

Legislation Text

File #: 21-725, **Version:** 1

PRESENTER:

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

SUBJECT:

Render decision on the petition 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 required with the development of the proposed 1845 Subdivision. The request was presented to the planning commission for a recommendation to city council. Planning commission considered the item on February 2, 2021 and 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. City council considered the item on June 28, 2021 and did not approve the applicant's request to remove the minor collector from the thoroughfare plan that crosses the proposed 1845 Subdivision.

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.

The appeal hearing was conducted at the city council meeting on June 28, 2021. City staff presented the item and the applicant was provided the opportunity to submit and present evidence demonstrating that the apportionment requirement is not roughly proportionate to the impact of the development. City council considered all the evidence presented at the appeal hearing.

A revised site plan including the subject thoroughfare roadway was submitted as part of the applicant's evidence. The site plan appears to include 76 single-family detached housing units and approximately 19,800 square foot of commercial land use. The commercial land use was estimated utilizing the ratio of lot size to commercial size from the applicant's traffic impact analysis for the original non-compliant site plan. Based on the adopted 2019 Roadway Impact Fee Study, the proposed development will generate 509.35 vehicle-miles traveled and the cost per vehicle-mile is \$1,371 in Service Area 5. The total demand cost of the development with the revised site plan is roughly \$698,318.85. The total demand cost of the development with the original site plan is roughly \$988,203.09. Note that the two site plans submitted by the applicant are non-compliant and the property is not properly zoned for the land uses shown on the site plan.

City code requires right-of-way dedication for the thoroughfare and construction of two lanes if required by the development. The right-of-way supply cost would be between \$197,439 - \$253,475 based on information provided by the applicant. Construction is dependent on the development traffic impacts and the remaining would be available for construction to serve the development. An updated and conforming site plan including zoning would need to be completed to evaluate the construction requirements.

City Council shall consider the petition for relief, the analysis prepared by the city, and the evidence presented by the applicant, and shall take one of the following actions:

1. Deny the appeal for relief, and impose the standard or condition in accordance with the initial decision;
2. Deny the appeal for relief, upon finding that the proposed requirements are inadequate to offset the impacts of the development on the municipal infrastructure, and either deny the application or require that additional apportionments for municipal infrastructure be made as a condition of approval of the application;

3. Grant the appeal in part and add such conditions of approval to the application as it deems appropriate;
4. Grant the appeal for relief, and waive in whole or in part any apportionment requirement necessary to meet the criteria for approval; or
5. Grant the appeal for relief, in whole or in part, and direct that the city participate in the costs of the particular municipal infrastructure pursuant to standard participation policies.

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 prepared by the city 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. Staff recommends City Council deny the appeal for relief, and impose the standard or condition in accordance with the initial decision that the analysis and decisions should be conducted on a compliant site plan.