

**Written evidence presented on behalf of the appellant at the June 28, 2021 Appeal Hearing. Submitted by email on June 22, 2021 by:**

John McClish

**BRADY & HAMILTON • WOMACK MCCLISH**

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Vernon's Texas Statutes and Codes Annotated  
Local Government Code (Refs & Annos)  
Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities  
Subtitle A. Municipal Regulatory Authority  
Chapter 212. Municipal Regulation of Subdivisions and Property Development (Refs & Annos)  
Subchapter Z. Miscellaneous Provisions

V.T.C.A., Local Government Code § 212.904

## § 212.904. Apportionment of Municipal Infrastructure Costs

Effective: June 10, 2019

Currentness

(a) If a municipality requires, including under an agreement under Chapter 242, as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer's portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is retained by the municipality. The municipality's determination shall be completed within thirty days following the submission of the developer's application for determination under this subsection.

(b) A developer who disputes the determination made under Subsection (a) may appeal to the governing body of the municipality. At the appeal, the developer may present evidence and testimony under procedures adopted by the governing body. After hearing any testimony and reviewing the evidence, the governing body shall make the applicable determination within 30 days following the final submission of any testimony or evidence by the developer.

(c) A developer may appeal the determination of the governing body to a county or district court of the county in which the development project is located within 30 days of the final determination by the governing body.

(d) A municipality may not require a developer to waive the right of appeal authorized by this section as a condition of approval for a development project.

(e) A developer who prevails in an appeal under this section is entitled to applicable costs and to reasonable attorney's fees, including expert witness fees.

(f) This section does not diminish the authority or modify the procedures specified by Chapter 395.

### Credits

Added by Acts 2005, 79th Leg., ch. 982, § 1, eff. June 18, 2005. Amended by Acts 2019, 86th Leg., ch. 635 (S.B. 1510), § 1, eff. June 10, 2019.

Notes of Decisions (2)

V. T. C. A., Local Government Code § 212.904, TX LOCAL GOVT § 212.904

Current through the end of the 2019 Regular Session of the 86th Legislature

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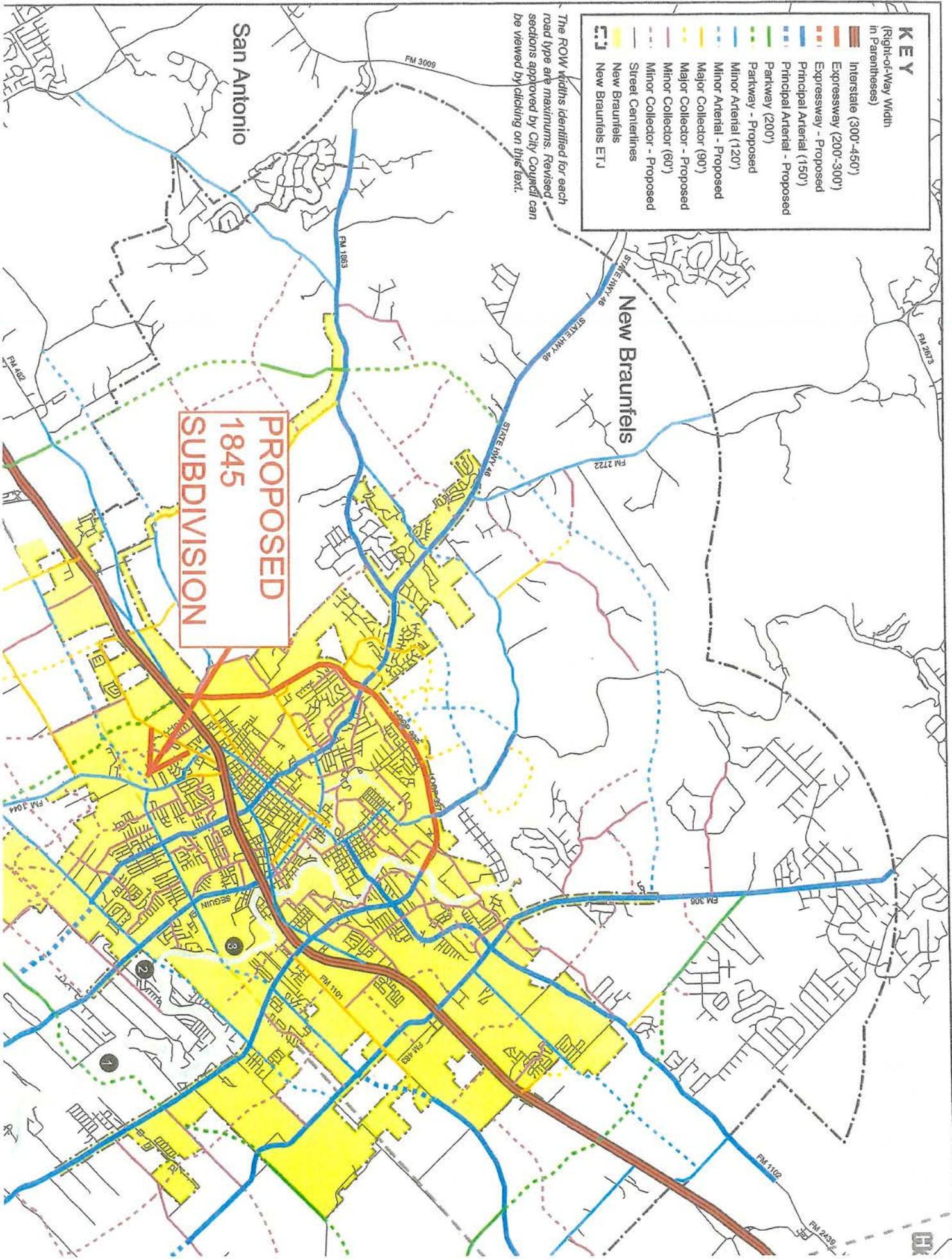
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## Aerial





