

Appeal hearing for relief from apportionment of municipal infrastructure costs associated with the proposed 1845 Subdivision located at 1890 FM 1044

June 28, 2021



City of
New Braunfels

Request for Rough Proportionality Analysis

- The City received a formal request for a “rough proportionality analysis” of the Minor Arterial thoroughfare costs for the Proposed 1845 Subdivision
- The request follows process and procedures set forth in the City’s Code of Ordinances, Section 118-13, Appeal for relief from apportionment of municipal infrastructure costs

Development Process

- Buyer and engineers notified of throughfare requirement in predevelopment and traffic impact analysis (TIA) meetings
- Engineer submitted noncompliant site plan to NBU
 - NBU notified the City
 - Site plan did not show streets on the thoroughfare plan
 - Site plan included land use that does not appear to be authorized with current Agricultural/Pre-development District zoning
- City notified engineer that the site plan was unacceptable
- City received request for rough proportionality analysis

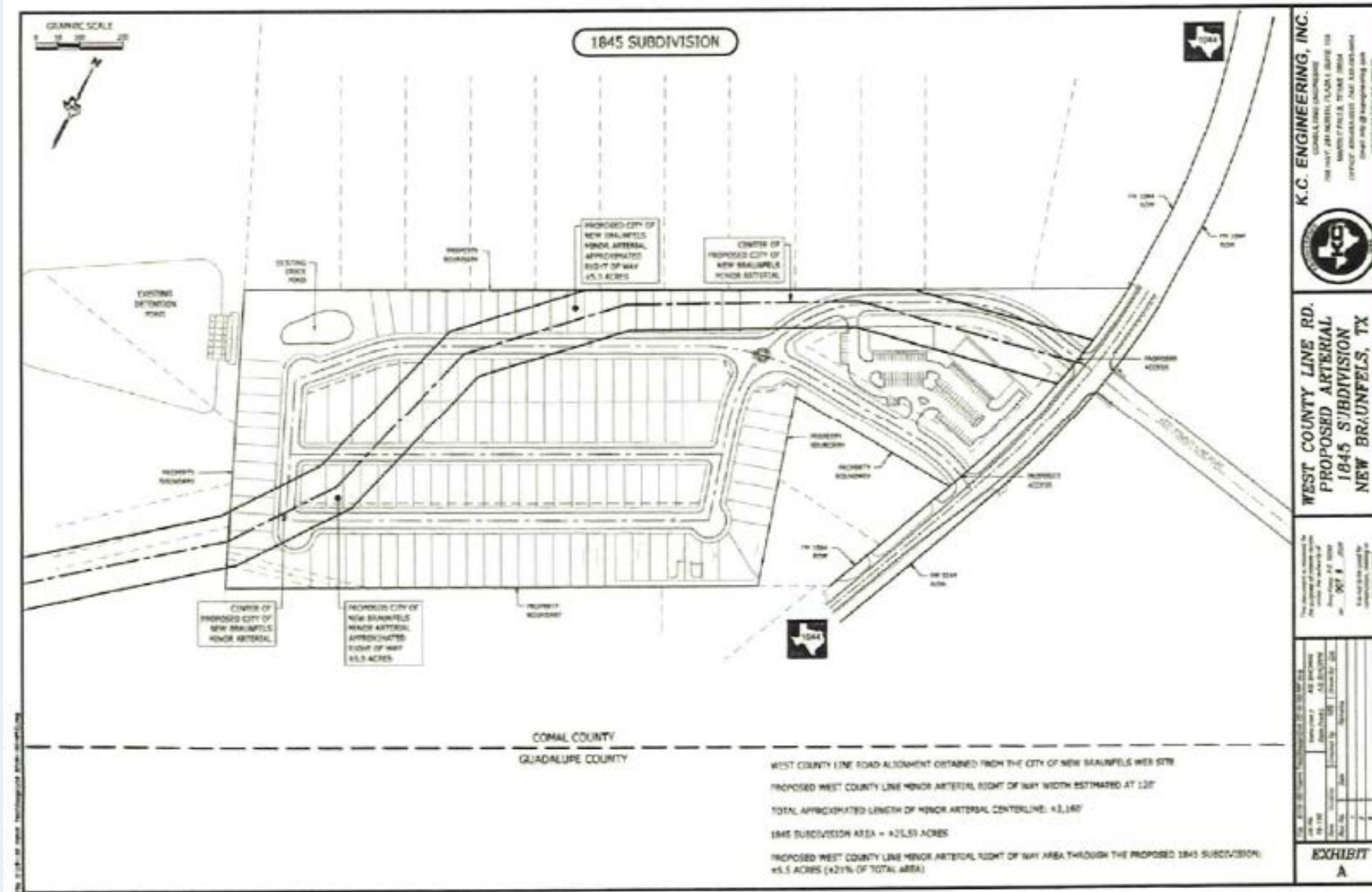
Site Aerial

Submitted by Brady & Hamilton – Womack McClish 10/13/2020



Noncompliant Site Plan

Submitted by Brady & Hamilton – Womack McClish 10/13/2020



Purpose of Appeal

- Assure that the application of apportionment of municipal infrastructure costs of a development is “roughly proportionate” to the proposed development
- The developer’s portion of the dedication costs, payment of fees, or payment of construction costs, may not exceed the amount that are “roughly proportionate” to the proposed development

Rough Proportionality

- Two landmark U.S. Supreme Court decisions – *Nollan vs. California Coastal Commission* (1987) and *Dolan vs. City of Tigard* (1994) – established the basic rule that conditioning development approval on dedication of land constitutes an unconstitutional “taking” of property unless the dedication is reasonably related and roughly proportionate to the impacts of development on the community.
- General accepted methodology is to compare the demand of the development to the transportation system to the supply provided by the exaction

Rough Proportionality Analysis

- City retained a licensed professional engineer experienced in the subject matter to prepare a rough proportionality analysis based on:
