



NOTICE OF MEETING OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF BURNET, TEXAS

This notice is posted pursuant to the Texas Local Government Code, Chapter §551 – Open Meetings.

Notice is hereby given that the **Public Hearing and Regular Meeting of the Planning and Zoning Commission** of the City of Burnet, Texas will be held on Monday **May 4, 2020**, at **6:00 p.m.**, in the City Council Chambers, Burnet Municipal Airport, 2402 S. Water, Burnet, TX. In order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19), a Declaration of a Public Health Emergency was executed by Mayor Bromley on March 19, 2020. The Council Chambers will be closed to public attendance. A Zoom Webinar with toll free conference call capability has been established for access as follows:

Computer: Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82110523439?pwd=TFNOMWdYNXo1S2c0YisrK2ZFNW1vUT09>

OR: Go to: www.zoom.us

Enter Webinar ID when prompted: 821 1052 3439 #

Enter Password when prompted: 528219 #

If you would like to address the Commission with a Public Comment while logged-in online, please use the “raise your hand” feature.

By Telephone Call: 888-475-4499 or 877-853-5257 (Toll Free Numbers)

Enter Webinar ID when prompted: 821 1052 3439 #

Enter Password when prompted: 528219 #

If you would like to address the Commission with a Public Comment while dialed in via telephone, please use the “raise your hand” feature, by pressing *9 while on the phone.

This notice is posted pursuant to the Texas Government Code, Chapter §551-Open Meetings.

The following subjects will be discussed, to-wit:

1. CALL TO ORDER:

2. ROLL CALL:

- 3. CONSENT AGENDA ITEMS:** All of the following items on the Consent Agenda are considered to be self-explanatory by the Commission and will be enacted with one motion. There will be no separate discussion of these items unless a Commission member, staff member or citizen requests removal of the item from the consent agenda for the purpose of discussion. For removal of an item, a request must be made to the Commission when the Consent Agenda is opened for Commission action.

- 3.1) Minutes of the regular meeting of the Planning and Zoning Commission of the City of Burnet, Texas held on March 2, 2020.

4. PUBLIC HEARINGS:

- 4.1) The Planning & Zoning Commission of the City of Burnet, Texas will hold a public hearing on the following proposed amendments to the City of Burnet Code of Ordinances Chapter 118 – “Zoning:”

Section 118-20, Chart 1 for the purpose of revising minimum front yard setbacks, minimum side yard setbacks, and minimum street side yard setbacks for the Light Commercial (C-1), Medium Commercial (C-2), and Heavy Commercial (C-3 zoning districts.

- 4.2) The Planning & Zoning Commission of the City of Burnet, Texas will hold a public hearing on a request to rezone property located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street, which is further described as lots 3-A and 3-B, Block 24, of the Peter Kerr Portion. The request is to rezone the property from its present designation of Single Family Residential – District (R-1) to a designation of Townhomes — District (R-2A).

- 4.3) The Planning & Zoning Commission of the City of Burnet, Texas will hold a public hearing on requested variances for the Wandering Oaks Subdivision located of County Road 100 in Oak Vista Subdivision (Legal Description: Lot numbers 80-83, 95-99, and lot 130). The requested variances are as follows:

1. Chapter 98 – Subdivisions, Sec. 98-42 Transportation Improvements, requiring all streets to be designed and constructed according to the City’s TCSS, in order to allow chip seal paving.
2. Chapter 98 – Subdivisions, Sec. 98-42 Transportation Improvements, requiring curbs to be installed on both sides of all interior streets.
3. Chapter 98 – Subdivisions, Sec. 98-42 Street Lighting, required to be installed in the subdivision.

5. ACTION ITEMS:

- 5.1) The Planning & Zoning Commission of the City of Burnet, Texas will discuss and consider action on the following proposed amendments to the City of Burnet Code of Ordinances Chapter 118 – “Zoning:”

Section 118-20, Chart 1 for the purpose of revising minimum front yard setbacks, minimum side yard setbacks, and minimum street side yard setbacks for the Light Commercial (C-1), Medium Commercial (C-2), and Heavy Commercial (C-3 zoning districts.

- 5.2) The Planning & Zoning Commission of the City of Burnet, Texas will discuss and consider action on a request to rezone property located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street, which is further described as lots 3-A and 3-B, Block 24, of the Peter Kerr Portion. The request is to rezone the property from its present designation of Single Family Residential – District (R-1) to a designation of Townhomes — District (R-2A).

- 5.3) The Planning & Zoning Commission of the City of Burnet, Texas will discuss and consider action on requested variances for the Wandering Oaks Subdivision located of County Road 100 in Oak Vista Subdivision (Legal Description: Lot numbers 80-83, 95-99, and lot 130). The requested variances are as follows:

1. Chapter 98 – Subdivisions, Sec. 98-42 Transportation Improvements, requiring all streets to be designed and constructed according to the City’s TCSS, in order to allow chip seal paving.
2. Chapter 98 – Subdivisions, Sec. 98-42 Transportation Improvements, requiring curbs to be installed on both sides of all interior streets.
Chapter 98 – Subdivisions, Sec. 98-42 Street Lighting, required to be installed in the subdivision.

6. STAFF REPORTS.

- 6.1) Addendum to the Planning & Zoning Agenda: Department and Committee Reports/Briefings: The Planning & Zoning Commission may or may not receive a briefing dependent upon activity or change in status regarding the matter. The listing is provided to give notice to the public that a briefing to the Commission on any or all subjects may occur.

- a. Discussion regarding P&Z regular monthly meeting times.

7. REQUESTS FOR FUTURE AGENDA ITEMS

8. ADJOURN

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Planning and Zoning Commission of the City of Burnet, is a true and correct copy of said notice and that I posted a true and correct copy of said notice on the bulletin board, in the City Hall of said City, Burnet, Texas, a place convenient and readily accessible to the general public at all times, and said notice was posted on May 1, 2020 at or before 5 o'clock p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Dated this the 1st day of May, 2020

Kelly Dix, City Secretary

NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS:

The City Council Chambers are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to the meeting. Please contact the Development Services Department at (512) 715-3206, FAX (512) 756-8560 or e-mail at jlutz@cityofburnet.com for information or assistance.



PLANNING & ZONING COMMISSION MINUTES

On this the 2nd day of March, 2020, the Planning and Zoning Commission of the City of Burnet, convened in Regular Session at 6:00 p.m. at the regular meeting place thereof with the following persons present, to-wit:

1. CALL TO ORDER:

The meeting was called to order at 6:02 p.m. by Chairman Gaut.

2. ROLL CALL:

Members Present: Tommy Gaut, Derek Fortin, Ricky Langley, Calib Williams, Jennifer Wind and Cesar Arreaza

Members Absent:

Guests: Sandra Mobley, Dave Matthews

Others Present: Jason Lutz, Director of Development Services
Leslie Kimbler, Development Services Admin.Tech.

3. CONSENT AGENDA:

3.1) Minutes of the meeting held December 2, 2019 Regular Zoning Commission Meeting.

A motion to approve the consent agenda with correction was made by Commissioner Fortin. The motion was seconded by Commissioner Langley and carried by a vote of 6 to 0.

4. PUBLIC HEARINGS:

4.1) The Planning & Zoning Commission of the City of Burnet, Texas will conduct a public hearing regarding a request to rezone property located at 101 John Kelly Dr, which is further described an approximate 1.902 acre tract out of ABS A0880 Lemuel Taylor Survey. The request is to rezone the property from its present designation of Medium Commercial—District (C-2) to a designation of Heavy Commercial—District (C-3).

Jason Lutz, Director of Development Services, presented staff's report regarding a request to rezone property located at 101 John Kelly Dr. from its present designation of Medium Commercial—District (C-2) to a designation of Heavy Commercial—District (C-3).

Chairman Gaut then opened the floor for public comment.

Dave Matthews, with Freedom Well Company who is the applicant for the request, spoke in favor of the request to rezone.

There being no further public comment, Chairman Gaut closed the public hearing.

5. ACTION ITEMS:

- 5.1) The Planning and Zoning Commission of the City of Burnet, Texas will discuss and consider action regarding a request to rezone property located at 101 John Kelly Dr, which is further described an approximate 1.902 acre tract out of ABS A0880 Lemuel Taylor Survey. The request is to rezone the property from its present designation of Medium Commercial—District (C-2) to a designation of Heavy Commercial—District (C-3).

Commissioner Arreaza made a motion to approve the request to rezone property located at 101 John Kelly Dr, which is further described an approximate 1.902 acre tract out of ABS A0880 Lemuel Taylor Survey. The request is to rezone the property from its present designation of Medium Commercial—District (C-2) to a designation of Heavy Commercial—District (C-3). The motion was seconded by Commissioner Fortin, and carried by a vote of 6 to 0.

6. STAFF REPORTS:

7. REQUESTS FOR FUTURE AGENDA ITEMS:

Commissioner Wind requested staff look into revising ordinances. Commissioner Gaut also asked about conducting training with the Planning and Zoning Commission in regards to duties of the Commission.

8. ADJOURN:

Commissioner Fortin made a motion to adjourn the meeting; Commissioner Langley seconded, and the motion carried by a vote of 6 to 0.

There being no further business, Chairperson, Tommy Gaut adjourned the meeting at 6:58 p.m.

Tommy Gaut, Chair
City of Burnet Planning and Zoning Commission

Attest: _____
Herve Derek Fortin, Secretary



Planning & Zoning Commission

ITEM 4.1

Jason Lutz
Development Services
(512) 715-3215
jlutz@cityofburnet.com

Agenda Item Brief

Meeting Date:	May 4, 2020
Agenda Item:	The Planning & Zoning Commission of the City of Burnet, Texas will hold a public hearing on the following proposed amendments to the City of Burnet Code of Ordinances Chapter 118 – “Zoning:”, Section 118-20, Chart 1 for the purpose of revising minimum front yard setbacks, minimum side yard setbacks, and minimum street side yard setbacks for the Light Commercial (C-1), Medium Commercial (C-2), and Heavy Commercial (C-3) zoning districts
Background:	City staff has begun the process of reviewing the City’s adopted zoning code in order to identify needed changes based on development trends, best planning practices, and state law changes.
Information:	<p>The first issue identified by staff was the need to update the setbacks in regard to commercial zoning districts.</p> <p>Staff originally proposed to modify front, side, street side, and rear yard setbacks and posted notice based on those proposals. At this time staff would like to focus on only the front yard setbacks for commercial and spend more time reviewing other setbacks.</p>
Staff Analysis:	<p>Based on review of the City’s code, other municipal setbacks, and best planning practices staff has identified front yard setbacks as an issue to move forward with.</p> <p>The current front yard setbacks are 30’ for C-1 (light commercial), 40’ for C-2 (medium commercial), and 50’ for heavy commercial. Based on staff findings the City of Burnet is more restrictive than other municipalities in the hill country and other similarly sized cities. You will notice that the city’s smallest front yard setback is larger than the largest front yard setback of other municipalities (see comparison table below).</p>

CITY	ZONING CATEGORY	ZONING INTENSITY	FRONT SETBACK
BURNET	C-1	Light	30'
	C-2	Medium	40'
	C-3	Heavy	50'
MARBLE FALLS	NC	Light	25'
	GC	Heavy	25'
	DD	Heavy/Urban	0'
DRIPPING SPRINGS	LR	Light	15'
	GR	Medium	25'
	CS	Heavy	25'
FREDERICKSBURG	C-1	Light	25'
	C-1.5	Medium	20'
	C-2	Heavy	15'
	CBD	Heavy/Urban	0'
Kerrville	C-1	Light	15'
	C-2	Medium	25'
	C-3	Heavy	25'
NOTE where multiple setback distances are listed, the 1st number is the general setback and the 2nd number is the setback adjacent to residential zones.			

After considering several factors regarding front yard setbacks staff is proposing to reduce all front yard setbacks to 25'.

