet, people care how much it costs to flush their toilet and doing it successfully is a service the City provides and people expect it to do so. Rebecca Huss said you might like to hold their hands, but she would think people would prefer to flush. John Champagne said he totally agreed. John Champagne said his point was they have a 50% reduction in revenue. Rebecca Huss said not this year, and she was guessing that it is only a 25% reduction off the top line for this year. John Champagne said he was not saying they should have a wholesale reduction in personnel, what he was saying was the pain they are experiencing is to be realized by everyone. John Champagne said he was also saying the people that are paying the bills need to have a return on investment in balance. John Champagne said he was not saying they should severely cut personnel; he was saying we should look at both sides of the ledger. Rebecca Huss said she agreed with that in totality, if not in tone, and said they need to look at this in its totality rather than one piece at a time because when you get to the end and you have not looked at the whole picture, you have things that you wished you had the money to spend. John Champagne said they have four or five mandates, the first, in his opinion, is to protect the citizens, the second is to make sure the water is at the faucets, the toilets flush and the roads work. John Champagne said after that he asked Rebecca Huss to tell him what was important. Rebecca Huss stated she had just said she cared about toilets and police because when she was saying about the things that she was going to prioritize, water and sewer and public safety were her top two. Rebecca Huss said she was saying she would like to look at the streets in the context of our entire obligation to the City. John Champagne



asked about the other obligations. Rebecca Huss said they have three pages of line items in the budget in just the general account alone. John Champagne said he was asking specifically what obligation is giving Rebecca Huss angst regarding the four items he just mentioned. Rebecca Huss said they obviously must pay the contractually obligated debt on their notes, 380 Agreements, stating that is a problem if the topline is shrinking. John Champagne said those are uncontrollable obligations. Rebecca Huss said she wanted to look at everything as a whole picture rather than making one headline inducing decision about streets today in opposition to the man you hired to micromanage the City.

John Champagne said he was saying if he is running this City, if this was his business, he would look at all his department heads and he would say how can they reduce costs and asked if that has been done. Mayor Countryman said that has been done, asking if he talked to Mr. Tramm. John Champagne said he had, but he had yet to see a specific. Mayor Countryman said all department heads have had the directive of only essential procurement should take place and they have put purchasing on hold. John Champagne asked what that meant. Mayor Countryman said that meant making sure the City is running, but not buying extras, stating she thought they all know what essential means. John Champagne said he wanted a number or a percentage, that is platitudinal speech and means nothing. Mayor Countryman said she thought they need to look at what money the City has coming in and ask if they can afford the expenditure or not. Mayor Countryman said she understood given on the last budget the money was there and projected in the budget, but now with the change of times, we do not know what the change will be and said she did not know how much money would be coming in and what the loss looks like. Mayor Countryman said how about stepping back and looking at what actually comes in and then work the budget accordingly. Mayor Countryman said she agreed some streets need attention, without a doubt, but she was saying to make sure they are affording it properly because they are not essential, you are able to travel on the streets, while they are not the best looking streets, she agreed. John Champagne said he was not looking at their appearance he was looking at safety. Mayor Countryman asked if there has been a wreck on the streets they are looking at repaving. John Champagne asked if that was what they were going to wait for a wreck. Mayor Countryman asked what the difference is between now and three months from

now, once they get a full understanding of the impact of this pandemic and asked if it was that big. John Champagne said his answer was, what is keeping them from a proactive plan, assuming there is a 50% reduction in revenue and asked what is keeping the City from doing that? Mayor Countryman said that it was an assumption, stating she would like to see real numbers because they can assume anything. John Champagne said the Mayor would like to wait until the reduction hits us in the face. Mayor Countryman said she would like to look at the information. John Champagne said he would like to plan in the event of the 50% reduction, there is the difference, the Mayor wants to wait until it happens, and he wants to anticipate it happening. Rebecca Huss asked John Champagne why he was so ready to spend \$46,000. John Champagne said he was done discussing the matter. Rebecca Huss said she would like to leave the road fund decision up to Mr. Tramm, his advice is to wait. John Champagne said he has; he has given Mr. Tramm all his opinions and he has left it up to him. John Champagne said his question to Rebecca Huss was where this falls in her priority list. Rebecca Huss said she had told John Champagne somewhere after public safety as in the police department and clean water. Rebecca Huss said to be clear, they are talking about her own road in front of her house, which she has pushed back for six years. John Champagne said he cares about the roads in total in the City and he could care less about her road. Mayor Countryman asked which roads were included for the \$47,000 repaving. Mr. Muckleroy, Public Works Director, advised the roads included were Baja Street, Worsham Street, Old Plantersville Road, West Way, and McGinnis Lane are the streets that City Council approved for the County to pave for an estimated total of \$47,515. Mayor Countryman said there was no doubt these streets need repaving, but she did not think they would get any worse for ninety days so they could assure the City can afford to pave them and get a better look at what funds they have available.

Mr. McCorquodale said the second half of Mr. Tramm's report was regarding development. Mr. McCorquodale mentioned there were two new subdivisions with about 230 home sites that are in the early stages of development, both existing developers in town, one on the west side, and the other just north of Buffalo Springs. Mr. McCorquodale said he was talking with several commercial developers who are

looking at parcels on the east side of town. Mr. McCorquodale said that development is not slowing down.

- B. Public Works Report – Mr. McCorquodale presented the Public Works Report advising that at Cedar Brake Park they have added some parking on the west side of town, with Public Works employees installing the culverts, stabilized sand and most of the excavation work, and they had the paving contractor in this past week. Mr. McCorquodale said Public Works installed a manhole on the corner of Old Plantersville Road in-house instead of using a contractor for a savings of approximately \$8,200, which has stopped the sewer backups at his house and the neighbor's house because they are located at the bottom of the hill as well as keeping everything on the south side of town flowing.
  
- C. Police Department Report – Mr. McCorquodale said some of the main changes are their operational stance in relation to COVID-19. Mr. McCorquodale said the Chief wanted him to reiterate is that while the arrests made and detainment of suspects is at a minimum right now, there are going to be warrants and they are not letting anyone go at this time, there is just a delay in when they are going to be addressed. Mr. McCorquodale said the department is trying to maintain the distance they can in a job where their entire focus is making interactions with people.

Tom Cronin asked if the Investigator position was filled. Mr. McCorquodale said it was filled this week and he started on Monday and they are in the final stages of getting his office space squared away so he can get to work. Tom Cronin asked the name of the Investigator. The City Secretary advised his name is Albert Chambers. John Champagne asked when the Investigator was brought on staff. Mr. McCorquodale advised it was Monday, April 27, 2020, stating the process started a couple of months ago.

John Champagne posed a question asking if they modified our personnel utilization regarding our anticipated reduction in revenue in terms of utilization of police officers, asking if they had done any of that specifically? Mayor Countryman said she spoke to Chief Solomon today and he did have four open spots and these hires were done prior

to the COVID-19 and he is not filling the other two spots currently. John Champagne said he wanted to ask the question again as to whether they have adjusted our utilization of existing personnel assets regarding police officers anticipating the reduction in revenue. Mr. McCorquodale asked Ms. Hensley to unmute the Chief. Ms. Hensley unmuted the Chief, but he was not present. John Champagne asked if everyone understood the question he just asked. Mr. McCorquodale said he understood and while he did not know the specific answer to the question, he would get that answer. John Champagne said it was not Mr. McCorquodale, who was doing a great job, he meant everybody else. Tom Cronin said he understood the question. Tom Cronin asked if the Chief was available. Mr. McCorquodale said he may be having microphone problems. Ms. Hensley advised he was calling in on another line that she can't get to, but stated he was unmuted on the computer. Mr. McCorquodale moved to the Court report until they can get the Chief online.

- D. Court Department Report – Mr. McCorquodale advised the big challenge for the Court is the technology bridge between the people that are getting the citations and getting to Court. Mr. McCorquodale said at times it is very difficult to get the citations taken care of either online or over the phone. Mr. McCorquodale said they were 47% down on citations and 32% down on revenue since January. Mr. McCorquodale said the Court was doing a fantastic job educating folks to get into compliance who want to take care of a citation online.

Rebecca Huss said the March revenue is about the same as the January revenue, which she was going to ask about. Mr. McCorquodale said he did not know specifically why those are the same, but he was looking at the totals from last year.

- E. Utility/Development Report – Mr. McCorquodale said the utilities brought in about \$162,000, permits just a little over \$38,000, with total revenue at \$212,842. Mr. McCorquodale said they have a total of 818 water accounts. Mayor Countryman asked if the City was helping residents if there is a late fee. Mr. McCorquodale said the City is not charging late fees during this time nor are they making disconnects for individuals that are living in their homes or for a business. Mr. McCorquodale said if there was someone that would not fall into the non-cutoff status, such as homebuilders

who have seven or eight accounts with the City, if they are going to fall into arrears they will need to pay those fees. John Champagne asked why the difference in applying this for homebuilders, asking where the differential was. Mr. McCorquodale said if there was a homebuilder that has not paid on a couple of his homes that he is working on since early January, to him that is different than this past month or six weeks. John Champagne asked what was the limit that the City has set in terms of our allowance. Mr. McCorquodale said he did not know specifically what that is. John Champagne said that was a subjective inference that Mr. McCorquodale just made in terms of the builders, but nothing objective and definitive regarding where that line is and where is the line for residential. John Champagne said his point was, he has no problem with the desire to give people leniency, and by the way, they should be getting federal money from the superfluous money that has been created by the federal government to give to each of us, so the way they spend it is none of his business. John Champagne said what is his business is when they pay their utilities, so he asked Mr. McCorquodale to tell him what the objective line is of demarcation and asked if we have one. Mr. McCorquodale said he would bet they do, unfortunately, he did not know it because he is not in the utility department, but that was probably a question for Mr. Tramm that he could answer. John Champagne said that should be a question for Mr. Muckleroy. Mr. McCorquodale said he was over Public Works. John Champagne asked who the billing person works for. Mr. McCorquodale said she ultimately works for Mr. Tramm. Rebecca Huss said ultimately that is a policy issue on how City Council is reacting to what is going on and what kind of decisions we are making to support our residents and businesses. John Champagne asked for some specifics on this information. Rebecca Huss said the question is on how far the City is going to go to try and keep people on a payment plan and what kind of arrears are we going to allow, which is something City Council needs to decide. John Champagne asked what that decision is based on. Rebecca Huss said she supposed it would be based on what they can agree upon. John Champagne said no, it was based on what this organization has coming in and what it can do to sustain itself. Rebecca Huss said that is true, but that is a decision that City Council would need to decide. John Champagne said he was asking for specifics, not whether people are not sure, or they don't know, because they need to be sure. Rebecca Huss said it is a policy decision that ultimately City Council needs to decide how much they will allow people to accrue and how long they can allow people

to remain on a payment plan, which are City Council decisions they need to be comfortable with because the arrears is something they ask about all the time. John Champagne asked why the differential between builders and residents. Rebecca Huss said her personal view is that residents are long term contributors to the City's profitability and quality of life, whereas the builders are much more short term. John Champagne asked if the builders contribute to the quality of life in the City. Rebecca Huss said not in the long term, they are here to build the product and then leave after they sell the product. John Champagne said they have left an asset that lends itself to the quality of life to this City and asked for an objective answer to the difference in the way these subjective ordinances are applied because he did not get it. Rebecca Huss said they are being practical, a builder is trying to get the building built and sold and if they are not working on it and paying their bills they are probably not going to be selling anytime soon, so they don't care whether the water is on or not. John Champagne said if a resident is not working and is buying whatever he believes is more important than his water, what is the difference? Rebecca Huss said there is nothing more important than water. Mr. McCorquodale advised it was less of a COVID-19 and more of an accounting situation they have wrestled within the last month. John Champagne said he was just saying this is superfluous and subjective with no specifics, and he is struggling as to why the City is not dealing with specifics. Mr. McCorquodale said in terms of specifics, they have about 10 months of operating in the utility account, so as you start to consider from a policy perspective in the coming months, keep that in mind.

- F. Water Report – Mr. Michael Williams, Vice President of Operations with Gulf Utility Services, reported for March they had several district alerts, which he wanted to point out on one alert they had an alarm for Well 4 failing to prime and they had C&C Water Well go out and look at it and the well motor had failed. Mr. Williams said the reasoning on that was due to an insulation failure on the motor itself, they were able to install a temporary rental and reinstall the motor on April 2, 2020. Mr. Williams said they did not have too many charges from Well 4 being down because they were able to get it repaired so quickly. Mr. Williams advised the effluent trend, with the flow for February through March was 4,964,000 gallons, with the daily peak flow on February

24, 2020, at 314,000 gallons and the daily average flow was 171,200 gallons. Mr. Williams reported that all the samples for the month of March were in compliance.

Mr. Williams said the water report shows we sourced a total of 8.276 million gallons, flushed 1.068 million gallons, which is slightly higher than normal because they drained some tanks for interior inspections bringing them to a 97% accountability.

- G. Financial Report – Mr. Anthony Lasky, Senior Accounting Clerk, introduced himself and stated he was looking forward to working with everyone. Mr. Lasky then presented his report to City Council. Rebecca Huss asked Mr. Lasky to skip the bank balances and get to the more interesting information. Mr. Lasky said right now the general fund as of March 31 they have about five and a half months reserve, but currently, Mr. Tramm was asking about that information earlier and there is about four-and-a-half-month reserve now. Mr. Lasky said there was no sales tax received for March due to the overpayment from September 2019 and then there was a \$2,700 payment for April but starting in May they should be back to normal again. John Champagne asked about the sales tax payment and what would the net payment have been. Rebecca Huss said they did not receive sales tax due to the overpayment. Mayor Countryman said they discussed this information at the last meeting. Rebecca Huss said this is something they have discussed several times and in great depth, this is money that is not the City's and was not recorded as ours. John Champagne said he was not talking about that; he was asking what the residual amount that is going to be realized by the City of Montgomery. Mayor Countryman said the funds have been paid back to the State and they had put those funds in an account that they accrued interest on and now they will be able to replenish it, but for two months the City did not receive any sales tax. John Champagne said he would just like to know what the net value of the revenue was for sales tax for March and asked if he could get that answer. Mr. Lasky said it would have been roughly \$217,000. John Champagne asked what the City's obligation for that month in terms of expenses was. Mr. Lasky said he was just trying to get a little more specific on that information. John Champagne said he would guess it would be about \$350,000 and asked if that amount was correct. Mr. Lasky said it was \$396,000 and then the rest is getting paid back for this month, leaving roughly \$2,700 collected for April in total. John Champagne asked everyone what they needed to wait for.

Rebecca Huss said they are talking about two separate things. John Champagne said no they are not they are talking about revenue and expenditures. Rebecca Huss said Mr. Lasky was talking about the HEB expense. John Champagne said he was talking about money coming in and money going out, which is all he is talking about. John Champagne said he just asked the question, what revenue for the City of Montgomery for March, which he was just given, the shortfall was obvious, and asked how this has become complicated because this is simple stuff. Mr. McCorquodale said he could speak to the ad valorem taxes, but he thought the \$217,000 that Anthony mentioned. John Champagne said that it does not even make a dent. John Champagne said he runs a business and he must meet payroll and he knows what it is like and so does Tom Cronin as well. John Champagne asked Mr. Lasky if that information was for March and since it is too early for April, he asked Mr. Lasky if he sees any tendencies or recovery in April. Mr. Lasky said everything should be paid back, which is why they got the \$2,700 for April, and then by next month in May they should see the regular amount come back. John Champagne asked Mr. Lasky if he was talking about specific individuals and said he was talking about net revenue and trends. John Champagne said Mr. Lasky gave him March and he is asking about April, for the trends, and asked if the trends seem to be going up or down. Mr. Lasky said it will go back to normal. John Champagne asked what that prediction was based on. Mr. Lasky said it was based on the City paying back the HEB amount that was accidentally deposited back in September. John Champagne said he was talking about net and not the HEB payment or anything else. Rebecca Huss said she was not sure that was Mr. Lasky's area of expertise. John Champagne said he understood it was a bit of an unfair question, but he is asking for an opinion in terms of trends and asked if anyone else wanted to answer. Tom Cronin asked Mr. McCorquodale if he and Mr. Tramm have done any forecasting for the fiscal year. Mr. McCorquodale said he knew that Mr. Tramm has but right now there is not enough data to do much forecasting from. Mr. McCorquodale said they should be seeing something in the next two to three weeks, so when they look at something like sales tax, as all of you know that is two months behind so to understand any real hit on the sales tax they are going to be into June seeing the information that comes in April. John Champagne asked Mr. McCorquodale what he thought the trend is. Mr. McCorquodale said his guess is somewhere around 20% down and said a lot of that is based on the composition of the City's retail. Mr. McCorquodale said if the



City had a lot of big box stores he would be looking at that totally different, such as a Shenandoah who relies heavily on a Portofino Center or something like that, that is a whole different animal. Mr. McCorquodale said the City of Montgomery received a good portion of its sales tax from grocery stores. John Champagne said he was not asking for hard numbers; he was asking what the indications were and what they see for the City. John Champagne said we pay you guys to look ahead, not behind, ahead.

- H. Engineer's Report – Mr. Roznovsky, City Engineer, presented his report to City Council. Mr. Roznovsky advised the Baja Road Project that is complete, they are still working on the corner, which they got proposals a couple of weeks ago and sent it to staff, and they wanted to get a couple more proposals to make sure the price was fair. Mr. Roznovsky said they were waiting until the first meeting in May to get proposals is the goal. Mr. Roznovsky said they are closing out the final documents with GrantWorks, and the reimbursement to the City will be processed soon.

Mr. Roznovsky said regarding the Water Plant 3 Improvements, they had met with the TORC on April 9, 2020, and went over the comments and will have those addressed in the next few days to submit for final approvals, and then they will update the costs for the project and sit down with staff to see how they want to bid the project. Mr. Roznovsky said he felt they should bid it with alternates, which is how they planned to give them some flexibility when the prices come in, based on what they have today.

