

Legislation Details (With Text)

File #:	22-527	Name:	
Type:	Resolution	Status:	Held
File created:	5/11/2022	In control:	City Council
On agenda:	5/23/2022	Final action:	
Title:	Discuss and consider a resolution to consent to the creation of the Flying W Municipal Utility District (MUD) within the City's Extraterritorial Jurisdiction (ETJ) in Comal County, consisting of approximately 362 acres situated on the west side of FM 1102, north of Havenwood at Hunters Crossing Subdivision, Units 1 and 2 and south of Unit 3, across from the intersection of Watson Lane West, and consider authorizing the City Manager to approve a development agreement between the City of New Braunfels and Aguilas Robles, LLC and MJD Endeavors, LLC related to the City's consent to the creation of the Flying W MUD.		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. Area Reference Map, 2. Aerial Map, 3. Flying W MUD Petition, 4. CCN Map, 5. Resolution, 6. Applicant's Proposed Development Agreement, 7. Draft Agreement, 8. Redlined Comparision Between Staff and Applicant Development Agreements		

Date	Ver.	Action By	Action	Result
5/23/2022	1	City Council	postponed	Pass

PRESENTER:

Christopher J. Looney, AICP, Planning and Development Services Director

SUBJECT:

Discuss and consider a resolution to consent to the creation of the Flying W Municipal Utility District (MUD) within the City's Extraterritorial Jurisdiction (ETJ) in Comal County, consisting of approximately 362 acres situated on the west side of FM 1102, north of Havenwood at Hunters Crossing Subdivision, Units 1 and 2 and south of Unit 3, across from the intersection of Watson Lane West, and consider authorizing the City Manager to approve a development agreement between the City of New Braunfels and Aguilas Robles, LLC and MJD Endeavors, LLC related to the City's consent to the creation of the Flying W MUD.

DEPARTMENT: Planning and Development Services**COUNCIL DISTRICTS IMPACTED:** Outside City Limits**BACKGROUND INFORMATION:**

Case #: CS22-0011

Applicants/Owners: Aguilas Robles, LLC, by TriOak Development, LLC
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This item was postponed from the May 9th City Council meeting with direction from City Council that the petitioner work with staff on the terms of the proposed Development Agreement prior to their next meeting. A meeting between the petitioner and City staff was conducted on Friday May 13, 2022. The petitioner revised and resubmitted their proposed edits to the Development Agreement Monday, May 16, 2022. Details are further below and attached.

The Texas Water Code (Chapter 54) and the Texas Local Government Code (Chapter 42, Section 42.042) (see resource links) outline the procedures for the creation of Municipal Utility Districts (MUDs). A MUD is a political subdivision of the State: they are one of several types of special districts that function as independent, limited governments of their own. The purpose of a MUD is to provide a developer an alternate method of financing infrastructure, such as water, sewer, drainage, and roads. Managed by a board of directors elected by the property owners within the MUD, the MUD can levy its own taxes and fees on the future property owners within the development to repay the developer's debt. MUDs are generally desired by developers when the subject properties lie beyond the physical reach of utility providers and/or outside utility company Certificates of Convenience and Necessity (CCNs).

When a proposed MUD lies within the boundaries of the City's Extraterritorial Jurisdiction (ETJ), state statute indicates that the respective city must give its consent before the MUD may be established. Consent by the municipality allows the developer to initiate proceedings to create the MUD through the Texas Commission on Environmental Quality (TCEQ). State statute further states:

If the city fails or refuses to give its consent for the creation of the MUD on mutually agreeable terms within 90 days after the date the City Council receives a written request for the consent, a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision may petition the City Council to make available to the area the water, sanitary sewer services, or both that would be provided by the political subdivision. If, within 120 days after the date the City Council receives the petition, the City Council fails to make a contract with a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed MUD to provide the services, that failure constitutes the governing body's consent to the creation of the proposed political subdivision.

The petition to consent to the creation of this larger version of the Flying W MUD was delivered to the City on

March 18, 2022. The 90-day period for which the City may consent or object to the consent of the creation of the proposed MUD expires on June 16, 2022. The petitioners' appeal relief is via TCEQ.

Location and Features

The subject property is comprised of approximately 362 acres on the west side of FM 1102, north of Havenwood at Hunters Crossing Subdivision, Units 1 and 2 and south of Unit 3, across from the intersection of Watson Lane West in New Braunfels' ETJ in Comal County. The property is currently developed with two single-family residences, and a third single-family residence converted into a church along with multiple accessory buildings, two septic systems and a water well according to the Comal Appraisal District records.

