

**MINUTES OF A JOINT PUBLIC HEARING OF THE CITY COUNCIL AND THE PLANNING AND ZONING COMMISSION OF THE CITY OF PEARLAND, TEXAS, HELD ON JULY 8, 2002, IN THE COUNCIL CHAMBERS, CITY HALL, 3519 LIBERTY DRIVE, PEARLAND, TEXAS**

**I. CALL TO ORDER**

The Joint Public Hearing was called to order at 6:45 p.m. with the following present:

Mayor	Tom Reid
Mayor Pro-Tem	Larry Marcott
Council Member	Klaus Seeger
Council Member	Richard Tetens
Council Member	H. Charles Viktorin
P&Z Chairman	Todd Iocco
P&Z Commissioner	Kevin McDonald
P&Z Commissioner	Robert Scherrer
P&Z Commissioner	Don Sederdahl

Also in Attendance: Executive Director of Community Services Tobin Maples, City Attorney Darrin Coker, Deputy City Manager Alan Mueller, City Manager Bill Eisen, and P&Z Secretary Jennifer Gonzales. P&Z Commissioner Russ Selemon was absent.

**I. CALL TO ORDER**

The first Joint Public Hearing was called to order at 6:46 p.m.

**II. PURPOSE OF HEARING**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Heavy Industrial District (M-2) on the following described property, to wit:**

**Zone Change Application No. 1043**

**Legal Description:** 10.0597 acres, being Lot 3, Allison Richey Gulf Coast Home Co. Subdivision, Section 10, H. T. & B. R.R. Co. survey, A-505, Brazoria Co., TX, as recorded in Volume 2, page 24, plat records of Brazoria Co., TX (7717-7817 Thomson Street)

**Owner:** Marie Thomson  
7730 Thomson Street  
Pearland, TX 77581

P&Z Chairman Todd Iocco read the purpose of the hearing into the record.

Executive Director of Community Services Tobin Maples gave a PowerPoint presentation giving the location of the proposed zone changes by showing slides of the property with a brief description of the surrounding properties. He stated 14 surrounding property owners were notified about the request. Mr. Maples explained this area has been heavily studied with the Cullen Boulevard plan and the outcome was to leave the area as residential. He stated that due to that fact staff is recommending denial. He stated the future use of Stone Road could be expanded and Houston may try to make the connection to the Beltway and maybe at that time "General Business" or "Commercial" may be acceptable. Mr. Maples commented that staff does not support Heavy Industrial in this area.

### **III. PERSONS WISHING TO SPEAK FOR THE PROPOSED REQUEST**

Charles Wilson, Attorney, 1331 Lamar, Suite 1160, Houston, TX 77010 was hired to assist Mrs. Thomson (owner of Stone Road Industrial Park) in receiving the requested zoning. He stated he is disappointed and distressed to find out staff has already recommended denial. Mr. Wilson pointed out this is the second request to recognize Mrs. Thomson's rights to her property. He stated he feels the City of Pearland owes Mrs. Thomson an obligation for consideration on her request and Mrs. Thompson owes the City of Pearland every opportunity to review and fully understand her position. He explained that Mrs. Thomson has owned the 10 acres for 22 years and has been operating it as an industrial park with four industrial-commercial steel buildings on the property, which were there long before the City annexed the property. He stated she has certain vested rights to this property. Mr. Wilson handed out a booklet, which contained materials in support of Zone Change Application No. 1043. He gave an extensive review of the contents of the book and explained Mrs. Thomson's constitutional rights. He referred to the Fifth Amendment of the United States Constitution, which states "...nor shall private property be taken for public use, without just compensation." Mr. Wilson pointed out the property now has a value in excess of a million dollars and if Mrs. Thomson does not get the requested zoning, the value could drop to \$11,000 per acre. He briefly went over the pictures of the property that were in the booklet. He requested the zoning for his client to be amended so she can continue to own and develop the property as she has in the past 22 years.

### **IV. PERSONS WISHING TO SPEAK AGAINST THE PROPOSED REQUEST**

Cecil Boykin, 13130 Max Road, Pearland stated the western part of his property adjoins with the eastern side of Mrs. Thomson's property. He stated his main concern is the existence of the pipeline that runs through the property. He pointed out that in 1978 there was an explosion that killed several people and there has been no remedial work done. Mr. Boykin stated it's not smart to build an industrial park on a pipeline. He stated his second concern is regarding the recent history of the property owner not taking care of the property and he referred to the overgrown weeds, brush and trees. He showed a drawing of the pipeline going through the property. Mr. Boykin stated that an unhealthy environment has been created and if the business were expanded that would increase the chances of his property flooding. He reminded the Council and Commission about the precedent that would be set if they approve this request.