The Water Plant Backfill Project is one that has been listed for years and was completed and bid back in 2016 a couple of times and the prices never were correct on it that was received. Mr. Roznovsky said with the changes in Lone Star rules, the need for it has decreased substantially since they are not going after credits, and they are really the City's reduction requirement for Catahoula water has gone away. Mr. Roznovsky said the recommendation between us and staff is to put this item on indefinite hold. Mr. Roznovsky said the plans are done and the bidding documents are done and on the shelf, so they can see how the Lone Star rules change in the future and if something becomes more advantageous they can bid it at that time.

Mr. Roznovsky said Lift Station #1 Replacement wet well structure is complete and they are now working on the above-ground items as well as the electrical at this time. Mr. Roznovsky said they did have two pay estimates since the last meeting totaling \$103,167, which all comes from the TWDB Loan and the developer contribution of \$200,000, of the \$1.1 million project. Mr. Roznovsky said the contractor is behind schedule and right now they are not expected to be complete until late May. Mr. Roznovsky said they are working with the contractor on the damages that are in the contract for late delivery.

Mr. Roznovsky advised Starbuck plans have been reviewed and approved, which will be in the same center as Chick-Fil-A. Mr. Roznovsky said the Heritage Parking expansion plans are ready to be approved along with the development plat and the building lines are recorded.

Mr. Roznovsky said Town Creek Crossing, Sections 1 and 2, which is Philip LeFevre's development between Buffalo Springs, Plez Morgan and Lone Star Parkway, so he will be going to the Planning and Zoning Commission next week for his preliminary plat and Depado Development is on the north side/west side of Lone Star Parkway, and are commercial reserves. Mr. Roznovsky said in total between those two developments is eight commercial reserves and around 200 homes. Mr. Roznovsky said on the map there is a townhome development on Plez Morgan, and they are starting with their design slowly but surely.

Mr. Roznovsky said the Hills of Town Creek, Section Four, has also submitted a preliminary plat for another 30 homes north of the apartment complex on Emma's Way.

Mr. Roznovsky said Lake Creek Village, Section 3 has completed their work last week by regrading the ditch on Buffalo Springs, so they will be going out in the next couple of days to make sure it is draining like it was intended.

Mayor Countryman asked if they found out if the one-year warranty for the Buffalo Springs Bridge work starts from the day or if it starts from the original date, which was

leftover from a previous meeting. Mr. Roznovsky said they are still working through that warranty and said they have been in conversation with the contractor on it and he is fighting his responsibility to go back out there, so it is on him to get with the City Attorney to discuss options for the City. Mr. Roznovsky said one thing he discussed with Mr. Muckleroy is getting a second opinion contractor out there so they understand the magnitude of the scope of the repairs and to have an actual price and to understand how much they are fighting over, whether it is a \$5,000 repair or a \$25,000 repair. Mayor Countryman asked to confirm that the contractor Fuqua hired a third party to do the work. Mr. Roznovsky said that is correct, but the contract that the City had was with Glenn Fuqua, and this was one of his subcontractors and the City did not have a separate contract with them and it is still Fuqua's obligation. Rebecca Huss said she went over there on Sunday and said it looks worse than it did a few weeks ago. Mr. Roznovsky said that is correct and said Mr. Muckleroy has gone out there and done some minor patching to try and keep expenses down and keep it from being undrivable, but it does not look good.

Mr. Roznovsky advised the right-hand turn lane documents were completed at the last meeting for the donation of the right-of-way. Mr. Roznovsky said in following up with TxDOT, they are now saying that it is still tied to construct those with the whole of FM 149 improvements. Mr. Roznovsky said TxDOT recalled that the City had a conversation years ago that this would be done under maintenance, so TxDOT is going back and checking their records. Mr. Roznovsky said TxDOT is also going through the Mobility Study, and Ms. Vu was also checking to see what other data they can pull from there to start to bolster the case for moving this forward.

Mr. Roznovsky stated the Annual Water Plant Inspections were completed back in March, which all came back with generally everything being okay, with a handful of items that were noted that were in the scope of the Water Plant 3 Improvements Project, and then some recoating at Water Plant 3 to extend the life of one of those tanks, which they are getting a proposal with the work to be done in the fall.

Rebecca Huss asked if Mr. Roznovsky knew the approximate value of the Starbucks building site. Mr. Roznovsky said he did not know that information and advised they

did not have a separate Escrow Agreement; they are tied in with The Shoppes development but said he would get that information.

Chief Solomon was not able to communicate during the meeting. John Champagne said for the sake of time, he would like to sum up what he was going to address with Chief Solomon. John Champagne said the last time he checked the Police Department represents about 54% of the total payroll of the City and said his question was “have we changed the utilization of existing assets, our most important assets personnel, to reduce our costs in terms of payroll and increase our utilization of existing personnel.” John Champagne said that was what he wanted to get an answer. Mr. McCorquodale said he would get with Chief Solomon to make sure they follow up and get it out to City Council.

Rebecca Huss moved to accept the Departmental Reports as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

6. Consideration and possible action regarding acceptance of the construction bid for the TWDB - Downtown Waterline Replacement project and authorize the project to be re-bid.

Mr. Roznovsky advised on March 16, 2020, the City received bids for the Waterline Replacement Project, which was right at the beginning of COVID-19. Mr. Roznovsky said they estimated the project to be approximately \$780,000, but the one bid they received from D.L. Glover was for approximately \$1.35 million for the project. Mr. Roznovsky said the City has worked with D.L. Glover in the past and was currently working on the 18-inch sewer line and is a fine contractor, but the price is way out of line of what it is estimated to be. Mr. Roznovsky said they went back and called all the contractors who have pulled the bidding documents to submit. Mr. Roznovsky said there was a lot of interest in the project and they were trying to figure out why they did not receive more bids. Mr. Roznovsky said the contractors advised there was a high number of bids at the time, which is always their excuse, they were unfamiliar with a product that was specified, so with being a waterline replacement, they recommended a PVC pipe that fuses together versus other materials they were more commonly open to, and then COVID-19 was a big item on their list and they did not want to lock themselves into a large project when COVID-19 was just starting. Mr. Roznovsky said

they looked at that and what parts of the contract they could make as alternates in a rebid to give more flexibility in bid prices. Mr. Roznovsky said the ultimate goal is there is a 12-inch waterline on FM 149 that stops by Jim's Hardware and then all goes down through six and eight-inch pipes to get to a 12-inch line across the street from City Hall and SH 105. Mr. Roznovsky said the goal is to connect those two pipes, so they have a continuous 12-inch pipe through the City. Mr. Roznovsky said this project also included was taking the line further east of Pond Street, across FM 149 in front of Brookshire Bros., and taking it down Houston Street to get to the Water Plant site. Mr. Roznovsky said those two pieces are not as critical as the majority of the water comes from the Water Plant #3 so getting that loop closed, the proposal is to make those alternate pieces of the project as well as providing flexibility and giving an alternate for different pipe materials. Mr. Roznovsky said their recommendation is to accept the bid and not award the project to D.L. Glover and authorize the project to be rebid, and then assuming the project is authorized, they would bid and have the bids at the June 9, 2020 meeting. Mr. Roznovsky said the contractors they spoke to said if they provide a rebid, they would generally be open to resubmitting.

Rebecca Huss said she appreciated them looking at why it did not work, rather than recommend they just go for a much higher cost.

Rebecca Huss moved to accept the construction bid and authorize the project to be rebid. Tom Cronin seconded the motion.

Discussion: John Champagne asked to confirm they are accepting a bid and requesting a rebid. Mr. Roznovsky said yes, they are accepting the receipt of the bid, but you are not awarding that bid to the contractor who submitted the bid. Mr. Roznovsky said City Council is saying yes, they received the bid, and they are rebidding. John Champagne said, in his opinion, there is a difference between received and accepted. Mr. Roznovsky said that is correct. John Champagne said the motion made is to accept or receive the bid. Rebecca Huss said she was doing what Mr. Tramm recommended in the document they have on the tablet. John Champagne said he was not disputing that. Rebecca Huss said, to clarify, she is not advising they pay for it, she is just acknowledging receipt of the bid and to clarify this is for the Texas Water Development Board Downtown Waterline Replacement Project. John Champagne said thank you for helping him understand.

Ms. Hensley confirmed for the minutes that the motion Rebecca Huss moved was to accept receipt of the bid and to authorize going out for rebid on the TWDB Downtown Waterline Replacement Project. Tom Cronin said he was comfortable with the clarification and seconded the motion. The motion carried unanimously. (4-0)

7. Consideration and possible action regarding calling a Public Hearing to be conducted by City Council, acting as the Zoning Board of Adjustment, regarding a variance request for a front building line of 25-feet instead of the required 35-feet for the proposed Heritage III development along SH 105, west of the Louisa Street intersection, as submitted by Cheatham Management to be held on May 26, 2020 at 6:00 p.m.

Mr. McCorquodale advised this was on the March 10, 2020 Agenda and due to a lack of a supermajority of City Council in attendance, which is required for a Zoning Board of Adjustment action, it was postponed until the next meeting, which was not held due to COVID-19 situation. Mr. McCorquodale said out of an abundance of caution to comply with notification laws, they would like to recall this meeting so they can publish notices and send out the notification.

John Champagne moved to accept the variance request for a front building line of 25-feet instead of the required 35-feet for the proposed Heritage III development along SH 105, west of the Louisa Street intersection, as submitted by Cheatham Management. Rebecca Huss asked to confirm they were only calling the Public Hearing for this item. Mr. McCorquodale said that is what they need to be doing and said they will act on the item after the Public Hearing on May 26, 2020. John Champagne said he thought they had already done that. Rebecca Huss said they did, both she and John Champagne were in complete agreement on the item. Mr. McCorquodale said there was a quorum at the meeting, but there was not a supermajority, which is what you must have. John Champagne said they are just calling the Public Hearing. Mayor Countryman said she hoped they would be in City Hall, but asked Ms. Hensley if that motion should be via Zoom or at 101 Old Plantersville Road. Ms. Hensley said yes.

John Champagne moved to call calling a Public Hearing to be conducted by City Council, acting as the Zoning Board of Adjustment, regarding a variance request for a front building

line of 25-feet instead of the required 35-feet for the proposed Heritage III development along SH 105, west of the Louisa Street intersection, as submitted by Cheatham Management to be held on Tuesday, May 26, 2020 at 6:00 p.m. at 101 Old Plantersville Road or by Zoom. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

8. Consideration and possible action regarding calling a Public Hearing for a rezoning request from R1-Single-Family Residential to B-Commercial for Lot 16, Area D, Montgomery Townsite Section Four, a vacant lot behind 21105 Eva Street, as submitted by Cheatham Management to be held on May 26, 2020 at 6:00 p.m.

Mr. McCorquodale said this was the same as the previous item, a supermajority was not present, so they are asking to recall the Public Hearing.

9. Rebecca Huss moved to call a Public Hearing for a rezoning request from R1-Single-Family Residential to B-Commercial for Lot 16, Area D, Montgomery Townsite Section Four, a vacant lot behind 21105 Eva Street, as submitted by Cheatham Management for City Council acting as the Board of Adjustment to be held on Tuesday, May 26, 2020, at 6:00 p.m. to be held at 101 Old Plantersville Road or via Zoom. T.J. Wilkerson seconded the motion.

Discussion: Mr. McCorquodale said City Council would not be acting as the Board of Adjustment, they will just be acting as City Council.

The motion carried unanimously. (4-0)

10. Consideration and possible action to appoint Kevin Lacy to fill the vacancy on City Council, Place 1, created by the resignation of Jon Bickford.

Mr. McCorquodale advised when there is a vacancy on City Council, such as they did when they had to postpone the Zoning Public Hearing. Mr. McCorquodale advised Mr. Lacy was the only candidate running unopposed in a race for the upcoming Election, which has been postponed to November. Mr. McCorquodale said the idea would be to have someone who could gain some experience and be involved in the budget and be able to fill a seat to give a

supermajority. Mr. McCorquodale said he did not have much knowledge of the item, so he would turn it over to City Council.

John Champagne asked Mr. Petrov if this information has been reviewed by him. Mr. Petrov said yes, he has. John Champagne said he was making a humble request to table this item and that they appoint for Place 1 an individual that City Council agrees upon and at that point he would resign and Kevin Lacy would take his place. John Champagne said he has done a little bit of investigation and he can say point blank that Mr. Randy Burleigh has agreed to serve for seven months in Place 1, although that does not preclude them from getting more applicants, he would ask they consider appointing someone for Place 1 at the next meeting, at which point Kevin Lacy would take the position that he has been elected to since he was unopposed and be consistent to what he believed were the wishes of the City, which is his request.

Rebecca Huss stated City Council all run at-large, so it is not like they are representing one particular group or another, and she thought part of having Kevin Lacy, in particular, on is to get experience with the rest of us who have served longer and John Champagne has been on the longest, so whether you leave or stay, having him be around with people that have more experience is better. Rebecca Huss said the item is for him to serve with the rest of City Council, and she thought that is the way the item should go. Rebecca Huss said if John Champagne wants to resign and have Mr. Randy Burleigh take his place, that is fine, she did not think the voters would be confused when it comes to pulling the lever for someone running unopposed in Place 2 if Kevin Lacy has to move down one seat in November. Rebecca Huss said she would like to get this taken care of so they can keep moving forward regardless of whether John Champagne changes his mind in two or four weeks or if he decides to serve out his term in November, then Kevin Lacy can get the experience. Rebecca Huss said they have a lot going on in the budget, obviously John Champagne has a lot of opinions of what they need to do and whether or not she agrees with him, that is not necessarily the worst thing to have John Champagne's experience as part of the process. Rebecca Huss said they should get going and appoint the person who is unopposed to this position now. John Champagne did not dispute the logic and said he is going to resign, so to Rebecca Huss' point they can do it this way, or they can do it another way, it does not matter to him. John Champagne said his only request was that it seems to him to be consistent with the Election process, two weeks to him is not going to hurt anything in terms of Kevin Lacy's experience. Rebecca Huss said she



thought it was personally risky because we can't appoint somebody to John Champagne's position until he is gone. John Champagne said they cannot appoint anybody to his position because his position has been filled.

Mr. Petrov advised if they have two vacancies on City Council at one time then they are kicked over into where you cannot fill the vacancy by appointment it can only be held by a Special Election. John Champagne asked the City Attorney if they appoint the open position, Place 1 and at that point, he resigns, what will happen. Mr. Petrov said if they keep it at one vacancy at a time and no more, then City Council can do exactly that. Rebecca Huss said she prefers to do it this way, get done what they were going to do and said she would love to see John Champagne stay and participate, but if he does not want to that is fine, Mr. Burleigh is certainly an able, efficient, inspiring budgetary wonk and would be great. Rebecca Huss said she was sure other people would want to participate, and then whoever they choose, but she would like to get it done so there are five people and they could get back to business. John Champagne said this is totally against what Rebecca Huss has said in the past, she has been against filling positions in the past, that being said, it does not matter, he sees the logic, but he will vote no, the City Council will have its way. Rebecca Huss said Kevin Lacy is running unopposed, they are not confusing things because he is running unopposed, all he is getting is six months' worth of experience. Rebecca Huss said Mr. Burleigh could end up here two weeks from now if John Champagne resigns and Mr. Burleigh submits his application.

Mayor Countryman asked John Champagne if that was his official resignation. John Champagne advised it was not.

Rebecca Huss moved to appoint Kevin Lacy to fill the vacancy on City of Montgomery City Council, Place 1, that was created by the resignation of Jon Bickford. Rebecca Huss said, as a side note, this Place 1 will be filled by the Special Election that will be held in November 2020. T.J. Wilkerson seconded the motion.

Discussion: Rebecca Huss stated Kevin Lacy will not be on the ballot for the Special Election, two other candidates are signed up for that Election.

The motion carried with 3- Ayes and 1-Nay by John Champagne. (3-1)

**EXECUTIVE SESSION:**

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property),551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas. (There are no items at this time.)

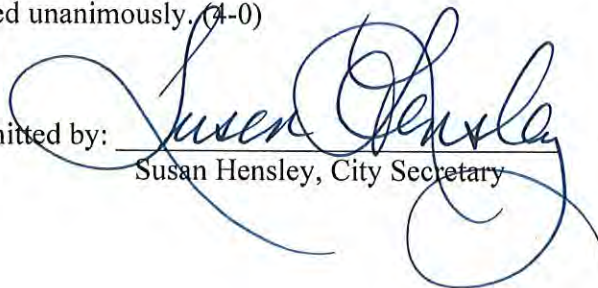
**COUNCIL INQUIRY:**

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to the recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

Rebecca Huss asked John Champagne if he was going to resign, she felt it would be helpful to do it and get it on the Agenda because she has been uncomfortable having four of us during the middle of a pandemic and someone gets ill during this time. John Champagne said he appreciated the question but stated he would decide one way or the other and said he failed to see what the pandemic had to do with this. Rebecca Huss said having a quorum is an important part of conducting business at a time when the City needs that. John Champagne stated they have a quorum. Rebecca Huss said that is while they are all healthy.

**ADJOURNMENT**

Rebecca Huss moved to adjourn the meeting at 7:33 p.m. Tom Cronin seconded the motion, the motion carried unanimously. (4-0)

Submitted by:   
Susan Hensley, City Secretary

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor Sara Countryman

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Dave McCorquodale</b>	<b>Exhibits: Escrow agreement</b>
<b>Date Prepared: May 8, 2020</b>	

**Subject**

Consideration and possible action regarding approval of an Escrow Agreement by and between the City of Montgomery and AutoZone Parts, Inc. (Dev. No. 2005).

**Description**

This agreement is for a stand-alone AutoZone retail store located on a .9-acre tract in the McCoy's development.

**Recommendation**

Approve the escrow agreement.

**Approved By**

Asst. City Administrator	Dave McCorquodale <i>DM</i>	Date: 5/8/20
City Administrator	Richard Tramm <i>RT</i>	Date: 5/8/20

**ESCROW AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF MONTGOMERY, TEXAS,**

**AND**

**AutoZone Parts, Inc.**

**Dev. No. 2005**

THE STATE OF TEXAS            ⊃

COUNTY OF MONTGOMERY       ⊃

This Escrow Agreement, is made and entered into as of the 30th day April, 2020 by and between the CITY OF MONTGOMERY, TEXAS, a body politic, and a municipal corporation created and operating under the general laws of the State of Texas (hereinafter called the "City"), and AutoZone Parts, Inc., (hereinafter called the "Developer").