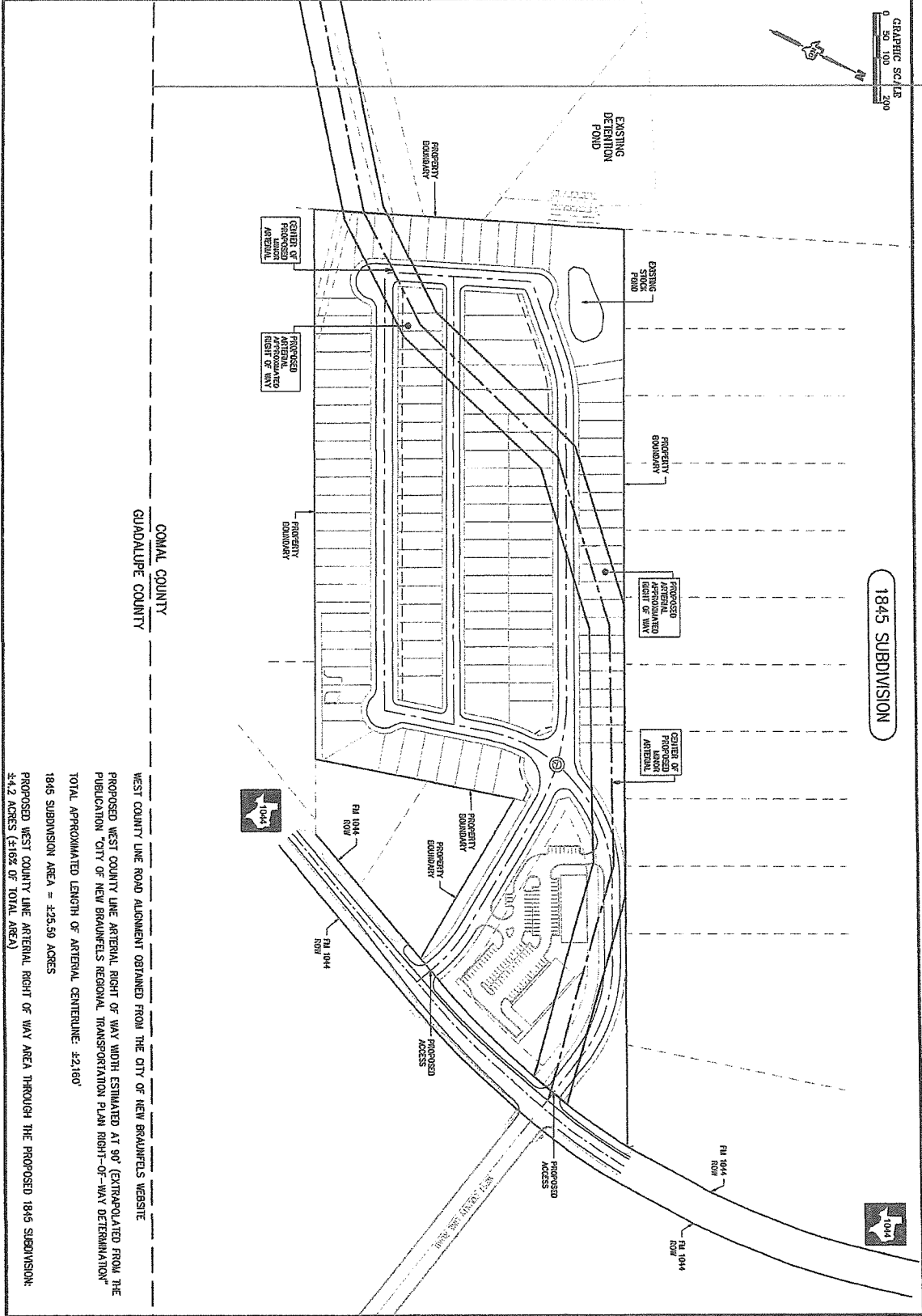



**KEY**  
(Right-of-Way Width  
in Parentheses)

- Interstate (300'-450')
- Expressway (200'-300')
- Expressway - Proposed
- Principal Arterial (150')
- Principal Arterial - Proposed
- Parkway (200')
- Parkway - Proposed
- Minor Arterial (120')
- Minor Arterial - Proposed
- Major Collector (90')
- Major Collector - Proposed
- Minor Collector (80')
- Minor Collector - Proposed
- Street Centerlines
- New Braunfels
- New Braunfels ETJ

The ROW widths identified for each road type are maximums. Revised sections approved by City Council can be viewed by clicking on this text.

**PROPOSED  
1845  
SUBDIVISION**



<p>File: K:\15-150\Karon\Tract\Design\CD\15-150-AP.dwg</p> <p>Job No. 15-150</p> <p>Date: 03/27/20</p> <p>Rev. No. 1</p>		<p>Scale (Plot): AS SHOWN</p> <p>Scale (Work): AS SHOWN</p> <p>Checked By: MS</p> <p>Drawn By: GKC</p>	<p>This document is released for the purpose of information review under the authority of Greg Haby, P.E. 52287 on SEPT 27, 2020</p> <p>It is not to be used for construction, bidding or permit purposes</p>	<p><b>WEST COUNTY LINE RD.</b></p> <p><b>PROPOSED ARTERIAL</b></p> <p><b>1845 SUBDIVISION</b></p> <p><b>NEW BRAUNFELS, TX</b></p>	 <p><b>K.C. ENGINEERING, INC.</b></p> <p>CONSULTING ENGINEERS</p> <p>705 HWY. 281 NORTH, SUITE 103</p> <p>MARBLE FALLS, TEXAS 75854</p> <p>OFFICE: 817-593-5535 FAX: 817-593-5564</p> <p>Email: info@kceengineering.com</p> <p>REGISTRATION # F-000977</p>
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**EXHIBIT**