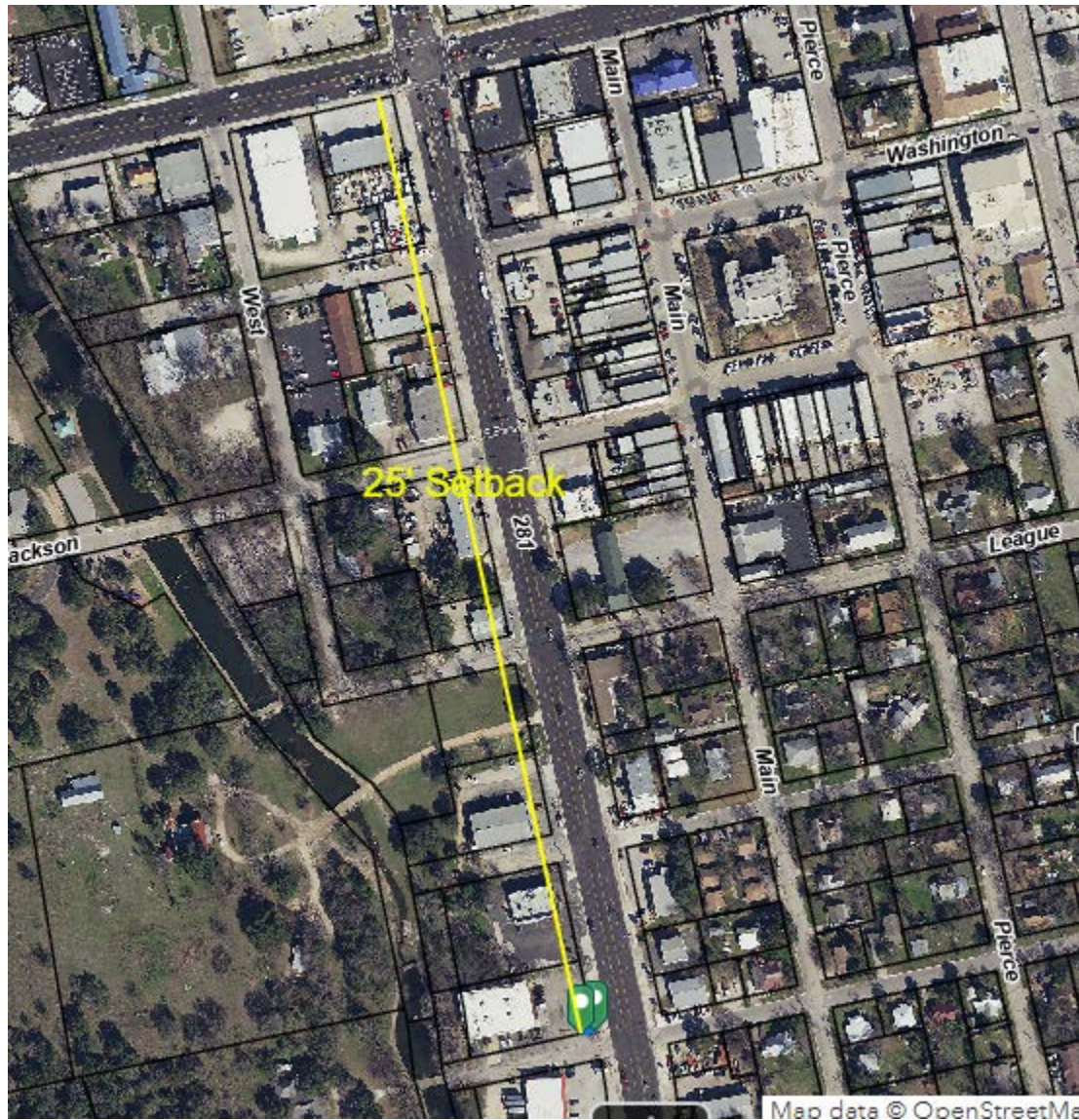
Flexibility: The reduction of front yard setbacks will allow flexibility for re-development and new construction by allowing the structure to move closer to the street.

Many new developments are trending to front loaded building to help active the streetscape and encourage a pedestrian friendly environment.

It also allows existing structures to expand existing non-conforming businesses without going through lengthy variance processes.

The reality of development is that most structures will maintain at least the minimum or more for front yards based on how sites are designed. Any developer who wants parking in front (18' wide) plus a drive isle will (12') will still need to be at least 30 feet from the street. However, this amendment would allow a new structure to provide parking in the rear and place more landscaping and sitting areas in the front.

Consistency: The reduction of front yard setbacks would keep new structures more consistent within the existing development. Most older structures along 281 have less than required 30'-50' setbacks required by code.



Recommendation: Staff recommends approval of the proposed amendment to reduce the front yard setbacks for the C-1, C-2, and C-3 zoning districts to 25'.

Sec. 118-20. - General requirements and limitations.

Chart 1

Zoning District	Front Yard Setback	Side Yard Setback	Street Side Yard Setback	Rear Yard Setback	Min. Lot S.F. Area	Min. Lot Width	Max. Height Limit
R-1	20 ft. for any road over 31 ft. of pavement 25 ft. for roads less than 31 ft.	7½ ft.	15 ft.	15 ft.	7,600 s.f.	60 ft.	35 ft. for structures over 1,500 s.f. 30 ft. for structures under 1,500 s.f.
R-1 E	30 ft.	15 ft.	15 ft.	15 ft.	1 acre	150 ft.	30 ft.
R-2	25 ft. for two unit 30 ft. for three and four unit	10 ft.	15 ft.	10 ft. 15 ft. when abutting R-1	4,500 s.f. per unit	75 ft.	35 ft.
R-2 A	25 ft. for two connected units 30 ft. for three or four connected units	10 ft. between structures	15 ft.	10 ft. 15 ft. when abutting R-1	4,500 s.f. per unit	75 ft.	35 ft.
R-3	50 ft.	10 ft. and one foot per unit	15 ft.	10 ft. 15 ft. when abutting R1	4,000 s.f. per unit	150 ft.	35 ft.
M-1	20 ft. for any road over 31 ft. of pavement 25 ft. for roads less than 31 ft.	7½ ft.	15 ft.	15 ft.	7,600 s.f.	60 ft.	35 ft. for structures over 1,500 s.f. 30 ft. for structures under 1,500 s.f.

M-2	50 ft.	10 ft. and one foot per unit	15 ft.	10 ft. 15 ft. when abutting R-1	4,000 s.f. per unit	150 ft.	35 ft.
OS	25 ft.	10 ft.	15 ft.	25 ft.	7,500 s.f.	60 ft.	35 ft.
A	25 ft.	25 ft.	15 ft.	25 ft.	2 Acres	150 ft.	35 ft.
Gov	25 ft.	15 ft.	15 ft.	15 ft.	7,600 s.f.	60 ft.	35 ft.
NC	20 ft. for any road over 31 ft. of pavement 25 ft. for roads of less than 31 ft.	7½ ft.	15 ft.	15 ft.	7,600 s.f.	60 ft.	35 ft.
C-1	30 <u>25</u> ft.	15 ft.	15 ft.	15 ft.	10,000 s.f.	50 ft.	35 ft.
C-2	40 <u>25</u> ft.	15 ft.	20 ft.	15 ft.	10,000 s.f.	60 ft.	35 ft.
C-3	50 <u>25</u> ft.	15 ft. for single tenant 25 ft. for multi-tenant	20 ft.	15 ft.	10,000 s.f.	60 ft. for single-tenant 100 ft. for multi-tenant	35 ft.
I-1	25 ft.	25 ft.	25 ft.	25 ft.	10,000 s.f.	50 ft.	60 ft.
I-2	25 ft.	25 ft.	25 ft.	25 ft.	10,000 sf.	60 ft.	60 ft.
PUD	n/a	n/a	n/a	n/a	n/a	n/a	n/a



Planning & Zoning Commission

ITEM 4.2

Jason Lutz
Development Services
(512) 715-3215
jlutz@cityofburnet.com

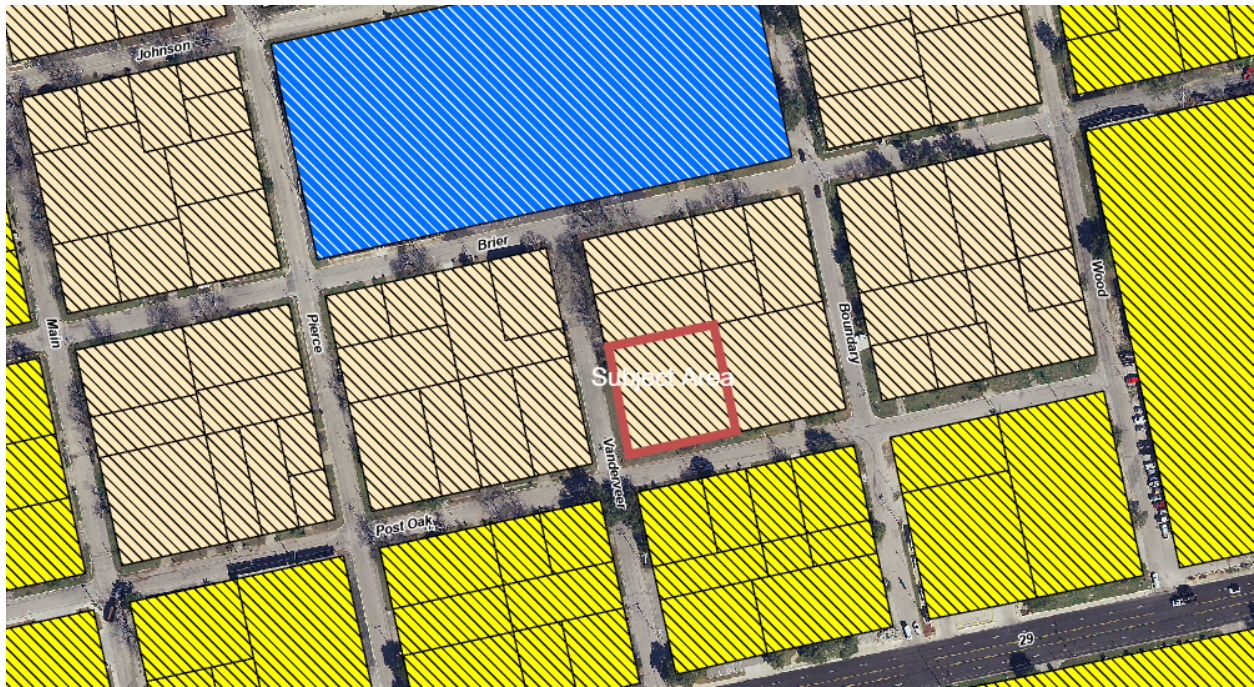
Agenda Item Brief

- Meeting Date:** May 4, 2020
- Agenda Item:** The Planning & Zoning Commission of the City of Burnet, Texas will hold a public hearing on a request to rezone property located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street, which is further described as lots 3-A and 3-B, Block 24, of the Peter Kerr Portion. The request is to rezone the property from its present designation of Single Family Residential – District (R-1) to a designation of Townhomes — District (R-2A).
- Background:** The property is located at the northeast intersection of N. Vanderveer St. and E. Post Oak Street. This location is an undeveloped property consisting of two lots, which were recently replatted. The applicant is requesting to up zone the property, from Single Family Residential – District (R-1) to a Townhomes — District (R-2A).
- Information:** The applicant is proposing to construct a single-family home on lot 3-A and construct a 4 unit townhome structure on lot 3-B.
- The proposed zoning category would allow the construction of both projects.
- Staff Analysis:** Staff has reviewed the proposed zoning request and looked at several factors such as Future Land Use Plan (FLUP), adjacent zoning/land uses, and access.
- FLUP: The City's Comprehensive Plan calls out this parcel as "Residential". While the comp plan does not differentiate between residential types or intensities of land uses, the requested zoning is in line with the Future Land Use Plan (see Exhibit B below).
- Adjacent Zoning/Land Uses: The subject tract is surrounded by R-1 (single-family) zoning along the northern and eastern property lines. The property is bounded to the west and south by city streets with R-1 (single-family) zoning across the streets.

Recommendation: Staff recommends approval of the request to rezone the property from its present designation of Single Family Residential – District (R-1) to a designation of Townhomes — District (R-2A).

An aerial photograph of a residential neighborhood. A blue shaded area highlights a specific cluster of houses. The houses are labeled with numbers, and a central house is marked with a '0'. The surrounding area includes other houses, streets, and a large commercial building on the right.