 - Generally accepted rough proportionality analysis methodology
 - City's thoroughfare dedication and construction requirements
 - Applicant's noncompliant site plan
 - Applicant's TIA including land use and intensity
 - Applicant's stated property value of \$1M for 25.641 acres

Rough Proportionality Analysis

- Proposed Development
 - 125 single-family detached housing
 - 18,000 square feet of commercial
- Total **demand** generated by the proposed development
 - 720.79 vehicle-miles
 - \$1,371/vehicle-mile
Based on 2019 roadway impact fee study, Service Area 5
(Generally accepted methodology)
 - \$988,203.09

Rough Proportionality Analysis

- Right-of-way (supply)
 - Analysis determined approximate 5.819 acres required (120 feet)
(More than the 5.5 acres – benefits developer)
 - \$1M indicated in 10/13/20 request = \$253,475
(Rounded up to \$1/sq ft – benefits developer)
 - \$870,000 appraised in 2/2/21 letter = \$197,439
(Updated based on noted appraisal)
- Construction (supply)
 - Dependent on TIA and need of development
 - Developer responsible for construction costs + right-of-way (\$197,439-\$253,475) up to \$988,203.09

Rough Proportionality Analysis

- Minor Arterial requirements are roughly proportionate based on noncompliant site plan and right-of-way costs
- Developer responsible for constructing the Minor Arterial as required by the TIA and to serve the development
- Developer is responsible for roughly \$734,727-\$790,764 in construction costs for the Minor Arterial
- **Analysis should be updated on a compliant site plan**

Applicants Observations/City Responses

- Analysis ignores cost of construction
 - Construction dependent on a compliant site plan and traffic impact analysis (TIA) to determine improvements necessary to serve the development
 - Analysis provides approximate construction costs responsible by the developer
- Developer concerned that splitting the tract, TxDOT spacing requirements, and having to build the minor arterial would limit the owner to make any profitable use of the land
 - City has not received financial information or pro forma financial statements to review and evaluate the profitability claim
 - Current zoning for the subject tract is APD and the land uses shown on the site plan are not allowed

