

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

**DEPARTMENT:** Development Services Department, Planning Division

**AGENDA DATE:** Public Hearing: July 7, 2009

**CONTACT PERSON/PHONE:** Andrew Salloum, (915) 541-4029, salloumam@elpasotexas.gov

**DISTRICT(S) AFFECTED:** 4

**SUBJECT:**

A resolution approving a detailed site development plan for Lot 1, Block 35, Colonia Verde Unit Six, City of El Paso, El Paso County, Texas, pursuant to a condition imposed by City of El Paso Ordinance 008361. The penalty is as provided for in Chapter 20.24 of the El Paso City Code. Subject Property: 10005 Dyer Street. Applicant: Barth Family, Ltd., ZON08-00095 (District 4).

**BACKGROUND / DISCUSSION:**

N/A

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) – Unanimous Approval Recommendation  
City Plan Commission (CPC) – Approval Recommendation (8-0)

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) N/A

**FINANCE:** (if required) N/A

**DEPARTMENT HEAD:** Victor Q. Torres  
Director, Development Services

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## RESOLUTION

**A RESOLUTION APPROVING A DETAILED SITE DEVELOPMENT PLAN FOR LOT 1, BLOCK 35, COLONIA VERDE UNIT SIX, CITY OF EL PASO, EL PASO COUNTY, TEXAS, PURSUANT TO A CONDITION IMPOSED BY CITY OF EL PASO ORDINANCE 008361. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.**

**WHEREAS, Barth Family, Ltd.,** (the "Applicant") has applied for approval of a detailed site development plan pursuant to a zoning condition, which requires City Plan Commission and City Council approval, to permit the construction and development of a retail building, with a 15-foot setback along the northerly property line and a height limitation to one-story structures; and

**WHEREAS,** a report was made by the staff to the City Plan Commission and a public hearing was held regarding such application;

**WHEREAS,** the City Plan Commission has approved and herein recommends Council approval of the subject detailed site development plan; and

**WHEREAS,** the City Council finds that the detailed site development plan meets all applicable requirements of the El Paso City Code;

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

1. Pursuant to requirements imposed by a zoning condition, the City Council hereby approves the detailed site development plan submitted by the Applicant, to permit the construction and development of a retail building, with a 15-foot setback along the northerly property line and a height limitation to one-story structures, on the following described property which is located in a C-1/sc (Commercial/special contract) District:

*Lot 1, Block 35, Colonia Verde Unit Six, City of El Paso, El Paso County, Texas*

A copy of the approved detailed site development plan, signed by the Applicant, the City Manager and the Secretary of the City Plan Commission, is attached hereto, as Exhibit "A" and incorporated herein by reference.

2. All construction and development on the property shall be done in accordance with the approved detailed site development plan and the development standards applicable in the C-1/sc (Commercial/special contract) District regulations.

3. The Applicant shall sign an agreement to develop the property and to perform all construction thereon in accordance with the approved detailed site development plan and the standards applicable in the C-1/sc (Commercial/special contract) District. Such agreement shall be signed and filed with the Zoning Administrator and the Executive Secretary of the City Plan Commission before building permits are issued.

4. This approval shall be void if construction on the property is not started in accordance with the approved detailed site development plan within four (4) years from the date hereof.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.**

**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook, Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar,  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Mathew S. McElroy, Deputy Director  
Deputy Director – Planning  
Development Services Department

(Agreement on following page)

**DEVELOPMENT AGREEMENT**

By execution hereof, I, \_\_\_\_\_, in my legal capacity for Barth Family, Ltd. (“Applicant”), identified in the Resolution to which this Development Agreement is attached, hereby covenant and agree, to develop the described property in accordance with the approved Detailed Site Development Plan, and in accordance with the standards applicable to the **C-1/sc (Commercial/special contract) District** located within the City of El Paso.

**EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.**

Barth Family, Ltd.

By: \_\_\_\_\_  
Carleen Barth

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS )**  
**)**  
**COUNTY OF EL PASO )**

This instrument is acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, in his legal capacity.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
  
\_\_\_\_\_

## MEMORANDUM

**DATE:** June 18, 2009

**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager

**FROM:** Andrew Salloum, Planner

**SUBJECT: ZON08-00095**

---

The City Plan Commission (CPC), on June 4, 2009, voted **8-0** to recommend **APPROVAL** of detailed site development plan.

The CPC found that the detailed site development plan is in conformance with all applicable requirements of the El Paso City Code, The Plan for El Paso; and the proposed use is in conformance with the Year 2025 Projected General Land Use Map. The CPC also determined that the detailed site development plan protects the best interest, health, safety and welfare of the public in general; that the proposed use is compatible with adjacent land uses; and the detailed site development plan will have no effect on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

There was **NO OPPOSITION** to this request.