**A**

1845 SUBDIVISION

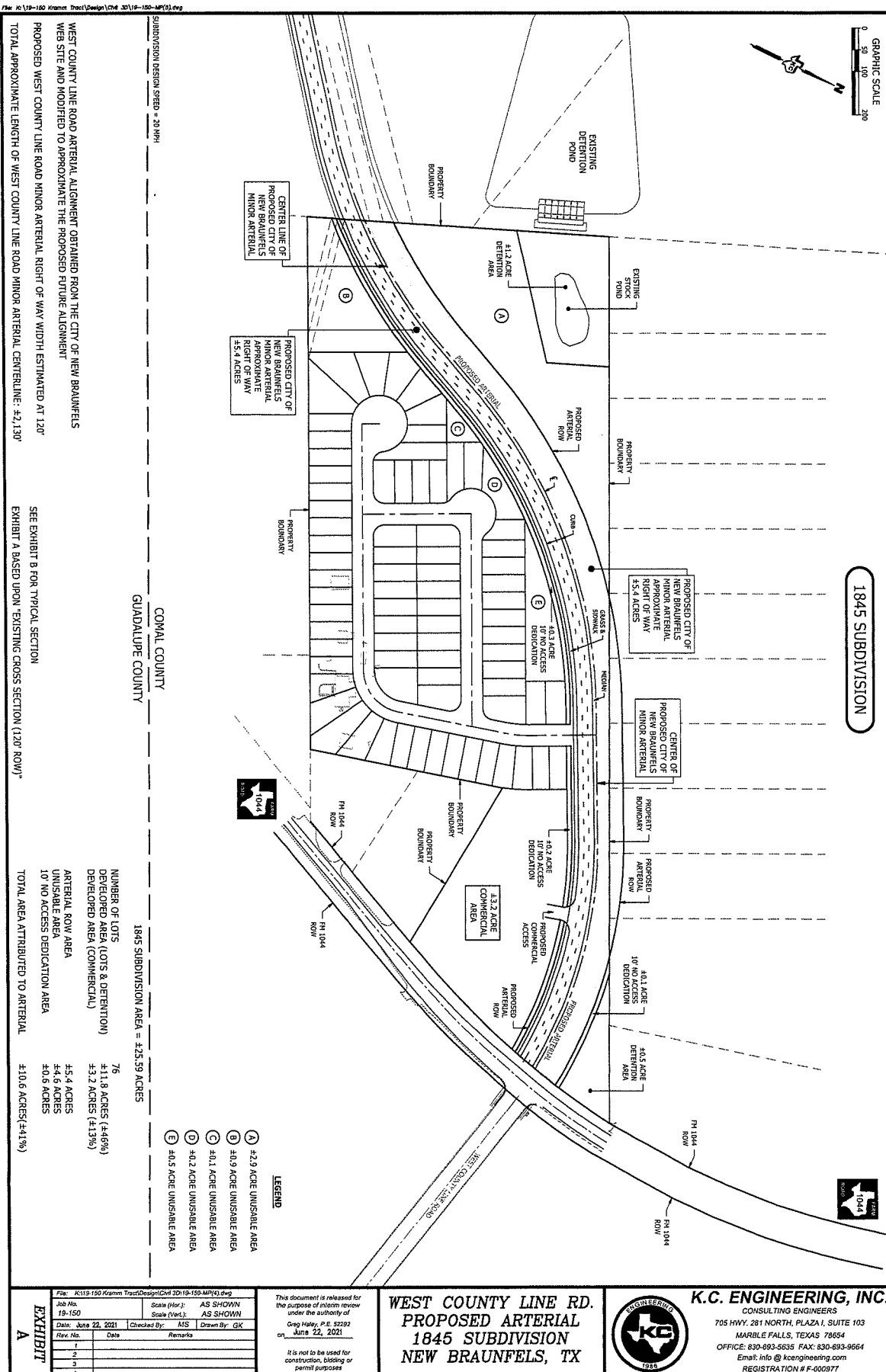
WEST COUNTY LINE ROAD ALIGNMENT OBTAINED FROM THE CITY OF NEW BRAUNFELS WEBSITE

PROPOSED WEST COUNTY LINE ARTERIAL RIGHT OF WAY WIDTH ESTIMATED AT 90' (EXTRAPOLATED FROM THE PUBLICATION "CITY OF NEW BRAUNFELS REGIONAL TRANSPORTATION PLAN RIGHT-OF-WAY DETERMINATION")

TOTAL APPROXIMATED LENGTH OF ARTERIAL CENTERLINE: ±2,160'