Bruce Seeley, 1318 Stone Rd, Pearland, TX stated the pictures shown were of the surrounding area of the business and if you drive out there you will notice that the area is primarily residential on Stone Road and Max Road. He stated the Constitution is one that balances property owner's rights and mostly everyone in this area is against the request. He added that somebody once told him it would be a good thing to be annexed into the City. He stated all he has seen is a bill for higher taxes and he stated this is the one time that living in the City of Pearland can help out interests for the residents in that area.

Suzanne Danz, 1357 Stone Rd, Pearland, TX stated that according to the Brazoria County Appraisal District there are approximately 200 acres of residential property along Stone Road and only 41 acres of business (4 businesses). She stated the area was totally residential before the gas pipeline explosion that disintegrated several homes. She stated she thinks it's fair to continue operating a business under the grandfather clause; but to classify an area as Heavy Industrial in the middle a residential neighborhood with no fire hydrants, no water, and no fire department near would be irresponsible on the City. She stated that as a former Enron employee she has seen first hand what happens when those in charge that are protecting the investments of hardworking people choose to do what is best for a select few. She compared City Council to the Enron leaders in making this decision. She asked for them to protect the environment of the residents. She is against the request.

Monica Daily, 1156 Stone Road, Pearland, TX has lived there 14 years. She does not have a good understanding as to what is instigating the reason for requesting the zone change. She asked if the owner is trying to sell it or if there is a change to the existing use. She commented that this is grandfathered and she can continue to operate the way she has for 22 years. She stated it would decrease the land values, increase pollution, increased flooding and have a potential for catastrophe to the area with no fire hydrants in the area. She stated this is the third or fourth go round in the Stone Rd area and so far the homeowners have been very pleased with the results. She stated her daughter spoke here and received a nice letter from the City and she has kept the letter in her scrapbook. They would like to keep the area residential.

Steve Bowers, 7002 Brookside Rd, Pearland, stated that they should leave everything the way it is now. He pointed out what has been covered: fire hydrant issue, safety, and the pipeline explosion. He stated the property is not being taken care of. He stated he has problem with one of the businesses regarding noise. He is against the request.

Walter Pasciak, 7705 Brookside, Pearland, TX 77581 stated that he strongly supports the people who have spoke in front of him who have already covered all the issues. He stated that regarding the Brazoria County Appraisal District his tax value on his land is already higher then the appraised value. He asked why there is not a fire department yet. He stated they also have problems with Emergency response due to the change of addresses. He stated that last month EMS could not find a house on Max Road, and two months ago they could not find his house. He explained that Industry should remain in an Industrial area.

Jim Humlick, 1212 Stone Road, Pearland, TX stated that he has been a resident there for 23 years and he concurs to all the previous objections made. He stated that roads are not well maintained. He asked if "Thompson Street" is really a street. He added that Heavy Industrial does not belong in that area.

Byron Sutherland, 2458 Country Club, Pearland, TX stated that his wife was born and raised on this property therefore there is a strong emotional commitment to make sure it is developed in a decent way. He stated the City of Pearland has done a poor job enforcing any health/sanitary conditions

**V. COUNCIL/PLANNING COMMISSION/STAFF DISCUSSION**

*Mr. Tobin Maples, Executive Director of Community Services*

Council Member Viktorin stated it asked a couple of time why the area is being zoned. He explained that if a hurricane were to come through and wipe out the business then the grandfather clause would go away and they could not rebuild the buildings.

Mrs. Thomson stated the City of Pearland requested her driveway to have a street name so she could obtain addresses for her facility. She exclaimed she went round and round with CR Long of the Engineering Department for a year and a half about this.

**VI. ADJOURNMENT**

The Joint Public Hearing adjourned at 7:20 p.m.

**SPECIFIC USE APPLICATION NO. 1043**

**I. CALL TO ORDER**

The Joint Public Hearing was called to order at 7:21 p.m.

**II. PURPOSE OF HEARING**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Light Industrial District (M-1) to Light Industrial District – Specific Use (M-1(S)) for mini-warehouse storage, on the following described property, to wit:**

**Specific Use Application No. 109**

**Legal Description: 8.2126 acres, being Tract A, out of 17.3151 acres in the H. T. & B. R.R. Co. survey, Section 11, A-239, Brazoria Co., TX (4181 Magnolia Street)**

**Owner: Mancel C. Beam  
4181 Magnolia**

**Pearland, TX 77584**

P&Z Chairman Todd Iocco read the purpose of the hearing into the record.

Executive Director of Community Services Tobin Maples gave a PowerPoint presentation giving the location of the proposed zone changes by showing slides of the property with a brief description of the surrounding properties. He stated 8 surrounding property owners were notified. He stated the Comprehensive Plan does call for Light Industrial and the property was consistent with the surrounding uses of the area, therefore staff recommends approval.

**III. PERSONS WISHING TO SPEAK FOR THE PROPOSED REQUEST**

NONE

**IV. PERSONS WISHING TO SPEAK AGAINST THE PROPOSED REQUEST**

NONE

**V. COUNCIL/PLANNING COMMISSION/STAFF DISCUSSION**

*Mr. Tobin Maples, Executive Director of Community Services*

Council Member Viktorin asked if they would have to comply with the façade requirements. Executive Director of Community Services Tobin Maples replied they would have to comply with the façade requirements.