**Attachment:** Staff Report



## City of El Paso – City Plan Commission Staff Report

**Case No:** ZON08-00095  
**Application Type:** Detailed Site Development Plan Review  
**CPC Hearing Date:** June 4, 2009  
**Staff Planner:** Andrew Salloum, 915-541-4029, [salloumam@elpasotexas.gov](mailto:salloumam@elpasotexas.gov)

**Location:** 10005 Dyer Street  
**Legal Description:** Lot 1, Block 35, Colonia Verde Unit Six, City of El Paso, El Paso County, Texas  
**Acreage:** 0.62 acres  
**Rep District:** 4  
**Existing Use:** Vacant  
**Existing Zoning:** C-1/sc (Commercial/special contract)  
**Request:** Detailed Site Development Plan review per Ordinance No. 8361

**Property Owner:** Barth Family, LTD.  
**Applicant:** Carleen and Gene Barth  
**Representative:** Carleen and Gene Barth

### SURROUNDING ZONING AND LAND USE

**North:** R-4 (Residential) / Single-Family Dwelling and Vacant  
**South:** C-1 (Commercial) / Gas Station  
**East:** C-3 (Commercial) / Restaurant  
**West:** C-1 (Commercial) / Ponding, Vacant

**THE PLAN FOR EL PASO DESIGNATION:** Commercial and Mixed Use (Northeast Planning Area)  
**NEAREST PARK:** Colonia Verde Park (2,570 Feet)  
**NEAREST SCHOOL:** Parkland Elementary (1,675 Feet)

### NEIGHBORHOOD ASSOCIATIONS

Northeast El Paso Civic Association

### NEIGHBORHOOD INPUT

Notice of the public hearing not required on detailed site development plan per El Paso City Zoning Ordinance.

### APPLICATION DESCRIPTION

The detailed site development plan review is to satisfy the requirement of Ordinance No. 8361 dated May 21, 1985 and amended June 12, 2001. Ordinance No. 8361 imposed two conditions on the property by special contract:

- 1) Prior to the issuance of any building permits, a detailed site development plan must be approved by the City Plan Commission and the City Council. Such site plan may include a height limitation to one-story structures on all or part of the subject property as the City Plan commission and City Council may reasonably require.
- 2) A 25-foot setback must be provided along the northerly property line. This condition was amended to require a 15-foot setback.

The site plan proposes a 7,400 sq. ft. retail building with 30 parking spaces and three (3) bicycle spaces. Primary access is from an adjacent property that has access from Dyer. The property owner has submitted a shared access agreement with the adjacent property for access. The site plan includes a 15-foot setback along the northerly property line as per the conditions placed on the property by special contract.

## **DEVELOPMENT COORDINATING COMMITTEE RECOMMENDATION**

The DCC recommends **APPROVAL** of detailed site development plan.

## **PLANNING DIVISION RECOMMENDATION**

The Planning Division recommends **APPROVAL** of the detailed site development plan.

### **The Plan for El Paso-City-Wide Land Use Goals**

All applications for detailed site development plan review shall demonstrate compliance with the following criteria:

- a. Goal: provide a pattern of commercial and office development which best serves community needs and which complements and serves all other land uses.
- b. Goal: preserve, protect, and enhance the integrity, economic vitality and livability of the city's neighborhoods.
- c. Goal: encourage the provision of neighborhood commercial services which are compatible with a neighborhood's residential character.

The purpose of the C-1 (Commercial) district is to serve the needs of surrounding residential neighborhoods by providing compatible neighborhood conveniences, goods, and services that serve day-to-day needs. The regulations of the district will permit location of business and professional offices and retail category uses within adjacent residential areas of medium and high densities.

The detailed site plan ensures the location of utility rights-of-ways and easements and water storm drainage; vehicular and pedestrian ways; on-site parking; location of open spaces, landscaped areas; and size, and design of exterior signs, plus other requirements of Section 20.04.160 Detailed Site Development Plan.

### **Development Services - Building Permits and Inspections Division**

Zoning Review: Retail Establishment permitted on existing C-1 (Commercial) District. Meets minimum yard, off-street parking and loading standards. Shall need to provide a six foot high masonry screening wall along the property lines abutting the residential district.

Landscaping: this project meets code under the building permit and if nothing changes shall continue to meet code under 18.46 as previously reviewed.

### **Development Services - Planning Division**

Current Planning: Recommend **APPROVAL** of the detailed site development plan as it meets all requirements of Section 20.04, Detailed Site Development Plan, and compiles with the special contract conditions.