Exhibit "B"
Future Land Use Plan Map



Future Land Use Plan



Commercial



Residential

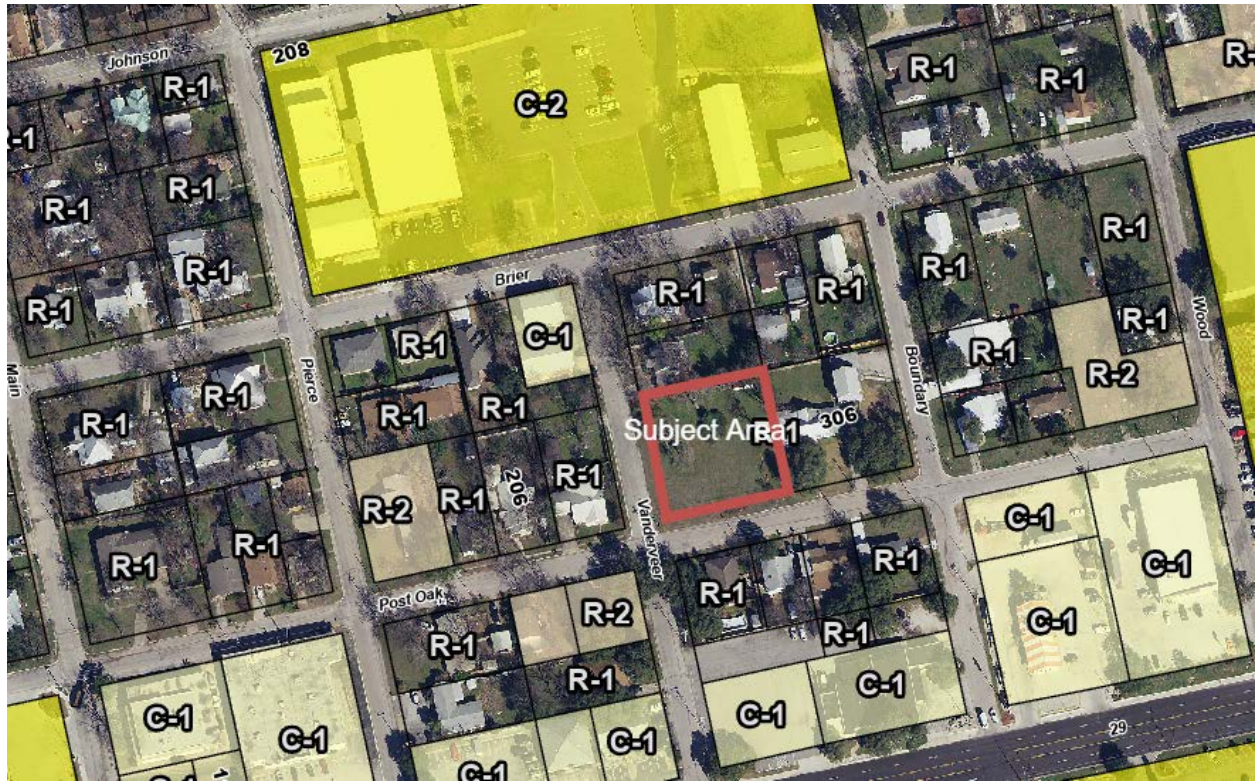


Government



Industrial

Exhibit "C"
Existing Zoning Map



[illegible]



Planning & Zoning Commission

ITEM 4.3

Jason Lutz
Development Services
(512) 715-3215
jlutz@cityofburnet.com

Agenda Item Brief

Meeting Date: May 4, 2020

Agenda Item: The Planning & Zoning Commission of the City of Burnet, Texas will hold a public hearing on requested variances for Wandering Oaks Circle located off County Road 100 in Oak Vista Subdivision (Legal Description: Lot numbers 80-83, 95-99, and lot 130). The requested variances are as follows:

1. Chapter 98 – Subdivisions, Sec. 98-42 Transportation Improvements, requiring all streets to be designed and constructed according to the City's TCSS, in order to allow chip seal paving.
2. Chapter 98 – Subdivisions, Sec. 98-42 Transportation Improvements, requiring curbs to be installed on both sides of all interior streets.
3. Chapter 98 – Subdivisions, Sec. 98-42 Street Lighting, required to be installed in the subdivision.

Background: The requested variances are in regards to a Preliminary Plat of Oak Vista Subdivision. This is a residential subdivision consisting of approximately 105.08 acres located north of County Road 100 (Scenic Oaks Drive), south and west of County Road 100 (Oak Vista Drive), and east of Billy Joe Fox Drive (see Exhibit A). The proposed subdivision includes twenty-one (21) residential lots ranging in size from 2.97 to 6.01 acres in size.

The preliminary plat and a corresponding variance, regarding maximum lengths for cul-de-sacs were approved by the P&Z Commission and City Council in June of 2019.

The proposed street located in this subdivision is a private street that will be owned and maintained by the subdivision via an HOA.

Information: The applicant is seeking a variance to the following regulations found in the City's Code of Ordinances.

Variance Request # 1: The applicant is to construct Wandering Oaks Circle to the Burnet County Road Standards.

Code Requirement: Sec. 98-42 Transportation Improvements, requiring all streets to be designed and constructed according to the City's TCSS, in order to allow chip seal paving.

Variance Request # 2: Applicant requests curb requirements be waived and that the street be constructed per County requirements, which allow streets without curbs.

Code Requirement: Chapter 98 – Subdivisions, Sec. 98-42 Transportation Improvements, requiring curbs to be installed on both sides of all interior streets.

Variance Request # 3: Applicant requests that street lighting not be required.

Code Requirement: Chapter 98 – Subdivisions, Sec. 98-42 Street Lighting, required to be installed in the subdivision.

Findings required. To approve a variance to the subdivision ordinance council and the commission shall conclude: that the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the variance observes the spirit of this chapter and concludes that substantial justice is done. The Commission and Council shall meet this requirement by making findings as required in Sec. 98-82(3). The required findings are evaluation in the Staff Analysis below.

Staff Analysis:

Variance 1. Chapter 98 – Subdivisions, Sec. 98-42 Transportation Improvements, requiring all streets to be designed and constructed according to the City's TCSS in order to allow chip seal paving.

Staff has provided additional documents regarding the proposed cost of maintenance for the proposed County Road standard. Based on a 20-year estimate of the total maintenance cost for the roads comes to \$80,366.34. Given the number of lots (21) this comes to a yearly cost of 191.35 (per lot).

Below is staff's analysis of the request as it relates to the criteria for this variance:

- a. **The public convenience and welfare will be substantially served.**

As the subdivision consists of large rural lots, with the average lot size being 4.23 acres, it is not anticipated that there will be significant vehicular traffic; consequently the public convenience and welfare will be substantially served by allowing this variance provided the developer positions the HOA with adequate resources to provide future street maintenance.

- b. **The appropriate use of surrounding property will not be substantially or permanently impaired or diminished.**

The requested variances will have no adverse impact on the surrounding properties as those properties are developed to similar standards.

- c. **The applicant has not created the hardship from which relief is sought.**

The only identifiable hardship is the code requires this subdivision be developed at a different standard than the surrounding subdivision. Consequently, it cannot be said the hardship was self-created.

- d. **The variance will not confer upon the applicant a special right or privilege not commonly shared or available to the owners of similar and surrounding property.**

It appears the applicant is seeking this variance so the subdivision infrastructure will be consistent with surrounding subdivisions.

- e. **The hardship from which relief is sought is not solely of an economic nature.**

The applicant is requesting that the property be built similarly to other developments in the area and that it is a hardship to not have similar standards as adjacent properties. The applicant also believes that this is not solely economic in nature as they are wanting to maintain a rural dark sky feel and stay consistent with the rural look of surrounding properties.

- f. **The variance is not contrary to the public interest.**

The proposed variance to the street standard would be built to County standards.

- g. **Due to special conditions, the literal enforcement of this chapter would result in an unnecessary hardship.**

The applicant is requesting that the property be built similarly to other developments in the area and that it is a hardship to not have similar standards as adjacent properties.

- h. **In granting the variance the spirit of the ordinance is observed and substantial justice is done.**

The proposed variance to the street standard would be built to County standards. The applicant also believes that this is not solely economic in nature in that this variance will promote consistency with the rural look of surrounding properties.

Variance two

Subdivisions, Sec. 98-42 Transportation Improvements, requiring curbs to be installed on both sides of all interior streets.

Below is staff's analysis of the request as it relates to the criteria for this variance:

- a. **The public convenience and welfare will be substantially served.**

The subdivisions surrounding this subdivision do not have curbs installed on interior streets and allowing this variance will promote consistency between adjoining subdivisions.

- b. **The appropriate use of surrounding property will not be substantially or permanently impaired or diminished.**

The requested variances will have no adverse impact on the surrounding properties as those properties are developed to similar standards.

- c. **The applicant has not created the hardship from which relief is sought.**

No, the applicant is requesting his subdivision be developed in a manner consistent with surrounding subdivisions.

- d. **The variance will not confer upon the applicant a special right or privilege not commonly shared or available to the owners of similar and surrounding property.**

It appears the applicant is seeking this variance so the subdivision infrastructure will be consistent with surrounding subdivisions.

- e. **The hardship from which relief is sought is not solely of an economic nature.**

The applicant is requesting that the property be built similarly to other developments in the area and that it is a hardship to not have similar standards as adjacent properties. The applicant also believes that this is not solely economic in nature in that this variance will promote consistency with the rural look of surrounding properties.

- f. **The variance is not contrary to the public interest.**

The proposed variance to the street standard would be built to County standards.

- g. **Due to special conditions, the literal enforcement of this chapter would result in an unnecessary hardship.**

The applicant is requesting that the property be built similarly to other developments in the area and that it is a hardship to not have similar standards as adjacent properties.

- h. **In granting the variance the spirit of the ordinance is observed and substantial justice is done.**

The proposed variance to the street standard would be built to County standards.

Variance three

Chapter 98 – Subdivisions, Sec. 98-42 Street Lighting, required to be installed in the subdivision.

Below is staff's analysis of the request as it relates to the criteria for this variance:

- a. **The public convenience and welfare will be substantially served.**

Due to the low-density regarding homes and traffic, a desire to maintain consistency in the area, and a desire for a "Dark Sky" community a variance to the street lighting requirement will substantially serve the public's convenience and welfare.

- b. **The appropriate use of surrounding property will not be substantially or permanently impaired or diminished.**

The requested variances will have no adverse impact on the surrounding properties as those properties are developed to similar standards.

- c. **The applicant has not created the hardship from which relief is sought.**

No, the applicant is requesting his subdivision be developed in a manner consistent with surrounding subdivisions.

- d. **The variance will not confer upon the applicant a special right or privilege not commonly shared or available to the owners of similar and surrounding property.**

No, as it appears the applicant is seeking this variance so the subdivision infrastructure will be consistent with surrounding subdivisions.

- e. **The hardship from which relief is sought is not solely of an economic nature.**

The applicant is requesting that the property be built similarly to other developments in the area and that it is a hardship to not have similar standards as adjacent properties. The applicant also believes that this is not solely economic in nature in that this variance will promote consistency with the environment of surrounding properties by promoting a rural dark sky ambiance.

- f. **The variance is not contrary to the public interest.**

In the context of this rural low density development the lack of street lighting is not contrary to the public interest.

- g. **Due to special conditions, the literal enforcement of this chapter would result in an unnecessary hardship.**

The applicant is requesting that the property be built similarly to other developments in the area and that it is a hardship to not have similar standards as adjacent properties.

- h. **In granting the variance the spirit of the ordinance is observed and substantial justice is done.**

In this instance the spirit of the ordinance is observed by not requiring street lights.

Recommendation: Staff has no objection to the Commission and Council authorizing the requested variances. However, with regards to variance one, should the variance be granted staff recommends the applicant be required to activate the HOA and initiate the collection of fees in order to provide adequate capitalization for the future street maintenance needs of the subdivision.