**RECITALS**

WHEREAS, the Developer desires to acquire and develop all or part of a 0.90-acre tract, being a portion of the McCoy's Montgomery plat, Reserve C, sometimes referred to as the AutoZone Tract, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

WHEREAS, the City policy requires the Developer to establish an Escrow Fund with the City to reimburse the City for engineering costs, legal fees, consulting fees and administrative expenses incurred for plan reviews, developer coordination, construction management, inspection services to be provided for during the construction phase, and one-year warranty services.

**AGREEMENT**

ARTICLE I

**SERVICES REQUIRED**

Section 1.01 The development of the AutoZone Tract will require the City to utilize its own personnel, its professionals and consultants; and the Escrow Fund will be used to reimburse the City its costs associated with these services.

Section 1.02 In the event other contract services are required related to the development from third parties, payment for such services will be made by the City and reimbursed by the Developer or paid directly by the Developer as the parties may agree.

ARTICLE II

**FINANCING AND SERVICES**

Section 2.01 All estimated costs and professional fees needed by City shall be financed by Developer. Developer agrees to advance funds to City for the purpose of funding such costs as herein set out:

Administrative	\$1,000
City Engineer	\$4,000
Legal	\$1,000
<hr/>	
TOTAL	\$6,000

Section 2.02 Developer agrees to submit payment of the Escrow Fund no later than ten (10) days after the execution of this Escrow Agreement. No work will begin by or on behalf of the City until funds have been received.

Section 2.03 The total amount shown above for the Escrow Fund is intended to be a "Not

to Exceed” amount unless extenuating, unexpected fees are needed. Examples of extenuating circumstances created by the developer that may cause additional fees include, but are not limited to, greater than three plan reviews or drainage analysis reviews; revisions to approved plans; extraordinary number of comments on plans; additional meetings at the request of the developer; variance requests; encroachment agreement requests; construction delays and/or issues; failure to coordinate construction with City; failed testing during construction; failing to address punch list items; and/or excessive warranty repair items. If extenuating circumstances arise, the Developer will be informed, in writing by the City, of the additional deposit amount and explanation of extenuating circumstance. The Developer agrees to tender additional sums within 10 days of receipt of request to cover such costs and expenses. If additional funds are not deposited within 10 days all work by or on behalf of the City will stop until funds are deposited. Any funds which may remain after the completion of the development described in this Escrow Agreement will be refunded to Developer.

ARTICLE III,

MISCELLANEOUS

Section 3.01 City reserves the right to enter into additional contracts with other persons, corporations, or political subdivisions of the State of Texas; provided, however, that City covenants and agrees that it will not so contract with others to an extent as to impair City's ability to perform fully and punctually its obligations under this Escrow Agreement.

Section 3.02 If either party is rendered unable, wholly or in part, by *force majeure* to carry out any of its obligations under this Escrow Agreement, then the obligations of such party, to the extent affected by such *force majeure* and to the extent that due diligence is being used to

resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the *force majeure* relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such *force majeure* relied upon to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "*force majeure*," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage, or accidents to machinery, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

Section 3.03 This Escrow Agreement is subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any regulatory agency having jurisdiction.

Section 3.04 No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstance.

Section 3.05 Any notice, communication, request, reply or advice (hereafter referred to as "notice") herein provided or permitted to be given, made, or accepted by either party to the other

(except bills) must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail in the manner herein above described shall be conclusively deemed to be effective, unless otherwise stated in this Escrow Agreement, from and after the expiration of seven (7) days after it is so deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to City, to:                      City Administrator  
   City of Montgomery  
   101 Old Plantersville Rd.  
   Montgomery, Texas 77356

If to Developer, to:                AutoZone Parts, Inc.  
   c/o Steven Waldo  
   123 S. Front St.  
   Memphis, Tennessee 38103

The parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party.

Section 3.06 This Escrow Agreement shall be subject to change or modification only in writing and with the mutual consent of the governing body of City and the management of Developer.

Section 3.07 This Escrow Agreement shall bind and benefit City and its legal successors and Developer and its legal successors but shall not otherwise be assignable, in whole or in part, by either party except as specifically provided herein between the parties or by supplemental



agreement.

Section 3.08 This Escrow Agreement shall be for the sole and exclusive benefit of City and Developer and is not for the benefit of any third party. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing.

Section 3.09 The provisions of this Escrow Agreement are severable, and if any provision or part of this Escrow Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Escrow Agreement and the application of such provision or part of this Escrow Agreement to other person circumstances shall not be affected thereby.

Section 3.10 This Escrow Agreement and any amendments thereto, constitute all the agreements between the parties relative to the subject matter thereof, and may be executed in multiple counterparts, each of which when so executed shall be deemed to be an original.

Section 3.11 This Agreement shall be governed by, construed and enforced in accordance with, and subject to, the laws of the State of Texas without regard to the principles of conflict of laws. This Agreement is performable in Montgomery County, Texas.


IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement in three (3) copies, each of which shall be deemed to be an original, as of the date and year first written in this Escrow Agreement.

CITY OF MONTGOMERY, TEXAS

By: \_\_\_\_\_  
Sara Countryman, Mayor

ATTEST:

By: \_\_\_\_\_  
Susan Hensley, City Secretary

  
Approved for signatures

AutoZone Parts, Inc.' \_\_\_\_\_  
Developer

DocuSigned by:  
  
By: \_\_\_\_\_  
Signature

Title: Vice President \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
Signature

Title: Vice President \_\_\_\_\_

STATE OF TEXAS {

COUNTY OF MONTGOMERY {

BEFORE ME, the undersigned authority, on this day personally appeared Sara Countryman, Mayor of the City of Montgomery, Texas, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public, State of Texas

TENNESSEE  
THE STATE OF TEXAS {

COUNTY OF SHELBY {

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Timothy J. Goddard and \_\_\_\_\_, Maria Leggett of AutoZone Parts, Inc, a Nevada Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated and as the act and deed of said organization.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30<sup>th</sup> day of April, 2020.

Debra Gillion  
Notary Public, State of Texas

**Debra Gillion**  
My Commission Expires: 7-03-21



## Prohibition on Boycotting Israel Verification

This Verification is hereby incorporated into the terms of the contract by and between City of Montgomery and AutoZone Parts Inc. entered into this the 30 day of April, \_\_\_\_\_.

1. AutoZone Parts Inc., in conjunction with the execution of the above referenced contract and in accordance with Chapter 2270 of the Texas Government Code, effective September 1, 2017, does hereby agree, confirm, and verify that it:
  - A. Does not Boycott Israel; and
  - B. Will not Boycott Israel during the term of the contract.

"Boycott Israel" has the meaning given to it in Chapter 808 of Subtitle A, Title 8 of the Texas Government Code. As of the effective date of the statute, the term means "refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes."

2. Contractor hereby acknowledges and agrees that this verification is a material term of the contract and Owner is expressly relying on this verification in agreeing to enter into the contract with Contractor.
3. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER FROM ALL CLAIMS, CAUSES OF ACTION, LEGAL PROCEEDINGS, DAMAGES, COSTS, FEES AND EXPENSES ARISING OUT OF OR RELATED TO AN ACTUAL OR ALLEGED MISREPRESENTATION BY CONTRACTOR PROVIDED HEREUNDER.**

[Signatures on Following Page]

### Prohibition on Boycotting Israel Verification[Continued]

DS DS  
[Signature] [Signature]

Approved for Signatures

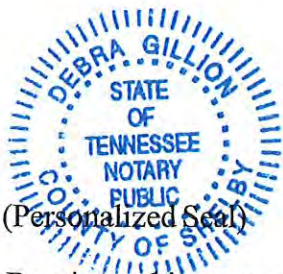
DocuSigned by:  
Tim Goddard  
By: 10CFD02383308439...  
AutoZone Parts Inc.  
(Contractor)

DocuSigned by:  
Maria Leggett  
By: EC9FD8C23ACE409...  
AutoZone Parts Inc.  
(Contractor)

State of TENNESSEE

County of SHELBY

Before me, a notary public, on this day personally appeared Timothy J. Goddard and Maria Leggett known to me to be the person(s) whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained in Paragraph 1A and B are true and correct.



My Commission Expires: 7-03-21

Debra Gillion  
Notary Public's Signature  
**Debra Gillion**

Receipt and incorporation into the above referenced contract hereby agreed to and acknowledged by:

\_\_\_\_\_  
Owner

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Richard Tramm</b>	<b>Exhibits: Sales Tax Revenue Projections</b>
<b>Date Prepared: May 7, 2020</b>	

**Subject**

Update to City Council on City Responses to COVID-19 pandemic situation and City sales tax revenue projections.

**Description**


Please see the attached documents for details related to sales tax revenue projections.

Each City department has altered its operations to better carry out its mission during the current pandemic response situation, much of which we have already covered in previous meetings. We are looking towards May 18<sup>th</sup> as the date to reopen the lobby to customer traffic, but will limit the number of people inside the lobby area at any one time.

**Recommendation**

No recommendation at this time. Staff will bring specific recommendations to City Council at May 26, 2020 meeting for action.

**Approved By**

City Administrator	Richard Tramm 	Date: 05/7/2020

City of Montgomery  
Sales Tax Revenue Projections  
FYE 2019-2020

	2019-2020 Adopted Budget	2019-2020 YTD Actual Amounts	30% Budget Reduction*	50% Budget Reduction*
<b>General Fund</b>				
Sales Tax ILO Ad. Valorem Taxes (1/2 %)	733,000	377,391	641,565	566,087
Sales Tax Other (1 %)	1,822,844	754,783	1,283,131	1,132,174
<b>Total Sales Tax</b>	<b>2,555,844</b>	<b>1,132,174</b>	<b>1,924,696</b>	<b>1,698,261</b>
<b>MEDC Fund</b>				
Sales Tax (1/2 %)	654,000	377,391	641,565	566,087
	654,000	377,391	641,565	566,087

\* These are calculated for 30% and 50% average reductions in collections for 3rd and 4th quarter for FYE 2019-2020 versus actual collections in 1st and 2nd quarter for FYE 2019-2020.

The City of Montgomery receives 2% sales tax from taxable sales in the City. This sales tax is allocated as:

- ½% Sales Tax ILO (In Lieu of) Property Tax
- 1% Sales Tax – Other
- ½% MEDC

Prior to the COVID-19 pandemic situation, it was discovered there was an error in the sales tax revenue categories of the General Fund. The figure of \$733,000 was incorrectly inserted into the Sales Tax ILO Ad Valorem Tax category and the figure of \$1,822,844 represented the total sales tax that should have been the sum of the Sales Tax ILO Ad Valorem Tax and Sales Tax - Other. This resulted in an over projection of \$733,000 at that time. The \$654,000 allocated to MEDC in the approved budget was slightly out of proportion with the General Fund sales tax revenue but was close to where it should have been. As we move forward with a budget correction, I would like to properly list these categories while we also tackle reducing projected sales tax revenues due to the current economic climate.

For the General Fund, \$1,132,174 was collected for the period October-March. I have reviewed two projections in studying the situation, the first is a 30% reduction for the next 6-month period (remainder of the Fiscal Year) and the second is a 50% reduction for that same period. In both cases, the reductions are based on actual collected sales tax for the first 6 months of the Fiscal Year (October-March) and then projected for the last 6 months of the Fiscal Year (April-September).

**30% Reduction Scenario:**

October-March Actual Collections	\$1,132,174
<u>April-May Projection</u>	<u>\$ 792,522</u>
Total Annual Projection:	\$1,924,696

You may notice this exceeds the amount of \$1,822,844 that was intended for the total General Fund for the Fiscal Year. This is because actual collections were 24% higher for the first 6 months of the Fiscal Year than that figure projects.

Budgeted Sales Tax Revenue-Annual	\$2,555,844
<u>30% Reduction Projection-Annual</u>	<u>\$1,924,696</u>
Projected Shortfall-Annual:	\$ 631,148

The 30% reduction results in a shortfall of \$631,148.

In this scenario, the MEDC receives \$641,565, which is 25% of the City's sales tax revenue (1/2% of sales in City).



**50% Reduction Scenario:**

October-March Actual Collections	\$1,132,174
<u>April-September Projection</u>	<u>\$ 566,087</u>
Total Annual Projection:	\$1,698,261

The 50% scenario results in a total annual sales tax projection for the General Fund of \$1,698,261.

Budgeted Sales Tax Revenue-Annual	\$2,555,844
<u>50% Reduction Projection-Annual</u>	<u>\$1,698,261</u>
Projected Shortfall-Annual:	\$ 857,583

The 50% reduction scenario results in a shortfall of \$857,583.

In this scenario, the MEDC receives \$566,087 which is 25% of the City's sales tax revenue (1/2% of sales in City).

The City was notified of the sales tax revenue for May 2020 last Thursday. This total figure is \$315,099.96. May 2020 represents a quarterly filing month. This is a 12% decrease from the last quarterly filing month of February 2020. This is also an 11% increase compared to May 2019. This was a better figure than I was expecting, although the next monthly numbers will certainly be a larger drop as they will be for the business during the month of April.

As of writing this report, I have not received the detailed data from the May 2020 sales tax numbers, but I have looked through recent data on the sales taxpayers. Several of the largest sales taxpayers in the City include businesses that are not at risk of significant decline recently and may have been able to increase sales. These include Kroger, Brookshire Brothers, Jim's Hardware, and McCoy's. The City also receives significant revenue related to internet sales, communications, online service providers, and other such companies that are at lower risk of significant revenue drops during this period.

I do expect that we will see a significant drop in the next report from restaurants and retail sales locations, but I also expect that we will see continued stable numbers in the other types of companies I mentioned previously.

It is for these reasons that I believe the 30% reduction scenario to be the most realistic projection for the City and not the 50% reduction scenario.

Each department head has been working to examine ways to make cuts in their budgets. I have had an initial discussion with each of them. Next week I will meet with each to review their proposed cuts and input those into a draft revised budget amendment to be presented at the May 26, 2020, City Council Meeting. Based on my discussions to date with department heads, I believe we will be able to cut enough items from the budget to meet these decreased revenues without significant cuts to City services or personnel. Item that will be cut from the current

year's budget are likely to include not filling currently unfilled staff positions, reducing purchases during the remainder of the fiscal year, restricting job-related travel, limiting job-related training to those that are necessary and putting a priority on training opportunities available without travel, increased use of technology to promote greater efficiency and identifying General Fund projects that can wait until the next fiscal year.

I expect to have the detailed sales tax payment information on the May 2020 collections prior to the next City Council meeting, which could allow me to refine my projections to a greater degree before that presentation.

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Dave McCorquodale</b>	<b>Exhibits: Resolution 2015-14, Engineer's memo</b>
<b>Date Prepared: May 8, 2020</b>	

**Subject**

Consideration and possible action regarding a waiver for Hills of Town Creek Section Four for an Economic and Utility Feasibility Study as required by Resolution 2015-14.

**Description**

The developer for the proposed Hills of Town Creek Section Four has requested a waiver to the requirement to have an Economic and Utility Feasibility Study. The developer believes that previous work done between 2011-2015 negate the need for a study. City staff and the city engineer do not believe that previous work done by the developer covers all of the topics addressed in an Economic and Utility Feasibility study. The developer's previous work may slightly reduce the cost of this study, but it doesn't eliminate the need for it.

City Council passed Resolution 2015-14 requiring these studies in June 2015. The Resolution and engineer's memo are attached.

**Recommendation**

Staff and the city engineer recommend denying the waiver request.

**Approved By**

Asst. City Administrator	Dave McCorquodale <i>DM</i>	Date: 5/8/20
City Administrator	Richard Tramm <i>RT</i>	Date: 5/8/20

May 8, 2020

The Honorable Mayor and City Council  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

Re: Waiver of Requirement for Utility and Economic Feasibility Study  
Hills of Town Creek Section 4 (Dev. No. 2004)  
City of Montgomery

Dear Mayor and Council:

As you are aware, the City requires that all developments wishing to receive water and sanitary sewer service from the City undergo a Utility and Economic Feasibility Study ("Study") to understand the impacts of the development on the City. The Hills of Town Creek, LLC ("the Developer") is requesting a wavier from the requirement to enter into an escrow agreement with the City to fund the Study for the Hills of Town Creek Section 4 development (the "Development") based on the following:

- In 2011 the Developer entered into a Development Agreement with the City to fund infrastructure improvements including extension of public utilities and improvements to Lift Station No. 6. The area covered in the Development Agreement includes this Development.
- In June 2015, the Developer's engineer submitted a letter to the City stating they had re-analyzed Lift Station No. 6 based on the land use assumptions at the time and there was sufficient capacity for the remaining areas.

We are of the opinion, it is in the City's best interest to deny the Developer's request for a wavier and require the Developer enter into an escrow agreement with the City to fund a Study for the following reasons:

- The City has a precedence for requiring the development of unplatted tracts to follow the Study process as defined in the City's Development Handbook. It is preliminarily believed that this Development will not have a significant impact on the City's infrastructure based on the relatively small number of homes and the previous analysis completed and submitted to the City. However, the precedence set will carry over to the other approximate 22 acres of undeveloped land within the Development Agreement area that may generate a more significant impact and will require the extension of public utilities to reach the tracts. Please note, a Study was not required on Section 3 because it was included in the preliminary platted area for Section 2 that was approved to proceed previously by the City.
- The Study will reevaluate the capacity of Lift Station No. 6 and surrounding sanitary sewer infrastructure with existing development, this proposed development, and future development. This will be a confirmation that the analysis completed in 2015 is accurate and the changes in land use have not changed the need for additional improvements.



- The Study will look at the impact of the additional homes and existing homes/apartments on the intersection of Emma's Way and 105 and determine if they Developer will be required to perform any additional traffic analysis.
- The Study will update the projected water and sewer demand for the City based on the scope of the Development and build out schedule.
- The Study will calculate the anticipated Impact Fees for the Development. (It is important to note the Impact Fees paid on this tract and the surrounding tracts within the Development Agreement area, get paid back to the Developer per Section 5.04 of his Agreement with the City.)
- The Study will determine the required escrow amount for the completion of the project based on project scope and schedule.
- The Study will identify the anticipated property tax to be generated from the Development.