P&Z Chairman Todd Iocco asked if the property to the north is being used. Executive Director of Community Services Tobin Maples replied it is vacant.

**VI. ADJOURNMENT**

The Joint Public Hearing adjourned at 7:21 p.m.

**SPECIFIC USE APPLICATION NO. 110**

**I. CALL TO ORDER**

The public hearing was called to order at 7:26 p.m.

**II. PURPOSE OF HEARING**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Single Family Dwelling District (R2) to Single Family Dwelling District – Specific Use (R2(S)) for a daycare, on the following described property, to wit:**

**Specific Use Application No. 110**

**Legal Description:** Being a tract of land out of a 31.606 acre tract of the H. T. & B. R.R. co. survey, Section 11, A-239, Brazoria Co., TX (4604 Walnut)

**Owner:** Don & Janell Moore  
4604 Walnut  
Pearland, TX 77581

**Agent:** Donna Moore

P&Z Chairman Todd Iocco read the purpose of the hearing into the record.

Executive Director of Community Services Tobin Maples gave a PowerPoint presentation giving the location of the proposed zone changes by showing slides of the property with a brief description of the surrounding properties. He stated 23 property owners were notified of the request and 1 form was returned in support of the request. He stated the applicant is aware that a lot of improvements would need to be made in order to have the structure brought up to code (ADA upgrades, parking, access..).

**III. PERSONS WISHING TO SPEAK FOR THE PROPOSED REQUEST**

Donna Moore, 3201 Alexander Parc, Pearland TX stated they currently have a home they live in and run an after school program. She is requesting this change mainly for the land use. She stated that 90% of her children are from Shadycrest and the center would be very small. She explained that she tutors children after school and helps them get their homework done and keep their grades up. She stated the Walnut Home would accommodate 34 children. Mrs. Moore has lived in Pearland for over 30 years.

**IV. PERSONS WISHING TO SPEAK AGAINST THE PROPOSED REQUEST**

NONE

**V. COUNCIL/PLANNING COMMISSION/STAFF DISCUSSION**

*Mr. Tobin Maples, Executive Director of Community Services*

NONE

**VI. ADJOURNMENT**

The Public Hearing adjourned at 7:31 p.m.

**ZONE CHANGE APPLICATION NO. 1049**

**I. CALL TO ORDER**

The Joint Public Hearing was 7:32 p.m.

**II. PURPOSE OF HEARING**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Single Family Dwelling District (R1) on the following described property, to wit:**

**Zone Change Application No. 1049**

**Legal Description: Lot 11, Robin Cove Subdivision, Section 2, Brazoria Co., TX, according to the map or plat thereof recorded in Volume 19, pages 185-186, plat records of Brazoria Co., TX (7105 Robin Meadow)**

**Owner: Everett & Liz Alley  
P.O. Box 3332  
Pearland, TX 77588**

P&Z Chairman Todd Iocco read the purpose of the hearing into the record.

Executive Director of Community Services Tobin Maples gave a PowerPoint presentation giving the location of the proposed zone changes by showing slides of the property with a brief description of the surrounding properties. He stated that 18 property owners were notified of the request and there were no forms returned. He stated staff recommends approval and the Comprehensive Plan does call for Low Density in this area.

**III. PERSONS WISHING TO SPEAK FOR THE PROPOSED REQUEST**

NONE

**IV. PERSONS WISHING TO SPEAK AGAINST THE PROPOSED REQUEST**

NONE

**V. COUNCIL/PLANNING COMMISSION/STAFF DISCUSSION**

*Mr. Tobin Maples, Executive Director of Community Services*

Mayor Tom Reid read into the record that Mr. Jerald R. Landis of 1913 Robin Meadows Dr returned a Public Comment Form and he is in support of the request.

**VI. ADJOURNMENT**

The Public Hearing adjourned at 7:37 p.m.

**ZONE CHANE APPLICATION NOS. 1044, 1045, AND 1048**

**I. CALL TO ORDER**

The Public Hearing was called to order at 7:38 p.m.