**Exhibit “A”
Location Map**

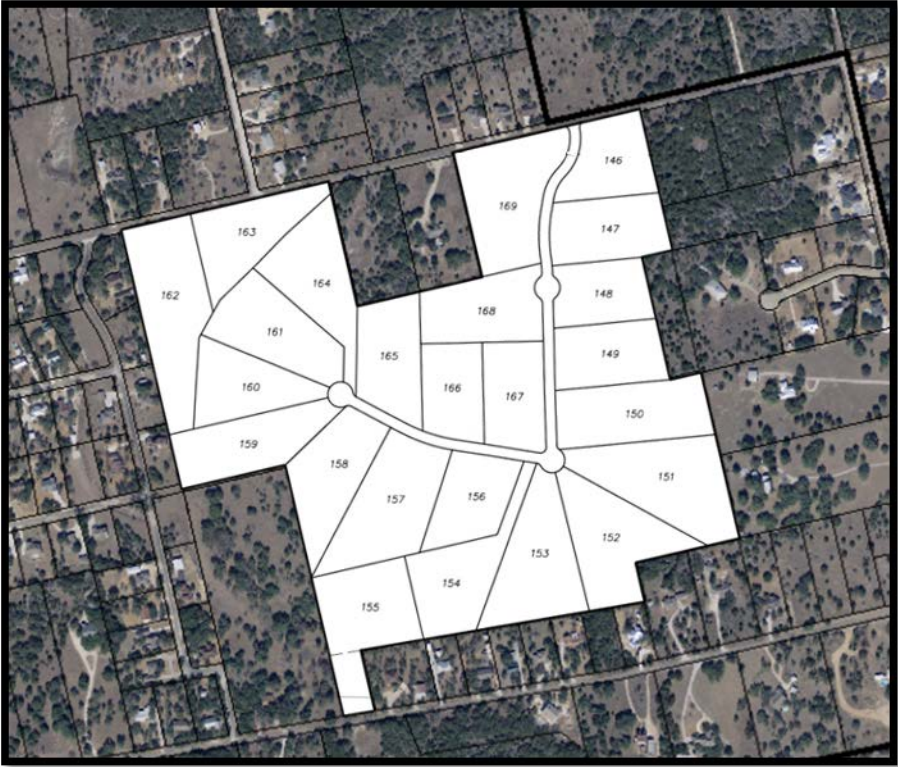


Exhibit "B"
Plat



***Louise Lary
114 Louise Lane
Burnet, Texas 78611***

April 30, 2020

Honorable Mayor and Members of City Council
Honorable Planning and Zoning Commissioners
City of Burnet, Texas
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

Re: Variance Request for the Wandering Oaks Subdivision

Dear Mayor, Council Members, and Commissioners,

For nearly 50 years, I have been proud to call Burnet home. Generations of the Lary family and the Fox family have been fortunate to contribute to the growth and development of our community in many ways, including the development of the Oak Vista subdivision. I am writing to you on behalf of Big Leaf, Ltd., the developer of Oak Vista.

Oak Vista offers an important choice for consumers in Burnet. As a subdivision outside the corporate limits, Oak Vista is a subdivision with a “country” feel and character. Oak Vista caters to people who want to build reasonably-priced homes on acreage lots, away from the hustle and bustle of town. The aesthetics of the infrastructure is important for the look and feel of the subdivision. Standing curbs are not in keeping with the character of the subdivision. Oak Vista residents want to stargaze in dark skies without the interference of street lights. The variance we are seeking is critical to maintaining this intentional, country aesthetic.

The development of Wandering Oak is a significant addition to Oak Vista. The plans for Wandering Oak were born of the vision of my late husband, Camm Lary, Jr. I look forward to completing this project with my dear friend and business partner, Vonnie Fox.

In support of the variance, I offer the following information:

- Street lights
 - There are no street lights in Oak Vista.
 - Existing residents of Oak Vista would oppose the light pollution on their property.
 - “Dark skies” are a key part of the character of Oak Vista.
- Curbs
 - Standing curbs are not used throughout Oak Vista.
 - This is essential for the aesthetics of the community.
 - We believe there are no issues with not using standing curbs.
- Standard for road design
 - The City Code requires a “paved” road. City staff has interpreted this to mean an asphalt road.
 - The landowners propose a different type of “paved” road, a chip seal road.

- We believe the design for the chip seal road is of good quality, at least as good as an asphalt road.
- Please see the letter provided by Marcus Horner, P.E., our engineer. (We have retained Marcus not just for the design of the road, but also for construction phase services to inspect the quality of the road construction.)
- We believe the chip seal road will last as long or longer than the asphalt road. This is based upon:
 - The expected traffic of a neighborhood, residential street,
 - The rock that is pervasive in the subdivision, and
 - The quality of the base layer that we propose to use (which meets the City's standards and exceeds the County's standards).
- Road maintenance.
 - Oak Vista is a deed-restricted community. The subdivision has a property owners association, the Oak Vista Property Owners Association (OVPOA).
 - In support of our variance request, we have extensively discussed with City staff the OVPOA and its powers, duties, responsibilities. We have provided the relevant documentation.
 - We understand that the City has no current or future obligation or responsibility to maintain Wandering Oak Road, a road outside the City's corporate limits.
 - We understand that the responsibility for road maintenance lies with Big Leaf, Ltd., as the developer, and ultimately the homeowners through the OVPOA.
 - In accordance with the "Oak Vista Covenants, Conditions and Restrictions," the OVPOA "is charged with the duty and responsibility of maintaining all roads within the subdivision."
 - The OVPOA is authorized to impose general and special assessments for road maintenance.
 - Oak Vista is still under development. As such, the developer currently bears the responsibility to build new infrastructure and maintain existing infrastructure. Therefore, no OVPOA assessment has been required. However, we commit to ensuring that the appropriate road assessment is collected from Wandering Oak homeowners.
 - Please see the letter from Marcus Horner, P.E., which estimates a maintenance schedule and maintenance costs.
 - Notably, our engineer expects that the cost of maintenance of the road we seek to build in our variance is less than the cost of maintenance of the road proposed by the City.
 - It is incumbent on us to make the maintenance as affordable as possible to the Wandering Oak homeowners. Doing so will ensure better and more consistent maintenance.

In light of Section 98-82(2) of the City Code, I offer the additional information in support of the variance:

- The commission and council should conclude that the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of this chapter would result in unnecessary hardship.

- The commission and council should conclude that the variance observes the spirit of this chapter and that substantial justice is done.
- The commission and council should find that:
 - The public convenience and welfare will be substantially served.
 - *The design sought in the variance is safe, of high quality, and can and will be well maintained by the OVPOA at a reasonable cost.*
 - *There is no appreciable or demonstrated benefit of the City standard over the design sought in the variance.*
 - The appropriate use of surrounding property will not be substantially or permanently impaired or diminished.
 - *The road design proposed is in keeping with the existing character of the community.*
 - *Street lights would substantially and permanently impair and diminish surrounding property.*
 - The applicant has not created the hardship from which relief is sought.
 - *The hardship is created by a city requirement for a type of road, curbing, and lighting that is inconsistent with the character of the community.*
 - *There is no appreciable or demonstrated benefit of the City standard over the design sought in the variance.*
 - The variance will not confer upon the applicant a special right or privilege not commonly shared or available to the owners of similar and surrounding property.
 - *The Oak Vista subdivision is unique as a subdivision with a country character in the extraterritorial jurisdiction of the City.*
 - *The design sought in the variance is largely consistent with the surrounding property.*
 - The hardship from which relief is sought is not solely of an economic nature.
 - *The City standard would create a hardship by being inconsistent with the existing character of the community.*
 - The variance is not contrary to the public interest.
 - *The design sought in the variance is safe, of high quality, and can and will be well maintained at a reasonable cost.*
 - *There is no appreciable or demonstrated benefit of the City standard over the design sought in the variance.*
 - *The design sought in the variance does not create drainage, traffic, or any public safety issues.*
 - Due to special conditions, the literal enforcement of this chapter would result in an unnecessary hardship, and
 - *The City requirement without the variance would be inconsistent with the character of the community, which is damaging to existing and future homeowners and landowners.*
 - In granting the variance the spirit of the ordinance and substantial justice is done.
 - *The design proposed in the variance is of high quality and supports the public health, safety, and welfare.*
 - *The developer is committed to building high quality, well-maintained infrastructure and the variance supports such goal.*

Burnet and Oak Vista are my home. As a resident of Oak Vista, I want to see my neighborhood thrive. I am confident that Oak Vista will thrive in partnership with the City. Thank you for your support of this variance.

Sincerely,

Louise Lary

cc: Jason Lutz, Director of Development Services
David Vaughn, City Manager



William H Engineering LLC

April 30, 2020

Mrs. Louise Lary
Big Leaf, Ltd
605 N Water St.
Burnet, TX 78611

Dear Mrs. Lary

Big Leaf, Ltd asked us to review potential maintenance costs for the alternative pavement types to be considered and comments on the different pavement options.

Attached are approximate maintenance cost for the two options. As would be expected the long term maintenance would likely be less for the chip seal proposed in the variance request because replacement cost at the likely 20 year design life would also be less costly than the city's standard HMAC surface. In lieu of crack sealing every 5 years on the chip seal surface a fog seal at 10 years might be considered.

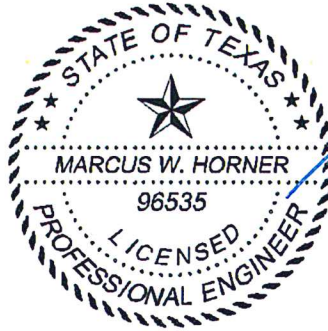
The attached is based on typical pavement maintenance. Actual maintenance necessary may vary or might be initiated for aesthetic reasons rather than out of necessity.

Our experience in this type of development on this type of subgrade is that the pavement is typically not subject to structural failure. Pavement design is heavily based on the subgrade soil and the traffic loading over time. We understand the subgrade likely consists of rock. The traffic loading calculation is based on units called 18Kip ESAL's (18 thousand pound Equivalent Single Axle Loadings). These are basically tractor trailer loadings (approximately 2.3 ESAL's per average tractor trailer). Typical residential structural designs require 14,000 to 100,000 ESAL's over a 20 year period.

Because this street will likely have very few tractor trailer loadings and it takes hundreds of passenger vehicle passes to equal 1 ESAL, if structural design were performed it would likely result in less than the recommended minimum base material thickness for both pavement types. Although we did not perform any soil testing or structural design, either 2" of HMAC or a two course chip seal over 8 inches of high quality well compacted base material would more likely than not satisfy a typical residential structural requirement.

If you have any questions or comments, or require additional information, please feel free to contact me at (512) 553-1555.

Sincerely,



A handwritten signature in blue ink, appearing to read "Marcus W. Horner", written over the right side of the seal.

Marcus W. Horner, P.E.
William H Engineering, LLC F#17508
Principal

Projected Maintenance Cost/Schedule

Wandering Oak Subdivision Burnet

Future cost a 1.147 average index annual construction cost

Current Construction cost estimate 1" mill and overlay				
Mill and stklp 1" HMAC	\$	7,964.44	(\$2.07 per SY)	
1" HMAC Overlay	\$	41,141.33	(\$95.00 per Ton)	
Total	\$	49,105.78		
$F=P(1+r)^n$				
\$	61,509.17	$=49105.78(1 + 1.132411628)^{20}$		
Current Estimated Cost crack seal				
JT/Crack Seal \$485.00/LMI	1.09 LMI	\$	528.65	5 yr ea
	Mob	\$	1,500.00	
	Total	\$	2,028.65	
	X3	\$	6,085.95	
$F=P(1+r)^n$				
\$	6,811.33	$=6085.95(1 + 1.132411628)^{10}$		
Current Estimated Cost Herbicide Curb edge				
Herbicide \$35.00/LMI	1.09 LMI	\$	38.15	1 yr ea
	Mob	\$	500.00	
	Total	\$	538.15	
	X20	\$	10,763.00	
$F=P(1+r)^n$				
\$	12,045.84	$=10763.00(1 + 1.132411628)^{10}$		

F is the fund amount (theFuture amount needed)

r is the annual rate of inflation (percentage)

n is the number of years the amount is accumulated.