If you have any questions or comments, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Chris Roznovsky'.

Chris Roznovsky, PE  
Engineer for the City

CVR/

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2020\MEMO to Council RE Study Waiver HOTC 4 05072020.docx

Enclosures:

None

cc:

Mr. Richard Tramm – City of Montgomery, City Administrator

Mr. Dave McCorquodale – City of Montgomery, Assistant City Administrator

Ms. Susan Hensley – City of Montgomery, City Secretary

Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney

**RESOLUTION NO. 2015-14**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY REQUIRING AN ECONOMIC AND UTILITY FEASIBILITY STUDY TO BE PERFORMED ON NEW DEVELOPMENTS WITHIN THE CITY.**

**WHEREAS**, the City of Montgomery is experiencing rapid growth with new single-family residential, multi-family residential, and commercial and industrial development; and

**WHEREAS**, such rapid growth of over 1,000 acres of undeveloped property within the corporate city limits will tax the water distribution facilities of the City, along with the City's storm water system, the wastewater collection system, and the water and wastewater plants along with lift stations; and

**WHEREAS**, the City Council of the City of Montgomery finds that it is prudent to require an economic and utility feasibility study for the future development of acreage within the corporate city limits;

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

**SECTION 1.** The City of Montgomery shall require the developer to fund an economic and utility feasibility study of all proposed developments requiring the equivalent of five (5) or more single family connections in advance of any approval by the City Planning and Zoning Commission and the City Council.

**SECTION 2.** The Economic and Utility Feasibility Study shall be performed by the City's city engineer or the City's designee, a Texas professional engineer, who will identify the following:

a. *Water/Wastewater Plants/Lift Stations*: to determine if capacity is available and the potential costs for such capacity;

b. *Water Distribution System/Wastewater Collection System*: to determine if the capacity is available in the City's lines and if the lines need to be extended to the proposed Development; to determine the costs to extend the lines; and if comprehensive waste plans that are necessary, potential responsibility and costs for extending utilities;

c. *Storm Sewer System/Storm Water Detention*: to determine if capacity exists in the infrastructure serving the proposed Development; to determine if detention is required; to determine if regional detention is available; and to determine potential responsibility and costs;

d. *Streets/Turn Lanes/Traffic Signals*: to determine if a street needs to be extended or widened because of project traffic volumes; to determine if a Traffic Impact Analysis (TIA) is needed; to determine whether turn lanes are needed on the existing streets serving the proposed development; and to determine the potential responsibility and cost.

e. *Revenue*: to calculate the potential tax revenues and associated expense for any contribution/reimbursement by the City and its financial impact on the City;

f. *Annexation*: to identify whether the tract will require annexation to be served; and identifies the cost to process the annexations;

g. *Schedule*: to identify the developer's potential schedule for the project.

**SECTION 3.** It is hereby officially found and determined that the meeting at which this Resolution was considered was open to the public as required and that the public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED this 23<sup>rd</sup> day of June 2015.

CITY OF MONTGOMERY, TEXAS

Kirk Jones

Kirk Jones, Mayor

ATTEST:

Susan Hensley

Susan Hensley, City Secretary

APPROVED:

Larry L. Foerster

Larry L. Foerster, City Attorney



Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Dave McCorquodale</b>	<b>Exhibits: Engineer's memo, P&amp;Z opinion, variance request letter &amp; lot size summary sheet, variance applications, subdivision plans</b>
<b>Date Prepared: May 8, 2020</b>	

**Subject**

Consideration and possible action regarding variance requests for minimum lot area and lot dimensions for The Hills of Town Creek, Section Four as submitted Chris Cheatham / The Hills of Town Creek, LLC.

**Description**

This 30-lot, 8-acre addition to the Hills of Town Creek subdivision is planned to be similar in layout to the existing 24-acre development. The existing lots were developed with lot widths averaging around 50-feet, side yards of 5-feet, and lot sizes averaging 6,500 square feet.

The developer is asking for variances to allow for a similar lot design. These variances are:

- Minimum lot width of 75-feet (proposed 50-foot widths)
- Minimum lot size of 9,000 square feet (proposed average 6,500 sqft; a number of lots also range between 15,000 sqft and 27,000 sqft)

A variance request has also been submitted to allow 5-foot side yards instead of 10-foot side yards. This is a Zoning Ordinance request and has a separate agenda item since it will require action from City Council acting as the Zoning Board of Adjustment.

**Recommendation**

Consider the requests and either approve or deny the two Subdivision Ordinance variance requests to allow minimum lot area and lot dimensions less than required by the ordinance.

**Approved By**

Asst. City Administrator	Dave McCorquodale <i>DM</i>	Date: 5/8/20
City Administrator	Richard Tramm <i>RT</i>	Date: 5/8/20



# PLANNING & ZONING COMMISSION OPINION OF FINDINGS

TO: MONTGOMERY MAYOR AND CITY COUNCIL

FROM: PLANNING & ZONING COMMISSION

CC: RICHARD TRAMM, CITY ADMINISTRATOR

SUBJECT: OPINION OF THE PLANNING & ZONING COMMISSION REGARDING  
A VARIANCE REQUEST FOR MINIMUM LOT AREA AND LOT DIMENSIONS FOR THE  
HILLS OF TOWN CREEK SECTION FOUR.

Mayor and Members of City Council,

Pursuant to Section 78-28 of the City of Montgomery Code of Ordinances (“the Code”), the Montgomery Planning and Zoning Commission met on May 5, 2020 to consider a request from The Hills of Town Creek, LLC / Chris Cheatham to allow lots less than 9,000 square feet and lots with dimensions less than 75-feet wide at the street and less than 120-feet deep.

After considering the request and supporting information, the Commission at its May 5th meeting recommended to City Council approval of the variance requests for minimum lot size and minimum dimensions based on the following reasons:

- The design and layout of the proposed 30-lot Section is consistent with the 100 lots already built out adjacent this site.
- The character of the existing neighborhood is consistent with good development practices and provides quality housing within the City.

Submitted on behalf of the Planning & Zoning Commission,



Dave McCorquodale  
Assistant City Administrator and Director of Planning & Development



1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

April 29, 2020

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

Re: Variance Request  
The Hills of Town Creek Sec. 4 (Dev. No. 2004)  
City of Montgomery

Dear Commission:

The Hills of Town Creek, LLC ("the Developer") plans to proceed with construction of a new residential development along Emma's Way, north of SH-105. The Developer is requesting the following variances from the City's Code of Ordinances:

- Section 78-88: The Code of Ordinances requires single-family residential developments to have a minimum 75' lot width, 120' lot depth, and 9,000 SF lot area. The Developer is proposing to provide 50' wide lots with sizes ranging from 5,300 SF to 27,000 SF. Additionally, several lots are proposed to have average depths of as little as 110'. The Developer is requesting a variance to allow a 50' lot width, 110' lot depth, and to allow the minimum lot area to be 5,300 SF.
- Section 78-95: The Code of Ordinances requires that compensating open space be provided equal to the total reduction in lot size from the 9,000 SF minimum. The Developer is requesting a variance to not provide compensating open space.
- Section 98-122 (a): The Code of Ordinances requires single-family residential developments to have a minimum 10' side yard. The Developer is requesting a variance to allow a 5' side yard.

Enclosed you will find requests for variance as submitted by the engineer for the development and a copy of the preliminary plat. The lot size and side yard variances are consistent with the variances previously approved for Hills of Town Creek Sections 2 & 3. It is important to note that Hills of Town Creek Sections 2 & 3 did provide compensating open space. The Developer currently proposes no compensating open space for this section nor does this section have direct access to adjacent open space.

Approval of the requested variances does not constitute plan approval and only allows the Developer to further refine the proposed plat and site plans, which will require the full review and approval of the City. Additionally, the development still needs to go through the Utility and Economic Feasibility study process to determine if any improvements to existing infrastructure need to be considered.



If you have any questions or comments, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Chris Roznovsky'.

Chris Roznovsky, PE  
Engineer for the City

CVR/ab

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2020\MEMO to P&Z RE Hills of Town Creek Sec. 4 Variance Requests.doc

Enclosures: Redlined Preliminary Plat  
Variance Requests

Cc (via email): The Honorable Mayor and City Council – City of Montgomery  
Mr. Richard Tramm – City of Montgomery, City Administrator  
Ms. Susan Hensley – City of Montgomery, City Secretary  
Mr. Dave McCorquodale – City of Montgomery, Director of Planning & Development  
Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney



April 14, 2020

City of Montgomery  
C/o Dave McCorquodale  
101 Old Plantersville Road  
Montgomery, TX 77316

RE: Variance request for Hills of Town Creek Section 4 regarding requirements for minimum lot area, lot width, and side yard

According to Sections 78 and 98 of the City of Montgomery Code of Ordinances, residential lots are required to have a minimum lot width of 75', minimum lot size of 9,000 SF and a side lot line of 10'. The proposed development will consist of approximately 30 single-family residential lots, with lot sizing ranging from 27,000 square feet to 5,300 square feet, 50' lot width and 5' side lot setbacks. We feel a variance requests are warranted for the following reasons:

- The proposed development is intended to be an extension of the existing Hills of Town Creek Sections 2 and 3, which is being built out by Stylecraft Builders. Stylecraft has been very successful with the product they have been producing and would like to continue with the same product. Sections 2 and 3 were previously approved with 50' lots and we request that we continue with 50' lots for this section. The Future Land Use Plan also shows the subject tract expected to be high density residential.
- Due to the narrow shape of the middle of the tract, we are only able to achieve a certain depth of lot, which reduces the overall lot area with the 50' width. Even with many lots less than the minimum of 9,000 SF, we are able to provide an average lot area of 9,900 SF for this section.

It is for the above-mentioned reasons that we feel the variance requests should be considered and approved. Please feel free to contact me at 936-647-0420 if you have any questions or concerns.

Thank you,

Jonathan White, PE  
L Squared Engineering  
Senior Project Manager, Partner  
936-647-0420  
Jwhite@L2engineering.com

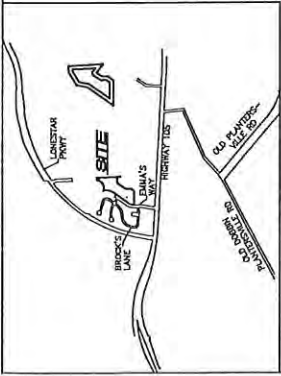
Attachments: Variance Request Applications, Preliminary Plat



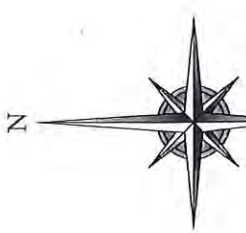
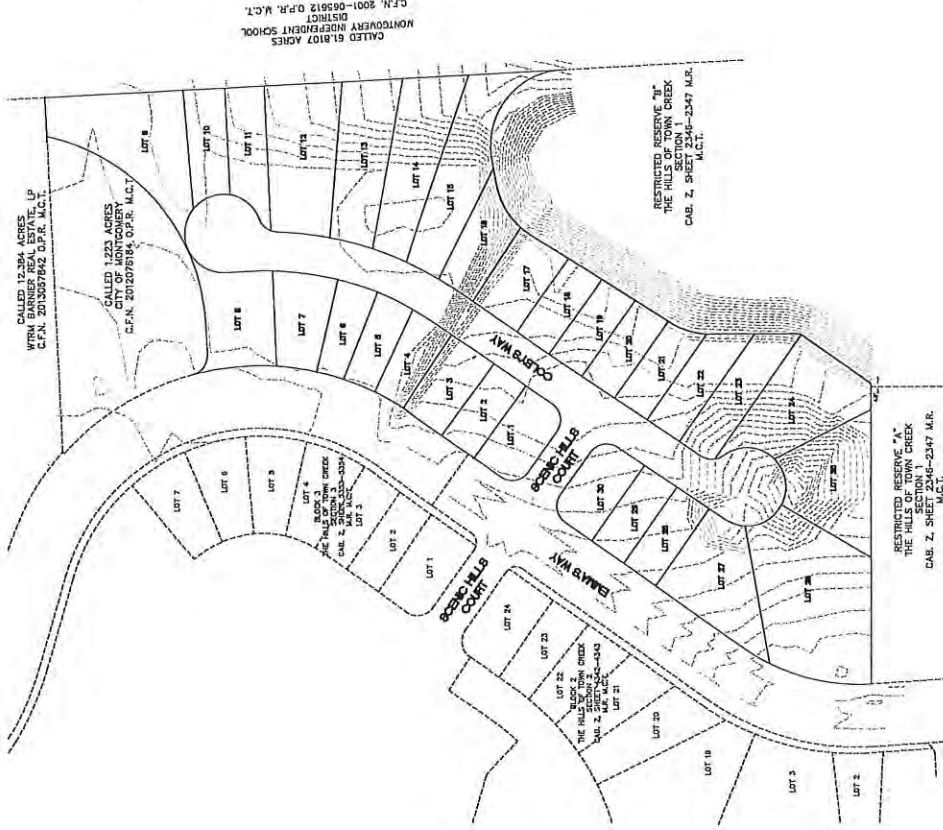
### Hills of Town Creek Section Four Lot Area Summary

Lot #	Lot Size (sqft)	Deficit (sqft)
1	7304	1696
2	5656	3344
3	7091	1909
4	5853	3147
5	5584	3416
6	5329	3671
7	8295	705
8	11403	0
9	18647	0
10	7062	1938
11	7967	1033
12	16827	0
13	13967	0
14	15046	0
15	15387	0
16	7536	1464
17	7997	1003
18	5751	3249
19	5855	3145
20	5939	3061
21	6190	2810
22	7503	1497
23	9175	0
24	15622	0
25	14403	0
26	27764	0
27	14360	0
28	5951	3049
29	5888	3112
30	7417	1583
<b>Total</b>	<b>298769</b>	<b>44832</b>

Average Lot size 9958.97



LOCATION MAP  
NOT TO SCALE



GRAPHIC SCALE  
( IN FEET )  
1 inch = 100 ft.

- LEGEND / ABBREVIATIONS**
- C.F.N. CABINET
  - C.F.N. CLERK'S FILE NUMBER
  - R.O. ROUND
  - O.P.R. OFFICIAL PUBLIC RECORDS
  - M.C.T. MONTGOMERY COUNTY, TEXAS
  - M.A.R. MONTGOMERY COUNTY, TEXAS
  - R.C.W. RIGHT OF WAY
  - (C.P.) CONVEYANCE
  - (V.P.) VEGETATION SETBACK
  - PROPERTY MARKER

- CITY OF MONTGOMERY BENCHMARKS**
- MONT 3 ELEV=288.73
  - 3" BRASS DISK LOCATED FROM THE INTERSECTION OF HWY 103 AND HWY 105 TO THE INTERSECTION OF LOT 1 OF THE HERITAGE HOUSE RESTAURANT, WHICH IS LOCATED ON THE NORTH SIDE OF HWY 105.
  - MONT 7 ELEV=281.77
  - 3" BRASS DISK IS LOCATED IN THE CENTER OF MONTGOMERY ON THE SOUTH SIDE OF HWY 103. MARK IS IN FRONT (NORTH) OF GAS PUMPING AREA OF HERITAGE HOUSE RESTAURANT. ADDRESS IS 10315 HWY 103 (SOUTH) FROM THE OLD SCHOOL HOUSE.

- BENCHMARK**
- BRASS DISK IN CONCRETE ELEV=314.12
  - BRASS DISK IN CONCRETE IN THE SOUTHEAST RIGHT-OF-WAY OF EMMA'S WAY LOCATED NORTH OF THE COMMON CORNER OF LOTS 1 AND 2, BLOCK 1, THE HILLS OF TOWN CREEK.

PRELIMINARY PLAT  
THE HILLS OF TOWN CREEK  
SECTION 4  
A SUBDIVISION OF  
8.1365 ACRES (354,425 SQ FT.)  
BENJAMIN RIGBY LEAGUE, ABSTRACT 31  
MONTGOMERY COUNTY, TEXAS

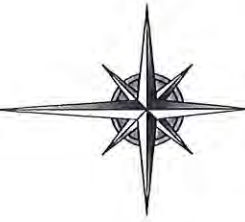
30 LOTS 1 BLOCK  
APRIL 2020

**CORE**  
LAND SURVEYING TRIPLS REG NO. 1034566  
10210 GROGANS MILL ROAD, SUITE 120  
THE WOODLANDS, TX 77380  
713-261-1000  
info@coreland.com

**L SQUARED ENGINEERING**  
REGISTERED PROFESSIONAL ENGINEER  
21123 EVA ST #200,  
MONTGOMERY, TX 77125  
(850) 847-0403

- GENERAL NOTES:**
1. The coordinates shown herein are Texas Central Zone No. 4924 State Plane Grid Coordinates (NAD83) and may be brought to surface by applying the following combined scale factor 0.999922.
  2. Distances shown along curves are arc lengths.
  3. Flood Statement: This site (proposed area) is situated in Zone "X" in Montgomery County, Texas according to the Flood Hazard Insurance Rate Map (FIRM) No. 13030C0101E. The area shown on this map is not to be used for siting or for the structures thereon will be free from flooding or flood damage. This determination has been made by scaling the property on this referenced map and is not the result of an elevation survey. This flood statement shall not create liability on the part of the surveyor.
  4. All corners are set 5/8 inch from rods with cap stamped "Core 6887" unless otherwise shown or noted.
  5. In addition to the building line shown on the face of this plat, all lots shall have a minimum 5' side yard setback and a minimum 10' rear yard setback, unless otherwise noted.