Approximately 87 acres of the subject property (24% of the proposed MUD) is located over the Edwards Aquifer Recharge Zone.

The applicant's petition indicates the planned uses of the property are single-family residential and multifamily, however, in a recent meeting with the petitioner, they indicated that the development will most likely be entirely single-family residential use.

Transportation

The property fronts FM 1102, a 150-foot wide Principal Arterial identified on the City's Regional Transportation Plan. The existing right-of-way width of FM 1102 is approximately 120 feet. A minimum right-of-way dedication of approximately 15 feet will be required adjacent to FM 1102 with platting of the subject property.

Water

Approximately 43 acres of the subject property adjacent to FM 1102 (approximately 12% of the proposed MUD) is located within Crystal Clear Special Utility District's (CCSUD) water CCN with the remainder of the property located outside of an existing water CCN. The petitioner anticipates CCSUD will be their water provider but it has not been confirmed at this time.

Wastewater

No portion of the property is located within an existing wastewater CCN. CCSUD's wastewater CCN boundaries are approximately 350 feet south of the subject property on the east side of FM 1102, encompassing the adjacent Crossings at Havenwood subdivision. The petitioner indicated CCSUD informed them the current site of the wastewater package plant within the Crossings at Havenwood is not large enough to accommodate the additional equipment needed to serve the proposed development within the MUD. Therefore, the petitioner is proposing to construct a wastewater treatment plant that will be owned, operated and maintained by a qualified and licensed operator.

Development Agreement

Outside city limits in the ETJ, the City's development regulations are limited to compliance with the Subdivision Platting Ordinance. Hence, without a MUD, development can still occur, simply in compliance with the city's platting rules. Land use and other development standards are not enforceable in the ETJ unless such regulations are agreed upon through the execution of a development agreement between the developer and the City. To ensure development within the proposed MUD is of a caliber that is a benefit and an asset to the residents and taxpayers of New Braunfels, and to assure water and wastewater infrastructure, service, and long-term maintenance are addressed, staff recommends the City and the developer enter into a development agreement under the authority of Chapter 212 of the Local Government Code. This Development Agreement would identify the development standards that will help ensure the development is at least of similar quality to development within the city limits of New Braunfels and implements the City's comprehensive plan, Envision

New Braunfels.

ISSUE:

The development agreement that staff originally proposed (attached) includes minimum development standards regarding lot density over the Edward's Aquifer Recharge Zone, housing diversity, landscaping, lighting, historic and archeological protection/remediation, voluntary annexation request upon dissolution of the MUD*, and the requirement to obtain building permits and inspections. The petitioner has agreed to many but not all of the terms of the development agreement as recommended by staff. Staff appreciates the willingness of the petitioner to propose standards that will advance New Braunfels' Comprehensive Plan and is very comfortable with most of the alternatives proposed by the petitioner, save for two which are detailed below.

While the petitioner did not agree to one-acre minimum lot sizes over the Edwards Aquifer Recharge Zone, they are proposing to set aside 14 acres over the recharge zone for park and recreation areas. Staff is comfortable with an alternative of park/open space acreage in lieu of larger lot sizes as it should result in less impervious cover over the recharge zone overall, which was the intent behind larger lot sizes. With one-acre lot sizes, staff calculated at least 50% of the 87 acres over the recharge zone could be pervious. Therefore, staff could only support the applicant's proposal if the 14 acres could be increased somewhat, or if the larger of all of the various lots could be situated over the recharge zone area.

One of the concerns about package treatment plants for sewage is their long-term maintenance. The complexity and cost is larger than typical HOAs can afford. And when they fail, the nearest utility provider or the city is mandated by the state to take them over. This is why staff recommends standards and a long-term maintenance plan be approved by the respective utility provider. Rather than the petitioner meeting CCSUD's standards for a package treatment plant for wastewater, they propose an unnamed retail wastewater service provider will operate and maintain the facility. Recognizing the petitioner is still working to secure a provider, staff is comfortable with this alternative, with some additional clarifying language on who will approve or adopt that long-term maintenance plan.

Finally, rather than the eventual builder obtaining City building permits and inspections, the petitioner is proposing to hire and fund inspections of all homes by a third-party inspector of their choice and provide inspection reports for each home to the City not less than quarterly and prior to occupancy of any home. While this is a sticking point on the staff recommendation, staff is willing to accommodate third party reviews for permits and inspections, conducted through the City and our third-party contractors. This will ensure accountability to the standards adopted by the City at the time of construction for the health, safety and welfare of all future homeowners.