**II. PURPOSE OF HEARING**

**Request for an amendment to the Land Use and Urban Development Ordinance of said City from classification Suburban Development District (SD) to Estate Lot Single Family Dwelling District (RE) on the following described property, to wit:**

**1. Zone Change Application No. 1044**

**Legal Description:** 8.750 acres, being Tracts 17A, 17B and 18, Allison Richey Gulf Coast Home Co. Subdivision, Section 19, H. T. & B. R.R. Co. survey, A-243, Brazoria Co., TX, according to the map or plat thereof recorded in Volume 2, page 23, plat records of Brazoria Co., TX (8210 Brookside Road)

**Owner:** Beatrice Lejsal  
8210 Brookside Road  
Pearland, TX 77581

**2. Zone Change Application No. 1045**

**Legal Description:** .6190 acres, being the East 135.66' of Tract 66, Hahl's Figland Orchard Subdivision, as recorded in Volume 3, page 77, Brazoria Co. plat records, Brazoria Co., TX (5920 Fite Road)

**Owner:** Jesus M. Vasquez  
3202 Hatfield Road  
Pearland, TX 77584

**3. Zone Change Application No. 1048**

**Legal Description:** 8.11 acres of land, being part of Lot 46, Allison Richey Gulf Coast Home Co.'s Subdivision, Section 80, H. T. & B. R.R. Co. survey, A-564, Brazoria Co., TX, according to the plat recorded in Volume 2, page 98, plat records of Brazoria Co., TX (2657 CR 59)

**Owner:** Jose M. and Sandra R. Martinez  
6762 Richwood  
Houston, TX 77087

P&Z Chairman Todd Iocco read the purpose of the hearing into the record.

Executive Director of Community Services Tobin Maples gave a PowerPoint presentation giving the location of the proposed zone changes by showing slides of the property with a brief description of the surrounding properties. He stated that all of the requests are consistent and staff is recommending approval.

### **III. PERSONS WISHING TO SPEAK FOR THE PROPOSED REQUEST**

#### **Zone Change Application No. 1044**

Beatrice Lejsal, 8210 Brookside Rd, Pearland, TX stated her husband build there home 43 years ago and she has 9 acres of property. Mrs. Lejsal is 75 years old and would like to be a resident as long as she lives on this property. She states she has nice neighbors and loves living in Pearland.

Juanita Sutherland, 2458 Country Club, Pearland, TX stated that she has known Beatrice Lejsal for a very long time and she was very good to Mrs. Sutherland's parents. She would like to support her request for residential zoning.

Suzanne Danz, 1357 Stone Rd, Pearland, TX stated that she would like to support Mrs. Lejsal's request. Mrs. Danz commented that Mrs. Lejsal is very nice and deserves yard of the month.

Bruce Seeley, 1318 Stone Rd, Pearland, TX stated he has never got to know Mrs. Lejsal however, everyone is really in favor of residential zoning in this area. He asked how she keeps all that are mowed.

Steve Bowers, 7002 Broadway, Pearland, TX stated that he supports the residential zoning in this area. He stated they need more people in Pearland like Mrs. Lejsal.

Robert Garner, 8126 Brookside Rd, Pearland, TX stated that he grew up one house from Mrs. Lejsal and he would like to see her house as residential. He stated he needs his place to be Commercial, but he thinks they can work together. He stated Mrs. Lejsal's tractor gets stuck about once a month so they have to go help her but she always brings over a plate of cookies for them in return.

#### **Zone Change Application No. 1048**

Jose Martinez, 6762 Richwood, Houston, TX stated that he would like to build a house on this property. He stated Pearland is a nice place to live and he would like to raise his children here.

### **IV. PERSONS WISHING TO SPEAK AGAINST THE PROPOSED REQUEST**

NONE

**V. COUNCIL/PLANNING COMMISSION/STAFF DISCUSSION**  
***Mr. Tobin Maples, Executive Director of Community Services***

Mayor Tom Reid pointed out that Mrs. Lejsal is very welcomed by the people.

Mrs. Lejsal pointed out that Robby has been a good neighbor.

**VI. ADJOURNMENT**

The Joint Public Hearing adjourned at 7:52 p.m.

Minutes respectfully submitted by:

\_\_\_\_\_  
Jennifer Gonzales, Planning & Zoning Secretary

Minutes approved as submitted and/or corrected this \_\_\_\_ day of \_\_\_\_\_, 2002, AD

\_\_\_\_\_  
Tom Reid, Mayor

## ✓ Appl 1048 (cc 59)

- ✓ 1) subly prop - vacant land - white bldg mat
- ✓ 2) vacant land South
- ✓ 3) " " East - brown grass
- ✓ 4) " " West - brush pile

## ✓ Appl 1044

- ✓ 1) subly prop - home w/ caport
- ✓ 2) vacant land - South - tree line cont
- ✓ 3) East - home w/ side garage
- ✓ 4) West - business Kustom Kolors
- ✓ 5) North - new home under construction

## ✓ Appl 1043

- 1) subly - Industrial park
- 2) m home - West
- ✓ 3) vacant w/ red fence - N
- ✓ 4) South - blue industrial buildings
- 5) East - MH; vacant land - Max Rd

✓ Appl 1049

- ✓ 1) subij prep - vacant land being cleared
- ✓ 2) West - vacant lot
- ✓ 3) South - vacant land - trees
- ✓ 4) East - home 2 story
- ✓ 5) North - home 1 story

SU109

- ✓ 1) ~~subij prep - vacant Altman Roofing Co~~
- ✓ 2) ~~West - Intercontinental Machine~~
- ✓ 3) ~~South - vacant land @ Magnolia (trees)~~
- ✓ 4) ~~West - movie trailers~~
- ✓ 5) ~~N - tree land~~

