

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Planning & Inspections Department
AGENDA DATE: Introduction 1/13/15; Public Hearing 1/20/15
CONTACT PERSON/PHONE: Nelson Ortiz, 212-1606
DISTRICT(S) AFFECTED: East ETJ, Adjacent to District 5

SUBJECT:

An ordinance annexing the following real property described as Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys and a portion of Zaragoza Road (F.M. 659), El Paso County, Texas. Subject Property: West of Zaragoza at Pebble Hills; Property Owners: Tomly Corporation, Inc.

SUAX13-00002 (Adjacent to District 5)

BACKGROUND / DISCUSSION:

See attached report.

PRIOR COUNCIL ACTION:

On June 26, 2012, City Council approved the construction of the Pebble Hills Boulevard extension as part of the Street Infrastructure Capital Plan. City Council awarded the design contract for the Pebble Hills Boulevard extension to Moreno Cardenas, Inc. (MCi) on August 13, 2013. The Annexation Agreement was approved on November 18, 2014.

AMOUNT AND SOURCE OF FUNDING:

FY 2013 – 2019 Certificates of Obligation Street Infrastructure

BOARD / COMMISSION ACTION:

City Plan Commission (CPC) – Recommended approval on December 18, 2014

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: Mathew McElroy, Director
Planning & Inspections Department



APPROVED FOR AGENDA:

CITY MANAGER: _____ DATE: _____

ORDINANCE NO. _____

AN ORDINANCE ANNEXING THE FOLLOWING REAL PROPERTY DESCRIBED AS TRACT 1C, SECTION 39, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS AND A PORTION OF ZARAGOZA ROAD (F.M. 659), EL PASO COUNTY, TEXAS.

WHEREAS, Tomly Corporation owner of record of approximately 5.0078 acres and the County of El Paso, owner of approximately .4247 acres of county road, lying in the City of El Paso's East Extraterritorial Jurisdiction; the property more fully described in the attached metes and bounds description, identified as Exhibit "A", and survey of the property, identified as Exhibit "B" and made a part hereof by reference. Tomly Corporation and the City of El Paso request that this area be annexed into the El Paso City Limits; and,

WHEREAS, the attached Service Plan, identified as Exhibit "C", identifies the municipal services to be extended to this annexed area and adopted as part of this ordinance; and,

WHEREAS, the City of El Paso and the Tomly Corporation have entered into an Annexation Agreement on November 18, 2014, attached as Exhibit "D", which governs the development of the property after the annexation; and,

WHEREAS, public hearings were held on December 15, 2014 and December 18, 2014 at which persons interested in the annexation were given the opportunity to be heard; and that no person voiced opposition to the annexation or Service Plan described as Exhibit "C"; and,

WHEREAS, the City Plan Commission reviewed and recommended approval of the Annexation and Service Plan at their public hearing meeting held on December 18, 2014; and,

WHEREAS, the City Council of the City of El Paso finds that approval of this Annexation is in the best interest, health, safety and welfare of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the boundaries of the CITY OF EL PASO are hereby extended to include Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys and a portion of Zaragoza Road (F.M. 659), El Paso County, Texas, more particularly described in Exhibit "A" and Exhibit "B".

Further, that the City of El Paso adopts the Service Plan described as Exhibit "C"; and that the annexation is subject to all terms and conditions of the Annexation Agreement, entered into on November 18, 2014, attached hereto as Exhibit "D."

PASSED AND APPROVED this _____ day of _____, 2015.

(SIGNATURES ON THE FOLLOWING PAGE)

ORDINANCE NO. _____

SUAX13-00002

Doc#364716

PL#13-1007-922/SUAX13-00002/Annexation Pebble Hills Extension – Tomly Corp

KMN


THE CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew S. McElroy, Director
Planning and Inspections Department

ORDINANCE NO. _____

SUAX13-00002

Doc#364716
PL#13-1007-922/SUAX13-00002/Annexation Pebble Hills Extension – Tomly Corp
KMN

Exhibit "A"

Prepared For: The City of El Paso
December 9, 2013
(Pebble Hills Extension)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas and a portion of Zaragoza Road (U.S. 659) being more particularly described by metes and bounds as follows:

Commencing for reference at an existing brass disk city monument at the centerline intersection of Pebble Hills Blvd. and Tierra Mina Dr. from which an existing brass disk city monument at the centerline intersection of Tierra Mina Dr. and Tierra Galvez Ct. bears North 00°32'46" West a distance of 501.26 feet; Thence along the centerline of Pebble Hills Blvd., South 89°56'52" East a distance of 489.43 feet to a point of curve; Thence leaving said centerline, North 84°34'40" East a distance of 104.75 feet a found ½" rebar with cap marked TX 5152 on the common line of tract 1C and 1D, Section 39, Block 79, Township 2, Texas and Pacific Railway company Surveys For The "TRUE POINT OF BEGINNING";

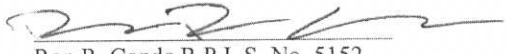
Thence along said common line, North 89°57'01" East a distance of 869.39 feet to a point on the centerline of Zaragoza road;

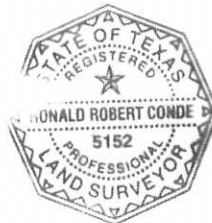
Thence along said centerline, South 42°34'01" West a distance of 370.00 feet to a point on the common line of Tract 1C, Section 39, Block 79, Township 2, and Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said common line, South 89°57'17" West a distance of 868.96 feet to a set ½" rebar with cap marked TX 5152 on the easterly line of Tierra Del Este Unit Twenty Seven recorded in Volume 79, Page 105, Plat records of El Paso County, Texas;

Thence along said line, North 42°31'33" East a distance of 369.66 feet to the "TRUE POINT OF BEGINNING" and containing 5.4325 acres of land more or less.

Note: Bearings based on centerline monuments on Pebble Hills Blvd. and Tierra Mina Dr. per Plat of Tierra Del Este Unit Twenty Seven recorded in Volume 79, Page 105, Plat records of El County, Texas