1845 SUBDIVISION AREA = ±25.50 ACRES

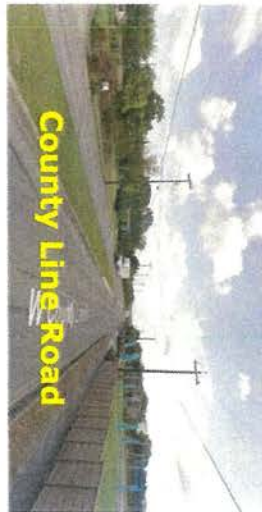
PROPOSED WEST COUNTY LINE ARTERIAL RIGHT OF WAY AREA THROUGH THE PROPOSED 1845 SUBDIVISION: ±4.2 ACRES (±16% OF TOTAL AREA)





# Proposed Cross Sections: Minor Arterials

Existing Cross Section (120' ROW)



County Line Road

Proposed Option (100' ROW)



- Four-lane facility with median or turn lane
- Six-foot sidewalks
- Buffer space to separate pedestrians from roadway





November 5, 2020  
John McClish  
Brady & Hamilton \* Womack McClish  
1801 Lavaca, Suite 120  
Austin, TX 78701

Re: Kramm Family – proposed 1845 Subdivision

Dear Mr. McClish:

This is in response to your letter dated October 13, 2020 concerning the removal of the County Line Road Minor Arterial from the City of New Braunfels Regional Transportation Plan and a rough proportionality analysis of the proposed 1845 Subdivision associated with the Kramm Family tract located on FM 1044. We also received your letter dated October 20, 2020 amending the State law required response from 14 days to 30 days.

The City utilized the professional services of Jeff Whitacre, P.E. with Kimley-Horn and Associates, Inc. to conduct a rough proportionality analysis of the proposed 1845 Subdivision. Mr. Whitacre is a Texas Registered Engineer, License Number 102469. Mr. Whitacre prepared the enclosed Technical Memorandum concluding that the County Line Road Minor Arterial right-of-way dedication is roughly proportionate to the proposed 1845 Subdivision as presented to the City of New Braunfels. The proposed site plan, land use, and intensity were based on information provided with the letter request and additional information provided by K.C. Engineering, Inc. associated with a formal application received on October 22, 2020 to remove the County Line Road Minor Arterial from the City of New Braunfels Regional Transportation Plan. You may appeal the analysis in accordance with the City of New Braunfels Code of Ordinances Section 118-13.

Your letter states that a "plat" of the proposed subdivision with the proposed future roadway superimposed was attached; however, the exhibit provided with the request represents a preliminary site plan that does not comply with the City's zoning and platting requirements. The tract is currently zoned agricultural/pre-development (APD) and the single-family lots shown on the preliminary site plan don't appear to meet the minimum standards. The engineers for the project are responsible to prepare plans, including a traffic impact analysis, that conform to the provisions of local codes and ordinances including platting requirements.

The County Line Road Minor Arterial superimposed on the subject tract represents a generalized location and is subject to modification to fit local conditions and subject to refinement. Furthermore, the City is currently updating the Regional Transportation Plan and is proposing to reduce the right-of-way requirements of a minor arterial from 120 feet to 100 feet and may be applicable to the subject tract. This update is ongoing and planned for approval by City Council in 2021. Furthermore, modifications to the site plan, zoning of the tract, and other adjustments to the roadway network, drainage facilities, intersections, and access will allow for various development scenarios. An additional rough proportionality analysis can be conducted based on an alternate development plan.

As noted above, we have received a formal application to remove the County Line Road Minor Arterial from the Regional Transportation Plan. The request requires staff review and local and state agency coordination to prepare a recommendation. The recommendation will be presented to Planning Commission for a recommendation to City Council. City Council will consider the recommendation and make a determinate on the thoroughfare. We anticipate this process to take up to 90 days.

We are willing to work with the Kramm family and engineers for the tract to fully develop the site and meet the City's development requirements. Feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Garry Ford, Jr.', with a long horizontal flourish extending to the right.