P is the current amount of money needed

Total Projected Maintenance Cost	\$	80,366.34
Lots		21
Years		20
\$	191.35	Per Year

Maintenance Schedule Breakdown

--- Herbicide and weed control along edge of pavement annually

--- Crack Seal every 5 years for first 15 years

--- Salvage remove and resurface upper 1" after 20 years

Construction Cost Trends For Highways

	March	1
2009	June	0.9398
	September	0.9292
	December	0.9026
	March	0.9419
2010	June	0.9384
	September	0.9465
	December	0.93
	March	0.9568
2011	June	1.0006
	September	1.0412
	December	1.0411
	March	1.0769
2012	June	1.127
	September	1.0955
	December	1.1071
	March	1.0908
2013	June	1.1235
	September	1.1448
	December	1.0931
	March	1.1278
2014	June	1.1699
	September	1.2351
	December	1.1938
	March	1.2198
2015	June	1.2048
	September	1.2063
	December	1.1627
	March	1.1311
2016	June	1.1779
	September	1.1798
	December	1.1534
	March	1.1172
2017	June	1.1846
	September	1.2343
	December	1.1619
	March	1.1747
2018	June	1.2521
	September	1.3446
	December	1.373
	March	1.3492
2019	June	1.4511
	September	1.4618

AVERAGE LAST
10 YEARS

1.132411628

<https://www.fhwa.dot.gov/policyinformation/nhcci/pt1.c>

Projected Maintenance Cost/Schedule

Wandering Oak Subdivision Burnet

Future cost a 1.147 average index annual construction cost

Current Construction cost estimate two course chip seal

Chipseal Surface Asphalt \$ 18,165.16 (5018 Gal \$3.62 per Gal)
 Chipseal Surface Aggregate (GR4) \$ 13,400.00 (134 Tons \$100.00 per Ton)

Total \$ 31,565.16

$F = P(1+r)^n$

\$ 39,538.05 = 39538.05(1 + 1.132411628)^20

Current Estimated Cost crack seal

JT/Crack Seal \$485.00/LMI 1.09 LMI \$ 528.65 5 yr ea
 Mob \$ 1,500.00
 Total \$ 2,028.65
 X3 \$ 6,085.95

$F = P(1+r)^n$

\$ 6,811.33 = 6811.33(1 + 1.132411628)^10

Current Estimated Cost Herbicide Curb edge

Herbicide \$35.00/LMI 1.09 LMI \$ 38.15 1 yr ea
 Mob \$ 500.00
 Total \$ 538.15
 X20 \$ 10,763.00

$F = P(1+r)^n$

\$ 12,045.84 = 12045.84(1 + 1.132411628)^10

F is the fund amount (theFuture amount needed)

r is the annual rate of inflation (percentage)

n is the number of years the amount is accumulated.

P is the current amount of money needed

Total Projected Maintenance Cost \$ 58,395.22

Lots 21

Years 20

\$ 139.04 Per Year

Maintenance Schedule Breakdown

--- Herbicide and weed control along edge of pavement annually

--- Crack Seal every 5 years for first 15 years

--- Resurface two course after 20 years

Construction Cost Trends For Highways

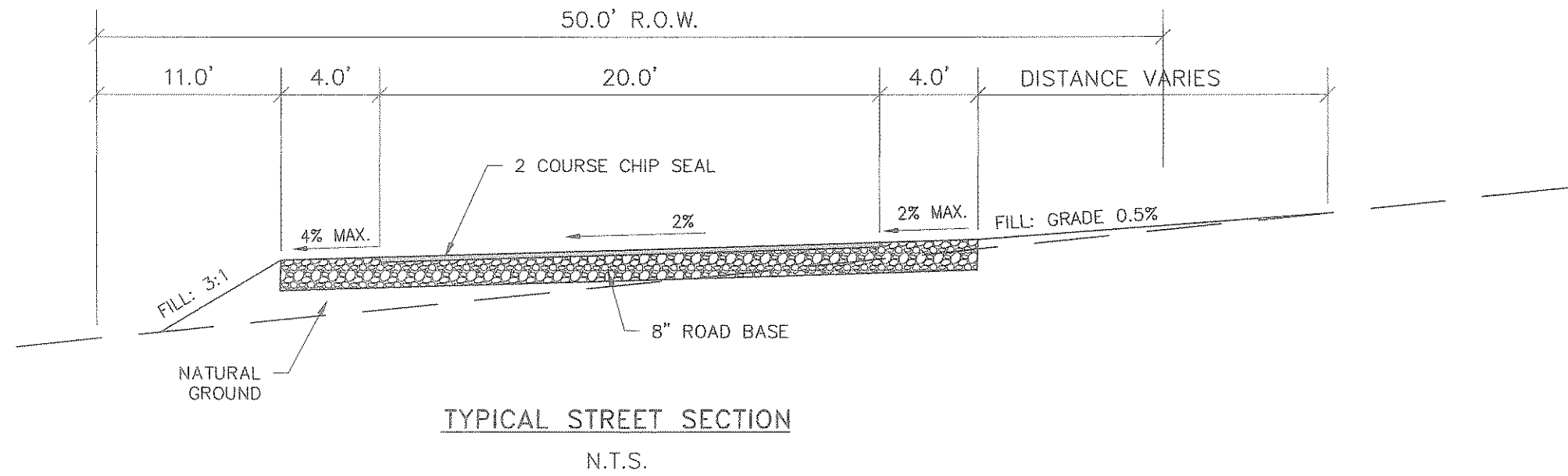
	March	1
2009	June	0.9398
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	December	1.1071
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2019	June	1.4511
	September	1.4618

AVERAGE LAST
10 YEARS

1.132411628

<https://www.fhwa.dot.gov/policyinformation/nhcci/pt1.cfm>

Date: Apr 08, 2020, 12:00pm User ID: stefyn
File: A:19-2006 Oak Vista Ann Ridwell DESIGN PLANS\DETAILS\ROADWAY.dwg



Strip off the surficial clay soils, and all organics, and soft spots. After stripping and excavation, the exposed subgrade should be proof rolled to identify weak or soft spots. These areas should then be excavated prior to placement of the new pavement. A geotechnical engineer and a county representative should be retained to observe the condition of the exposed subgrade and proof rolling operations.

Perform density testing of subgrade at a frequency of 1 test per 500 lf. Compaction shall be a minimum of 95% of optimum as determined by test method Tx114-E, maintain moisture contents up to with in \pm 3% of optimum.

If fill material is necessary to raise the roadway to rough grade, the material used should be a lean clay (CL), clayey sand (SC), or clayey gravel (GC) according to the Unified Soil Classification system with a PI of 20 or less. The material should be compacted to at least 95 percent of the maximum dry density determined using TxDOT Test Method TEX-113-E. Maintain water contents from \pm 1 - 3% of the optimum moisture content.

On the scarified and re-compacted subgrade, place the recommended thickness of onsite or offsite produced limestone flexible base material consisting of:

1. A maximum of zero percent (0%) retained on an inch and a quarter (1 1/4") screen.
2. Between 8 percent (8%) and thirty percent (30%) retained on a seven-eighths (7/8") screen. Between thirty percent (30%) and sixty percent (60%) on a three-eighths (3/8") screen. Between forty-five (45%) and seventy percent (70%) and a #4 mesh sieve and between seventy (70%) and eighty-five (85%) on a #40 mesh sieve.
3. A plasticity index not to exceed twelve (12).
4. Liquid limit not to exceed 30.

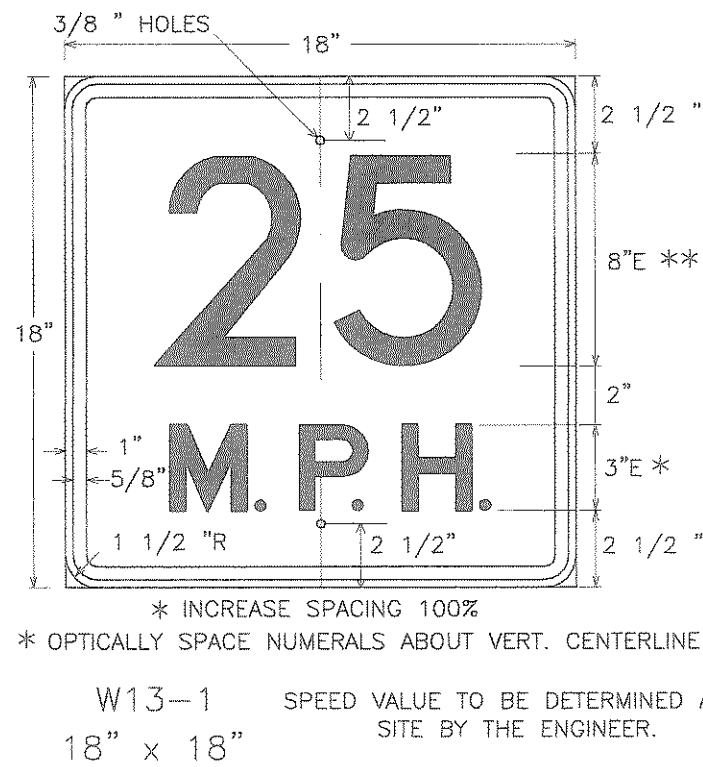
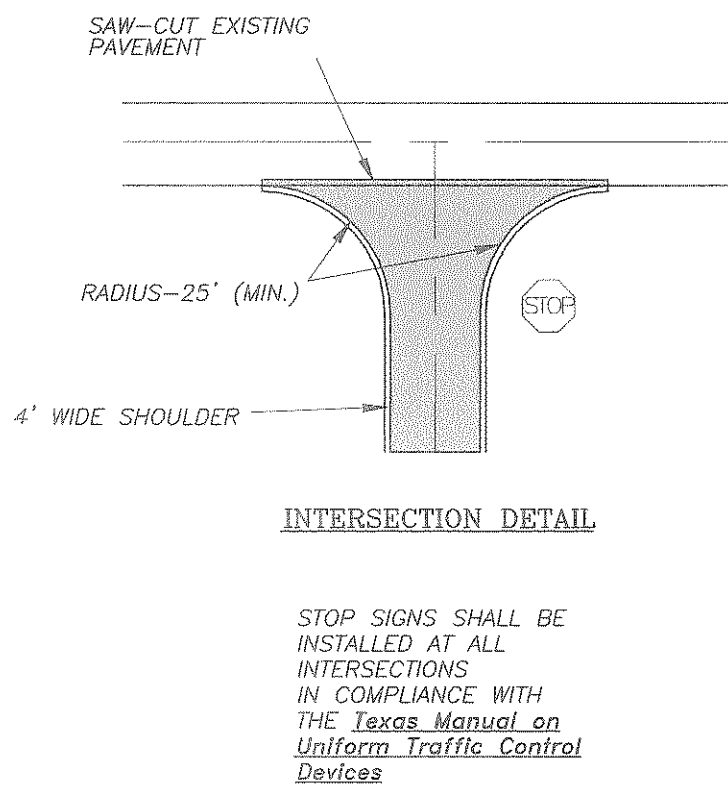
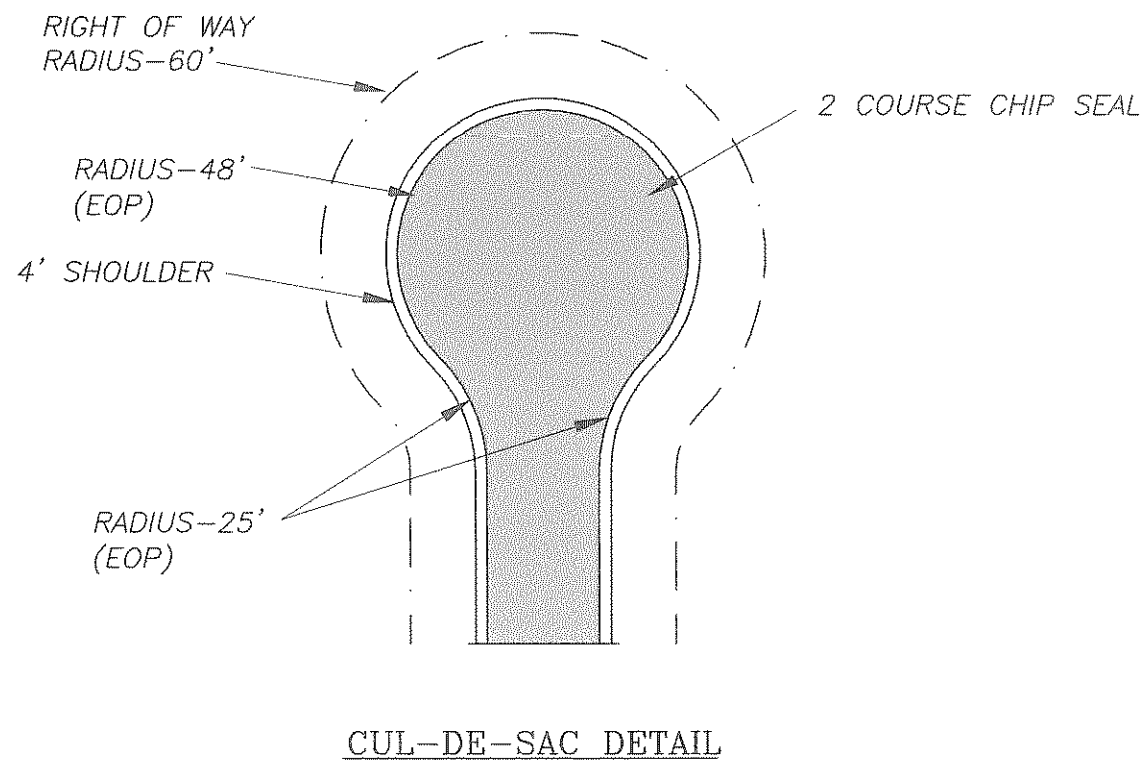
Compact the base material to 95% of the maximum dry density determined using TxDOT Test Method TEX-113-E. Hold water contents within a range to allow for proper compaction, and maintain a compacted lift thickness at 6 inches or less.