Ron R. Conde R.P.L.S. No. 5152
Job no: 613-61



ORDINANCE NO. _____

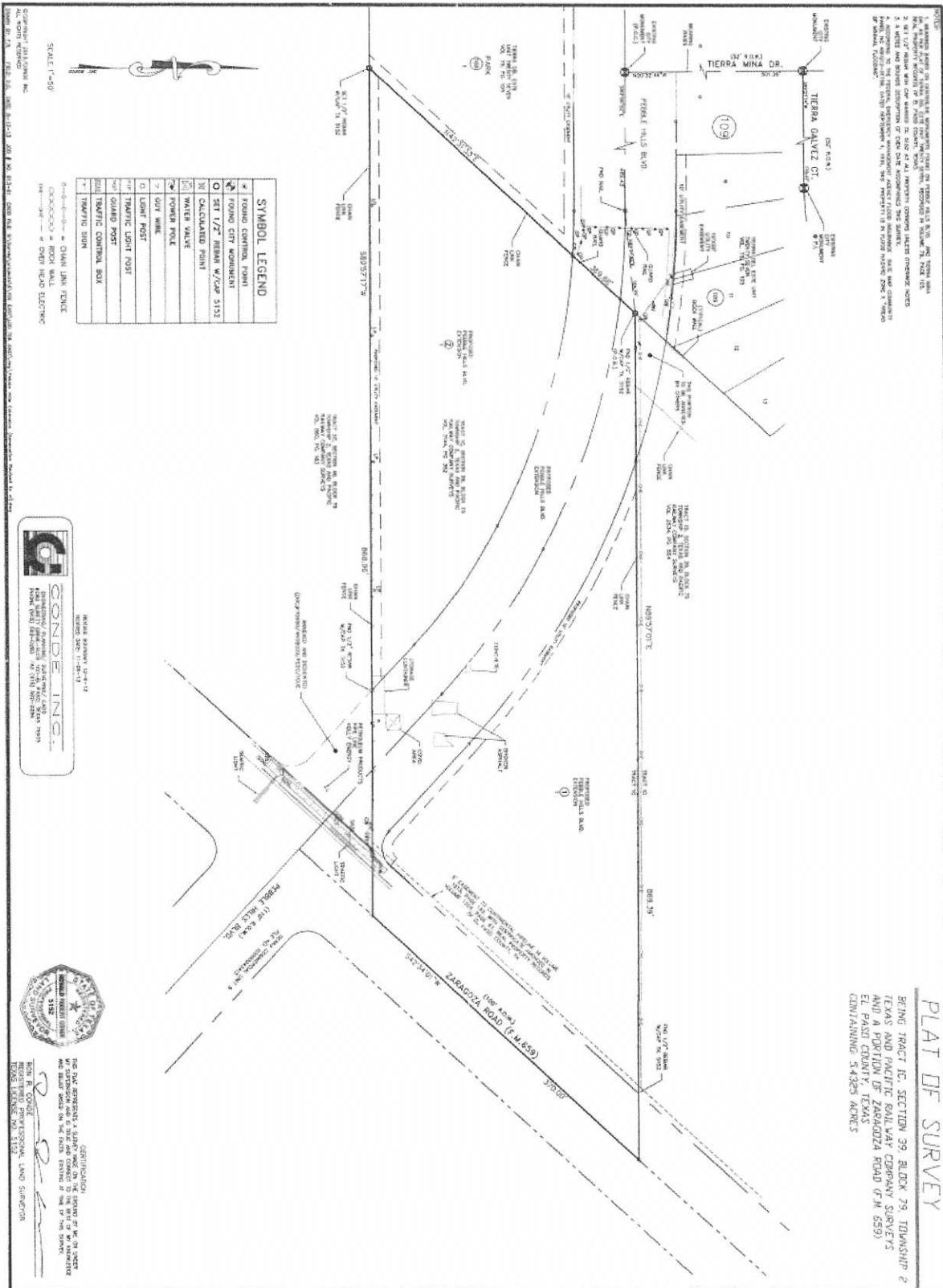
SUAX13-00002

Doc#364716

PL#13-1007-922/SUAX13-00002/Annexation Pebble Hills Extension – Tomly Corp

KMN

Exhibit "B"



ORDINANCE NO. _____

SUAX13-00002

Doc#364716

PL#13-1007-922/SUAX13-00002/Annexation Pebble Hills Extension – Tomly Corp

KMN

EXHIBIT "C"

CITY OF EL PASO ANNEXATION SERVICE PLAN

INTRODUCTION

This Service Plan (Plan) is made by the City of El Paso, Texas (City) pursuant to Chapter 43 Municipal Annexation of the Texas Local Government Code. This Plan is made specifically for a 5.4325-acres of property located in the City's East Extraterritorial Jurisdiction (ETJ), being Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys and a portion of Zaragoza Road (F.M. 659), El Paso County, Texas. The area is more specifically described by metes and bounds in Exhibit "A" and the survey Exhibit "B", which are attached to the annexation ordinance of which this Plan is a part.

EFFECTIVE TERM

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council, which refers to this Plan and specifically renews this Plan for a stated period of time.

INTENT

It is the intent of the City of El Paso that services under this Plan shall provide full municipal services in accordance with State law and the Annexation Agreement entered into by the property owners and the City, such agreement being identified as Exhibit "E" and is attached to the annexation ordinance.

The City reserves the right guaranteed to it by Section 43.056(k) Texas Local Government Code, to amend this Plan if the City Council determines that changed conditions or subsequent occurrence or any other legally sufficient circumstances exist under the Local Government Code, or other Texas laws to make this Plan unworkable or obsolete or unlawful.

SERVICE COMPONENTS

This Plan includes three service components: (1) Immediate Services Program, (2) Additional Services, and (3) a Capital Improvement Program.

As used in this Plan, providing services includes having services provided by any method or means by which the City extends municipal services to any other area of the City. This may include causing or allowing private utilities; governmental entities and other public service organizations to provide such services by contract, in whole or in part. It may also include separate agreements with associations or similar entities.

1. Immediate Services Program

The following services will be provided in the annexation area immediately upon the effective date of the annexation, unless otherwise noted.

- a. Police Protection. The El Paso Police Department will provide protection and law enforcement services in the annexation area on the effective date of annexation. These services include:

- normal patrols and responses;
 - handling of complaints and incident reports;
 - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.
- b. Fire Protection. The El Paso Fire Department will provide emergency medical services and fire protection services in the annexation area, on the effective date of annexation. These services include:
- fire suppression and rescue;
 - emergency medical services;
 - hazardous materials mitigation and regulation;
 - emergency prevention and public education efforts;
 - construction plan review;
 - inspections.
- c. Solid Waste Collection. No solid waste collection services will be available within the annexation area except for the following:
- dead animal collection - dead animals are removed from roadways upon request.
- d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility and as governed by their Rules and Regulations. The subject property is not located within the City of El Paso Impact Fee area.
- e. Maintenance of Roads and Streets, Including Street Lighting. The City of El Paso will maintain public streets over which the City has jurisdiction. These services include:
- emergency pavement repair;
 - ice and snow monitoring of major thoroughfares
 - maintenance of public streets on as-needed basis and in accordance with established policies of the City.
- f. Maintenance of Parks, Playgrounds, and Swimming Pools. No public recreation facilities will be located within the annexation area however, the nearest public neighborhood park is located within 2,359 feet of the annexed area.

2. **Additional Services**

Certain services, in addition to the above services, will be provided within the annexation area. They are as follows:

- a. Drainage Services. El Paso Water Utilities/ Public Service Board will provide drainage maintenance in the annexation area in accordance with established policies of the City. Services include:
- maintenance of existing public ponding areas and retention dams;
 - storm sewer maintenance;
 - emergency spills and pollution complaints response related to storm drainage systems;

The following services will be provided by the City Development's Land Development Division:

- watershed development review and inspection;
 - flood plain office (information relating to flood plains).
- b. Public Library Department. No library facilities will be located within the annexation area however, the nearest public library is located 2,359 feet from the annexed area.
- c. Inspection Services. The City of El Paso will provide inspection services including building, electrical, plumbing, gas, engineering, housing and environmental. These inspections services will be provided as necessary to the annexation area.
- d. Department of Public Health. All of the Public Health services codes and regulations will be extended to the annexed area on the effective date of annexation
- e. Planning and Zoning. All land annexed shall be classified in the R-F zoning district, unless the applicant submits a rezoning application which will be subject to a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council.
- f. Other Services. The City will provide all other services not specifically listed above, in the annexed area according to established City policies and procedures.

3. Capital Improvements Program

The City will initiate the construction of capital improvements necessary for providing municipal services for the annexation area as necessary. Any such construction or acquisition shall begin within two and a half (2 ½) years of the effective date of the annexation and shall be substantially completed within four and half (4 ½) years after that date. Construction of any capital improvement within the annexation area will be done in accordance with the established policies of the City.

- a. Police Protection. No capital improvements are necessary to serve the annexed area.
- b. Fire Protection. No capital improvements are necessary to serve the annexed area.
- c. Solid Waste Collection. No capital improvements are necessary to serve the annexed area.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the El Paso Water Utility's Rules and Regulations. Capital improvements will be initiated pursuant to the facilities plan for the annexed area. Water and Wastewater services to new subdivisions will be provided according to the standard policies and procedures of the El Paso Water Utilities, which may require the developer of a new subdivision to install water and wastewater utility lines. The extension of water and sewer service will be provided in accordance with the adopted Rules and Regulations of the El Paso Water Utilities.

- e. Roads and Streets. Road or street related capital improvements will be built once the annexation is finalized. In general, the City will acquire control and jurisdiction of all public roads and public streets within the annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.
- f. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary to serve the annexed area.
- g. Drainage Facilities. No capital improvements are necessary to serve the annexed area
- h. Street Lighting. The developer will install public street lighting in accordance with the City's standard policies and procedures.
- i. Other Publicly Owned Facilities, Building or Services: In general, other City functions and services, and the additional services described above can be provided for the annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide City services.
- j. Capital Improvement Planning. The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services in accordance with established policies of the City.

AMENDMENT: GOVERNING LAW

This Plan may not be amended or repealed except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes. This Plan is subject to and shall be interpreted in accordance with the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and the orders, rules regulations of governmental bodies and officers having jurisdiction.

FORCE MAJEURE

In case of an emergency, such as force majeure as that term is defined in this Plan, in which the City is forced to temporarily divert its personnel and resources away from the annexation area for humanitarian purposes or protection of the general public, the City obligates itself to take all reasonable measures to restore services to the annexation area of the level described in this Plan as soon as possible. Force Majeure shall include, but not be limited to, acts of God, acts of the public enemy, war, blockages, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrest and restraint of government, explosions, collisions, and other inability of the City, whether similar to those enumerated or otherwise, which is not within the control of the City. Unavailability or shortage of funds shall not constitute Force Majeure.

the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and the Rules and Regulations of the El Paso Water Utilities/Public Service Board, and Owner agrees to comply with the additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

1. Prior to the issuance of any building permits, a detailed site development plan for any commercial developments shall be reviewed and approved as per the El Paso City Code in effect on the date of this Agreement.
2. No off premise signs shall exist on the Property at the time of annexation.
3. Project trees required as part of Title 18 landscaping requirements shall be placed as a visual screen within a 10 foot landscape buffer along any areas abutting residential uses and parks. The buffer and landscape material shall be credited towards the landscape requirement in Title 18.
4. Owner understands that a Traffic Impact Analysis (TIA) may be required by Title 19 at the time of platting. Owner agrees to be responsible for contributing to the cost of traffic mitigation ("Improvements") if the TIA indicates are necessary, attributable and proportional (the Owner's proportionate share) to the development of the Property.