Below are applicable guidelines in Envision New Braunfels, our Comprehensive Plan, which development should advance:

- Action 1.3: Encourage balanced and fiscally responsible land use patterns.
- Action 1.12: Collaborate with internal and with external partners and stakeholders to identify and connect sidewalk and bicycle lanes to trails to improve access and connectivity to key hubs and desirable destinations, i.e. downtown, dining and shopping areas, rivers, parks, Wurstfest, Gruene, Headwaters at the Comal, etc.
- Action 2.1: Sustain community livability for all ages and economic backgrounds.
- Action 3.19: Improve walkability across town to attract younger generations seeking pedestrian connections.
- Action 3.20: Encourage residential development to include pedestrian and bicycle friendly trails to nearby schools, preferably within a 2-mile radius of each school.

- Action 3.30: Encourage and incentivize workforce/affordable housing to attract new workforce entrants and young families.
- Action 5.2: Discourage development in Edwards Aquifer Recharge and contributing zones, stream zones, flood-prone areas, steep slopes, or other ecologically constrained areas. Where development in these areas must occur, require that it be environmentally sound using tools such as but not limited to low impact development (LID).
- Action 6.4: Consider how each new development project impacts the transportation system and ensure appropriate mitigation is implemented.
- Action 6.5: Utilize public/private partnerships to guide growth and investment.
- Action 7.10: Require more street connectivity/adopt connectivity ratios.
- Action 7.11: Allow for smaller/narrower streets and lot size variety within individual subdivisions.
- Action 7.14: Increase tree canopy for increased shade to encourage walking.
- Action 7.19: Improve connectivity for all modes of transportation including bicycles.
- Action 7.21: Ensure there is connected multi-modal access to all public facilities and from all parts of town.
- Aging in Place:
 - Encourage housing that supports aging in the community.
 - Encourage mobility options that support older motorists, pedestrians, transit riders and cyclists.
- Regional Planning:
 - Balance resources in an equitable manner that does not lead to disinvestment in existing New Braunfels.
 - Assure the long-term fiscal health of New Braunfels, and that policy decisions do not create an undue fiscal burden on the City or others.
 - Ensure that the policy provides guidance for decisions made by utility providers, so they can aid in achieving Envision New Braunfels.

The subject property lies within the Hoffman Lane Sub-Area which is identified for conservation communities focused around maintaining and enhancing ecological integrity while allowing some level of development to occur.

FISCAL IMPACT:

When the package treatment plan fails, the state will require either a local utility provider or the City to assume responsibility for the sewer infrastructure.

If the City were to annex the property within a MUD prior to the MUD's expiration, the City would assume any remaining debt of the MUD.

If the City were to annex the property within the MUD after expiration of the MUD, the City would assume roadway and public infrastructure maintenance, and provide City services to the new City residents.

RECOMMENDATION:

Most of the petitioner's alternatives are agreeable to staff and would advance Envision New Braunfels. However, staff has to recommend denial at present, but could support consent to the creation of the MUD if the applicant will amend the draft development agreement to:

1. Require all building permits and inspections to be issued/conducted by the City. The City currently contracts with third party reviewers and inspectors, which should address the petitioners' concerns about speed of these processes.
2. Either increase the number of acres to be set aside over the recharge zone, or ensure that the larger of the various lots in the development are situated over the recharge zone, all to ensure quality and quantity of runoff making its way into the Edwards Aquifer.

These two changes, along with the other alternatives proposed by the petitioner, would be consistent with and

would implement Envision New Braunfels, and prevent an undesirable development pattern in the ETJ.

*Note: pursuant to state law, a city may not condition its consent to a MUD on a requirement that the developer agree to annexation, as such, this recommendation is not based, in any way, on the developer agreeing or not agreeing to annexation provisions within the proposed development agreement.

Resource Links:

- Chapter 54 of the Texas Water Code: [WATER CODE CHAPTER 54. MUNICIPAL UTILITY DISTRICTS \(texas.gov\)](https://statutes.capitol.texas.gov/Docs/WA/htm/WA.54.htm) <<https://statutes.capitol.texas.gov/Docs/WA/htm/WA.54.htm>>
- Chapter 42 of the Texas Local Government Code: [LOCAL GOVERNMENT CODE CHAPTER 42. EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES \(texas.gov\)](https://statutes.capitol.texas.gov/Docs/LG/htm/LG.42.htm) <<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.42.htm>>
- Section 118-4 Development Agreements, of the City of New Braunfels Code of Ordinances: <https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?