Garry Ford, Jr., PE  
Assistant Public Works Director/City Engineer

Enclosures

cc: Christopher J. Looney, AICP, Planning and Development Services Director  
Greg A. Malatek, PE, Public Works Director

## TECHNICAL MEMORANDUM

11/4/2020

To: Garry Ford, P.E.  
City Engineer  
City of New Braunfels

From: Jeff Whitacre, P.E., AICP, PTP  
Kimley-Horn and Associates, Inc.  
TBPE Firm Number F-928

Date: November 4, 2020

Subject: Kramm Family Rough Proportionality Analysis  
City of New Braunfels, Texas



### Purpose

On October 13, 2020 the City of New Braunfels (City) received a request for the City Engineer to conduct a rough proportionality analysis for the Kramm Family proposed 1845 Subdivision. Under Section 118-46 (b) (2) *“whenever a tract to be platted borders on or embraces any part of any street shown on the thoroughfare plan, such part of such proposed street shall be shown on the master plan or the plat.”* The letter stated that a subdivision plan was submitted that did not comply with the Thoroughfare Plan after a previous meeting was held outlining this requirement. Currently a subdivision plan has not been submitted that complies with the Subdivision Platting requirements. However, the memo requests a proportionality analysis to be completed. For a rough proportionality assessment, a compliant plan should be presented to make an accurate determination. This determination will be made on the current submitted plan but should be revised once a compliant plan is submitted.

The purpose of this memorandum is to provide a “rough proportionality” calculation of the submitted Kramm Family proposed 1845 Subdivision. For roads, the rough proportionality calculation is a comparison of the capacity provided by a development to the traffic impacts of the proposed development.

### Proportionality Methodology

Traffic generation of new development impacts the area roadway system by using available capacity. To measure system impacts, an analysis using vehicle-miles of travel in the PM peak hour was conducted. Using the vehicle-miles of travel (demand), the cost of the provided by roadway improvements (supply) can be compared with the cost of traffic generated by a proposed development.

# Kimley»Horn

## Demand

Based upon information provided by the City from a March 16, 2020 Traffic Impact Analysis (TIA) worksheet (submitted after the October 13, 2020 letter) the Kramm Family proposed 1845 Subdivision will ultimately consist of the following land use and intensity:

- 125 single-family detached housing
- 18,000 square feet of commercial

Based on the adopted 2019 Roadway Impact Fee Study the following are the vehicle-miles traveled generated by the proposed development:

- 125 dwelling units \* 4.61 vehicle-miles/dwelling unit
  - 576.25 vehicle-miles
- 18.0 1,000 square feet \* 8.03 vehicle-miles/1,000 square feet
  - 144.54 vehicle-miles

**TOTAL DEMAND: 650.04 vehicle-miles**

The cost per vehicle-mile indicated in the 2019 Roadway Impact Fee Study is \$1,371 per vehicle mile in Service Area 5.

- 720.79 vehicle-miles \* \$1,371/vehicle-mile

**TOTAL DEMAND: \$988,203.09**

The total impact of the proposed development on the transportation network in the City of New Braunfels Service Area 5 is \$988,203.09.

## Supply

Based upon information provided by the City of New Braunfels and the applicant, the Kramm Family proposed 1845 Subdivision is requested to dedicate the right-of-way for the County Line Road minor arterial extension and potentially build two-lanes of the roadway to serve the proposed development. The current Thoroughfare Plan illustrates 120' of right-of-way for County Line Road extension the while a proposed amendment shows 100' of right-of-way. This would result in 4.861 (211,745 sq. ft.) acres or 5.819 acres (253,475 sq. ft.).

Based on the October 13, 2020 letter the land was approximately \$1 per square foot, so the right-of-way request would be between \$211,745 - \$253,475 which is below the demand calculated. Note Comal County Appraisal District shows a market value of \$630,690 which is 63% of the value indicated in the October 13, 2020 letter.



# Kimley»Horn

The remaining \$734,728.09 (\$988,203.09 -\$253,475). would be available to the construction of the needed County Line Road extension to serve this development. An updated site plan would need to be completed to evaluate this requirement.