Three: Upon annexation, the City shall acquire a portion of the property for the future Pebble Hills extension, as shown in Exhibit C. Within 90 days of passage of the ordinance annexing Property, Owner and City shall jointly apply to subdivide the property in accordance with the procedures of Title 19 (Subdivisions) of the Code in effect at the time this Annexation Agreement is approved by City Council. The City shall dedicate as ROW the property it acquires from Owner for the Pebble Hills extension. City shall be solely responsible for the design and construction of the future Pebble Hills extension. Owner shall be permitted future access to Pebble Hills through this property.

Four: EPWU, at their cost, has agreed to extend a 24-inch diameter water main from the western limits of the owner's property to connect to an existing water main located at the Pebble Hills/Zaragoza intersection, east of Zaragoza Road.

Included is a 16-inch diameter water main stub-out to the north parallel to Zaragoza within a 20 feet wide easement, this will provide a water connection for a future water main extension for future developments. The easement shall extend along the entire frontage of the property parallel to Zaragoza Road, adjacent to the Holly easement. The EPWU will also construct or pay to construct an 8-inch diameter water main stub-out to the south parallel to Zaragoza Road to provide a water connection for a future water main extension for future developments to the south. Also included are two 6-inch service stub-outs to address water service connections for the proposed Lots 1 and 2 of the proposed plat.

EPWU, at their cost, will extend an 8-inch diameter sanitary sewer main from the western limits of the owner's property to approximately 300 feet east. Wastewater service to Lots 1 and 2 of the proposed plat will be available from two 6-inch diameter service stub-outs, and will also provide an 8-inch diameter stub-out to the north at the western limits of the project to provide a connection for a future sanitary sewer main extension for future development.

Both water and sanitary sewer main extensions will be the future developer's responsibility and will require coordination with EPWU.

Owner understands and agrees that Owner will be responsible for paying any other fees required by the Public Service Board's Rules and Regulations as well as payment of water and wastewater annexation fees to the El Paso Water Utilities-Public Service Board for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system as follows and associated wastewater service connection:

<u>Meter Size</u>	(in Dollars) <u>Water</u>	(in Dollars) <u>Wastewater</u>
Less than 1"	939.00	166.00
1"	2,349.00	416.00
1 1/2"	4,697.00	832.00
2"	7,515.00	1,331.00
3"	15,029.00	2,662.00
4"	23,483.00	4,160.00
6"	46,966.00	8,319.00
8"	87,357.00	15,474.00
10"	124,929.00	22,129.00

Based on gallons per minute water flow; EPWU-PSB Rules & Regulations No.1, Sec.7(J)

The water and wastewater annexation fee shall be increased by three (3) percent on **December 1, 2014** and each year thereafter, compounded annually.

Payment of the water and wastewater annexation fee shall be due at the time of application for service. New/additional water and/or wastewater connections shall pay the appropriate annexation fees. Existing water and wastewater connections are not subject to these fees. The annexation fee set forth herein shall not be increased in relation to the Property nor shall the Owner be responsible for payment of impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

Five: Owner shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property at the time of annexation to the City. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property at the time of annexation, shall be provided by the Owner within thirty (30) days from passage of the ordinance annexing Property to the City. The aerial and other evidence shall be submitted to the Zoning Administrator in the City Development Department of the City for validation of such non-conforming lot, use, or structure within the Property.

Owner acknowledges that pursuant to City Regulations, upon the annexation of the Property, the Property shall be classified to R-F (Ranch-Farm) for zoning purposes. Owner has submitted an

application for rezoning of the property from the default R-F (Ranch-Farm) to a C-3 commercial zoning classification suitable for future development.

City agrees to process the zoning application in conjunction with the annexation hearing process. The public hearings by the City Plan Commission and the City Council on the annexation and the rezoning for the Property shall be held at the same hearings.

The City reserves the right to place the following conditions on the property which are necessitated by and attributable to the increase in use generated by the change in zoning in order to protect the health, safety, and welfare of the abutting property owners and the residents of the City.

1. Prior to the issuance of any building permits, a detailed site development plan for any commercial developments shall be reviewed and approved as per the El Paso City Code in effect on the date of this Agreement.
2. No off premise signs shall exist on the Property at the time of annexation.
3. Project trees required as part of Title 18 landscaping requirements shall be placed as a visual screen within a 10 foot landscape buffer along any areas abutting residential uses and parks. The buffer and landscape material shall be credited towards the landscape requirement in Title 18.

Six: The City hereby agrees to pay all annexation recording fees.

Notice: Any formal notice or other communication ("Notice") required to be given by one party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person, (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, (iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery," or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. For the purpose of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

- (1) CITY: City of El Paso
Attn: City Manager
300 N. Campbell
El Paso, Texas 79901

Copy to: City Clerk
Same Address as above

- (2) OWNER: Tomly Corporation
306 E. Paisano
El Paso, TX 79901

Copy to: Conrad Conde

Conde, Inc.
6080 Surety Dr., Ste. 100
El Paso, TX 79905

Copy to: Jorge Molinar
jorgelopez@lopezsaroldi.com
915-838-3900

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Party. If any date or any period provided in this agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Successors and Assigns: This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and inure to the benefit of the parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land-use regulations that may apply to a specific lot.

Remedies: This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained. In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty- (30-) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

Force Majeure: In the event that any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes,

hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

Severability: If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised here from, and the invalidity thereof shall not affect any of the other provisions contained herein, provided that any invalid provisions are not deemed by the City or the Owner to be material to the overall purpose and operation of this Agreement. If the City or Owner determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to disannex the Property. If the Owner has made such determination, the Owner shall have the option to terminate this Agreement. Such judgment or decree shall relieve the City and the Owner from performance under such invalid provision of this Agreement.

Entire Agreement: This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties.

Governing Law, Jurisdiction & Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

No Third-Party Beneficiary: This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.

Waiver: Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Reservation of Rights: to the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

Further Documents: Each Party agrees that at any time after execution of this Agreement, it will upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effect the terms of this Agreement.

Incorporation of Exhibits and Other Documents by Reference: All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Effect of State and Federal Laws: Notwithstanding any other provisions of this Agreement, each Party in carrying out the terms of this Agreement shall comply with all applicable State and Federal laws.

Headings: The headings as to contents of particular articles or sections herein are inserted only for convenience, and they are in no way to be construed as a limitation on the scope of the particular articles or sections to which they refer.

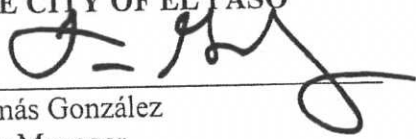
Ambiguities: In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

Counterparts: It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

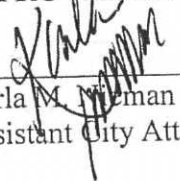
Authority for Execution: Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.

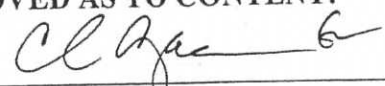
THE CITY OF EL PASO


Tomás González
City Manager

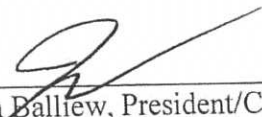
APPROVED AS TO FORM:


Karla M. Nieman
Assistant City Attorney

APPROVED AS TO CONTENT:


Mathew S. McElroy, Director
City Development Department

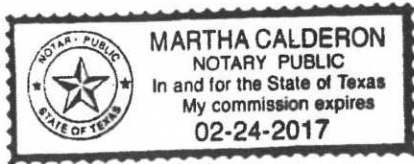
APPROVED AS TO CONTENT:


John Balliew, President/CEO
El Paso Water Utilities Public Service Board

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 19th day of November 2014, by
Tomás González, as City Manager of the City of El Paso, Texas



Martha Calderon
Notary Public, State of Texas

Martha Calderon
Notary's Printed or Typed Name

02-24-2017

My Commission Expires:

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2014.

Owner(s): Tomly Corporation

By: _____

Title: PRESIDENT

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 17 day of Nov 2014, by
Horacio Menas President of Tomly Corporation.