N



GRAPHIC SCALE



**LEGEND / ABBREVIATIONS**

- C.F.N. CURVE'S FILE NUMBER
- P.F.N.D. PLANNED FUTURE DEVELOPMENT
- O.P.R. OFFICIAL PUBLIC RECORDS
- M.O.C.T. MONTGOMERY COUNTY, TEXAS
- R.O.W. RIGHT OF WAY
- (TYP.) TYPICAL
- VS. VARIATION SETBACK
- PROPERTY MARKER
- 

**CITY OF MONTGOMERY BENCHMARKS**

- MONT 3 ELEV=28673'  
3" BRASS DISK LOCATED FROM THE INTERSECTION OF HWY 103 AND HWY 144, WEST 4700' TO THE PARKING LOT OF THE HERITAGE HOUSE RESTAURANT, WHICH IS LOCATED ON THE NORTH SIDE OF HWY 103.
- MONT 7 ELEV=29177'  
3" BRASS DISK IS LOCATED IN THE CENTER OF MONTGOMERY ON THE SOUTH SIDE OF HWY 103. MARK LOCATED ON THE NORTH SIDE OF HWY 103, NEAR BROOKSIDE BROTHERS PRODUCE STORE, AS WELL AS ADDRESS HWY 103(SOUTH) FROM THE OLDE SCHOOL HOUSE.

**BENCHMARK**

- BRASS DISK IN CONCRETE ELEV=31412'  
BRASS DISK IN CONCRETE IN THE SOUTHEAST CORNER OF COMMON CORNER OF LOTS 1 AND 2, BLOCK 1, THE HILLS OF TOWN CREEK.

PRELIMINARY PLAT  
**THE HILLS OF TOWN CREEK**  
 SECTION 4  
 A SUBDIVISION OF  
 8.1365 ACRES (354,425 SQ. FT.)  
 BENJAMIN RIGBY LEAGUE, ABSTRACT 31,  
 MONTGOMERY COUNTY, TEXAS

30 LOTS  
 1 BLOCK  
 APRIL 2020

ENGINEER:  
**LSQUARED ENGINEERING**  
 L.S. SQUARED  
 21123 EVA ST #200  
 MONTGOMERY, TEXAS 77135  
 (832) 644-4202

LAND SURVEYING TEMPLS REG NO. 10194560  
 10710 GORGANS MILL ROAD, SUITE 120  
 THE WOODLANDS, TX 77380  
 (281) 324-8288

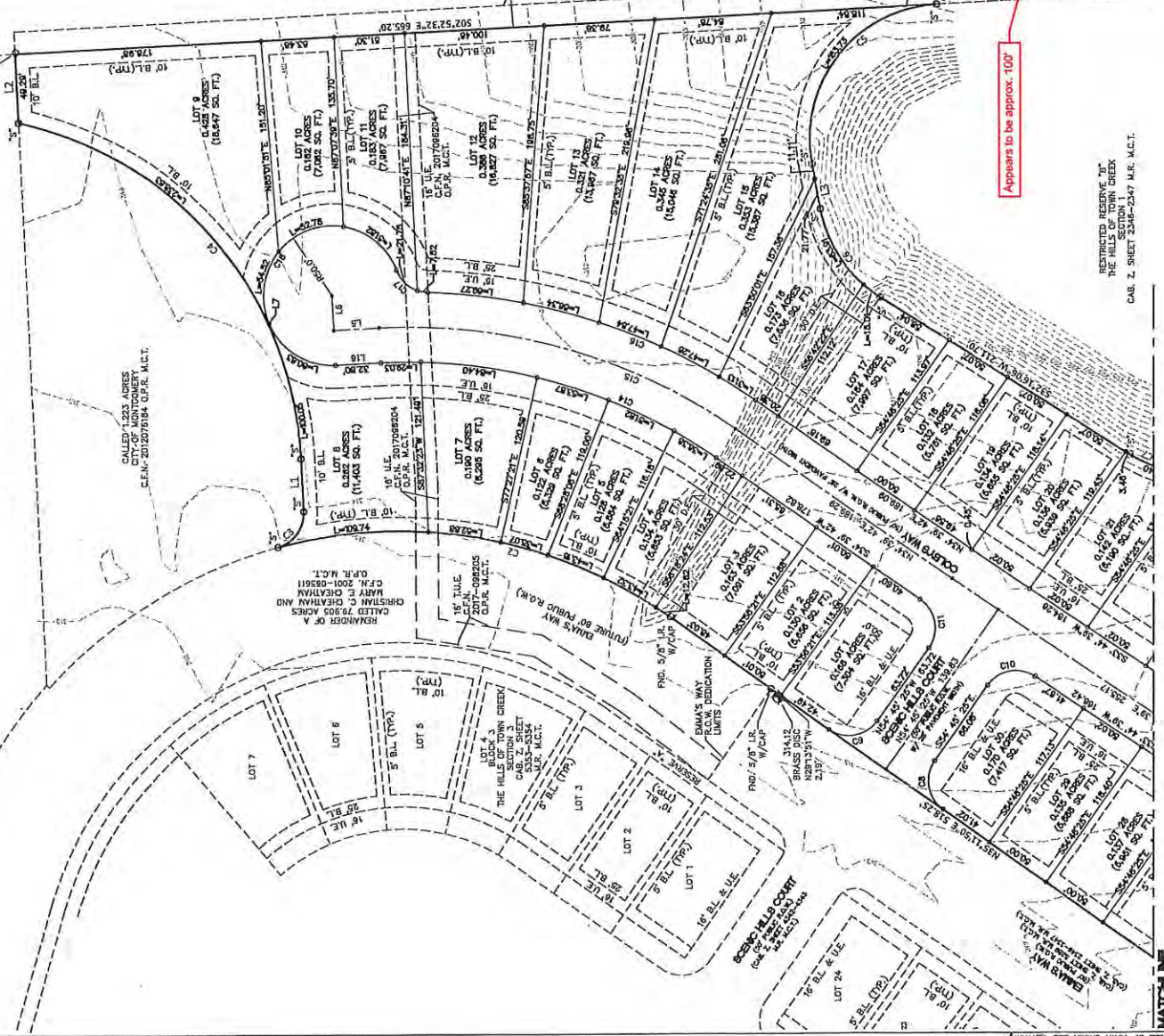
CONTRACT NO. 2019-001

**LINE TABLE**

NO.	BEARING	LENGTH
L1	N 87°05'32" E	37.81
L2	N 87°05'32" E	49.37
L3	S 79°21'17" W	32.88
L4	S 58°15'31" E	25.00
L5	N 02°52'32" W	32.86
L6	N 87°07'28" E	25.00
L7	S 23°13'42" E	0.87

**CURVE TABLE**

NO.	LENGTH	RADIUS	DELTA	CHD. BRG.	CHORD
C1	174.59	260.00	38°41'38"	N 15°20'59" E	172.27
C2	296.60	360.00	46°39'54"	N 10°12'04" E	267.25
C3	34.08	25.00	78°05'01"	S 53°51'15" E	31.50
C4	338.68	260.00	74°33'09"	N 49°49'29" E	312.24
C5	183.74	96.00	67°03'15"	S 55°09'31" W	144.62
C6	564.14	96.00	32°18'55"	S 16°05'41" W	534.87
C7	39.29	25.00	89°02'44"	N 89°13'13" E	35.37
C8	39.29	25.00	89°02'44"	N 89°08'47" W	34.16
C9	38.62	25.00	88°30'04"	S 10°02'33" E	34.89
C10	38.62	25.00	88°30'04"	S 10°02'33" E	34.89
C11	38.62	25.00	88°30'04"	S 10°02'33" E	34.89
C12	238.63	50.00	59°34'33"	S 79°27'08" W	35.59
C13	30.71	25.00	70°31'44"	N 87°15'47" E	81.65
C14	255.51	360.00	37°21'14"	N 15°39'35" E	258.86
C15	271.88	450.00	37°21'14"	N 15°39'35" E	258.86
C16	251.84	450.00	37°21'14"	N 15°39'35" E	258.86
C17	28.27	25.00	67°04'15"	N 83°24'12" E	27.87
C18	230.75	50.00	25°14'53"	N 56°38'07" W	81.00



CALLER 12.384 ACRES  
 BEARS  
 589'53'33" E  
 141.1  
 C.F.N. 2011057842 O.P.R. M.C.T.

CALLER 1.233 ACRES  
 BEARS  
 589'53'33" E  
 141.1  
 C.F.N. 2011057842 O.P.R. M.C.T.

REMANENT OF A  
 CHRISTIAN C. CHEATHAM AND  
 MARY C. CHEATHAM  
 O.P.R. M.C.T.  
 C.F.N. 2001-055611

CALLER 79.905 ACRES  
 BEARS  
 589'53'33" E  
 141.1  
 C.F.N. 2011057842 O.P.R. M.C.T.

CALLER 0.200 ACRES  
 BEARS  
 589'53'33" E  
 141.1  
 C.F.N. 2011057842 O.P.R. M.C.T.

CALLER 0.200 ACRES  
 BEARS  
 589'53'33" E  
 141.1  
 C.F.N. 2011057842 O.P.R. M.C.T.

CALLER 0.200 ACRES  
 BEARS  
 589'53'33" E  
 141.1  
 C.F.N. 2011057842 O.P.R. M.C.T.

RESTRICTED RESERVE "D"  
 THE HILLS OF TOWN CREEK  
 SECTION 4  
 C&S Z. SHEET 2019-001 M.C.T.

RESTRICTED RESERVE "D"  
 THE HILLS OF TOWN CREEK  
 SECTION 4  
 C&S Z. SHEET 2019-001 M.C.T.

RESTRICTED RESERVE "D"  
 THE HILLS OF TOWN CREEK  
 SECTION 4  
 C&S Z. SHEET 2019-001 M.C.T.

**LEGEND / ABBREVIATIONS**

- CAB. CABINET
- C.F.N. CLEK'S FILE NUMBER
- L.R. FROM ROD
- O.P.R. OFFICIAL PUBLIC RECORDS
- M.R. MAP RECORDS
- R.O.W. RIGHT-OF-WAY
- V.E. VEGETATION
- V.E.B. VEGETATION SETBACK
- PROPERTY MARKER

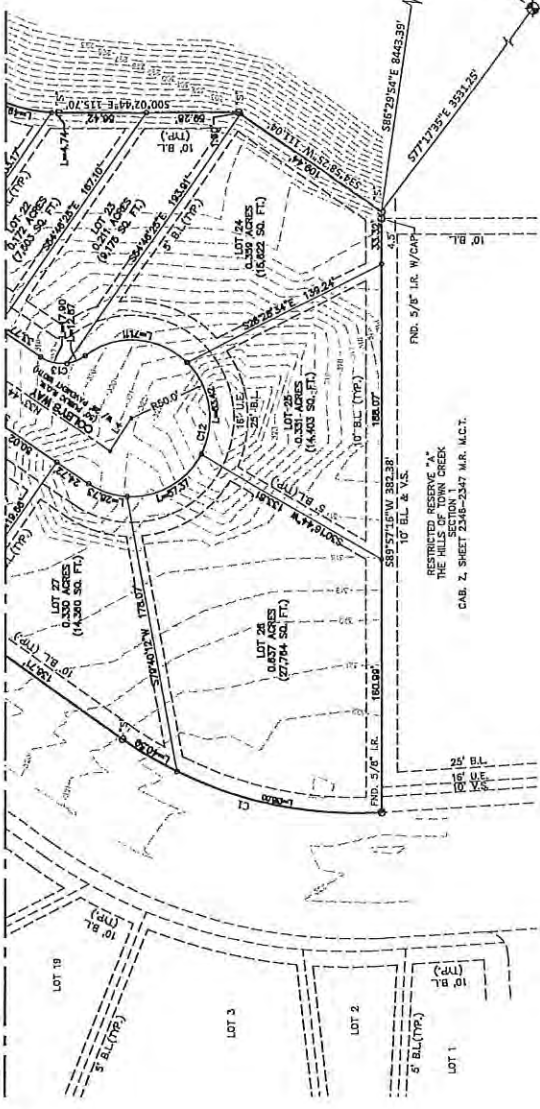
**CITY OF MONTGOMERY BENCHMARKS**

**MONT 3** ELEV=488.73'  
 3" BRASS DISK LOCATED FROM THE INTERSECTION OF HWY 101 AND THE INTERSECTION OF THE PARKING LOT OF THE HERITAGE HOUSE RESTAURANT WHICH IS LOCATED ON THE NORTH SIDE OF HWY 101.

**MONT 7** ELEV=391.77'  
 BRASS DISK IS LOCATED IN THE CENTER OF MONTGOMERY COUNTY COURTHOUSE WHICH IS IN FRONT (NORTH) OF GAS PUMPING AREA OF BROOKSHIRE BROTHERS GROCERY STORE AS WELL AS THE INTERSECTION OF HWY 101(SOUTH) FROM THE OADE SCHOOL HOUSE.

**BENCHMARK**

**BENCH-31-41Z** ELEV=314.12'  
 BRASS DISK IN CONCRETE IN THE SOUTHEAST RIGHT-OF-WAY OF EDNA'S WAY LOCATED NORTH OF THE INTERSECTION OF EDNA'S WAY FROM THE COMMON CORNER OF LOTS 1 AND 2, BLOCK 1, THE HILLS OF TOWN CREEK.



**PRELIMINARY PLAT**  
**THE HILLS OF TOWN CREEK**  
**SECTION 4**  
 A SUBDIVISION OF  
**8.1365 ACRES (354,425 SQ. FT.)**  
**BENJAMIN RIGBY LEAGUE, ABSTRACT 31**  
**MONTGOMERY COUNTY, TEXAS**

**30 LOTS**      **APRIL 2020**  
**1 BLOCK**

**ENGINEER:**  
**L SQUARED ENGINEERING**  
 L.S. SQUARED  
 2123 EVA ST #200,  
 MONTGOMERY, TEXAS 77358  
 (409) 844-4420

**SUPERVISOR:**  
**CORE**  
 CORE SURVEYING - TIRPLS REG NO. 1034550  
 10210 GROGANS MILL ROAD, SUITE 120  
 THE WOODLANDS, TX 77380  
 T: 281.281.1209  
 corelandsurveying.com

**LINE TABLE**

NO.	BEARING	LENGTH	CHD. BRG.	CHORD
L1	N 87°03'32" E	37.81'	N 15°05'59" E	17.21'
L2	N 87°03'32" E	49.32'	N 15°05'59" E	28.72'
L3	N 87°03'32" W	32.88'	N 09°46'29" E	31.56'
L4	S 59°15'21" E	35.00'	N 49°46'29" E	31.52'
L5	N 02°31'32" W	32.80'	N 51°53'55" E	250.59'
L6	N 87°07'28" E	25.00'	N 51°53'55" E	208.41'
L7	S 23°23'42" E	0.89'	N 56°30'07" W	81.00'

**CURVE TABLE**

NO.	LENGTH	RADIUS	DELTA	CHD. BRG.	CHORD
C1	175.59'	260.00'	39°41.38"	N 15°05'59" E	172.27'
C2	356.60'	340.00'	49°58.54"	N 10°12'24" E	287.28'
C3	34.08'	15.00'	78°00.01"	S 53°51'15" E	31.56'
C4	338.68'	260.00'	74°38.00"	N 49°46'29" E	315.24'
C5	163.74'	86.00'	87°43.25"	N 51°53'55" E	144.60'
C6	76.92'	86.00'	47°02.52"	S 55°09'11" W	76.72'
C7	54.14'	86.00'	32°18.55"	S 15°05'59" W	52.45'
C8	39.29'	35.00'	90°02.44"	N 01°11'37" E	35.33'
C9	39.25'	35.00'	89°57.78"	N 09°46'29" E	35.34'
C10	38.62'	35.00'	88°30.04"	S 07°30'27" E	34.89'
C11	33.52'	35.00'	80°24.53"	S 75°21'08" W	33.52'
C12	21.83'	50.00'	20°51.44"	N 82°04'47" E	21.83'
C13	30.77'	50.00'	70°31.44"	S 01°11'37" E	28.87'
C14	255.51'	390.00'	37°32.14"	N 15°53'55" E	250.59'
C15	271.89'	415.00'	37°32.14"	S 15°53'55" E	267.05'
C16	251.84'	440.00'	37°43.77"	N 15°53'55" E	268.41'
C17	232.77'	50.00'	97°04.52"	N 32°24'21" E	232.62'
C18	219.75'	50.00'	251°48.51"	N 56°30'07" W	81.00'



STATE OF TEXAS  
COUNTY OF MONTGOMERY

That the Hills of Town Creek, LLC herein acting individually or through the undersigned duly authorized agents, do hereby make subdivision of said property according to the plat shown on this plat as streets, alleys, porches, and other areas, and dedicate to public use all areas shown on this plat as streets, alleys, porches, and other areas, and the dedication of the surface of any portion of streets or alleys to conform to such areas and does hereby dedicate, and Denter's successors and assigns to warrant and forever defend the title to the land so dedicated.

Owner hereby certifies that Owner has or will comply with all applicable regulations of this city and that a rough proportionally exists between the dedications, improvements, and easements required under regulations and the projected impact of the subdivision.

Where streets or alleys are dedicated for private use, such dedication shall include an easement covering the street area which permits the installation, operation and maintenance of water, sewer, gas, electric, telephone, cable television, and other utility lines, and the easement shall also provide a right of access to public agencies engaged in both routine and emergency public services including law enforcement, fire protection, medical response, inspection and code enforcement.

IN TESTIMONY WHEREOF, The Hills of Town Creek, LLC have caused these presents to be signed by \_\_\_\_\_, its \_\_\_\_\_, Executive Director, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The Hills of Town Creek, LLC

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

STATE OF TEXAS  
COUNTY OF MONTGOMERY

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein stated, and on the day and date of said act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Notary Public in and for the State of Texas

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

That I, Corneil Tumbalata Jr., do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Montgomery, Texas.

Corneil Tumbalata Jr.  
Texas Registration No. 6857

CITY OF MONTGOMERY

I, THE UNDERSIGNED, Engineer for the City of Montgomery, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of the City as to which its approval is required.

By: \_\_\_\_\_  
CITY ENGINEER - City of Montgomery

This plat and subdivision has been submitted to and considered by the City Planning and Zoning Commission of the City Council of the City of Montgomery, Texas and is hereby approved by such Commission and Council.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

By: \_\_\_\_\_  
Sara Conroy  
Mayor

By: \_\_\_\_\_  
CITY SECRETARY

I, \_\_\_\_\_, Clerk of the County Court of Montgomery County, Texas, do hereby certify that the instrument with its certificate of authentication was filed for registration in my office on \_\_\_\_\_, 2020, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M., in cabinet \_\_\_\_\_ sheet \_\_\_\_\_ of record of \_\_\_\_\_ for said County.