## **Analysis**

Based on information provided by the applicant in the March 16, 2020 preliminary drainage site plan, TIA worksheet and October 13, 2020 letter the request for right-of-way dedication (\$253,475) is less than then demand of \$988,203.09 and as a result is a roughly proportional request.

It is anticipated that if the alignment was properly drawn three areas would be created, 15.437 acres, 4.523 acre tract, and 0.769 acre tract. The 0.769 acre tract is in the same location that was identified in the March 16, 2020 as a proposed water quality and detention pond and is anticipated could remain as such. The commercial tract could remain and the remaining residential areas would be to be revaluated.

## **Conclusion**

Based on the current information the request of the Kramm Family proposed 1845 Subdivision to dedicate right-of-way for the County Line Road minor arterial extension as requested is roughly proportionate to this development.

This analysis should be updated based on a compliant site plan that considers this roadway based on the guidance that was previously provided.

**PRELIMINARY OPINION OF  
PROBABLE CONSTRUCTION COST FOR  
MINOR ARTERIAL THROUGH KRAMM TRACT  
NEW BRAUNFELS, TEXAS**

The Pay Item reference indicates the controlling specification for each Pay Item of K.C. Engineering, Inc. Standard Specifications (3rd Edition). Pay Items containing a reference to TxDOT are from Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014.

Prepared By:  
K.C. Engineering, Inc. - Firm Registration No. F-977

PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE IN NUMBERS	AMOUNT (Quantity x Unit Price)
<b>GENERAL REQUIREMENTS</b>					
010.16.1	SEQUENCE OF CONSTRUCTION	1	LS	\$ 10,000.00	\$ 10,000.00
010.16.2	FIELD ENGINEERING	1	LS	\$ 20,000.00	\$ 20,000.00
010.16.3	MOBILIZATION	1	LS	\$ 20,000.00	\$ 20,000.00
010.16.4	AS-BUILT DRAWINGS	1	LS	\$ 3,300.00	\$ 3,300.00
GEN. COND. ART. 5	BONDS AND INSURANCE	1	LS	\$ 10,000.00	\$ 10,000.00
<b>TOTAL GENERAL REQUIREMENTS</b>				<b>\$</b>	<b>63,300.00</b>
<b>ROADWAY IMPROVEMENTS</b>					
102.4.2	CLEARING AND GRUBBING	22	STA	\$ 500.00	\$ 11,000.00
TxDOT 260.6.2	LIME TREATMENT (6")	9,840	SY	\$ 3.00	\$ 29,520.00
106.4.1	SUBGRADE PREPARATION (6")	9,840	SY	\$ 3.00	\$ 29,520.00
200.5.1	EXCAVATION	3,280	CY	\$ 9.00	\$ 29,520.00
220.4.1	EMBANKMENT	1,640	CY	\$ 6.00	\$ 9,840.00
240.6.1	FLEXIBLE BASE, 12" DEPTH, DENSITY CONTROLLED	2,590	CY	\$ 45.00	\$ 116,550.00
TxDOT 315	PRIME COAT (MC-30 OR AE-P)	8,640	SY	\$ 1.00	\$ 8,640.00
330.5.1	CONCRETE CURB AND GUTTER	4,320	LF	\$ 15.00	\$ 64,800.00
TxDOT 531	CONCRETE SIDEWALKS (5' WIDTH, 4" DEPTH)	2,160	LF	\$ 25.00	\$ 54,000.00
410.12	HOT MIX (TYPE C) (TxDOT ITEM 340)	8,640	SY	\$ 12.00	\$ 103,680.00
<b>TOTAL ROADWAY IMPROVEMENTS</b>				<b>\$</b>	<b>457,070.00</b>