Margaret A. Bagby
Notary Public, State of Texas

Margaret A. Bagby
Notary's Printed or Typed Name

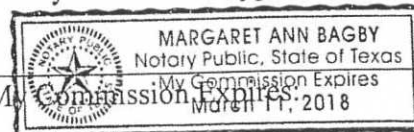


Exhibit A Metes and Bounds Description

Prepared For: The City of El Paso
December 9, 2013
(Pebble Hills Extension)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas and a portion of Zaragoza Road (U.S. 659) being more particularly described by metes and bounds as follows:

Commencing for reference at an existing brass disk city monument at the centerline intersection of Pebble Hills Blvd. and Tierra Mina Dr. from which an existing brass disk city monument at the centerline intersection of Tierra Mina Dr. and Tierra Galvez Ct. bears North 00°32'46" West a distance of 501.26 feet; Thence along the centerline of Pebble Hills Blvd., South 89°56'52" East a distance of 489.43 feet to a point of curve; Thence leaving said centerline, North 84°34'40" East a distance of 104.75 feet a found ½" rebar with cap marked TX 5152 on the common line of tract 1C and 1D, Section 39, Block 79, Township 2, Texas and Pacific Railway company Surveys For The "TRUE POINT OF BEGINNING";

Thence along said common line, North 89°57'01" East a distance of 869.39 feet to a point on the centerline of Zaragoza road;

Thence along said centerline, South 42°34'01" West a distance of 370.00 feet to a point on the common line of Tract 1C, Section 39, Block 79, Township 2, and Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said common line, South 89°57'17" West a distance of 868.96 feet to a set ½" rebar with cap marked TX 5152 on the easterly line of Tierra Del Este Unit Twenty Seven recorded in Volume 79, Page 105, Plat records of El Paso County, Texas;

Thence along said line, North 42°31'33" East a distance of 369.66 feet to the "TRUE POINT OF BEGINNING" and containing 5.4325 acres of land more or less.

Note: Bearings based on centerline monuments on Pebble Hills Blvd. and Tierra Mina Dr. per Plat of Tierra Del Este Unit Twenty Seven recorded in Volume 79, Page 105, Plat records of El County, Texas



Ron R. Conde R.P.L.S. No. 5152
Job no: 613-61



Exhibit B Survey Map

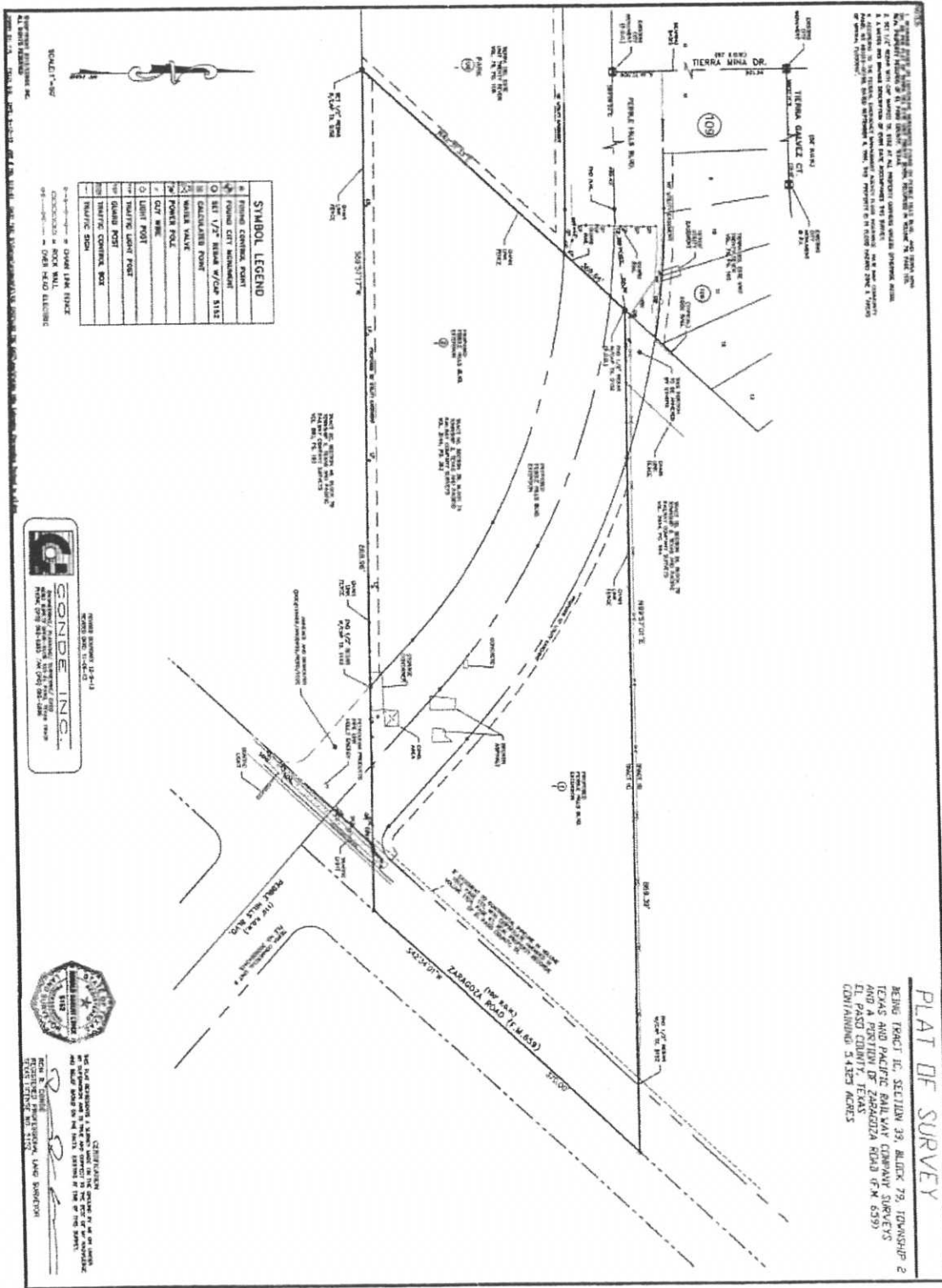
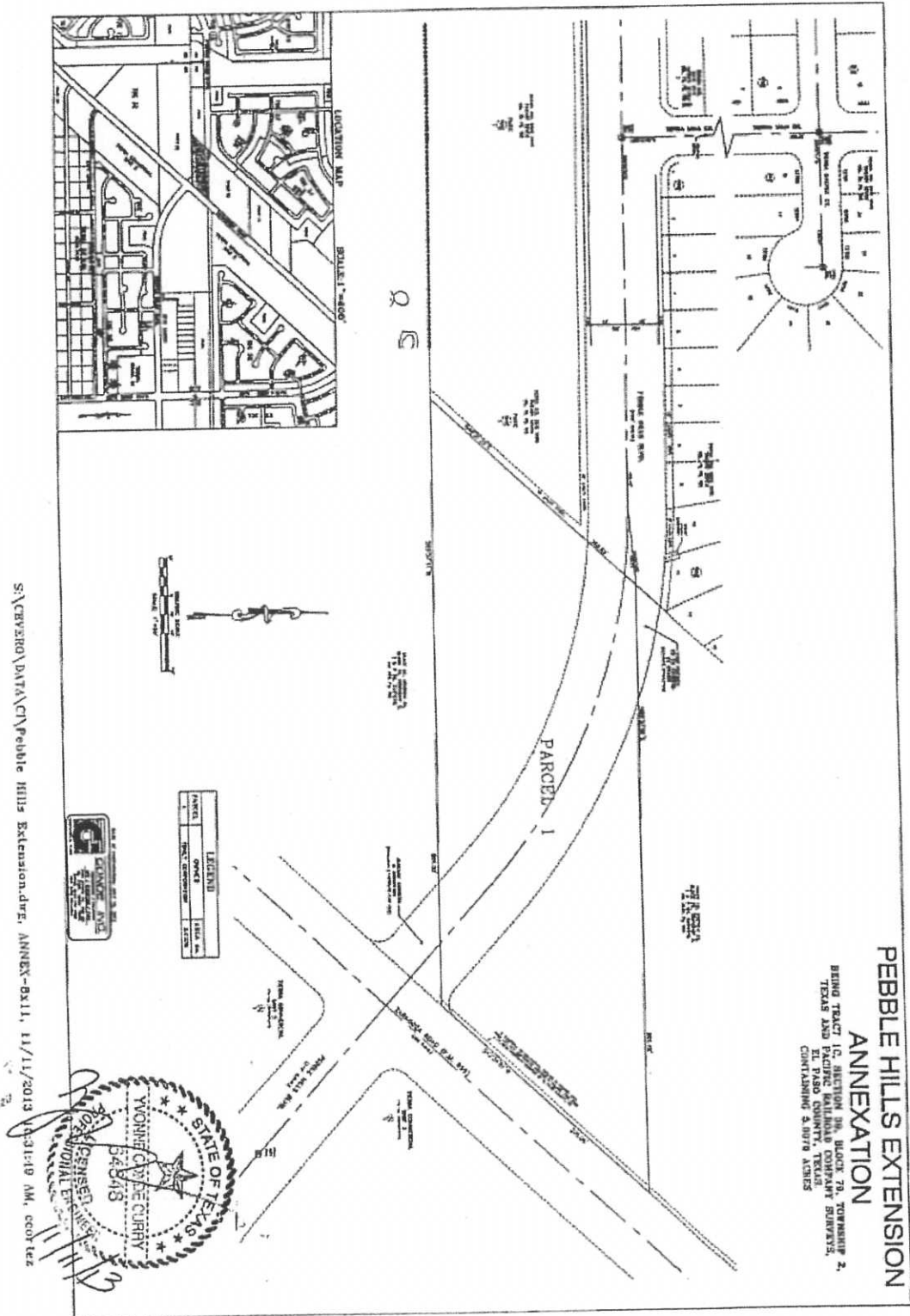