Surface Treatment

The "double asphalt or emulsion surface treatment" or two course surface treatments shall conform to the following:

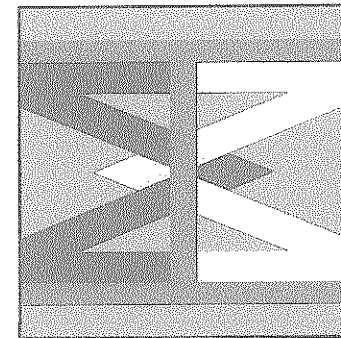
Apply a prime coat in accordance with Item 314, of TxDOT, 2004 Standard Specifications for Construction of Highways Streets and Bridges. The prime coat should consist of an emulsified asphalt conforming to TxDOT Item 300.2(4) and be applied at a minimum application rate of 0.35 gal per square yard.

A two-course "squirt top" consisting of #4 grade cover stone treated with a thirty-five hundredths (.35) gallons per square yard of hot asphalt. The second course to be of a #5 grade cover stone treated with twenty-eight hundredth (.28) gallon per square yard hot asphalt of AC-5 type in both cases, or variances as approved by the Precinct Commissioner.

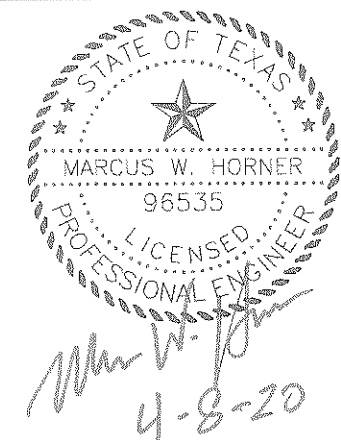


SPEED LIMIT SIGN DETAIL
N.T.S.

WILLIAM H ENGINEERING LLC
1001 BUCHANAN DRIVE, SUITE 2
BURNET, TEXAS 78611
PH. 512-553-1555
marcus@williamhengineering.com
TEXAS REGISTRATION # 17058



ROADWAY DETAILS
OAK VISTA SUBDIVISION
BURNET, TEXAS



File: A:19-2006\DESIGN\PLANS\DETAILS\ROADWAY	Job No. 19-2006	Scale (Hor.): NONE	Scale (Vert.): N/A	Drawn By: NS	Checked By: VP	Remarks
Date: 00/00/19	Rev. No. 1	Date	2	3	4	

SHEET
8.0

0715691

OAK VISTA SUBDIVISION
FOURTH AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND
RESTATEMENT OF ORIGINAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AS AMENDED

STATE OF TEXAS }

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF BURNET }

WHEREAS, Big Leaf, Ltd., a Texas Limited Partnership, hereinafter called Declarant, is now the developer of the property described herein, by virtue of the San Luis Company and Humberto V. Reyes having sold and conveyed all of their interest in property described below to Oak Vista, Inc., a Texas Corporation, of Burnet County, Texas, who in turn conveyed to Big Leaf, Ltd. The San Luis Company and Humberto V. Reyes did declare the hereafter described property to be subject to certain protective Covenants, Conditions, and Restrictions of record in Volume 318, Page 629, of the Deed Records of Burnet County, Texas, and the First Amendment To Declaration of Covenants, Conditions, and Restrictions of record in Volume 321, Page 989 of the Deed Records of Burnet County, Texas, which declaration and the first amendment pertains to the following described property to-wit:

957.627 acres of land situated in a tract called 1100 acres in a conveyance from Jo Ann McDuff et al to San Luis Company and Humberto V. Reyes, recorded in Volume 279, Page 986-993 Deed Records of Burnet County, Texas and situated partly (635.786 acres) in the Eugenio Perez Survey No. 41, partly (155.36) in L. W. Cavin Survey No. 1332, and partly (34.89 acres) in the William H. McGill Survey No. 42, Burnet County, Texas more particularly described in Exhibit "A" of the declaration recorded in Volume 318, Page 629 of the Deed Records of Burnet County, Texas, to which reference is here made and as shown in a plat of record in cabinet 1, slide 183 C and D and slide 184 A and B of the Plat Records of Burnet County, Texas and as replated in Cabinet 2, Slide 4 C-D; Cabinet 2, Slide 36D; Cabinet 2, Slide 173C; Cabinet 2, Slide 188C; Cabinet 3, Slide 1A; Cabinet 3, Slide 62B; Cabinet 3, Slide 65A; Cabinet 3, Slide 73A-C; Cabinet 3, Slide 123B-D; Cabinet 3, Slide 161B; and Cabinet 4, Slide 42B of the Plat Records of Burnet County, Texas.

WHEREAS, the Oak Vista, Inc. became the owner of all of the undeveloped land and unsold lots and filed the Second Amendment to Declaration of Covenants, Conditions and Restrictions in Volume 571, Page 741 of the Real Property Records of Burnet County, Texas;

WHEREAS, the undersigned Oak Vista, Inc. transferred all of its interest to Big Leaf, Ltd. a Texas General Partnership who is now the developer and Declarant.

WHEREAS, due to changing conditions, the replatting of certain lots, the development of a golf course, and make other needed changes and clarifications;

WHEREAS, due to the prior amendments and the numerous amendments contained herein to keep parties from having to refer to four different instruments the original declaration and all such amendments need to be restated in one instrument;

WHEREAS, the undersigned owners are joining in this amendment and restatement of the Declaration of Covenants, Conditions, and Restrictions of the property described herein;

NOW, THEREFORE, Declarant and the undersigned owners do file this Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions, and as amended by the First and Second Amendment to Declaration of Covenants conditions and Restrictions, hereby amending said Amended Declaration as follows:

Article VI is amended by changing the date from December 31, 2007 to December 31, 2012;

Article III

(3) is amended by adding another sentence clarify the lot count.

Article VIII

(1) (b) is amended by defining certain entities;

(2) is amended by changing the minimum of 1,200 square feet of floor space to 1,600 square feet of floor space;

(8) is amended to define masonry products and exterior and roof treatments;

(9) is restated; and

(23) is clarified.

Article X is amended by adding another sentence clarify the lot count.

Article XI section 1 is amended by changing the date December 31, 2000, to December 31, 2012;

Article XII section 5 is amended by changing the date April 1, 2000, to March 31, 2007;

In addition certain cosmetic and style changes have been made to make the instrument more uniform and readable. The above listing of changes is for convenience only and the omission of a change shall not invalidate this declaration or any such omitted changes

NOW, THEREFORE, Declarant does file this Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions, and as amended by the First, Second and Third Amendments to Declaration of Covenants conditions and Restrictions, hereby amending said Declaration as described above and restating the original Declaration of Covenants, Conditions and Restrictions together with the all amendment and this amendment in one instrument as follows:

**ARTICLE I
DEFINITIONS**

★ **Section 1. Association.** Association shall mean and refer to OAK VISTA PROPERTY OWNERS ASSOCIATION, its successors and assigns.

Section 2. Lot. Lot shall mean any platted lot as shown in the plat of OAK VISTA SUBDIVISION, to be recorded in Map and Plat Records of Burnet County, Texas, or any platted lot as shown in the plat of any subdivision hereinafter created from any platted lot within OAK VISTA SUBDIVISION.

Section 3. Member. Member shall mean and refer to every person or entity who holds membership in the Association.

Section 4. Owner. Owner shall mean and refer to the record owner, whether one or more persons, or entities, of a fee simple title to any Lot in said Subdivision, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. Declarant. Declarant shall mean and refer to Big Leaf, Ltd. its successors and assigns.

Section 6. Architectural Control Committee. Architectural Control Committee may sometimes be referred to herein as ACC and shall refer to the ACC initially appointed by Declarant and at a later date elected by the members as provided herein.

Section 7. Property. Property shall mean and refer to that certain real estate herein before described, or any other property subject to this declaration and a part of this Subdivision by the Declarant or its successor and assigns.

ARTICLE III VOTING RIGHTS

1. Voting Rights in the Association. Each Member of the Association shall be entitled to one vote for each lot in which he holds the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members, provided however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. Members may cast fractional votes. Ownership shall be determined as provided in Section 2 of this Article.

2. Determining Ownership and Voting Rights. Ownership and the number of votes an owner may cast, in voting in ACC elections, in voting as a member in Association elections and for any other votes provided for in this declaration shall be calculated as provided herein. Each lot owner shall be entitled to join in and execute an instrument to amend this Declaration as provided in Article X. To determine if seventy five (75%) per cent for the first twenty (20) year or sixty (60%) per cent thereafter of the lot owners have joined in such amendment the following rules will apply:

a) The record owner of a fee interest in any lot subject to this declaration may join in the execution of an amendment to this Declaration or vote as a member of the association or vote in the election of the ACC.

b) In the event that more than one person is the record owner of a fee interest then all such persons must join in the execution of such amendment for the entire lot or lots to be counted as joining in such amendment, or to count as one whole vote in an election. However, the owners may be counted as a fractional interest or vote, as provided in the following subsection.

c) In the event that only part of the record owners join in the execution of such amendment or vote in an election only the fractional ownership of such lot or lots as reflected by the deed of record in the County Clerk's Office of Burnet County, Texas, shall be counted towards the seventy five (75%) per cent or sixty (60%) per cent amount needed to amend or only a fractional vote will be counted. If the deed does not reflect the actual fractional ownership it will be presumed for these purposes that each party shown on the deed owns an equal amount, this shall be true notwithstanding any unrecorded agreements otherwise.

3. **Subdivided Lots and Declarant Property.** Subdivided lots for both voting as a member or for amendment of this declaration shall count as one lot. To be a valid "subdivided lot or lots" such subdivision must have been approved by the ACC, all necessary governmental authorities and recorded properly in the County Clerk's Office of Burnet County, Texas, for 180 days prior to such vote or amendment. Lots which are divided by metes and bounds and not by a platted resubdivision will not be considered as a "Subdivided lot or lots" for voting as a member or for amendment of this declaration, but will be considered a single lot with more than one owner, unless division by metes and bounds was done by the Oak Vista, Inc or Big Leaf, Ltd, or approved by the ACC in that case the lots will be the same as approved subdivided lots with one vote each. The subdivision of lots 89 and 90 are hereby approved. Those part lots, if any, left over under Article VIII, (1), be shall be counted as a whole or complete lot. Large tracts and unsubdivided acreage still in the name of the Declarant shall be counted on the basis of one (1) acre being counted as one lot.

ARTICLE IV.

POWER AND DUTIES OF THE ASSOCIATION

A **OAK VISTA PROPERTY OWNERS ASSOCIATION** shall have the following powers and duties, whenever, in the exercise of its discretion, it may deem them necessary and advisable; provided however, nothing herein contained shall be deemed to prevent any owner from enforcing any covenants or restrictions in his own name.

A 1. **Roads.** The Association is charged with the duty and responsibility of maintaining all roads within the Subdivision as shown on the Subdivision Plat or any Resubdivision Plats for Oak Vista Subdivision of record in the office of County Clerk of Burnet County, Texas, until such time as said road shall be dedicated to the County of Burnet, Texas, and the County of Burnet, or the City of Burnet the proper governmental authority does undertake and assume responsibility for the maintenance of said roads. In addition the Association shall maintain any and all golf cart paths or hike and bike trails that may be created.

2. **Enforcement.** To enforce this Declaration either in its own name or in the name of any owner within the Subdivision. Provided however, this right of enforcement shall not serve to prevent such changes, releases or modifications or restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, contracts or plats in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the property owners, wherever and whenever such rights of assignment exist. The expenses and costs of any such proceedings shall, however, be paid out of the general fund of the Association as herein provided.