SU110

- ✓ 1) subij - home
- ✓ 3) pool - homes w / trees
- ✓ 2) home - West
- ✓ 4) Masonic Lodge - East
- ✓ 5) South - home - Willow I Subd  
on Silsbee

✓ Appl #1045

- 1) Subj Property - vacant
- 2) West - gray 2 story
- 3) East - mobile home
- ✓ 4) North - new 2 story home
- 5) South - 1 story white brick on Figland

Appl 1047

- ✓ 1) Subj prop - metal bldg
- 2) ~~Texas~~ FMSC Oil Field Services  
fronting Main St - West
- ✓ 3) Texas - North
- ✓ 4) Reactor Services International, Inc. <sup>North</sup>
- ✓ 5) South - Industrial bldg - "Water Screensvc" - red trim
- 6) East - need vacant land

*call about workshop 7/23/02  
 James Johnson  
 possible Bob Lewis MF track  
 6:00 pm*

**MEMBERS OF THE PLANNING & ZONING COMMISSION  
 (3 YEAR TERM)  
 (2 TERMS ALLOWED)  
 as of 09/20/01**

**MEMBER**

**TERM EXPIRES**

**PHONE #'S**

~~H. CHARLES VIKTORIN, Chairman  
 2905 Smith Road  
 Pearland, TX 77584~~

November, 2002

Home: 281-485-4111  
 Mobile: 281-413-1844  
 Work: 281-997-3438  
 Fax: 281-997-3728

~~DONALD GLENN, Vice-Chairman  
 1112 Gulfon  
 Pearland, TX 77581~~

March, 2002

Home: 281-996-1809  
 Office: 713-599-4141  
 Fax: 713-599-0058

TODD IOCCO  
 3510 Shadycrest  
 Pearland, TX 77581

March, 2002

Office: 281-997-3747  
 Mobile: 281-923-8633  
 Fax: 281-403-1433

KEVIN A. MCDONALD  
 1802 Oak Hollow Dr. W  
 Pearland, TX 77581

September, 2004

Office: 832-736-9300  
 Home: 281-992-1693  
 Fax: 832-736-9333  
 Cell: 832-736-9300

ROBERT SCHERRER  
 5315 Colonial Drive  
 Pearland, TX 77584

April, 2004

Office: 713-529-3992  
 Fax: 713-529-8161

DON W. SEDERDAHL  
 3418 Shady Crest  
 Pearland, TX 77581

September, 2004

Office: 713-942-7575  
 Work: 281-412-0091

RUSS SELEMON  
 2312 John  
 Pearland, TX 77581

November, 2002

Office: 409-766-6445  
 Home: 281-996-9785  
 Fax: 409-766-6541

*yes*  
*yes*  
*probably*  
*yes*

*left a message*  
*left a message*

**ZONE CHANGE APPLICATION NO. 1043**

**MATERIALS**

**IN SUPPORT OF**

**THE APPLICATION FOR CHANGE IN THE  
ZONING CLASSIFICATION OF THE 10.0597  
ACRE *STONE ROAD INDUSTRIAL PARK*  
FROM SUBURBAN DEVELOPMENT  
DISTRICT (SD) TO HEAVY INDUSTRIAL  
DISTRICT (M-2)**

**MARIE D. THOMSON  
7729 THOMSON STREET  
PEARLAND TEXAS 77581  
APPLICANT**

**CHARLES J. WILSON  
1331 LAMAR, SUITE 1160  
HOUSTON, TEXAS 77010  
PHONE: 713-651-9433  
FAX: 713-651-9766  
ATTORNEY FOR  
APPLICANT**

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## **THE PROPERTY**

The property consist of a rectangular tract, fronting approximately 409 feet on Stone Road. It is approximately 1,070 feet deep. It contains approximately 10 acres. It is burdened with a pipeline easement. It is improved with four industrial steel buildings, one at 7817 Thomson, containing 5,000 square feet, one at 7801 Thomson containing 6750 Square feet, one at 7802 Thomson containing 8,150 square feet and one at 7721 Thomson containing 7,640 square feet. In addition, it is improved with a telecommunications tower, a mobile home, shell drive (Thomson Street) fencing and landscaping. Because of the pipeline easement, it is not well suited for residential use, but it is very well suited for industrial use, and it has been developed into an industrial park (*Stone Road Industrial Park*) and has been used as an industrial park for many years. It was improved, with all of its present improvements, at the time it was annexed into the City in 1998.

## **PURPOSE**

The purpose of the Application is to conform zoning to the status quo. The Property is and has been lawfully developed as an industrial park for many years before it was annexed into the City. Its owner is legally entitled continue using the property as industrial property, and this reality should be recognized and acknowledged by the City, and the City's Zoning should conform to this preexisting reality.