Exhibit C Annexation Plan



MEMORANDUM

DATE: January 6, 2015

TO: The Honorable Mayor and City Council
Tommy Gonzalez, City Manager

FROM: Nelson Ortiz, Senior Planner

SUBJECT: Annexation SUAX13-00002 (West of Zaragoza at Pebble Hills)

On November 18, 2014, an Annexation Agreement for the subject property was approved between the City of El Paso and Tomly Corporation, Inc.

The proposed annexation was scheduled for the City Plan Commission (CPC), on December 18, 2014. The CPC recommended **approval** for the proposed annexation and service plan.

The recommendation is based on the determination that the annexation is in the best interest, health, safety and welfare of the public in general; and will have no effect on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

Property Owners/Applicant: Tomly Corporation

Representative: Conde, Inc.

Attachments: Staff Report



City of El Paso – City Plan Commission Staff Report

Case No: SUAX13-00002
Application Type: Annexation and Service Plan
CPC Hearing Date: December 18, 2014
Staff Planner: Nelson Ortiz, 212-1606, Ortiznx@elpasotexas.gov

Location: West of Zaragoza at Pebble Hills
Legal Description: Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys and a portion of Zaragoza Road (F.M. 659), El Paso County, Texas
Acreage: 5.4325 acre
Rep District: Adjacent to District 5
Existing Use: Industrial storage yard
Existing Zoning: ETJ
Proposed Zoning: C-3 (Commercial)

Property Owner: Tomly Corporation
Applicant: Tomly Corporation
Representative: Conde, Inc.

Distance to Park: Adjacent to Tierra Del Este #27 Park
Distance to School: Roberto Ituarte Elementary and Raphael Hernando Middle (.75 mi.)

SURROUNDING ZONING AND LAND USE

North: N/A / East ETJ / Vacant
South: C-3/c / Vacant
East: C-4/c / Vacant
West: R-5 / Park / Residential Development

THE PLAN FOR EL PASO DESIGNATION: G4 Suburban (Walkable)

General Information:

The applicant is requesting annexation of land within the City of El Paso's Extra Territorial Jurisdiction (ETJ) and approval of a service plan in conjunction with the Annexation Agreement. Under the terms of the approved agreement, the subject property is proposed to be re-zoned from R-F (Ranch Farm) to C-3 (Commercial) at the time of annexation.

The annexation is being requested to accommodate roadway improvements for the future extension of Pebble Hills Boulevard. Two lots intended for commercial development are also proposed.

Neighborhood Input:

Notice of the public hearings were mailed to all property owners within 300 feet of this proposed annexation and published in the El Paso Times in accordance with the Texas Local Government Code. Planning staff did not receive any phone calls in support or opposition to this request.

DCC Recommendation:

The Development Coordinating Committee recommends **approval** and provides the following comments:

City Development Department - Planning Division:

Planning has no objection to the annexation request. The Service Plan shall be approved with the ordinance approving the annexation in accordance with the Texas Local Government Code 43.056. Planning recommends **approval** of this request.

El Paso Water Utilities:

The EPWU does not object to this request.

El Paso Police Department:

We do not foresee any conflicts from this.

City Development Department - Land Development

We have reviewed the application and have no comments.

Sun Metro:

Recommends the applicant coordinate with staff in identifying a potential location for the placement and construction of a future bus stop.

County of El Paso:

The County has no comments or objections with the proposed annexations related to the extension of Pebble Hills west of Zaragoza.

Department of Transportation:

No comments received.

Fire Department:

No comments received.

Parks and Recreation Department:

No comments received.

Environmental Services:

No comments received.