WITNESS MY HAND AND SEAL OF OFFICE, at Conroe, Montgomery County, Texas, the day and date last above written.

By: \_\_\_\_\_  
Mark Tumball, Clerk County Court  
Montgomery County, Texas

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

PRELIMINARY PLAT  
THE HILLS OF TOWN CREEK  
SECTION 4  
A SUBDIVISION OF  
8.1365 ACRES (354,425 SQ. FT.)  
BENJAMIN RIGBY LEAGUE, ABSTRACT 31  
MONTGOMERY COUNTY, TEXAS

30 LOTS  
1 BLOCK  
APRIL 2020

SURVEYOR  
**CORE**  
ENGINEER  
LS SQUARED ENGINEERING  
PLANNING CONSULTING ASSOCIATES  
21123 EVA ST #202,  
MONTGOMERY, TX 77336  
(936) 847-0420

LAND SURVEYING TBPPLS REG. NO. 10184590  
10210 GROGANS HILL ROAD, SUITE 120  
THE WOODLANDS, TX 77380  
CoreSurveying.com



# Variance Request Application

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316  
(936) 597-6434

**Upon completion return application to [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us)**

### Contact Information

Property Owner(s): Chris Cheatham, Cheatham Management

Address: PO Box 234 Montgomery, TX Zip Code: 77356

Email Address: ccheatham@consolidated.net Phone: 936-449-5400

Applicants: L Squared Engineering

Address: 3307 W Davis Street, Suite 100 Conroe, TX 77304

Email Address: Jwhite@L2Engineering.com Phone: 936-647-0420

### Parcel Information

Property Identification Number (MCAD R#): Part of R362322

Legal Description: Part of Tracts 54-C and 63A-1, within the Ben J Rigsby Survey, Abstract 31

Street Address or Location: Emma's Way and Scenic Hills Court

Acreage: 8.1365 Present Zoning: Commercial Present Land Use: Vacant

### Variance Request

Applicant is requesting a variance from the following:

City of Montgomery Ordinance No.: 2014-03 Section(s): 78-88

Ordinance wording as stated in Section (78-88 ):  
(C) Minimum width is 75'

Detail the variance request by comparing what the ordinance states to what the applicant is requesting:

Lot sizes will have minimum lot width of 50' similar to Hills of Town Creek Sections 2 & 3.

**Signatures**

Owner(s) of record for the above described parcel:

Signature: Chris Emata Date: 4/13/20

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

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

*Note: Signatures are required for all owners of record for the property proposed for variance. Attach additional signatures on a separate sheet of paper.*

**\*Additional Information\***

The following information must also be submitted:

Cover letter on company letterhead stating what is being asked.

A site plan.

All applicable fees and payments.

The application from must be signed by the owner/applicant. If the applicant is not the owner, written authorization from the owner authorizing the applicant to submit the variance request shall be submitted.

<p><b>Date Received</b> <i>Office Use</i></p>	
---	--



# Variance Request Application

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316  
(936) 597-6434

**Upon completion return application to [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us)**

### Contact Information

Property Owner(s): Chris Cheatham, Cheatham Management

Address: PO Box 234 Montgomery, TX Zip Code: 77356

Email Address: ccheatham@consolidated.net Phone: 936-449-5400

Applicants: L Squared Engineering

Address: 3307 W Davis Street, Suite 100 Conroe, TX 77304

Email Address: Jwhite@L2Engineering.com Phone: 936-647-0420

### Parcel Information

Property Identification Number (MCAD R#): Part of R362322

Legal Description: Part of Tracts 54-C and 63A-1, within the Ben J Rigsby Survey, Abstract 31

Street Address or Location: Emma's Way and Scenic Hills Court

Acreage: 8.1365 Present Zoning: Commercial Present Land Use: Vacant

### Variance Request

Applicant is requesting a variance from the following:

City of Montgomery Ordinance No.: 2014-03 Section(s): 78-88

Ordinance wording as stated in Section (78-88 ):

(e) No building shall be constructed on or moved onto any lot of less than 9,000 square feet

\_\_\_\_\_  
\_\_\_\_\_

Detail the variance request by comparing what the ordinance states to what the applicant is requesting:

Lot sizes will range in the development, with a minimum of approximately 5,300 square feet (SF) to over 27,000 SF. The average lot size throughout the subdivision will be over 9,900 SF.

\_\_\_\_\_

**Signatures**

Owner(s) of record for the above described parcel:

Signature: Amey Chaturvedi Date: 4/13/20

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

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

*Note: Signatures are required for all owners of record for the property proposed for variance. Attach additional signatures on a separate sheet of paper.*

**\*Additional Information\***

The following information must also be submitted:

Cover letter on company letterhead stating what is being asked.

A site plan.

All applicable fees and payments.

The application form must be signed by the owner/applicant. If the applicant is not the owner, written authorization from the owner authorizing the applicant to submit the variance request shall be submitted.

<p><b>Date Received</b> <i>Office Use</i></p>	
---	--

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Dave McCorquodale</b>	<b>Exhibits: N/A</b>
<b>Date Prepared: May 8, 2020</b>	

**Subject**

Consideration and possible action on calling a Zoning Board of Adjustment Public Hearing regarding a variance request for 5-foot side yard setbacks in lieu of the required 10-foot side yard setback for Hills of Town Creek Section Four, as submitted by Chris Cheatham / The Hills of Town Creek, LLC.



**Description**

While this item is related to the lot size and lot dimension variance requests, side yard requirements are part of the Zoning Ordinance and the variance process is different than Subdivision Ordinance variances. This item requires a Public Hearing and is decided by the City Council acting as the Zoning Board of Adjustment.

**Recommendation**

Staff recommends calling a Zoning Board of Adjustment Public Hearing for Tuesday June 9th at 6:00 p.m. to receive comments on the request. This date will allow for publication and notification deadlines to be met.

**Approved By**

Asst. City Administrator	Dave McCorquodale 	Date: 5/8/20
City Administrator	Richard Tramm 	Date: 5/8/20

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Dave McCorquodale</b>	<b>Exhibits: Engineer's memo, lot summary sheet, preliminary plat, and excerpt from Subdivision Ord.</b>
<b>Date Prepared: May 8, 2020</b>	

**Subject**

Consideration and possible action regarding a variance request for the requirement to provide compensating open space in lieu of minimum lot sizes of 9,000 square feet for The Hills of Town Creek, Section Four, as submitted by Chris Cheatham / The Hills of Town Creek, LLC.

**Description**

When City Council approves a variance for lot sizes smaller than required by Code, compensating open space is required in the subdivision at minimum 1:1 ratio. The developer is asking for a variance to not provide any compensating open space for a deficit of 1-acre.

**Recommendation**

Consider the request and either approve or deny the compensating open space variance request.

**Approved By**

Asst. City Administrator	Dave McCorquodale <i>DM</i>	Date: 5/8/20
City Administrator	Richard Tramm <i>RT</i>	Date: 5/8/20



1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

April 29, 2020

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

Re: Variance Request  
The Hills of Town Creek Sec. 4 (Dev. No. 2004)  
City of Montgomery

Dear Commission:

The Hills of Town Creek, LLC ("the Developer") plans to proceed with construction of a new residential development along Emma's Way, north of SH-105. The Developer is requesting the following variances from the City's Code of Ordinances:

- Section 78-88: The Code of Ordinances requires single-family residential developments to have a minimum 75' lot width, 120' lot depth, and 9,000 SF lot area. The Developer is proposing to provide 50' wide lots with sizes ranging from 5,300 SF to 27,000 SF. Additionally, several lots are proposed to have average depths of as little as 110'. The Developer is requesting a variance to allow a 50' lot width, 110' lot depth, and to allow the minimum lot area to be 5,300 SF.
- Section 78-95: The Code of Ordinances requires that compensating open space be provided equal to the total reduction in lot size from the 9,000 SF minimum. The Developer is requesting a variance to not provide compensating open space.
- Section 98-122 (a): The Code of Ordinances requires single-family residential developments to have a minimum 10' side yard. The Developer is requesting a variance to allow a 5' side yard.

Enclosed you will find requests for variance as submitted by the engineer for the development and a copy of the preliminary plat. The lot size and side yard variances are consistent with the variances previously approved for Hills of Town Creek Sections 2 & 3. It is important to note that Hills of Town Creek Sections 2 & 3 did provide compensating open space. The Developer currently proposes no compensating open space for this section nor does this section have direct access to adjacent open space.

Approval of the requested variances does not constitute plan approval and only allows the Developer to further refine the proposed plat and site plans, which will require the full review and approval of the City. Additionally, the development still needs to go through the Utility and Economic Feasibility study process to determine if any improvements to existing infrastructure need to be considered.





If you have any questions or comments, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Chris Roznovsky'.

Chris Roznovsky, PE  
Engineer for the City

CVR/ab

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2020\MEMO to P&Z RE Hills of Town Creek Sec. 4 Variance Requests.doc

Enclosures: Redlined Preliminary Plat  
Variance Requests

Cc (via email): The Honorable Mayor and City Council – City of Montgomery  
Mr. Richard Tramm – City of Montgomery, City Administrator  
Ms. Susan Hensley – City of Montgomery, City Secretary  
Mr. Dave McCorquodale – City of Montgomery, Director of Planning & Development  
Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney

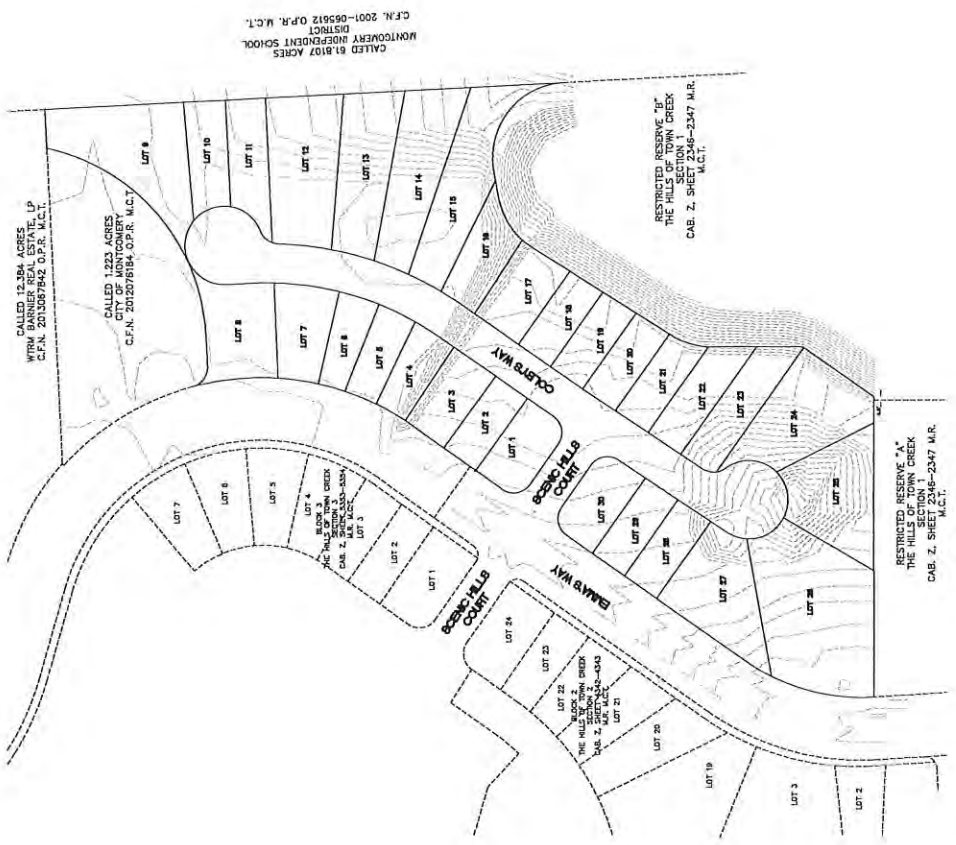
### Hills of Town Creek Section Four Lot Area Summary

Lot #	Lot Size (sqft)	Deficit (sqft)
1	7304	1696
2	5656	3344
3	7091	1909
4	5853	3147
5	5584	3416
6	5329	3671
7	8295	705
8	11403	0
9	18647	0
10	7062	1938
11	7967	1033
12	16827	0
13	13967	0
14	15046	0
15	15387	0
16	7536	1464
17	7997	1003
18	5751	3249
19	5855	3145
20	5939	3061
21	6190	2810
22	7503	1497
23	9175	0
24	15622	0
25	14403	0
26	27764	0
27	14360	0
28	5951	3049
29	5888	3112
30	7417	1583
<b>Total</b>	<b>298769</b>	<b>44832</b>

Average Lot size 9958.97



LOCATION MAP  
NOT TO SCALE



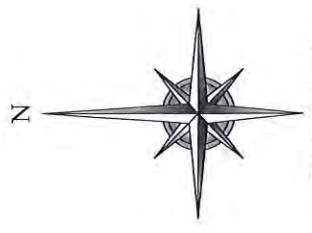
CALLED 12,354 ACRES  
WFM BANNER REAL ESTATE, LP  
C.F.N. 2012076184 O.P.R. M.C.T.

CALLED 1,833 ACRES  
CITY OF MONTGOMERY  
C.F.N. 2012076184 O.P.R. M.C.T.

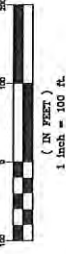
CALLED 81,817 ACRES  
MONTGOMERY INDEPENDENT SCHOOL  
C.F.N. 2001-065612 O.P.R. M.C.T.

RESTRICTED RESERVE "B"  
THE HILLS OF TOWN CREEK  
CAB. Z. SHEET 2346-2347 M.R.  
M.C.T.

RESTRICTED RESERVE "A"  
THE HILLS OF TOWN CREEK  
CAB. Z. SHEET 2346-2347 M.R.  
M.C.T.



GRAPHIC SCALE



**LEGEND / ABBREVIATIONS**

- CAB. CABINET FILE NUMBER
- FND. FOUND
- RD. ROAD
- LE. LEGAL PUBLIC RECORDS
- M.C.T. MONTGOMERY COUNTY, TEXAS
- M.R. MONTGOMERY COUNTY, TEXAS
- RT. RIGHT-OF-WAY
- (T.P.) TYPICAL
- V.S. VEGETATION SETBACK
- PROPERTY MARKER

**CITY OF MONTGOMERY BENCHMARKS**

- MONT 3 ELEV.=268.73  
3" BRASS DISK LOCATED FROM THE INTERSECTION OF HWY 105 AND HWY 149, WEST 4-4700' TO THE PARKING LOT OF THE "RESTAURANT", WHICH IS LOCATED ON THE NORTH SIDE OF HWY 105.
- MONT 7 ELEV.=291.77  
3" BRASS DISK IS LOCATED IN THE CENTER OF MONTGOMERY INDEPENDENT SCHOOL. THE DISK IS LOCATED ON THE SOUTH SIDE OF HWY 105, MARKED BY BROOKSHIRE BROTHERS GROCERY STORE, AS WELL AS ADDRESS HWY 105(SOUTH) FROM THE OLDE SCHOOL HOUSE.

**BENCHMARK**

- BRASS DISK IN CONCRETE ELEV.=314.12  
BRASS DISK IN CONCRETE IN THE SOUTH-EAST CORNER OF EMMA'S WAY LOCATED NORTH 29°13'51" WEST, A DISTANCE OF 2.18' FROM THE HILLS OF TOWN CREEK.

PRELIMINARY PLAT  
THE HILLS OF TOWN CREEK  
SECTION 4  
A SUBDIVISION OF  
8.1365 ACRES (354,425 SQ. FT.)  
BENJAMIN RIGBY LEAGUE, ABSTRACT 31  
MONTGOMERY COUNTY, TEXAS

30 LOTS  
1 BLOCK  
APRIL 2020

**CORE**  
LAND SURVEYING TPLS REG NO. 1034560  
16115 BROOKS MILL ROAD, SUITE 103  
THE WOODLANDS, TX 77380  
T: 281-828-1238  
coresurveying.com

ENGINEER:  
**L SQUARED ENGINEERING**  
21123 EVA ST #200,  
MONTGOMERY, TX 77355  
(936) 647-0423

- GENERAL NOTES:**
1. The coordinates shown hereon are Texas Central Zone No. 4204 State Plane Grid Coordinates (NAD83) and may be brought to surface by applying the following combined scale factor 0.999922.
  2. Distances shown along curves are arc lengths.
  3. Flood Statement: This site (proposed area) is situated in Zone "X" in Montgomery County, Texas according to FEMA map number 483350200G dated August 15, 2014. This statement does not imply that the property is in a flood hazard area or that the area is subject to flooding or other damage. This determination has been made by a duly licensed professional engineer. The engineer's responsibility is to provide an accurate flood hazard statement that does not create liability on the part of the surveyor.
  4. All corners are set 5/8 inch iron rods with cap stamped "Core 8637" unless otherwise shown or noted.
  5. In addition to the building line shown on the face of the plat, all lots shall have a minimum 5' side yard setback and a minimum 10' rear yard setback, unless otherwise noted.

Sec. 78-95. - Compensating open space requirements.

In those instances where proposed lots have an area less than the minimum established by the planning and zoning commission, compensating open space will be required and can be approved by the planning and zoning commission and city council. For planned unit development (PUD), compensating open space must be made available based on the density of development and in accordance with the general zoning requirements of the city. Such compensating open spaces remain undeveloped or landscaped and may be developed for recreational purposes within the PUD, both active and passive. They may be used to provide courtyard access from the groups or clusters of lots adjacent to public streets or for temporary stormwater detention structures within the planned stormwater facility plan of the city.

( Ord. No. 2011-09, § 1, 7-26-2011)

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date:</b> May 12, 2020	<b>Budgeted Amount:</b> N/A
<b>Department:</b> Administrative	
<b>Prepared By:</b> Dave McCorquodale	<b>Exhibits:</b> Rezoning request letter & application, site survey, preliminary plan
<b>Date Prepared:</b> May 7, 2020	

**Subject**

Consideration and possible action regarding calling a Public Hearing for a rezoning request from B-Commercial to R1-Single-Family Residential for the proposed Hills of Town Creek Section Four, as submitted by Cheatham Management.