## **GOVERNING LEGAL PRINCIPLES**

### **Constitutional Protection:**

The applicant's legal right to continue using her property, as she used it before it was annexed into the City is protected by the United States and Texas Constitutions.

**United States Constitution:**

The Fifth Amendment of the United States Constitution provides: "...nor shall private property be taken for public use, without just compensation." If administrative action by the City should constitute a "taking" of Applicant's property, she is entitled to be compensated under the Fifth Amendment of the United States Constitution.

**Texas Constitution:**

Article 1 §17 of the Texas Constitution reads: "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made...." If an administrative action of the City should constitute a "taking" or a "damaging" of Applicant's property, she is entitled to compensation under Article 1 §17 of the Texas Constitution

**Legislative Definition of "Taking"**

The Texas Legislature has recognized that governmental action that reduces the market value of real property by 25% is a "taking" under the Federal and Texas Constitutions.

The Private Real Property Rights Preservation Act<sup>1</sup>, §§ 2007.001 *et seq.* Gov. Code at § 2007.002 (5) (B) (ii) defines a "taking" to include "a governmental action" that "is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect".

**City of Pearland Zoning Ordinance:**

The City's Zoning Ordinance expresses an intent to protect the rights of property owners such as Applicant, by considering the character of their property and conserving the value of their

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<sup>1</sup> While this legislation does not apply to Cities, the Legislative determination that governmental action that causes a 25% reduction in the market value of real property is a "taking" should be respected, because the Constitution protects property owners from uncompensated takings, and the constitutional protection is enforceable with or without resort to procedures set out in The Private Real Property Rights Preservation Act.

buildings.

Chapter 1. of the Zoning Ordinance - TITLE PURPOSE AND INTERPRETATION - reads, in part: "... the purpose ... is to zone the entire area of the City of Pearland into *districts* in accordance with a comprehensive plan for the purpose of promoting health, safety, morals and the general welfare of the general public.... Said districts have been established *with reasonable consideration of the character of the district* and its peculiar suitability for the particular uses, and *with the view of conserving the value of buildings* and environment by encouraging the most appropriate use of land through the community.

**Judicial Precedent:**

The Texas Courts have recognized that when zoning regulations damage or destroy the value of property, the property owner is entitled to compensation under the Constitution.

In *Mayhew v. The Town of Sunnyvale*, 964 S.W.2d 922 (Tex. 1998), at pp. 935-936, the Texas Supreme Court held that a "regulatory taking" can occur when governmental action "unreasonably interferes" with a landowner's "right to use and enjoy property" and that "unreasonable interference" with a landowner's right to use and enjoy property can be shown by showing loss of "the investment-backed expectation". In determining loss of "investment-backed expectation" the "permitted use" at the time the landowner acquires the property constitutes the landowner's "primary expectation", which must be compared to the "permitted use" under the newly imposed regulation. If the newly imposed "permitted use" unreasonably impacts the "investment-backed expectation" the regulation imposes a "taking", which, under the constitution, requires compensation.

In *City of Glenn Heights v. Sheffield Development Company, Inc.*, 61 S.W.3d 634 (Tex. App. Waco 2001, Pet. Filed), at p. 640, the Waco Court of Appeals held that "downzoning" that caused a 38% decline in value of property constituted an "administrative taking".