Attachments

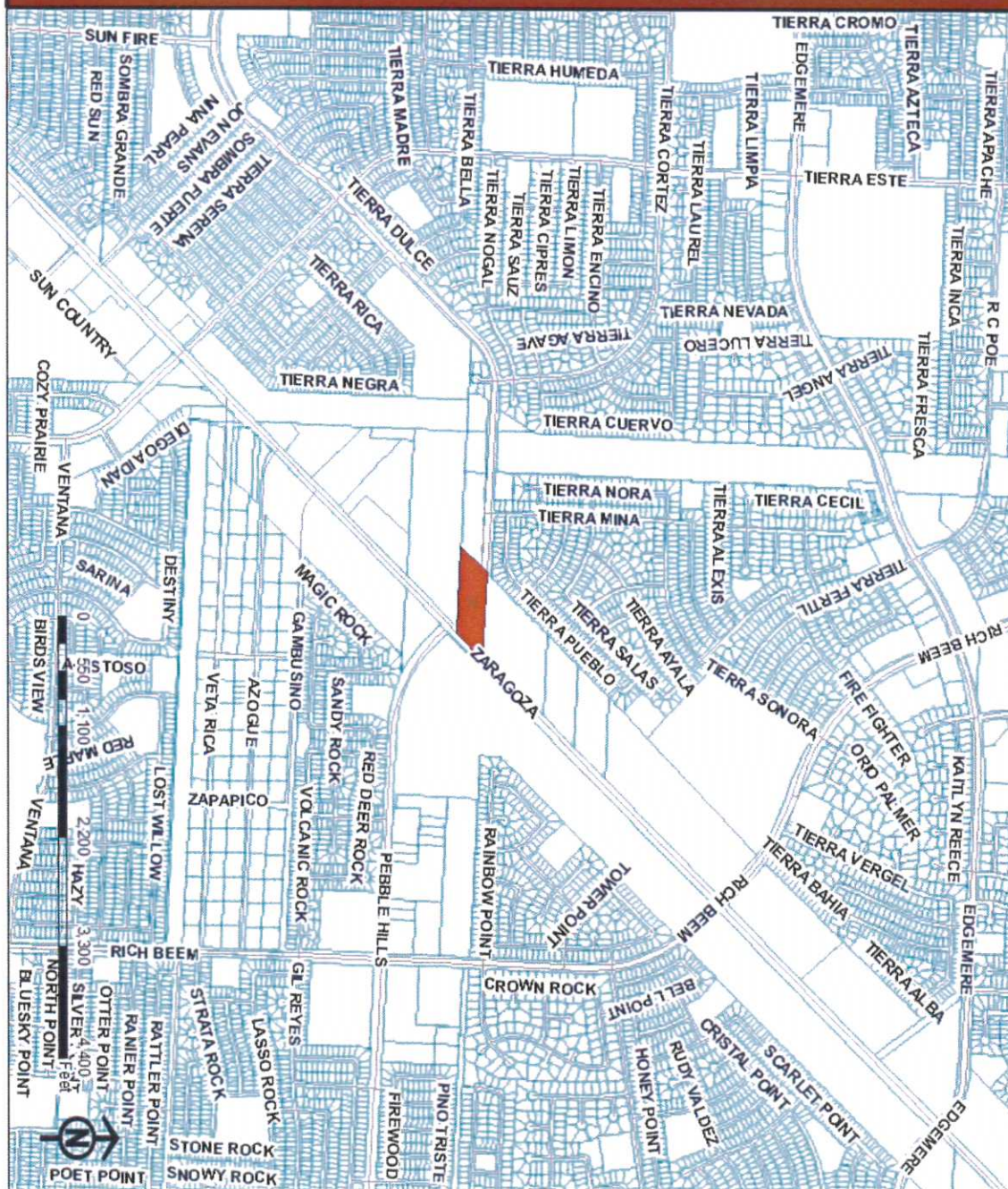
Attachment 1: Location Map

Attachment 2: Aerial

Attachment 3: Survey

Attachment 4: Application

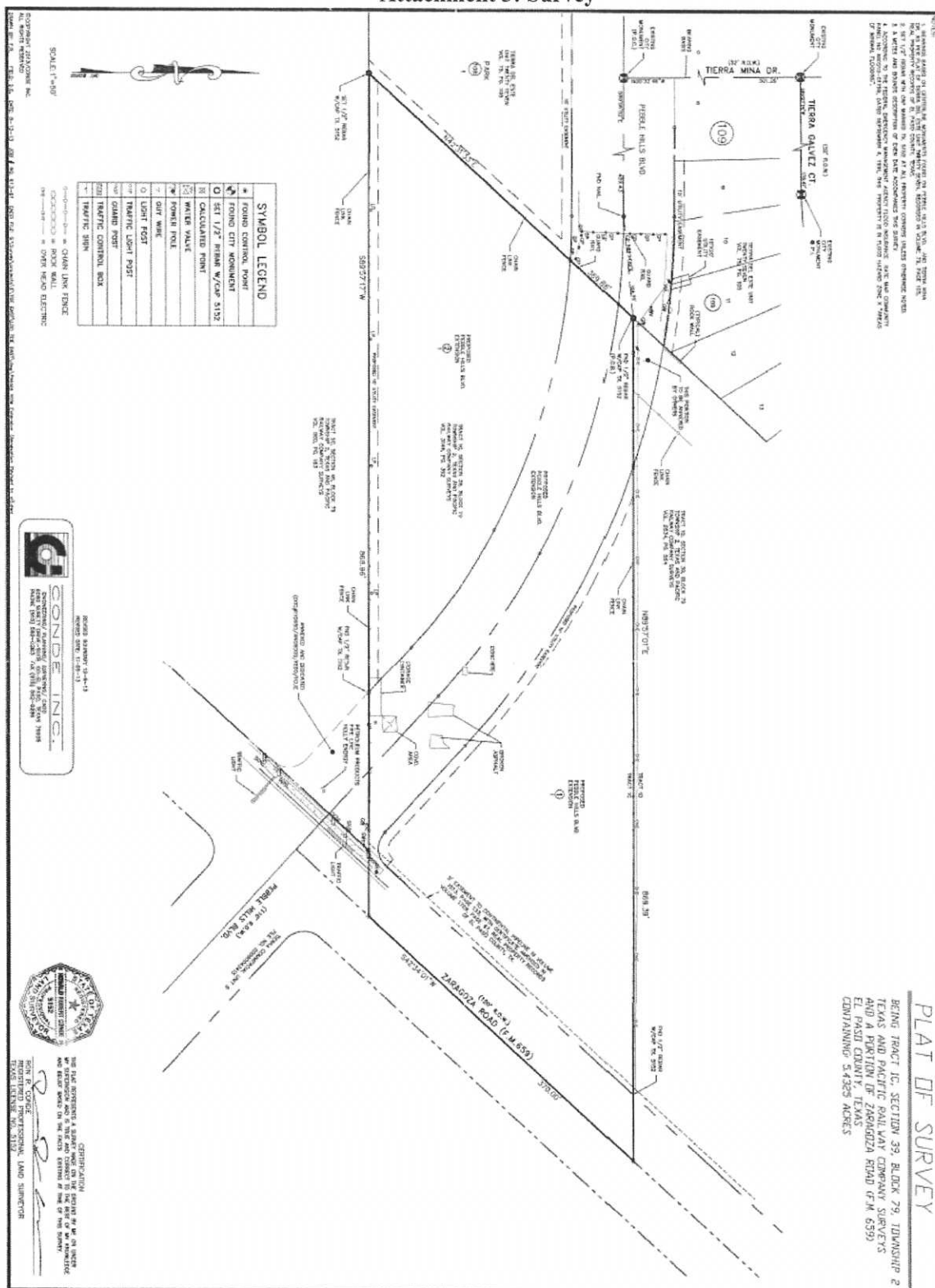
PEBBLE HILLS EXTENSION ANNEXATION



Attachment 2: Aerial

PEBBLE HILLS EXTENSION ANNEXATION





Attachment 4: Application



APPLICATION FOR ANNEXATION PLANNING & ECONOMIC DEVELOPMENT PLANNING DIVISION

CITY OF EL PASO, TEXAS
811 Texas Avenue
El Paso, TX 79901
915-541-4558

1. CONTACT INFORMATION

PROPERTY OWNER(S): Tomly Corporation
ADDRESS: 306 E. Paisano ZIP CODE: 79901 PHONE: 472-3194
APPLICANT(S): Tomly Corporation
ADDRESS: 306 E. Paisano ZIP CODE: 79901 PHONE: 472-3194
REPRESENTATIVE(S): Conde, Inc.
ADDRESS: 6080 Surety Drive, Ste 100 ZIP CODE: 79905 PHONE: 592-0283
E-MAIL ADDRESS: cconde@condeinc.com

2. PARCEL ONE INFORMATION

PROPERTY IDENTIFICATION NUMBER: X579-000-23990-1700
LEGAL DESCRIPTION: Being Tract 1C, Section 39, Block 79 Township 2, Texas and Pacific Railway Company
Surveys, and a Portion of Zaragoza Road (F.M. 659) El Paso County, Texas
STREET ADDRESS OR LOCATION: Pebble Hills Blvd & Zaragoza Road REP DISTRICT: 5
ACREAGE: 5.4325 ac PRESENT ZONING: n/a PRESENT LAND USE: vacant
PROPOSED ZONING C-3 PROPOSED LAND USE: Commercial

3. PARCEL TWO INFORMATION

PROPERTY IDENTIFICATION NUMBER: _____
LEGAL DESCRIPTION: _____
STREET ADDRESS OR LOCATION _____ REP DISTRICT: _____
ACREAGE: _____ PRESENT ZONING: _____ PRESENT LAND USE: _____
PROPOSED ZONING _____ PROPOSED LAND USE: _____

4. PARCEL THREE INFORMATION

PROPERTY IDENTIFICATION NUMBER: _____
LEGAL DESCRIPTION: _____
STREET ADDRESS OR LOCATION _____ REP DISTRICT: _____
ACREAGE: _____ PRESENT ZONING: _____ PRESENT LAND USE: _____
PROPOSED ZONING _____ PROPOSED LAND USE: _____

5. ADDITIONAL INFORMATION

OWNER (S) OF RECORD FOR THE ABOVE DESCRIBED PARCEL(S):
Printed Name: "See attached" Signature: _____
Printed Name: _____ Signature: _____
Printed Name: _____ Signature: _____

Note: Signatures are required for all owners of record for the property proposed for rezoning. Attach additional signatures on a separate sheet of paper.

SUAX13-00002	** OFFICE USE ONLY **	
RECEIVED DATE: <u>11/26/13</u>	APPLICATION FEE: \$ <u>645.54</u>	
DCC REVIEW DATE: <u> </u> / <u> </u> / <u> </u> ; 1 ST Public Hearing: <u> </u> / <u> </u> / <u> </u> (Location/time to be announced)		
CPC REVIEW DATE: <u> </u> / <u> </u> / <u> </u> (1:30 pm, City Council Chambers, 2 nd Floor, City Hall Building)		
ACCEPTED BY: <u>Nelson</u> <u>0</u>		

APPLICATION FOR AN EXATION

OWNER (S) OF RECORD FOR THE ABOVE DESCRIBED PARCEL(S):