3. **Borrowing.** To borrow money by and through the Board of Directors, provided the borrowing of funds is approved and sanctioned by a two thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

A 4. **Expenditures.** The Association shall have the right to expend its funds for any of the above mentioned purposes and for such other purposes not herein specifically mentioned as said Association acting through its Board of Directors may deem advisable for the general welfare of the property owners in the Oak Vista Subdivision. This shall include the ownership of land and the operation of recreational facilities.

ARTICLE V.

COVENANT FOR MAINTENANCE ASSESSMENTS

1. **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each lot owned within the Properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: a) annual assessments or charges, and b) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.
2. **Uniform Rate.** The annual assessments shall be fixed at a uniform rate for all lots as determined by the Board of Directors, and shall be collected on an annual basis.
3. **Commencement and Due Date of Annual Assessments.** The annual assessment shall commence upon the determination of the Board of Directors that said funds are necessary for exercising the powers and duties conferred upon the association by Article IV hereof. The Board of Directors shall fix the amount of each such annual assessment against each lot at least thirty (30) days in advance of each assessment period. Written notice of the annual assessment shall be sent to every owner subject hereto by the Board of Directors.
4. **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any Subdivision road or easement to preclude the foreclosure of any property upon which said roads are situated provide that any such assessment shall have the assent of two thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.
5. **Notice and Quorum for any Action Authorized Under Article V.** Written notice of any meeting called for the purpose of taking any action authorized under Article V shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty-five percent (25%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting, being twelve and one half per cent (12.5%). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
6. **Non Payment of Assessments - Remedies of the Association.** Assessments shall be due and payable on a date established by the Board of Directors in any calendar year. If not paid within thirty (30) days of such due date, the assessment shall bear interest at the highest rate allowed by law, and the Association may bring an action at law against the owner personally obligated to pay the assessment, and the interest, costs, and reasonable attorney's fees of any such action shall be recoverable or otherwise added to the amount of such assessment and to foreclose the lien against each lot retained herein. Any Owner failing to pay the assessment shall forfeit all right to use the property owned by the Association until such assessment has been paid. The specific remedies referred to herein shall not preclude the Association from exercising any other remedies, which may legally exist, and such remedies shall be considered as cumulative.

7. **Purposes of Assessments.** Annual assessment and special assessments shall be assessed for the purpose of providing maintenance and capital improvements to the roads and easements within the subdivision providing access to each lot until such time as the County of Burnet, or City of Burnet, Texas, both accepts the dedication of such roads and agree to fully maintain them; for the further purpose of preventing any foreclosure of any Property upon which such roads are situated; enforcing these covenants, conditions, and restrictions; maintaining the Association; and exercising those powers and duties conferred upon the Association By Article IV above and this declaration. The Association may collect funds for this purpose by creating a sinking or contingency fund from annual assessments, or may secure said funds by special assessment, or through the combination thereof.

8. **Subordination of Assessment Liens:** The annual assessment lien and special assessment lien provided for herein shall be subordinated to and shall be secondary and inferior to all other prior or subsequent voluntary liens established on said property by means of a Deed Trust or Builder's and Mechanic's Lien Contract. The assessment liens shall not be subordinated to any tax liens, judgment liens or other similar non-voluntary liens.

9. **Subordination to the Veterans Land Board of the State of Texas:** The annual assessment and special assessment liens provided for herein shall not apply to land held by the Veterans Land Board of the State of Texas. The assessment shall be considered a personal obligation of the contract holder. When the Veterans Land Board no longer has any interest in the land, the annual assessment lien and special assessment liens provided for herein shall once again apply in full force and effect, including any past due assessments accrued under the name of the contract holder when such contract holder or his heirs or assigns acquire fee simple title to the property.

ARTICLE VI TEMPORARY MANAGEMENT BY DECLARANT

Prior to December 31, 2012, Declarant shall have the right, at its option, to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association in the same way and manner as though all of such powers and duties had been reserved to the Declarant alone.

ARTICLE VII PROPERTY RIGHTS

Every owner shall have an easement of use for himself, his successors and assigns, and their invitees, in, over, across and through Subdivision roads shown on the Subdivision Plat constructed by the Declarant for the purpose of providing vehicular and pedestrian ingress and egress to each lot. Declarant shall dedicate said roads to the public and said easement is granted until such time as the County of Burnet, or the City of Burnet, Texas, accepts such dedication.

Declarant or ACC may approve the change, abandonment, rerouting, widening, creation of any subdivision roads or easements. All such changes must be approved in writing and filed of record in the manner prescribed by law.

ARTICLE VIII USE RESTRICTIONS

1. **USE OF PROPERTY.** The use of the property shall be as follows:

a. All lots, except as provided in section b, of Article VIII below, shall be used for residential purposes only.

b. 178.686 acres, described in a deed from Oak Vista, Inc. to the City of Burnet in Volume 572, Page 740 of the Real Property Records of Burnet County, Texas, to which reference is here made for a full and complete description and being out of and a part of Lots number 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of Oaks Vista Subdivision as shown of record in Cabinet 1, Slide 183C of the Plat Records of Burnet County, Texas and as amended and additionally 11.64 acres out of and a part of Lots 6 and 7, of Oaks Vista Subdivision as shown of record in Cabinet 1, Slide 183C of the Plat Records of Burnet County, Texas and as amended and being more fully described in a deed to the City of Burnet in a Deed dated December 18, 2001, recorded in Volume 1032, Page 988 of the Official Public Record of Burnet County, Texas may be used for governmental purposes, but only as provided herein. In the event that the 178.686 acres and the 11.64 acres are owned by a governmental authority and used for governmental purposes then in such event none of the covenants, conditions and restrictions set out herein or the original declaration of covenants, conditions and restrictions as amended by the first amendment thereto shall apply to the 178.686 acres and the 11.64 acres during the time of such ownership and use. In the event that the 178.686 and the 11.64 acres are not owned by a governmental authority and used for governmental purposes then the 178.686 and the 11.64 acres shall be used for residential purposes only and all of the covenants, conditions, and restrictions set out herein shall apply to these lots.

A governmental authority shall be defined as the State of Texas or any agency or department of the State of Texas, the City of Burnet and Burnet County. A governmental authority shall not mean a Public Facility Corporation or any other corporation created to aid, assist or act on behalf of a governmental authority. If any part of the above property is deeded or transferred to a Public Facility Corporation or any other corporation created to aid, assist or act on behalf of a governmental authority, the covenants, conditions, and restrictions set out herein shall apply to such property and such property shall be used for residential purposes only.

Use for governmental purpose shall not include any use as a jail, prison, detention center or any facility for housing, detaining, holding, transporting, processing or prosecuting prisoners, inmates or detainees regardless of whether or not the property is owned by a governmental authority.

Notwithstanding any provision herein, including Article XII, Section 4 regarding existing structures and improvements, in the event any bond holder or trustee on behalf of any holders of bonds issued to finance improvements on any portion of the property shall foreclose on or be deeded any portion of the property or in anyway acquire a property interest in any part of the property described in this section, then the covenants, conditions, and restrictions set out herein shall apply to such property and the property shall be used for residential purposes only and any non-conforming uses shall immediately cease.

The 178.686 acres and the 11.64 acres not may be subdivided by replatting or divided by metes and bounds without written approval from the ACC and complying with all laws and regulations governing subdividing, replatting or dividing property.

2. **SQUARE FOOTAGE REQUIREMENT.** All single family dwellings shall contain a minimum of 1,600 square feet of floor space, exclusive of open porches, breezeways, carports and garages.

3. **APPROVAL OF PLANS.** All plans and specifications for all single family residences shall be approved by the architectural control committee prior to the starting of construction. No single family residences or other structure may be constructed without the approval of the ACC.

4. **COMPLETION.** All residences must be completely finished on the exterior in accordance with normal construction standards before being occupied. The exterior shall be finished within six (6) months of the start of construction. Small trailers may be permitted while the residence is being constructed, however construction of the entire residence must be completed within 18 months.

5. **LOCATION OF WELLS AND SEPTIC.** The ACC must approve in writing the location of any well or septic prior to the drilling of the well or construction of the septic system.

6. **LOTS ADJOINING GOLF COURSE AND AIRPORT.** Lots adjoining the Delaware Springs Golf Course when platted or replatted may have setbacks, easements and conditions shown on the plat different from other lots in the subdivision. Lots adjoining the Burnet City Airport of the Plat Records of Burnet County, Texas and may have the ability to house airplanes and enter the Burnet City Airport. Amended and/or additional restrictions may be filed by the Declarant concerning these lots after they are platted notwithstanding any limitations herein relating to amendments hereto. The Declarant or the ACC shall have the right to make all needed variances with respect to any such lots. Such variances shall be in writing.

7. **CONSTRUCTION OF RESIDENCES.** All residences shall be recognized standard construction with the exterior first floor walls of at least fifty (50%) per cent composed of stone, masonry or stucco. Hardy Plank, Hardy Siding, fiber-cement siding, cement fiber board and equivalent products will not qualify as stone, masonry or stucco, such products may be used in the construction of the residences, but not as a substitute for stone, masonry or stucco. In computing such percentage all gables, window and door openings shall be excluded from the total area of exterior walls.

All residences shall be finished with roofing material, paint, trim and other exterior treatments that blend with the existing housing in a tasteful manner, such finishing shall be approved by the ACC. The ACC judgment in this matter shall be final.

Any residences constructed prior to the date of this amendment are approved as constructed, however any additions to such existing residences must comply with this requirement.

8. **MANUFACTURED HOMES AND RELOCATED HOMES.** No manufactured home or relocated home may be placed on any lot. A manufactured home shall mean a home that is constructed on a remote location and moved, in whole or in major parts, to the lot. A relocated home is any structure constructed on a remote site and moved in whole or in major parts, to the lot and shall include older or previously occupied homes or buildings. The ACC shall have the sole authority to determine what is a manufactured home and what is a relocated home.

The ACC may determine that certain homes which are constructed in whole or in part at a remote site are in fact modular homes and may be approved by the ACC. Any such approval must be in writing and any such modular homes must comply with all other requirements of this Declaration.

In the event that any court shall enter an order that would have the effect of allowing a manufactured home or relocated home to be placed on any lot, prior to the placement of such home on a lot all other requirements of this Declaration must be complied with and the ACC has the power to make additional requirements that would make any such home resemble the other homes in the subdivision.

These addition requirements shall include, but not be limited to, additional stone or masonry, a roof with sufficient overhang, a type of exterior construction that would blend with the other houses in the Subdivision and other requirements the ACC may deem necessary to achieve the over all building plan in the subdivision. Failure to request and receive such guidelines and rulings from the ACC shall be a violation of this Declaration.

9. **SUBDIVISION OF LOTS.** No lot may be resubdivided without the written approval of the Declarant or the ACC. Such written approval must appear on any plat filed for record or be filed in the Real Property Records. All such resubdivided lots must provide for set back lines and easements as provided herein or on the plat of the subdivision. The Declarant or the ACC can grant variance to such set back lines and easements. All such resubdivisions must comply with all governmental rules and regulations applicable to the property.

10. **SET BACK LINES.** Building as used herein shall mean a primary residence, garage, out building, storage shed or other structure temporary or permanent. Variations from these requirements may be granted in individual cases where tract size or topography makes these requirements impractical, but any such variation must have the written approval of the Declarant or the ACC.

A) For the all lots located in replats in recorded in Cabinet 3, Slide 1A (except lots 141 and 145), Cabinet 3, Slide 73A-C and Cabinet 3, Slide 123B-D the following building set back lines will apply: No building shall be located nearer than 20 feet to a front lot line or to any side street lot line. No building shall be located nearer than 10 feet to any side or back lot line.

B) For lots 141 and 145 shown in a replat in Cabinet 4, Slide 42B the following building set back lines will apply: No building shall be located nearer than 50 feet to a front lot line or to any side street lot line. No building shall be located nearer than 25 feet to any side or back lot line. These set back lines are more restrictive than those show on the plat and will supercede those shown on the plat.

C) For lot 142A shown in a replat in Cabinet 4, Slide 42B the following building set back lines will apply: No building shall be located nearer than 20 feet to a front lot line or to any side street lot line. No building shall be located nearer than 10 feet to any side or back lot line.