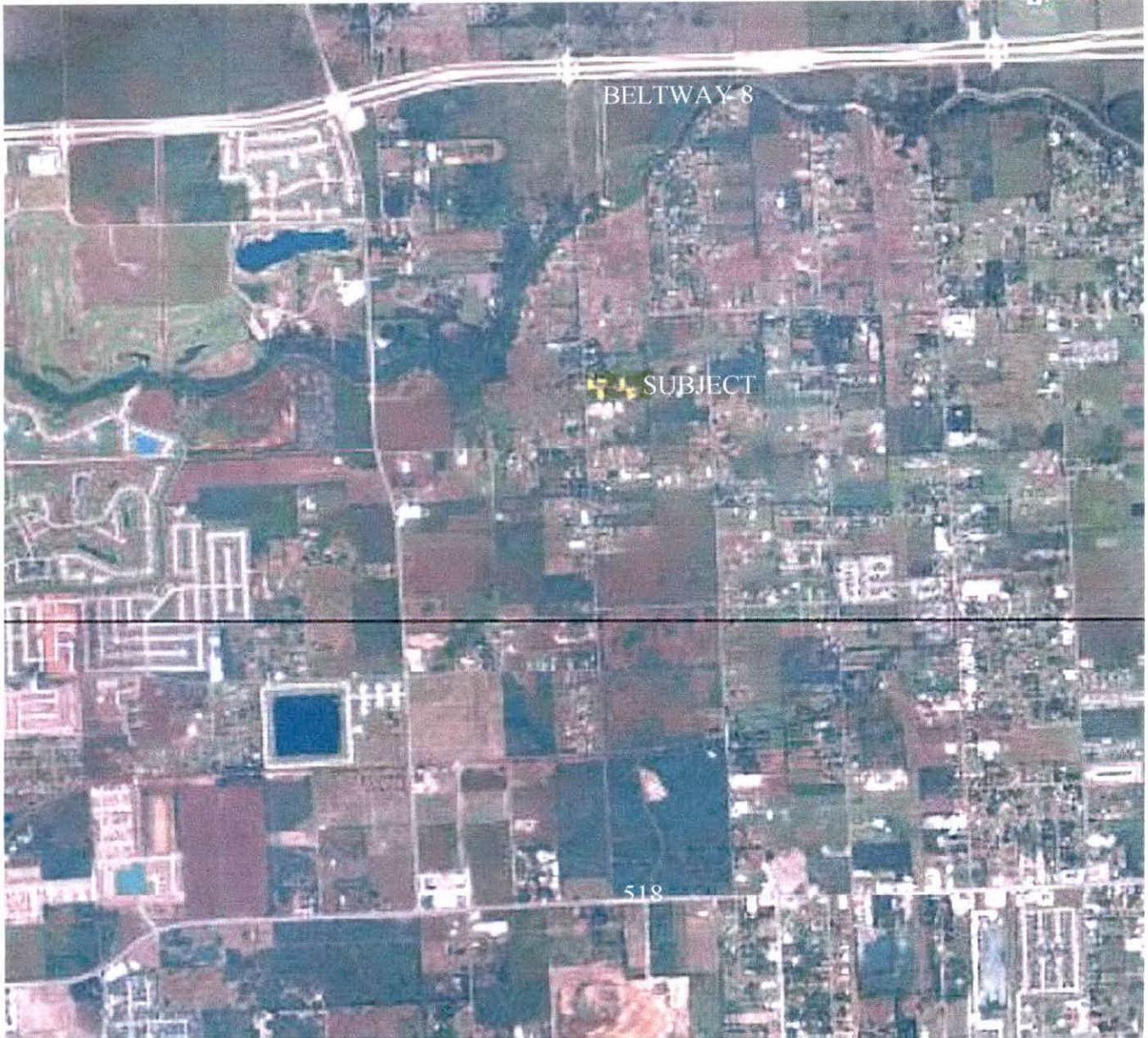
**APPLICANT'S RIGHTS**

The Applicant owns and has owned the subject property for 22 years. She has expended a substantial sum of money improving the property with lawful industrial improvements and the

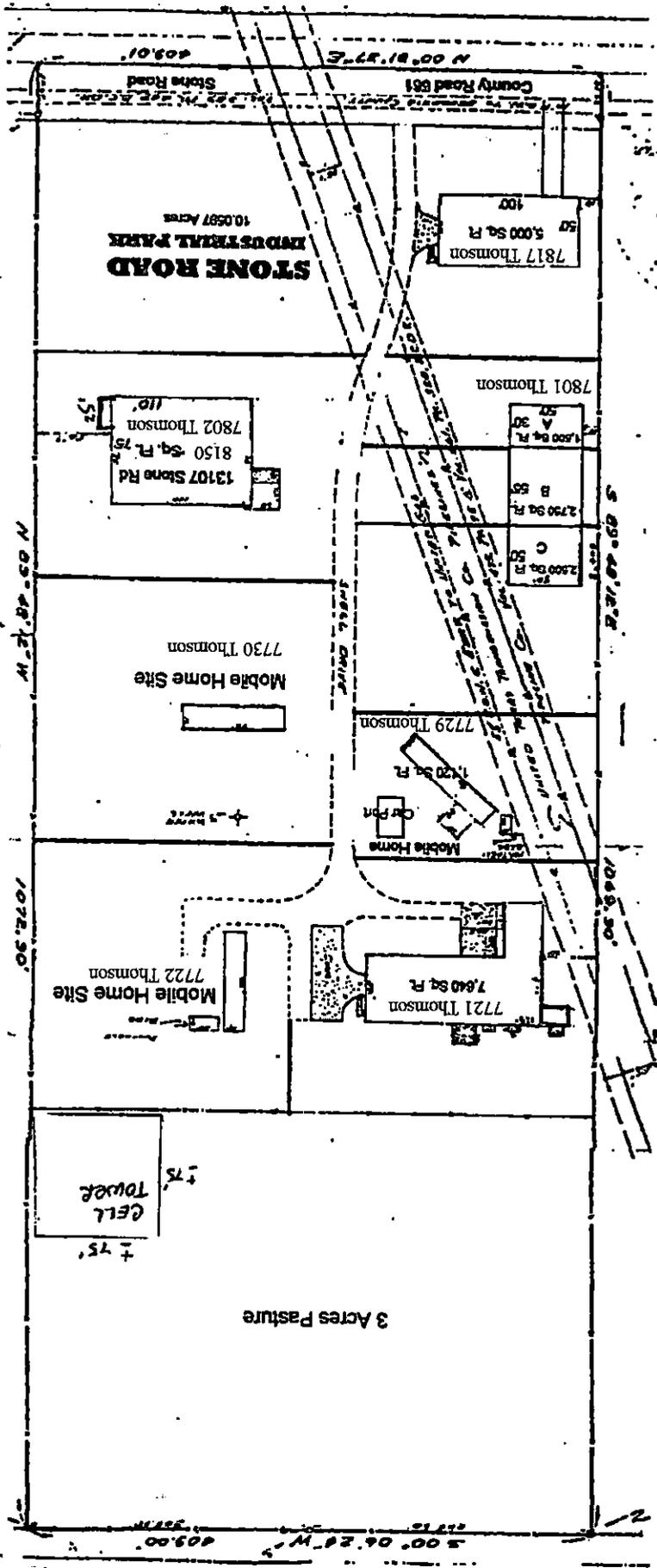
property, as lawfully improved and used, has been appraised at a value in excess of \$1,000,000. At the time the improvements were placed on the property the property was un-zoned, and unrestricted. Applicant had the legal right to use and enjoy the property in any lawful manner. Her industrial use of the property is and has always been lawful. The City annexed the property in 1998, and now threatens to interfere with her right to continue in her lawful use of her property. She has a vested right to continue making industrial use of her property, and she is asking that the property be zoned "M-2" (heavy industrial) in confirmation of the status quo, and in recognition and in preservation of her existing vested property rights.