~~Printed Name: River Oaks Properties, LTD
106 Mesa Park Dr
El Paso, TX 79912~~

Signature: _____

~~Printed Name: Tomly Corporation
306 E. Paisano
El Paso, TX 79901~~

~~Signature: _____~~

~~Printed Name: Genagra, LP
5009 Vista Del Monte St
El Paso, TX 79922~~

Signature: _____

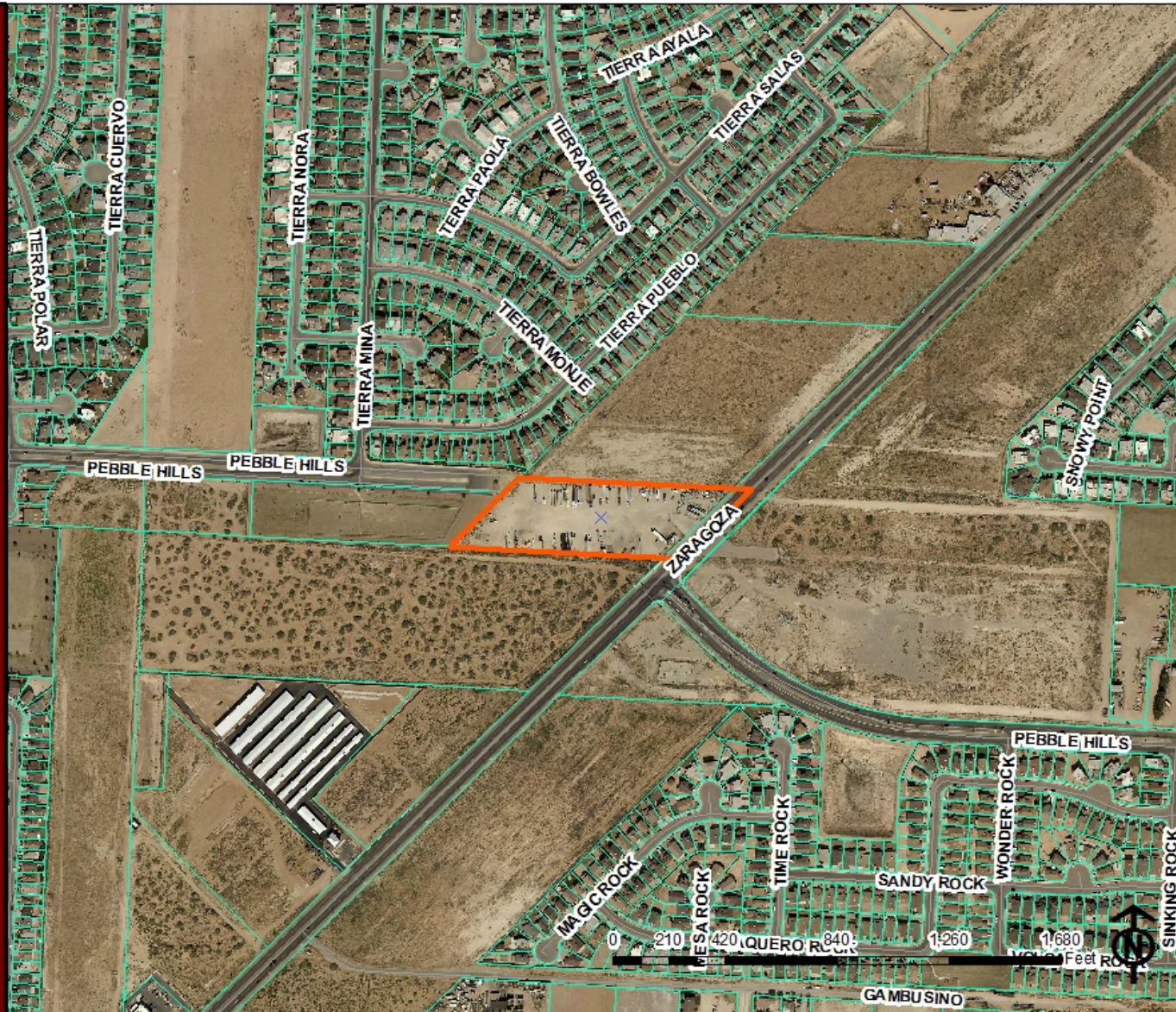


Recommendation/Public Input

- **City Development Recommendation:** Approval
- **CPC Vote:** Unanimous Approval
- No public communication in support or opposition to this request.