D) For all other lots the following building set back lines will apply: No building shall be located nearer than 50 feet to a front lot line or to any side street lot line. No building shall be located nearer than 25 feet to any side or back lot line.

11. **EASEMENTS.** There is reserved an easement or right of way over a strip 15 feet in width along the front boundary line and 10 feet in width along the side and rear boundary lines for the purpose of installation or maintenance of utilities by private or public authority and for drainage.

12. **ACCESS.** Access to public streets or thoroughfares from all lots in the subdivision will be by way of or onto the roads or streets constructed within the Subdivision. No other easement or roads will be permitted unless approved in writing by the Declarant or the ACC. Roads and easements may be created and constructed which will connect the Subdivision with the Delaware Springs Golf Course, the subdivision generally known as Delaware Springs, property owned on this date by Susan and Glenn Morris, and property owned by Dan and Linda McBride.

13. **NUISANCE.** No noxious or offensive activities shall be carried on or upon any lot, nor shall anything be done thereon which may be or may become an annoyance to the neighborhood, violate any public law, or which is opposed to the purposes of these

restrictions. The lot and improvements shall not be used for any purpose which will create or emit any objectionable, offensive or noxious odors, dust, gas fumes or other materials or used for large public gatherings.

14. **TRASH, STORAGE, VEHICLE REPAIRS.** No trash, ashes, vegetation or other refuse may be thrown, placed, kept or dumped on any of the lots. Trash, garbage and other waste shall not be permitted except in sanitary containers. Properly constructed compost piles shall be allowed.

15. **ANIMALS.** No animal may be raised, boarded or bred for commercial purposes on any lot. 4-H and FFA projects shall not be considered commercial purposes. All domestic animals shall be contained within the boundaries of the owner's property or in the control of a responsible individual. No livestock or fowl shall be raised, kept or bred on any lot except that there may be one (1) animal unit for each acre in excess of two (2) acres, with a fraction of an acre to be considered as a full acre. (E.g., on 2.8 acres no animal unit allowed; on 2.5 acres one (1) animal unit allowed; on 3.2 acres two (2) animal units allowed.) For the purpose hereof, one (1) animal unit shall mean either one (1) horse, one (1) cow (with calf), or three (3) sheep or goats, three (3) fowl, but no swine. If the Declarant or the ACC receives two (2) or more complaints about an animal the Declarant or the ACC may declare the animal a nuisance and the owner shall remove the animal from the property. Excessive numbers of domestic animals may constitute a nuisance.

16. **SEWAGE DISPOSAL.** All residences shall be equipped with approved sanitary plumbing fixtures and shall be connected to an approved septic system or central sewage system. Approval shall be from the proper governmental authority.

17. **PARKING.** No truck, bus, trailer, automobile, recreational vehicle shall be left parked in the street in front of any lot except for construction and repair equipment while a residence is being built or repaired.

18. **VEHICLES AND ABANDONED VEHICLES.** Abandoned vehicles or equipment shall not be kept on any lot. Vehicles or equipment shall be deemed abandoned if it is not in a condition to be driven by its own power with normal accessories and stays in such condition for 30 days or more. This restriction shall not apply to vehicles or equipment stored inside a fully enclosed garage or building.

19. **REPAIR OF VEHICLES.** No auto repair work, which requires more than one (1) day to complete, will be allowed on any lot. This restriction shall not apply to repair work inside a fully enclosed garage or building.

20. **SIGNS.** No signs shall be displayed on any lot without the written approval of the Declarant or the ACC. Notwithstanding the foregoing owners may place a sign not to exceed 2 square feet in size displaying their name.

21. **OIL AND MINING OPERATION.** No drilling, development, refining, quarrying, mining or prospecting operations for any minerals or other matter shall be conducted on any lot. This shall not apply to the removal of topsoil and gravel on lot 13 & 36.

22. **USE AS DWELLING.** No truck, trailer, trailer house, mobile home, boat, motor home, camper, tent, shack or garage shall ever be used as a dwelling, either temporary or permanent. The ACC may grant the right for very short term use of use of a motorhome or trailer.

23. **GOOD REPAIR.** All residences and other buildings must be in a good state of repair and must be painted or repaired when necessary to preserve the attractiveness thereof.

24. **DRIVEWAYS.** No owner may block any drainage ditch, including road ditches. When necessary for drainage a drain will be installed all driveways where they connect to any subdivision road.

25. **MODEL HOMES.** The Declarant or the ACC shall have authority to approve the use of a lot for a model home and approve any restrictions on such use to include, but not limited to, hours open, signs, parking and length of time such house may be used as a model home.

26. **USE OF CERTAIN EASEMENTS.** In the event that easements are created for golf carts or for hike and bike trails, no motorcycles, motorized all terrain vehicles, motorized three wheel vehicles, dirt bikes, motorized off road vehicles or any vehicles with a loud exhaust or engines shall be allowed on such easements. Golf carts, both electrical and gasoline powered, shall be permitted. Gasoline powered carts shall not create a loud noise. The Declarant or the ACC shall have the power to pass additional rules and regulations for the use of such easements. The word "bike" in "hike and bike" shall mean a bicycle that is not motorized.

27. **CONSTRUCTION.** All construction sites shall be kept in an orderly and neat condition. All material and trash which might be blown by the wind shall be kept in a secured container or condition. The contractor may maintain such facilities as may be reasonably necessary and convenient for such construction including but not limited to offices, storage areas, equipment and other items generally associated with normal construction. The ACC shall have the right to require a contractor to clean up his building site and be the sole judge if such building activities meet the standards set out herein.

28. **HAZARDOUS MATERIALS AND ENVIRONMENTAL HAZARDS.** The lot and improvements thereon shall not be used for any purpose that is in violation of any environmental law.

29. **FIREARMS AND HUNTING.** No hunting shall be allowed within the subdivision. No discharge of firearms shall be allowed within the subdivision, except for self-defense or shooting of snakes and varmints in an area with no firing lines to other dwellings or with a shotgun.

30. **RULES AND REGULATIONS BY ACC.** The Declarant and the ACC shall have the authority to make additional rules and regulations where allowed herein and to additionally make rules and regulations to clarify the provisions hereof.

ARTICLE DL SEVERABILITY

Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way effect any other provision, and all other provisions shall remain in full force and effect.

ARTICLE X. DURATION AND AMENDMENT

The covenants, conditions and restrictions provided for in this Declaration shall run with and bind the property and shall inure to the benefit of and be enforceable by the Declarant, the owner of any lot subject to these Declarations, their heirs and successors and assigns, the ACC, or the Association, for a term of twenty (20) years from the date the Original Declaration is recorded, (the original Declaration not this amended Declaration) after which time the same shall be automatically extended for successive periods of ten (10) years. Except as herein above expressly provided, the provisions hereof may be amended during the

first twenty (20) year period only by an instrument signed by not less than seventy five percent (75%) of the lot owners and thereafter by an instrument signed by not less than sixty percent (60%) of the lot owners. Any amendment must be properly recorded in County Clerk's Office of Burnet County, Texas. Notwithstanding the foregoing, Declarant reserves the right to amend this Declaration any time prior to the time it has conveyed fifty percent (50%) of the lots in said subdivision, resubdivided lots shall be included in the count of total lots. Large tracts and unsubdivided acreage still in the name of the Declarant shall be counted on the basis of one (1) acre being counted as one lot.

ARTICLE XI

ARCHITECTURAL CONTROL COMMITTEE

1. **CREATION OF ACC.** There is hereby created an Architectural Control Committee, herein called the ACC. The ACC shall consist of three members who shall be appointed by the Declarant who shall serve until December 31, 2012 ("initial term"). In the event that a vacancy occurs during the initial term, the Declarant or its successors and assigned shall appoint a new member to serve during the unexpired part of the initial term. If the Declarant fails to make such appointment within 30 days the remaining members of the ACC may make the appointment.

2. **ELECTION OF MEMBERS OF ACC.** Prior to the end of the initial term or immediately (within 120 days) after the end of the initial term, the ACC shall request the Association to hold an election wherein each Owner may cast votes as provide in Article III. The Declarant shall be considered an Owner for voting purposes in ACC elections and may cast votes as calculated in Article III. The Association shall notify all Owners either by regular mail, postpaid, or publication of the time and place of the election, at least 14 days before the date of the election. If by publication, such notice shall be published twice in a local newspaper having general circulation in the City of Burnet with the first notice being published at least 14 days before the date of election. Should the Association not act within 90 days to hold such election or if no Association exists or is operating, the ACC shall call and conduct the election. In the event that neither the ACC or Association act, the Declarant or ten (10%) per cent of the Owners may call and conduct the election.

At the meeting for election, fifty per cent (50%) of the Owners shall constitute a quorum. Owners may vote by proxy and such proxies will be counted to establish a quorum. Cumulative voting will not be permitted. The Owners shall elect three (3) members to the ACC who shall each serve two (2) year terms. Members of the ACC whose terms have expired shall serve until their successors are elected.

3. **VACANCY.** If an elected member resigns or ceases to serve on the ACC, the directors of the Association shall appoint a replacement member to the ACC or if no Association exist, or if the directors of the Association fail or refuse to make such appointment within 30 days of being notified of the vacancy the remaining members of the ACC may make such appointment.

4. **BIENNIAL ELECTION.** The Association or the ACC if the Association does not exist or is not operational shall call for a biennial election for members of the ACC in the same manner as set out in Section 2. above, during the first quarter of each even numbered years.

5. **TERM OF OFFICE.** The term of office of the first elected members of the ACC shall begin on April 1, 2007, and expire March 31, 2009. Terms of subsequent members shall be for 2 years, beginning on April 1 of each even year (0 being an even year).

4. **RECALL.** Upon the receipt of a petition containing the names of fifty per cent (50%) of the owners an election will be called as provided in section 4 above for the recall of the member or members of the ACC named in the petition. Such names on the recall petition must be obtained within a 90 day period. The election for new members if such recall election is successful shall be held at the same meeting immediately following the recall election. No recall election may be had until after the year 2009.

ARTICLE XII

ARCHITECTURAL CONTROL

1. **APPROVAL BY ACC.** No building, garage, barn shed, storage house, wall, fence, driveway, sidewalk, parking area, animal stall and facilities, or other improvements shall be erected, placed on any lot nor shall any major exterior addition change to or alteration thereof be made until the plans and specifications therefor and a plat showing the location thereof in relation to property lines, building lines, easements, and surrounding structures shall have been approved by a majority of the ACC. All applications to the ACC and all actions of the ACC shall be in writing and copies of its action shall be retained in its office.

In making decisions the ACC shall take into consideration the following:

- a. The effect that the improvement or alteration requested may have upon the view of the natural terrain and scenery from surrounding structures;
- b. The effect of the improvements or alterations may have on trees and the environment;
- c. That all improvements and alterations harmonize with the surrounding structures existing at the time of application or approved from construction); and
- d. That all improvements and alterations comply with the terms and conditions contained elsewhere in this instruments and amendments thereto.

2. **DEVIATIONS.** Except for, Section 1 of Article VIII, the ACC may approve deviations from this Declaration for unusual conditions that would not, in their sole opinion, detract from the overall intent of these Restrictions. Any deviations shall require the approval of all members of the ACC then serving and the ACC shall have the final authority as to such deviations and their findings and decisions shall be final and conclusive.

3. **FEEs.** The ACC may establish a fee schedule to help defray cost of its operation.

4. **EXISTING STRUCTURES AND IMPROVEMENTS.** All existing structures and improvements shall be deemed to have been approved by the ACC, provided such structures and improvements were in compliance with all the terms and conditions of the Declaration in existence at the time of construction.

All other terms, conditions, and provisions of said Declaration are hereby ratified and affirmed and carried forward as of the effective date of said Declaration.

IN WITNESS WHEREOF, Oak Vista, Inc., the Declarant herein, and joined by the undersigned property owners has herein caused this instrument to be executed effective the 21st day of December, 2007.

Big Leaf, Ltd., a Texas Limited Partnership

By: Billy Joe Fox
Billy Joe Fox, President
Little Leaf, Inc., General
Partner

STATE OF TEXAS

COUNTY OF BURNET

This instrument was acknowledged before me on the 21st day of December, 2007, by BILLY JOE FOX, President of Little Leaf, Inc., General Partner of Big Leaf, Ltd., on behalf of said corporation and in such capacity.

(seal)



Mikki Joy
Notary Public State of Texas