**STONE ROAD INDUSTRIAL PARK**  
10.0587 Acres

7817 Thomson  
5,000 Sq. Ft.  
100

7801 Thomson

13107 Stone Rd  
8150 Sq. Ft. 75  
7802 Thomson  
110'

1,500 Sq. Ft. 30  
A  
2,700 Sq. Ft. 55  
B  
2,500 Sq. Ft. 50  
C

7730 Thomson  
Mobile Home Site

7729 Thomson  
1,420 Sq. Ft.  
Mobile Home  
Old P.M.

7722 Thomson  
Mobile Home Site

7721 Thomson  
7,840 Sq. Ft.

Cell Tower  
75'

3 Acres Pasture

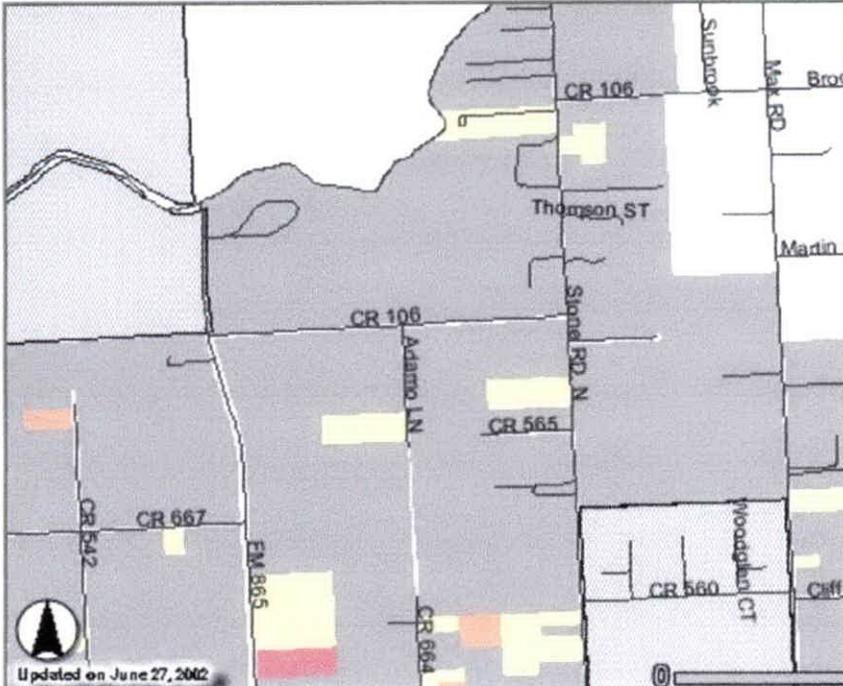
5 00° 04' 28" W 109.00'

N 03° 48' E 1072.30'

S 89° 49' 12" E 1068.50'

County Road 881  
Stone Road  
N 03° 11' 27" E 403.01'

# Zoning



layers legend

- Street Centerline
- ETJ
- Zoning
  - C - Commercial
  - City
  - GB - General Business
  - M-1 Light Industrial
  - M-2 Heavy Industrial
  - MF - Multi-Family
  - MH - Mobil Home
  - NS - Neighborhood Service
  - OP - Office Professional
  - P - Park
  - PUD - Planned Unit Development
  - R-1 Low Density Single Family
  - R-2 Medium Density Single Family
  - R-3 High Density Single Family
  - R-4 Maximum Density Single Family
  - RE - Estate Lot Single Family
  - S - School
  - SD - Suburban Development
  - SDB - Suburban Business
  - SOR - Suburban Residential

Zoom In