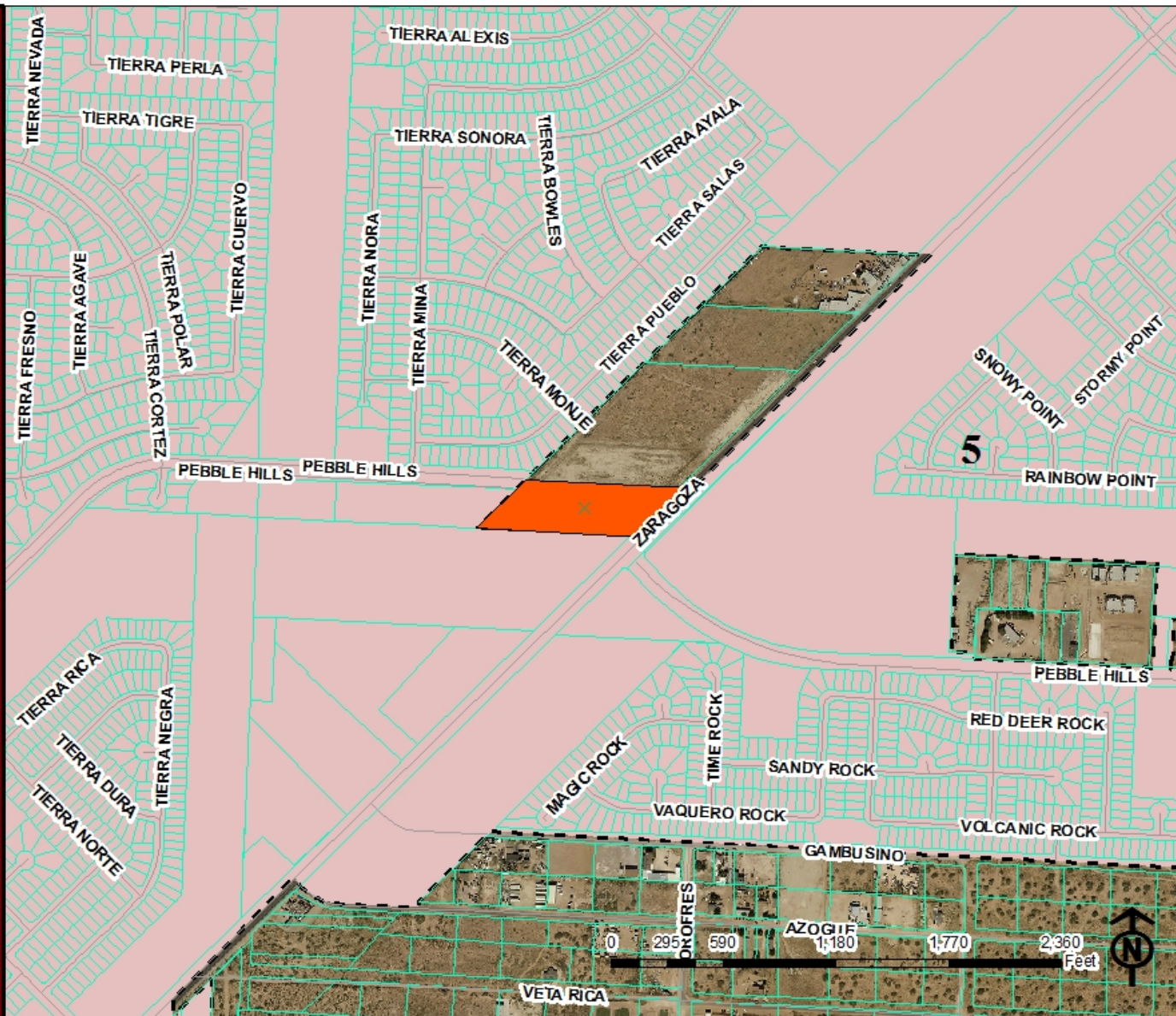


PEBBLE HILLS EXTENSION ANNEXATION



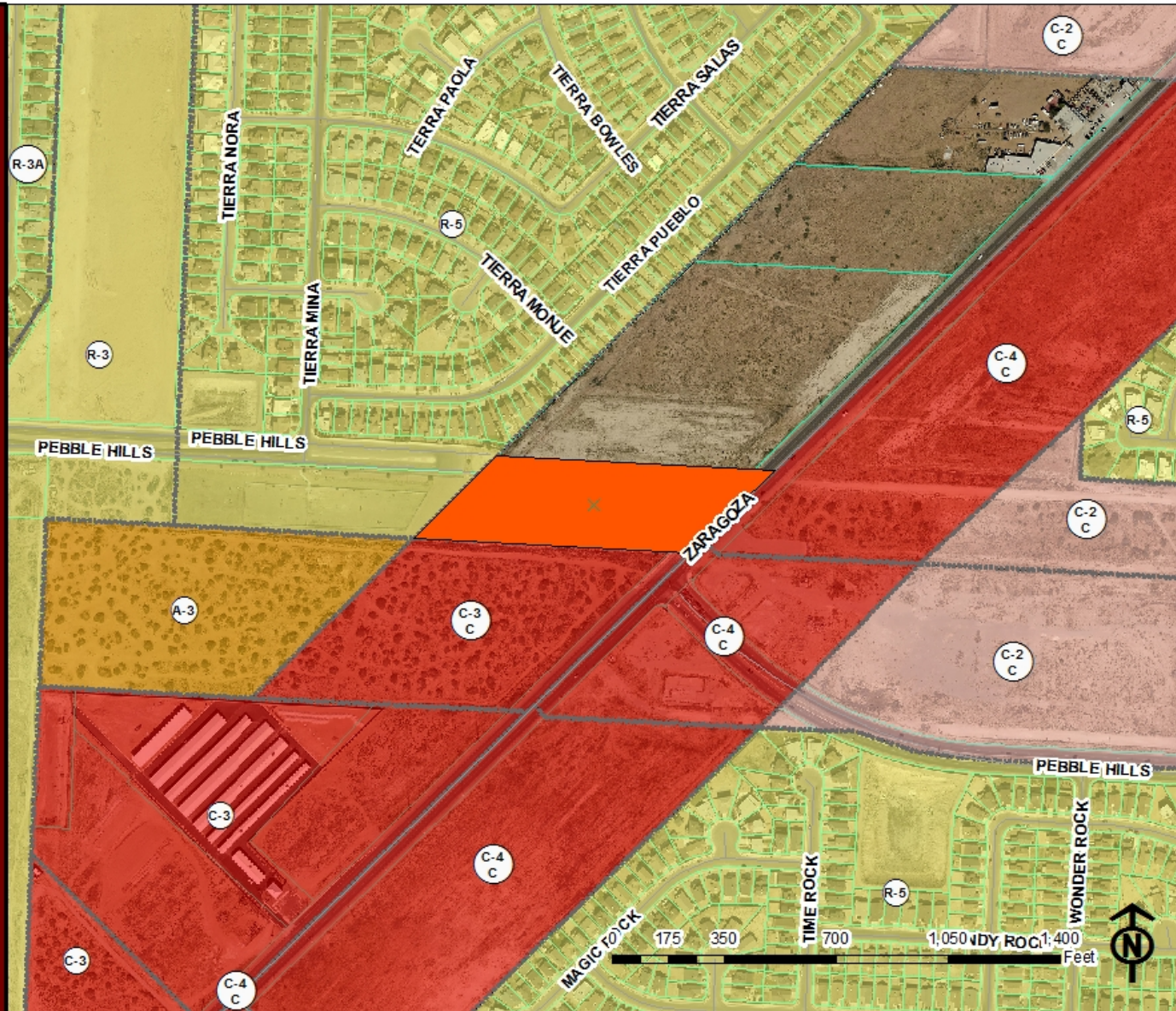


PEBBLE HILLS EXTENSION ANNEXATION





PEBBLE HILLS EXTENSION ANNEXATION















BEING TRACT 1C, SECTION 39, BLOCK 79, TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS
AND A PORTION OF ZARAGOZA ROAD (F.M. 659)
EL PASO COUNTY, TEXAS
CONTAINING: 5.4325 ACRES

SYMBOL LEGEND

✱	FOUND CONTROL POINT
⬢	FOUND CITY MONUMENT
○	SET 1/2" REBAR W/CAP 5152
⊗	CALCULATED POINT
⊠	WATER VALVE
⌚	POWER POLE
⌚	GUY WIRE
⊙	LIGHT POST
⊙	TRAFFIC LIGHT POST
⊙	GUARD POST
⊙	TRAFFIC CONTROL BOX
⊙	TRAFFIC SIGN

REVISION: 12-5-13

SYMBOL LEGEND	
	FOUND CONTROL POINT
	FOUND CITY MONUMENT
	SET 1/2" REBAR W/CAP 5152
	CALCULATED POINT
	WATER VALVE
	POWER POLE
	GUY WIRE
	LIGHT POST
	TRAFFIC LIGHT POST
	GUARD POST
	TRAFFIC CONTROL BOX
	TRAFFIC SIGN

SCALE: 1"=50'

REVISED BOUNDARY 12-9-13
REVISED DATE 11-09-13



CONDE INC.
ENGINEERING/ PLANNING/ SURVEYING/ CAD
8080 SANITY DRIVE-SUITE 100-DL PASO, TEXAS 75605
PHONE (915) 562-0283 /FAX (915) 562-0286



CERTIFICATION

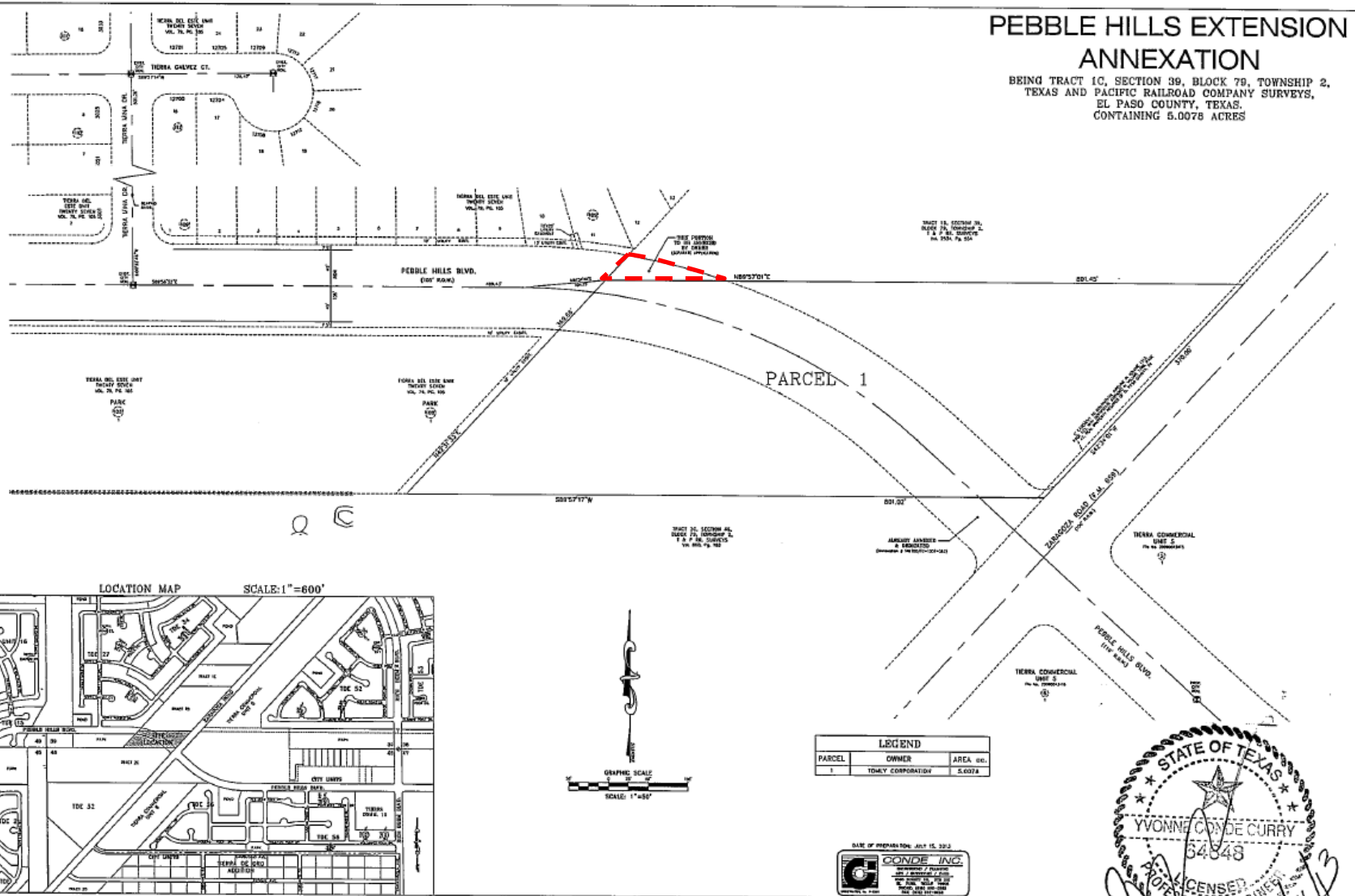
THIS PLAT REPRESENTS A SURVEY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF BASED ON THE FACTS EXISTING AT TIME OF THIS SURVEY.

RON R. CONDE
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS LICENSE NO. 5152



PEBBLE HILLS EXTENSION ANNEXATION

BEING TRACT 1C, SECTION 39, BLOCK 79, TOWNSHIP 2,
TEXAS AND PACIFIC RAILROAD COMPANY SURVEYS,
EL PASO COUNTY, TEXAS.
CONTAINING 5.0078 ACRES



LEGEND		
PARCEL	OWNER	AREA (ac)
1	TOHLY CORPORATION	5.0078





Provides a program under which the City will provide full municipal services no later than 2 ½ years after the effective date of the annexation. (TLGC, 43.056).