Applicants Observations/City Responses

- Request that the cost per demand (\$1,371/vehicle-mile) be “reworked” based on the right-of-way costs
 - Cost of demand is based on the 2019 Roadway Impact Fee Study (accepted methodology)
 - Cost of demand is not based on the specific right-of-way costs
- Applicant disagrees with the rough proportionality analysis and requested formal appeal to City Council

Appeal to City Council

- City received a petition that the application of the standard or the imposition of conditions relating to the apportionment *is not roughly proportionate* to the nature and extent of the impacts created by the proposed development on municipal infrastructure
- Code: The petitioner shall demonstrate the requirement is not roughly proportional to the proposed development and may include evidence that addresses any of the following information:
 - Total capacity to be utilized, consumed, and supplied by the development
 - Comparison of the capacity to be supplied by the apportionment
 - Effects of any credits or city participation of oversizing the apportionments

Evidence Received June 22, 2021

- Texas Local Government Code 212.904. Apportionment of Municipal Infrastructure Costs
- Property Aerial
- Location of the proposed 1845 Subdivision on the City's 2012 Thoroughfare Plan
- Original noncompliant site plan with Minor Arterial overlay
- Revised site plan showing current 120' Minor Arterial right-of-way and a 3-lane roadway, revised land use, and unusable area
- Proposed Cross Sections: Minor Arterials presentation slide from the Thoroughfare Plan Update presented by City staff in 2019
- City's Rough Proportionality Response Letter and Analysis
- Preliminary Opinion of Probable Construction Cost for Minor Arterial Through Kramm Tract

City Engineer Evaluation

- City Engineer shall evaluate the petition and supporting study and other evidence, and shall make a recommendation to City Council based on information contained in the study and any comments from the city's planning and development services department
- New evidence provided for evaluation includes:
 - Revised site plan
 - Proposed Cross Sections
 - Applicant's Preliminary Opinion of Probable Construction Cost
- A supporting study was not provided

Submitted by Brady & Hamilton – Womack McClish 6/22/2021



City Engineer Evaluation – Revised Site Plan

1. The land use shown is not allowed under current zoning
2. It appears that only two lanes of the arterial should be constructed to the farthest intersection (to be confirmed with a traffic study)
3. Unusable and detention areas are not supported by drainage and utility studies
4. Drainage channels and water quality improvements are not shown
5. Unusable areas could be developed based on final zoning, used to enlarge lot size, or provide park requirements

City Engineer Evaluation – Revised Site Plan

6. Unclear why “10’ No Access Dedication” is shown
(not a city requirement)
7. Does not include existing utility easements
8. “Total Area Attributed to Arterial” cannot be confirmed
9. Minor arterial curvature cannot be confirmed
10. There appears to be no consideration for minor arterial modification

City Engineer Evaluation

Proposed Cross Sections

1. There is no consideration for a reduced minor arterial right-of-way width to match proposed thoroughfare plan update as mentioned in correspondence

Preliminary Opinion of Probable Construction Cost

1. Cannot be confirmed without preliminary design layout
2. Disagree based on revised site plan minor arterial comments (project limits, roadway section, etc)

City Engineer Recommendation

- Deny the appeal for relief
- Impose the standard that the development
 - Applies and receives the zoning to allow proposed land uses, and
 - Submits a master plan or plat application meeting zoning and plat requirements, or
 - Requests an updated roughly proportionate analysis based on a master plan or plat meeting zoning and plat requirements
- Work with staff to develop a site plan that meet city requirements and discuss potential thoroughfare modifications and potential roadway impact fee credits/participation

Applicant's Presentation of Evidence

City Council Discussion/Action

- City Council shall consider the request **after** an appeal hearing on the subject is held
- City Council shall hold the appeal hearing and consider the petition within 30 days of the submission of the study and another other evidence submitted on behalf of the appellant in support of the appeal (**June 22, 2021**)
- City Council shall make a final decision within 30 days following the final submission of any testimony or evidence by the developer at the appeal hearing (**July 26, 2021**)

QUESTIONS?