**Description**

The proposed Hills of Town Creek Section Four is a continuation of the existing residential development on the west side of the City. The plans call for 30 new homesites similar in character to the existing neighborhood. The same homebuilder is planned for construction of the homes. Sections Two and Three of the subdivision have a total of 100 homesites—55 homes are completed, 18 are under construction, and 27 lots are available.

The City Attorney can advise on the specific wording of the motion regarding the Covid-related TOMA guidelines that allow video/teleconferencing and how changes in the Governor Abbott's orders might affect the Public Hearing notice.

**Recommendation**

Staff recommends calling a Public Hearing for Tuesday June 9th at 6:00 p.m. via video/teleconference to receive comments on the request. This date will allow for publication and notification deadlines to be met.

**Approved By**

Asst. City Administrator	Dave McCorquodale <i>DM</i>	Date: 5/8/20
City Administrator	Richard Tramm <i>RT</i>	Date: 5/8/20



April 14, 2020

City of Montgomery  
C/o Dave McCorquodale  
101 Old Plantersville Road  
Montgomery, Texas 77316

RE: Rezoning Request For the Proposed Development of Hills of Town Creek Section 4

Mr. McCorquodale,

On behalf of Chris Cheatham, I am formally submitting a request to rezone approximately 8.13 acres of land within the City of Montgomery City Limits from its current zoning designation of Commercial (B) to single family residential (R1). The proposed development will consist of approximately 30 single family homes and will be an extension of the current Hills of Town Creek Sections 2 and 3. I have attached the zoning application with additional supporting documentation required by the application.

Please contact me directly if you have any questions.

Thank you,

Jonathan White, PE  
L Squared Engineering  
Senior Project Manager, Partner  
936-647-0420  
Jwhite@L2engineering.com

Attachments: Rezoning Application, Preliminary Plat





# Rezoning Application

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316  
(936) 597-6434

**Upon completion return application to [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us)**

### Contact Information

Property Owner(s): Chris Cheatham, Cheatham Management

Address: PO Box 234 Montgomery, TX

Zip Code: 77356 Phone: 936-449-5400

Email Address: ccheatham@consolidated.net

Applicants: Jonathan White, L Squared Engineering

Address: 21123 Eva Street, Suite 200 Montgomery, TX

Zip Code: 77356 Phone: 936-647-0420

Email Address: Jwhite@L2engineering.com

### Parcel Information

Property Identification Number (MCAD R#): Part of R362322

Legal Description: Provided in attached exhibit

Street Address or Location: Emma's Way and

Acreage: 8.1365 Present Zoning: Commercial Present Land Use: Vacant

Proposed Zoning: R-1 Proposed Land Use: Residential Subdivision

Is the proposed use in compliance with the Future Land Use Plan?  YES  NO

### Additional Information

Owner(s) of record for the above described parcel:

Signature: *Chris Cheatham* Date: 4/9/20

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

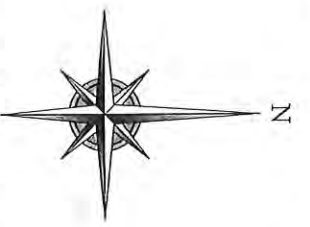
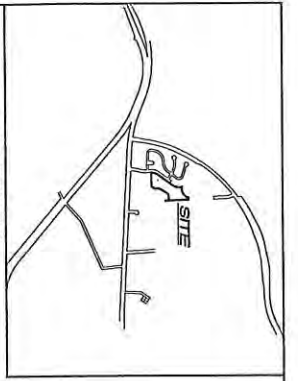
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*Note: Signatures are required for all owners of record for the property proposed for Special Use Permit. Attach additional signatures on a separate sheet of paper.*

<h2>Date Received</h2> <p>Office Use</p>	
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**LEGEND / ABBREVIATIONS**

- CAB. CABINET
- CFN. CADD FILE NUMBER
- FLN. FROM
- IR. IRON ROD
- LR. LUMBER
- M.C.R. MONTGOMERY COUNTY RECORDS
- M.R. MAP RECORDS
- M.S. RIGHT OF WAY
- P. PROPERTY MARKER

**CITY OF MONTGOMERY BENCHMARKS**

- MON 3 ELEV.=288.73'
- 3" BRASS DISK LOCATED FROM THE INTERSECTION OF HWY 108 AND HWY 148 WEST 4470' TO THE PARKING LOT OF THE HERITAGE HOUSE RESTAURANT, WHICH IS LOCATED ON THE NORTH SIDE OF HWY 108.
- MON 7 ELEV.=291.77'
- 3" BRASS DISK IS LOCATED IN THE CENTER OF MONTGOMERY ON THE SOUTH SIDE OF HWY 108. MARK BROADSHIRE BROTHERS GROCERY STORE, AS WELL AS ACROSS HWY 108(SOUTH) FROM THE OLD SCHOOL HOUSE.

- BENCHMARK CUT SQUARE IN CONCRETE ELEV.=316.35'
- CUT SQUARE IN CONCRETE ON 8x8 INLET LOCATED AT THE INTERSECTION OF HWY 108 AND EMMA'S WAY INTERSECTION.

THE HILLS OF TOWN CREEK  
SECTION 4  
A SUBDIVISION OF  
8.1365 ACRES (354,425 SQ. FT.)  
BENJAMIN RIGBY LEAGUE, ABSTRACT 31  
MONTGOMERY COUNTY, TEXAS

30 LOTS 1 BLOCK

APRIL 2020

**CORE** ENGINEERING  
2112 E.A. ST. 200,  
MONTGOMERY, TX 77358  
(936) 841-4430  
corelandsurveying.com

LAND SURVEYING TSP#S REG. NO. 30194560  
THE WOODLANDS, TX 77380  
T: 284.928.1208  
corelandsurveying.com

**GENERAL NOTES**

1. The coordinates shown herein are Texas Central Zone No. 4234 State Plane Grid Coordinates (NAD83) and may be brought to surface by applying the following combined scale factor \_\_\_\_\_.
2. Distances shown along curves are arc lengths.
3. Flood Statement: This site (proposed area) is situated in Zone "X" in Montgomery County, Texas according to the Flood Hazard Insurance Study for the Hills of Town Creek, Texas, dated 11/11/14. Flood hazard areas and/or the structures thereon will be free from flooding or flood damage. This determination has been made by sealing the property on the referenced map and is not the result of an elevation survey. This flood statement shall not create liability on the part of the surveyor.
4. All corners are set 5/8 inch iron rods with cap stamped "Core 6855" unless otherwise shown or noted.
5. In addition to the building line shown on the face of the plat, all lots shall have a minimum 5' side yard setback and a minimum 10' rear yard setback, unless otherwise noted.

Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Dave McCorquodale</b>	<b>Exhibits: Engineer's memo, variance request letter &amp; applications, subdivision layout plan</b>
<b>Date Prepared: May 8, 2020</b>	

**Subject**

Consideration and possible action regarding a variance request to allow residential streets serving more than 50 homes to have a 50-foot ROW as allowed in the current Subdivision Ordinance in lieu of the 60-foot ROW as required by the 2002 Subdivision Ordinance that applies to the Buffalo Springs Planned Development, as submitted by Lefevre Development, Inc.

**Description**

This 125-acre development north of Buffalo Springs at the intersection of Lonestar Parkway and Buffalo Springs Drive has 199 residential lots and 8 commercial reserves. The Planned Development Agreement with the developer follows the 2004 ordinances that require 60-foot rights-of-way for residential streets serving more than 50 homes.

The developer is asking to be allowed to follow the current Subdivision Ordinance that allows 50-foot rights-of-way for all residential streets. It is important to note that the right-of-way does not affect the width of the street itself. What this variance would do is to allow homes to be placed five feet closer to the street than if a 60-foot right-of-way were used.

**Recommendation**

Consider the request and either approve or deny the Subdivision Ordinance variance request to allow 50-foot residential street rights-of-way.

<b>Approved By</b>		
Asst. City Administrator	Dave McCorquodale <i>DM</i>	Date: 5/8/20
City Administrator	Richard Tramm <i>RT</i>	Date: 5/8/20



1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

April 29, 2020

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

Re: Variance Request  
Town Creek Crossing Sec. 1 & 2 (Dev. No. 2006)  
City of Montgomery

Dear Commission:

LeFevre Development, Inc. ("the Developer") plans to proceed with construction of a new residential development north of Lone Star Parkway. As you may recall, this Developer has an existing development agreement with the City that requires him to follow the 2004 Code of Ordinances and he is not subject to any new requirements, regulations, impact fees, feasibility studies, etc. that were not in place in 2004. The Developer is requesting the following variances from the 2004 edition of the City's Code of Ordinances:

- Section 78-92: The Code of Ordinances requires single-family residential developments to have a minimum 75' lot width, 120' lot depth, and 9,000 SF lot area. The Developer is proposing to provide 60' and 70' wide lots with sizes ranging from 6,500 SF to 18,000 SF. Additionally, several lots are proposed to have average depths of as little as 100'. The Developer is requesting a variance to allow a 60' lot width, 100' lot depth, and to allow the minimum lot area requirement to be offset with compensating open space.
- Section 78-91: The Code of Ordinances requires all local streets to have a minimum right-of-way ("ROW") width of 60'. The current Code of Ordinances allows streets which serve fewer than 50 lots to have a 50' ROW. The Developer is requesting a variance to allow the development to abide by the current ordinance for this item only.

Enclosed you will find requests for variance as submitted by the engineer for the development and a copy of the preliminary plat. We offer no objection to the Developer's request on the grounds that the proposed variances pose no apparent detriment to the development or the surrounding area.

Approval of the requested variances does not constitute plan or plat approval and only allows the Developer to further refine the proposed plat and site plans, which will require the full review and approval of the City.



If you have any questions or comments, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Chris Roznovsky'.

Chris Roznovsky, PE  
Engineer for the City

CVR/ab

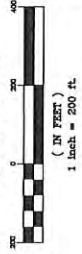
K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2020\MEMO to P&Z RE Town Creek Crossing Sec. 1 & 2 Variance Requests.doc

Enclosures: Redlined Preliminary Plat  
Variance Requests

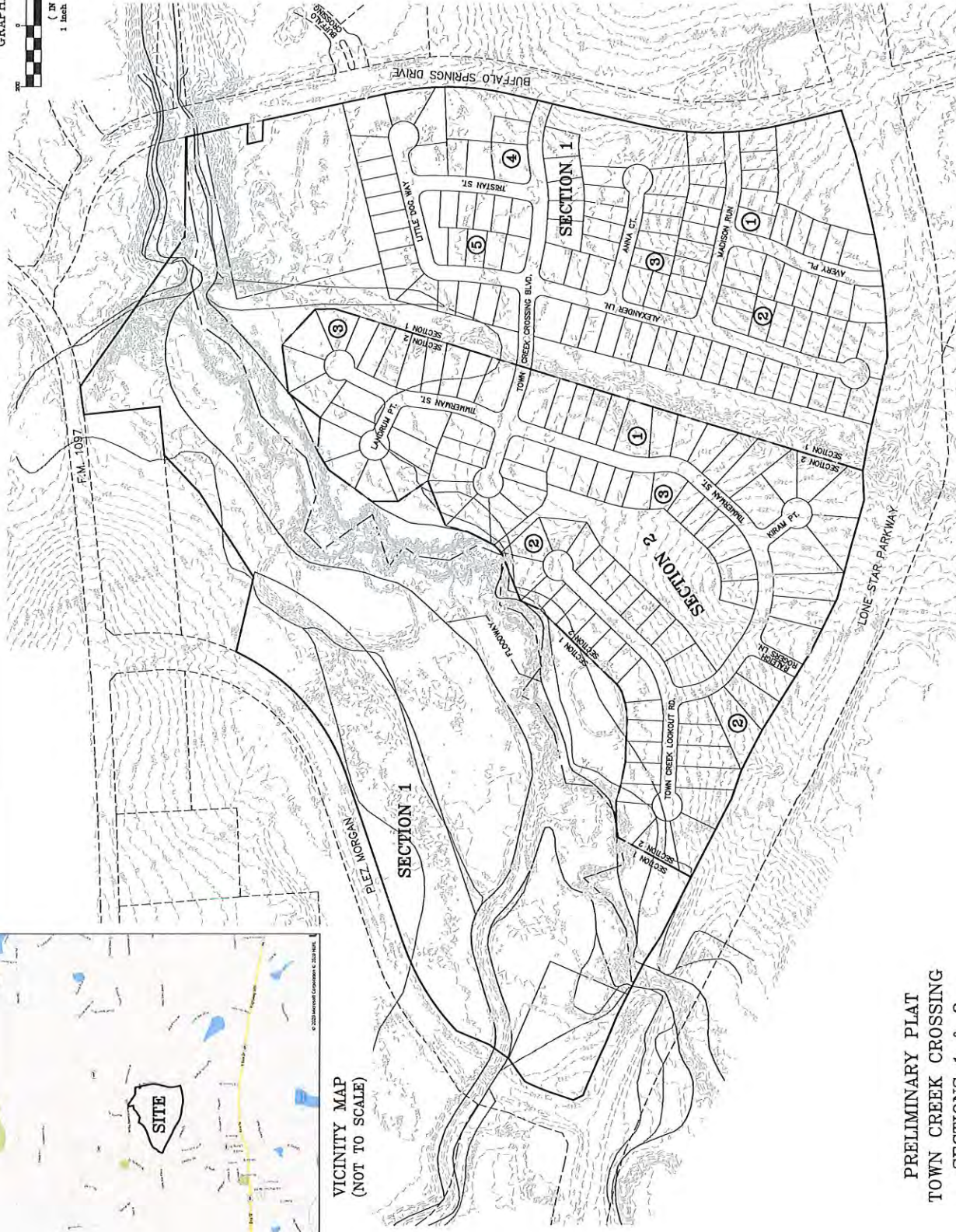
Cc (via email): The Honorable Mayor and City Council – City of Montgomery  
Mr. Richard Tramm – City of Montgomery, City Administrator  
Ms. Susan Hensley – City of Montgomery, City Secretary  
Mr. Dave McCorquodale – City of Montgomery, Director of Planning & Development  
Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney



GRAPHIC SCALE



VICINITY MAP  
(NOT TO SCALE)



**PRELIMINARY PLAT  
TOWN CREEK CROSSING  
SECTIONS 1 & 2**

A RESIDENTIAL SUBDIVISION OF  
125.192 ACRES (5,453,371 SQ. FT.)  
OF LAND IN THE

JOHN CORNER SURVEY, A-8  
MONTGOMERY COUNTY, TEXAS

**8 BLOCKS \* 199 LOTS \* 10 RESERVES**  
April 2020

ENGINEER:



INSIGHT ENGINEERING  
3807 WINDYBROOK, STE. 100  
CONROE, TX 77385  
(281) 447-0420  
www.insightengineering.com

SURVEYOR:



LANDPOINT  
606 SANDUST ROAD, STE. 200  
THE WOODLANDS, TX 77380  
(281) 447-8722  
www.landpoint.net

OWNER:

Lefevre Development, Inc.  
780 Clippert Drive  
Suite 100  
Montgomery, Texas 77356  
(936) 582-1088

April 28, 2020

City of Montgomery  
C/o Dave McCorquodale  
101 Old Plantersville Road  
Montgomery, TX 77316

RE: Variance request for Town Creek Crossing regarding Right of Way Widths

Mr. McCorquodale,

According to Section 78-91 of the 2002 City of Montgomery Code of Ordinances, all local streets are required to have a right of way (ROW) width of 60'. According to Section 78-87 of the current City Code of Ordinances, minor residential streets (streets servicing less than 50 lots) are allowed to have a 50' ROW and all other residential streets are required to have a 60' ROW. The preliminary plat submitted showed all ROW to be 50' in width. Since the proposed development is in the PDD, which allows the proposed development to follow any ordinance that is in place in 2004, we would like to propose a variance to allow 50' ROWs for streets that service less than 50 lots, which will adhere to the current ordinance in regards to ROW width requirements.

The proposed ROW on the submitted plat will be widened to 60' for any streets that service more than 50 lots, which will include Timmerman Street, Town Creek Crossing Blvd, Madison Run and Avery Place. All other streets will remain at 50' ROW.

Since our request would be in compliance with the current ordinance, we feel the variance request should be considered and approved. Please feel free to contact me at 936-647-0420 if you have any questions or concerns.

Thank you,



Jonathan White, PE  
L Squared Engineering  
Senior Project Manager, Partner  
936-647-0420  
Jwhite@L2Engineering.com

Attachments: Variance Application, Preliminary Plat



# Variance Request Application

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316  
(936) 597-6434

**Upon completion return application to shensley@ci.montgomery.tx.us**

### Contact Information

Property Owner(s): LeFevre Development Inc.

Address: 780 Clepper, Suite 100 Montgomery, TX Zip Code: 77356

Email Address: plefevre@lefco-inc.com Phone: 936-597-5200

Applicants: L Squared Engineering

Address: 3307 W Davis Street, Suite 100 Conroe, TX 77304

Email Address: Jwhite@L2Engineering.com Phone: 936-647-0420

### Parcel Information

Property Identification Number (MCAD R#): R392827, R405109, R392828

Legal Description: Tracts I-H, I-L, and I-J within the John Corner Survey, Abstract 8

Street Address or Location: Northwest corner of Buffalo Springs Drive and Lone Star Parkway

Acreage: 125.192 Present Zoning: PD Present Land Use: Vacant

### Variance Request

Applicant is requesting a variance from the following:

City of Montgomery Ordinance No.: 2002- Section(s): 78-91

Ordinance wording as stated in Section (78-91 ):  
local streets are required to have 60' Right of Way widths

Detail the variance request by comparing what the ordinance states to what the applicant is requesting:

See request letter

**Signatures**

Owner(s) of record for the above described parcel:

Signature: William Onnas Date: 4/28/20

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

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

*Note: Signatures are required for all owners of record for the property proposed for variance. Attach additional signatures on a separate sheet of paper.*

**\* Additional Information \***

The following information must also be submitted:

Cover letter on company letterhead stating what is being asked.