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PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE IN NUMBERS	AMOUNT (Quantity x Unit Price)
<b>DRAINAGE IMPROVEMENTS</b>					
600.5.1	PIPE RCP CLASS III STORM SEWER MAIN - 24"	1,100	LF	\$ 75.00	\$ 82,500.00
600.5.1	PIPE RCP CLASS III STORM SEWER MAIN LATERAL - 18"	176	LF	\$ 65.00	\$ 11,440.00
625.7.1	CONCRETE JUNCTION BOX	8	EA	\$ 4,000.00	\$ 32,000.00
TxDOT 496	10' CURB INLET	8	EA	\$ 5,000.00	\$ 40,000.00
1100.9.1	TRENCH SAFETY, ALL DEPTHS	1,276	LF	\$ 2.00	\$ 2,552.00
<b>TOTAL DRAINAGE IMPROVEMENTS</b>				<b>\$</b>	<b>168,492.00</b>
<b>SIGNS, STRIPING &amp; TRAFFIC CONTROL</b>					
TxDOT 502	BARRICADES, SIGNS, AND TRAFFIC HANDLING	1	LS	\$ 10,000.00	\$ 10,000.00
TxDOT 644	INSTALL SMALL ROADSIDE SIGN, SUPPORTS, AND ASSEMBLIES	5	EA	\$ 600.00	\$ 3,000.00
TxDOT 666	REFL PAV MRK TY I (Y) 4" (SLD) (100 MIL)	4,320	LF	\$ 1.00	\$ 4,320.00
TxDOT 666	REFL PAV MRK TY I (Y) 4" (BRK) (100 MIL)	540	LF	\$ 1.00	\$ 540.00
TxDOT 672	REFL PAV MRK TY II-A-A	54	EA	\$ 5.00	\$ 270.00
<b>TOTAL SIGNS, STRIPING &amp; TRAFFIC CONTROL</b>				<b>\$</b>	<b>18,130.00</b>
<b>EROSION AND SEDIMENTATION CONTROL</b>					
900.5.1	SILT FENCE	900	LF	\$ 2.50	\$ 2,250.00
900.5.1	SILT FENCE - REMOVE	900	LF	\$ 1.00	\$ 900.00
905.5.1	CONCRETE WASHOUTS	1	LS	\$ 1,000.00	\$ 1,000.00
910.8.1	REVEGETATION (TOPSOIL AND SEEDING)	3,600	SY	\$ 3.00	\$ 10,800.00
920.3.1	ROCK FILTER DAM, TYPE 2	40	LF	\$ 30.00	\$ 1,200.00
920.3.1	ROCK FILTER DAM, TYPE 2 - REMOVE	40	LF	\$ 10.00	\$ 400.00
<b>TOTAL EROSION AND SEDIMENTATION CONTROL</b>				<b>\$</b>	<b>16,550.00</b>

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NEW BRAUNFELS, TEXAS**

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K.C. Engineering, Inc. - Firm Registration No. F-977

PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE IN NUMBERS	AMOUNT (Quantity x Unit Price)
<b>MISCELLANEOUS WORK ITEMS</b>					
750.10.1	LOCATING EXISTING UNDERGROUND FACILITIES	1	LS	\$ 5,000.00	\$ 5,000.00
<b>TOTAL MISCELLANEOUS WORK ITEMS</b>				<b>\$</b>	<b>5,000.00</b>
<b>TOTAL BID (TOTAL OF ITEMS IN THE COLUMNS ABOVE)</b>				<b>\$</b>	<b>728,542.00</b>
<b>CONTINGENCY (~10%)</b>				<b>\$</b>	<b>72,858.00</b>
<b>TOTAL BID (TOTAL OF ITEMS IN THE COLUMNS ABOVE)</b>				<b>\$</b>	<b>801,400.00</b>

The unit prices contained herein are based upon recent available bidding data from TxDOT's Average Low Bid Unit Price for the Austin District, other bid histories, other information, and the opinions of the preparer. As such, these prices may not accurately reflect future bid prices because bidding trends change and opinions of probable cost reflect prior bidding history.

This document is released for the purposes of interim review under the authority of  
**Greg Haley, P.E. 52292** on

June 22, 2021  
It is not to be used for construction, bidding, permitting or for any other purposes.

The unit prices contained herein are based upon the judgment of K.C. Engineering, Inc. (KCE) As such, these prices may not accurately reflect future bid prices because bidding trends change and opinions of probable cost reflect prior bidding history. KCE cannot and does not warrant or represent that bids or negotiated prices will not vary from an estimate of construction cost or evaluation prepared or agreed to by KCE