

## Legislation Text

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**File #:** 21-425, **Version:** 1

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**PRESENTER:**

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

**SUBJECT:**

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

**DEPARTMENT:** Public Works/Planning & Development Services

**COUNCIL DISTRICTS IMPACTED:** 1

**BACKGROUND INFORMATION:**

The City of New Braunfels city engineer received a petition to city council to appeal for relief from an apportionment requirement associated with the proposed 1845 Subdivision located at 1890 FM 1044 in the New Braunfels city limit and Comal County. The purpose of the appeal is for the right-of-way dedication of a minor arterial street on the thoroughfare plan as required in Code of Ordinances Section 118-46 (t), *Responsibility for right-of-way dedication and public street construction*. The code also states that the developer may also be required to construct at least two lanes of an arterial street if such is supported by a traffic impact analysis (TIA).

City staff communicated the thoroughfare requirements with the property owner through predevelopment meetings, TIA scoping meeting, and a meeting with the property owners and their attorneys. In March 2020, New Braunfels Utilities (NBU) notified the city that they received a request for electric service design and that subdivision layout was inconsistent with the city's thoroughfare plan. The city and NBU informed the property owner that the subdivision site plan was noncompliant with the city's subdivision regulations and could not be accepted.

City staff received a request for a rough proportionality analysis for the noncompliant site plan in accordance with State Law and Code of Ordinances Section 118-13. Jeff Whitacre, P.E. with Kimley-Horn and Associates was retained by the city and the analysis shows the apportionment of the right-of-way dedication is roughly proportionate for the noncompliant site plan. Furthermore, city staff notified that applicant that the thoroughfare is subject to modification to fit local conditions and are willing to work on a solution to fully develop the site and meet the city's development requirements. Additionally, a rough proportionality analysis should be conducted for a complaint site plan that meets the city's subdivision regulations.

In addition to the rough proportionality analysis, the city received a request to remove the minor arterial from the thoroughfare plan. The request is in process and was presented to the planning commission for a recommendation to city council. Planning commission unanimously recommended not to remove the thoroughfare and requested the applicant to work with city staff on a solution that would meet the city's

development requirements. The item was paused with the roughly proportionality analysis request and will be presented to city council in May 2021.

City staff received a petition to appeal the city's retained engineer's proportionality analysis to city council. The petition included the same noncompliant site plan and observations about the analysis. The petitioner did not provide any additional evidence, as stated in the petition, that would change the city's analysis that shows the apportionment of the right-of-way dedication is proportionate. Furthermore, the analysis and decision should be conducted on a complaint site plan to determine a more accurate cost.

Per code, the city council shall consider the request after an appeal hearing is held and make a final decision within 30 days following the final submission of any evidence by the petitioner at the appeal hearing. In deciding the appeal for relief, the city council shall determine whether the petitioner has demonstrated that the city apportionment is not roughly proportionate to the proposed development impact on municipal infrastructure. City council's decision shall be final.

**ISSUE:**

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

**FISCAL IMPACT:**

City may be required to participate in or cover the costs of the right-of-way dedication required in the city's subdivision regulations.

**RECOMMENDATION:**

Analysis shows the apportionment of the right-of-way dedication associated with apportionment of municipal infrastructure costs associated with the proposed 1845 Subdivision located at 1890 FM 1044 is roughly proportionate for the noncompliant site plan. The analysis and decisions should be conducted on a compliant site plan.