A site plan.

All applicable fees and payments.

The application from must be signed by the owner/applicant. If the applicant is not the owner, written authorization from the owner authorizing the applicant to submit the variance request shall be submitted.

<p><b>Date Received</b> <i>Office Use</i></p>	
---	--



Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Dave McCorquodale</b>	<b>Exhibits: Engineer's memo, variance request letter &amp; applications, subdivision layout plan</b>
<b>Date Prepared: May 8, 2020</b>	

**Subject**

Consideration and possible action regarding variance requests for minimum lot area and lot dimensions for Town Creek Crossing Sections One & Two, as submitted by Lefevre Development, Inc.

**Description**

This 125-acre development north of Buffalo Springs at the intersection of Lonestar Parkway and Buffalo Springs Drive has 199 residential lots and 8 commercial reserves. The developer is asking for variances to allow for a similar lot design to character of the homes along Racetrack Lane in Lake Creek Village. These variances are:



- Minimum lot width of 75-feet (proposed 55-ft to 60-ft widths)
- Minimum lot size of 9,000 square feet (proposed lots are 7,000 - 10,000 sqft)

These lots will also have 5-foot side yards. No variance is needed, however, since the Zoning Ordinance from 2004 that governs the agreement allows for 5-foot side yards. Also, of note is that the 2004 Subdivision Ordinance does not require an opinion of the P&Z for variances.

**Recommendation**

Consider the requests and either approve or deny the two Subdivision Ordinance variance requests to allow minimum lot area and lot dimensions less than required by the ordinance.

**Approved By**

Asst. City Administrator	Dave McCorquodale 	Date: 5/8/20
City Administrator	Richard Tramm 	Date: 5/8/20



1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

April 29, 2020

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

Re: Variance Request  
Town Creek Crossing Sec. 1 & 2 (Dev. No. 2006)  
City of Montgomery

Dear Commission:

LeFevre Development, Inc. ("the Developer") plans to proceed with construction of a new residential development north of Lone Star Parkway. As you may recall, this Developer has an existing development agreement with the City that requires him to follow the 2004 Code of Ordinances and he is not subject to any new requirements, regulations, impact fees, feasibility studies, etc. that were not in place in 2004. The Developer is requesting the following variances from the 2004 edition of the City's Code of Ordinances:

- Section 78-92: The Code of Ordinances requires single-family residential developments to have a minimum 75' lot width, 120' lot depth, and 9,000 SF lot area. The Developer is proposing to provide 60' and 70' wide lots with sizes ranging from 6,500 SF to 18,000 SF. Additionally, several lots are proposed to have average depths of as little as 100'. The Developer is requesting a variance to allow a 60' lot width, 100' lot depth, and to allow the minimum lot area requirement to be offset with compensating open space.
- Section 78-91: The Code of Ordinances requires all local streets to have a minimum right-of-way ("ROW") width of 60'. The current Code of Ordinances allows streets which serve fewer than 50 lots to have a 50' ROW. The Developer is requesting a variance to allow the development to abide by the current ordinance for this item only.

Enclosed you will find requests for variance as submitted by the engineer for the development and a copy of the preliminary plat. We offer no objection to the Developer's request on the grounds that the proposed variances pose no apparent detriment to the development or the surrounding area.

Approval of the requested variances does not constitute plan or plat approval and only allows the Developer to further refine the proposed plat and site plans, which will require the full review and approval of the City.



If you have any questions or comments, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Chris Roznovsky'.

Chris Roznovsky, PE  
Engineer for the City

CVR/ab

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2020\MEMO to P&Z RE Town Creek Crossing Sec. 1 & 2 Variance Requests.doc

Enclosures: Redlined Preliminary Plat  
Variance Requests

Cc (via email): The Honorable Mayor and City Council – City of Montgomery  
Mr. Richard Tramm – City of Montgomery, City Administrator  
Ms. Susan Hensley – City of Montgomery, City Secretary  
Mr. Dave McCorquodale – City of Montgomery, Director of Planning & Development  
Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney



April 15, 2020

City of Montgomery  
C/o Dave McCorquodale  
101 Old Plantersville Road  
Montgomery, TX 77316

RE: Variance request for Town Creek Crossing regarding requirements for minimum lot area and lot width

Mr. McCorquodale,

According to Sections 78-88 and 98-122 of the City of Montgomery Code of Ordinances, the general provisions of Chapter 98 will apply for any development within the City limits and requires a lot area of 9,000 square feet. The proposed development will consist of approximately 203 single-family residential lots ranging from 7,000 SF to over 10,000 SF. According to Section 78-99 of the City of Montgomery Code of Ordinances dated 2002, proposing compensating open space to account for any deficit areas under the 9,000 square foot minimum is required and can be approved by the Planning Commission and City Council. With this, a variance may not be required, but we feel it is warranted for the following reason:

- Based on the submitted plat, the deficit area of lots less than 9,000 SF comes to 2.8 acres. Within the development, we are proposing 67 acres of open space and drainage reserves to remain undeveloped or landscaped for recreational use by the residents. These reserves will serve as amenities with walking trails, dog parks, and recreational facilities. The proposed compensating open space exceeds the required according to this ordinance.

According to Sections 78-88 and 98-122 of the City of Montgomery Code of Ordinances, there is a minimum lot width of 75 feet. The proposed development incorporates lots with a minimum width of 60 feet. We feel the variance request is warranted as it is intended to compliment the Lake Creek Village development across Lone Star Parkway, but with additional amenities. Town Creek Crossing will be a more premium development as it will have 67 acres of open space, parks and recreational facilities. These amenities can include walking trails, golf cart paths, dog parks, pickleball courts, pavilions, common areas, etc.

It is for the above-mentioned reasons that we feel the variance requests should be considered and approved. Please feel free to contact me at 936-647-0420 if you have any questions or concerns.

Thank you,

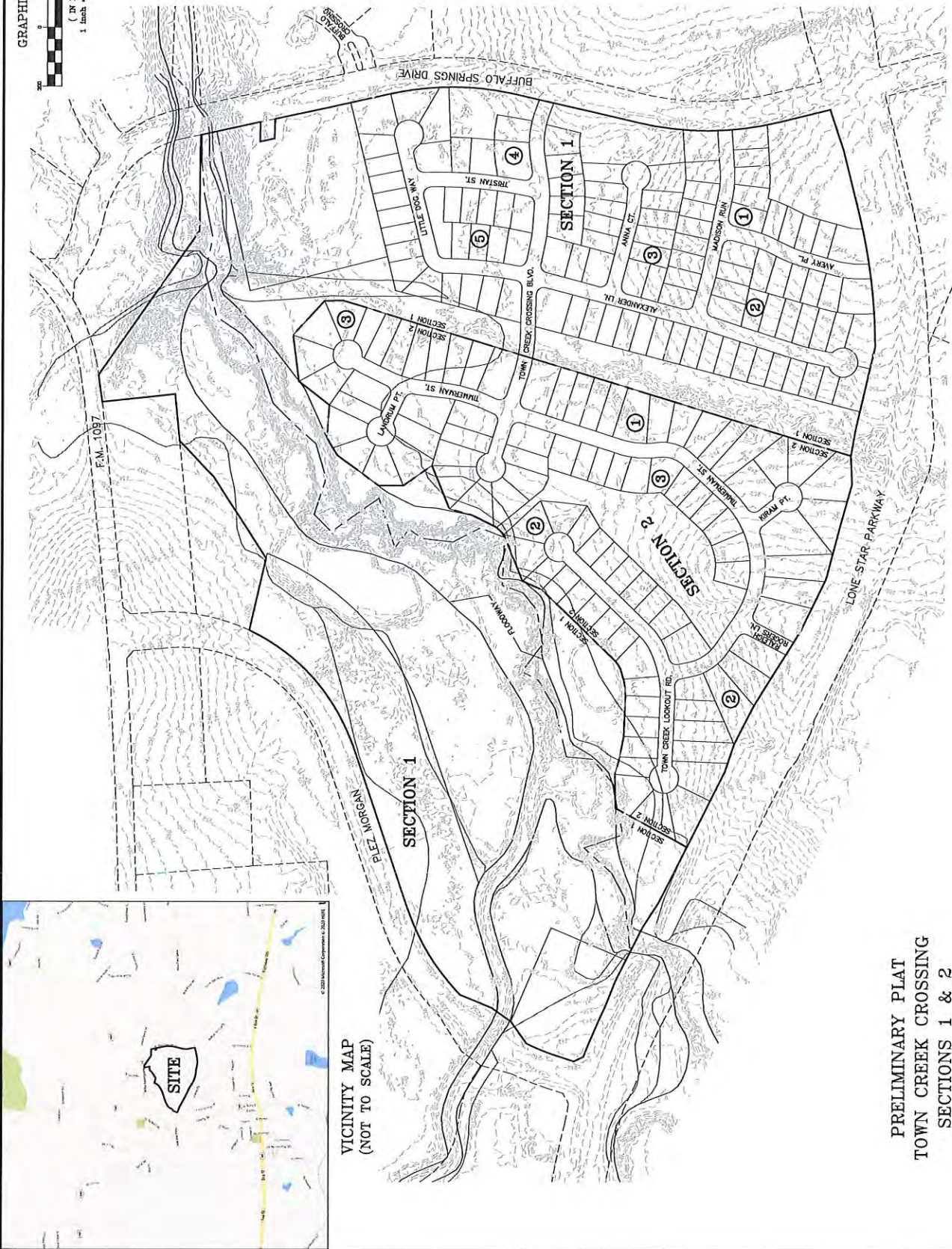
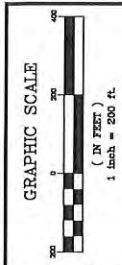
Jonathan White, PE  
L Squared Engineering  
Senior Project Manager, Partner  
936-647-0420  
Jwhite@L2Engineering.com

Attachments: Variance Applications, Preliminary Plat





VICINITY MAP  
(NOT TO SCALE)



**PRELIMINARY PLAT  
TOWN CREEK CROSSING  
SECTIONS 1 & 2**

A RESIDENTIAL SUBDIVISION OF  
125.192 ACRES (5,453,371 SQ. FT.)  
OF LAND IN THE  
JOHN CORNER SURVEY, A-8  
MONTGOMERY COUNTY, TEXAS

**8 BLOCKS \* 199 LOTS \* 10 RESERVES**  
April 2020

**ENGINEER:**  
  
I. SQUARED ENGINEERING  
3077 WESS JAYNE ST., STE. 100  
COLUMBIANA, TX 77830  
(830) 647-0420  
www.squaredengineering.com

**SURVEYOR:**  
  
625 SANDUST ROAD, STE. 200  
THE WOODLANDS, TX 77380  
(281) 419-1100  
www.landpoint.net  
TERRIS REG. NO. 10164172  
JCP No. 20-0052

**OWNER:**  
LeFevre Development, Inc.  
780 Clepper Drive  
Suite 100  
Montgomery, Texas 77356  
(936) 582-1088



# Variance Request Application

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316  
(936) 597-6434

**Upon completion return application to [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us)**

**Contact Information**

Property Owner(s): LeFevre Development Inc.

Address: 780 Clepper, Suite 100 Montgomery, TX Zip Code: 77356

Email Address: plefevre@lefcv-inc.com Phone: 936-597-5200

Applicants: L Squared Engineering

Address: 3307 W Davis Street, Suite 100 Conroe, TX 77304

Email Address: Jwhite@L2Engineering.com Phone: 936-647-0420

**Parcel Information**

Property Identification Number (MCAD R#): R392827, R405109, R392828

Legal Description: Tracts 1-H, 1-L, and 1-J within the John Corner Survey, Abstract 8

Street Address or Location: Northwest corner of Buffalo Springs Drive and Lone Star Parkway

Acreage: 125.192 Present Zoning: PD Present Land Use: Vacant

**Variance Request**

Applicant is requesting a variance from the following:

City of Montgomery Ordinance No.: 2002- Section(s): 78-92

Ordinance wording as stated in Section ( 78-92 ):  
(e) No building shall be constructed on or moved onto any lot of less than 9,000 square feet.

Detail the variance request by comparing what the ordinance states to what the applicant is requesting:

Compensating open space is being proposed to account for the lots being less than the 9,000 square feet requirement, as mentioned in Section 78-99 of the Code of Ordinances.

**Signatures**

Owner(s) of record for the above described parcel:

Signature: William Amos Date: 4/13/20

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

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

*Note: Signatures are required for all owners of record for the property proposed for variance. Attach additional signatures on a separate sheet of paper.*

**\*Additional Information\***

The following information must also be submitted:

Cover letter on company letterhead stating what is being asked.

A site plan.

All applicable fees and payments.

The application from must be signed by the owner/applicant. If the applicant is not the owner, written authorization from the owner authorizing the applicant to submit the variance request shall be submitted.

<p><b>Date Received</b> <i>Office Use</i></p>	
---	--



# Variance Request Application

City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316  
(936) 597-6434

**Upon completion return application to shensley@ci.montgomery.tx.us**

**Contact Information**

Property Owner(s): LeFevre Development Inc.

Address: 780 Clepper, Suite 100 Montgomery, TX Zip Code: 77356

Email Address: plefevre@lefc0-inc.com Phone: 936-597-5200

Applicants: L Squared Engineering

Address: 3307 W Davis Street, Suite 100 Conroe, TX 77304

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**Parcel Information**

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Legal Description: Tracts I-H, I-L, and I-J within the John Corner Survey, Abstract 8

Street Address or Location: Northwest corner of Buffalo Springs Drive and Lone Star Parkway

Acreage: 125.192 Present Zoning: PD Present Land Use: Vacant

**Variance Request**

Applicant is requesting a variance from the following:

City of Montgomery Ordinance No.: 2002- Section(s): 78-92

Ordinance wording as stated in Section (78-92):  
(c) Minimum lot width is 75'

Detail the variance request by comparing what the ordinance states to what the applicant is requesting:

The proposed development will have 60' minimum lot widths.





Montgomery City Council  
**AGENDA REPORT**

<b>Meeting Date: May 12, 2020</b>	<b>Budgeted Amount: N/A</b>
<b>Department: Administrative</b>	
<b>Prepared By: Dave McCorquodale</b>	<b>Exhibits: Engineer's memo, developer's letter, and excerpt from Subdivision Ord.</b>
<b>Date Prepared: May 8, 2020</b>	

**Subject**

Consideration and possible action regarding proposed compensating open space in lieu of minimum lot sizes of 9,000 square feet for Town Creek Crossing Sections One & Two, as submitted by Lefevre Development, Inc.

**Description**

It is important to note this is not a variance request. When City Council approves a variance for lot sizes smaller than required by Code, compensating open space is required in the subdivision at minimum 1:1 ratio.

The developer has proposed lots with a cumulative deficit of 2.8-acres below what is required. He is proposing 67-acres in compensating open space.

**Recommendation**

Consider the request and either approve or deny the compensating open space.

**Approved By**

Asst. City Administrator	Dave McCorquodale <i>DM</i>	Date: 5/8/20
City Administrator	Richard Tramm <i>RT</i>	Date: 5/8/20



1575 Sawdust Road, Suite 400  
The Woodlands, Texas 77380  
Tel: 281.363.4039  
Fax: 281.363.3459  
[www.jonescarter.com](http://www.jonescarter.com)

April 29, 2020

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

Re: Variance Request  
Town Creek Crossing Sec. 1 & 2 (Dev. No. 2006)  
City of Montgomery

Dear Commission:

LeFevre Development, Inc. ("the Developer") plans to proceed with construction of a new residential development north of Lone Star Parkway. As you may recall, this Developer has an existing development agreement with the City that requires him to follow the 2004 Code of Ordinances and he is not subject to any new requirements, regulations, impact fees, feasibility studies, etc. that were not in place in 2004. The Developer is requesting the following variances from the 2004 edition of the City's Code of Ordinances:

- Section 78-92: The Code of Ordinances requires single-family residential developments to have a minimum 75' lot width, 120' lot depth, and 9,000 SF lot area. The Developer is proposing to provide 60' and 70' wide lots with sizes ranging from 6,500 SF to 18,000 SF. Additionally, several lots are proposed to have average depths of as little as 100'. The Developer is requesting a variance to allow a 60' lot width, 100' lot depth, and to allow the minimum lot area requirement to be offset with compensating open space.
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Chris Roznovsky, PE  
Engineer for the City

CVR/ab

K:\W5841\W5841-0900-00 General Consultation\Correspondence\Letters\2020\MEMO to P&Z RE Town Creek Crossing Sec. 1 & 2 Variance Requests.doc

Enclosures: Redlined Preliminary Plat  
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Cc (via email): The Honorable Mayor and City Council – City of Montgomery  
Mr. Richard Tramm – City of Montgomery, City Administrator  
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April 15, 2020

City of Montgomery  
C/o Dave McCorquodale  
101 Old Plantersville Road  
Montgomery, TX 77316

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Mr. McCorquodale,

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- Based on the submitted plat, the deficit area of lots less than 9,000 SF comes to 2.8 acres. Within the development, we are proposing 67 acres of open space and drainage reserves to remain undeveloped or landscaped for recreational use by the residents. These reserves will serve as amenities with walking trails, dog parks, and recreational facilities. The proposed compensating open space exceeds the required according to this ordinance.

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Thank you,



Jonathan White, PE  
L Squared Engineering  
Senior Project Manager, Partner  
936-647-0420  
Jwhite@L2engineering.com

Attachments: Variance Applications, Preliminary Plat

Sec. 78-95. - Compensating open space requirements.

In those instances where proposed lots have an area less than the minimum established by the planning and zoning commission, compensating open space will be required and can be approved by the planning and zoning commission and city council. For planned unit development (PUD), compensating open space must be made available based on the density of development and in accordance with the general zoning requirements of the city. Such compensating open spaces remain undeveloped or landscaped and may be developed for recreational purposes within the PUD, both active and passive. They may be used to provide courtyard access from the groups or clusters of lots adjacent to public streets or for temporary stormwater detention structures within the planned stormwater facility plan of the city.

( Ord. No. 2011-09, § 1, 7-26-2011)