#### Land Development:

- ADA accessible Sidewalks, Wheel-chair ramp(s), and Driveway(s) will be required.\*
- Grading plan and permit required.\*
- Storm Water Pollution Prevention plan and/or permit required.\*
- Drainage plans must be approved by the Development Services, Engineering Section.\*
- Coordination with TXDOT.\*
- On-site ponding will be required\*. The drainage plan shall follow the approved subdivision improvement plans.
  
- Additional Comments: Site location is not located within a Special Flood Hazard Area, Flood Zone(s) C, "Areas of minimal flooding" - Panel 480214 0020 B.
  - \* This requirement will be applied at the time of development.

### **Engineering Department, Traffic Division**

- Access agreement shall be required.
- Sidewalks shall comply with City's ordinance.

### **Fire Department**

The El Paso Fire Department has reviewed ZON08-00095 Detailed Site Development Plan located at 10005 Dyer Street. The location, size, and arrangement of structures listed as items "b" and "c" on the Required Documentation for Detailed Site Development Plan Review Application meets the minimum requirements of the International Fire Code for Fire Apparatus Access. All other requirements of the fire code will be checked during the Construction Plan Review Process.

### **El Paso Water Utilities**

EPWU-PSB does not object to this request.

### **CITY PLAN COMMISSION OPTIONS**

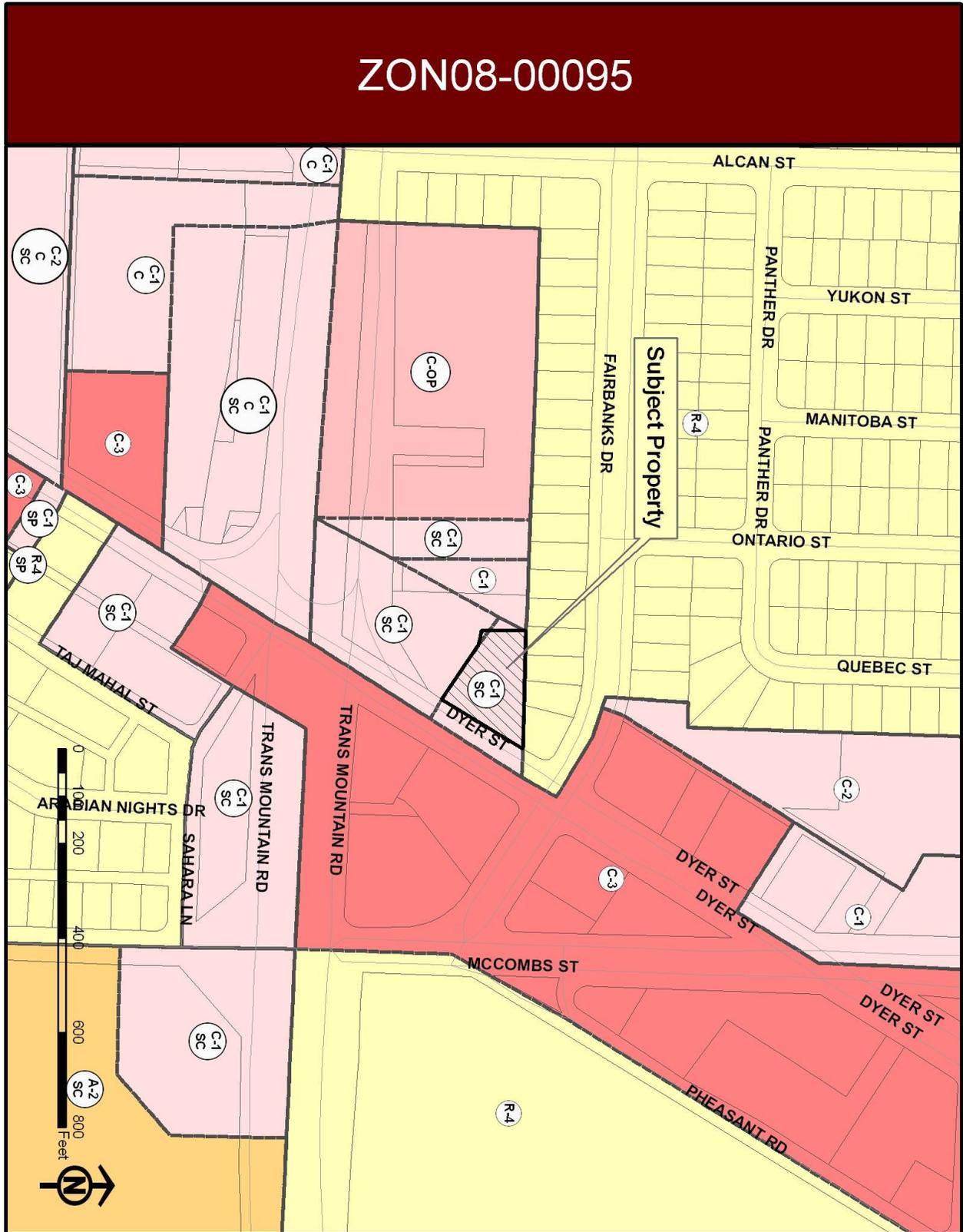
The City Plan Commission may consider the following options and additional options that it identifies when reviewing the detailed site plan application:

1. Recommend approval of the application finding that the detailed site development plan is in conformance with the review criteria of The Plan for El Paso as reflected in CPC report or other criteria that the CPC identifies from the Plan
2. Recommend approval of the application with modifications to bring the detailed site development plan into conformance with the review criteria in The Plan for El Paso as reflected in CPC report or other criteria from the Plan as identified by the CPC.
3. Deny the application finding that the detailed site development plan does not conform to the review criteria in The Plan for El Paso as reflected in CPC report or other criteria identified from the Plan by the CPC.

### **Attachments**

- Attachment 1: Zoning Map
- Attachment 2: Aerial Map
- Attachment 3: Ordinance 8361
- Attachment 4: Shared Access Agreement
- Attachment 5: Detailed Site Development Plan
- Attachment 6: Building Elevations

ATTACHMENT 1: ZONING MAP



ATTACHMENT 2: AERIAL MAP

ZON08-00095



**ATTACHMENT 3: ORDINANCE 8361**

CONTRACT CASE #85-5043

THIS CONTRACT, made this 21<sup>st</sup> day of May, 1985, by and between FIRST FINANCIAL-A SAVINGS ASSOCIATION OF EL PASO, Texas, First Party, and the CITY OF EL PASO, Second Party, witnesseth:

Application has been made to the City of El Paso for rezoning all of Tract 1P1, Section 29, Block 81, TSP 1, T&P RR. Co. Survey, City and County of El Paso, Texas, which are more particularly described by metes and bounds below.

The parcel of land herein described is all of Tract 1P1, Section 29, Block 81, Tsp. 1, T&P Railroad Company Surveys, El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

Commencing at a point lying on the intersection of the northerly right-of-way line of Loop 375 (Trans-Mountain Road) and the easterly boundary line of Tract 1P3A, Section 29, Block 81 Tsp. 1, T&P Railroad Company Surveys, said point being the TRUE POINT OF BEGINNING of this description;

THENCE, North 29°26'00" East, along said boundary line, a distance of 327.64 feet to a point lying on the southerly boundary line of Block 1, Colonia Verde;

THENCE, North 88°49'00" East, along said boundary line, a distance of 227.63 feet to a point lying on the westerly right-of-way line of U.S. Highway 54 (Dyer Street);

THENCE, South 29°23'00" West, along said right-of-way line, a distance of 231.64 feet to a point lying on the northerly right-of-way line of Loop 375 (Trans-Mountain Road);

THENCE, South 57°12'06" West, along said right-of-way line, a distance of 150.00 feet to a point;

THENCE, South 87°19'26" West, continuing along said right-of-way line, a distance of 149.01 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 1.38738 acres (60,434.44) of land more or less.

To remove certain objections to such rezoning, First Party covenants that if the property is rezoned from R-4 (Residential) to C-1 (Commercial) District within the meaning of the zoning ordinance of the City of El Paso, it shall be subject to the following restrictions, conditions and covenants:

1. Prior to the issuance of any building permits, a detailed site development plan must be approved by the City Plan Commission and the City Council. Such site plan may include a height limitation to one-story structures on all or part of the subject property as the City Plan Commission and City Council may reasonably require.

RECEIVED

SEP 30 1988

**ATTACHMENT 3: ORDINANCE 8361**

2. A 25-foot setback must be provided along the northerly property line.

This agreement is a restriction, condition and covenant running with the land and a charge and servitude thereon, and shall bind First Party and its successors in title. Any future conveyance of the land shall contain this restriction, condition and covenant and shall embody this agreement by express reference.

The City may enforce this agreement by injunction or any other legal or equitable remedy. The City Council of the City of El Paso may amend or release the above restrictions, conditions and covenants in its discretion without the consent of any third person who may be benefited thereby, and without affecting the validity, or necessitating the amendment of, the ordinance passed by the City Council embodying this change of zoning and subject to this contract.

WITNESS THE FOLLOWING SIGNATURES AND SEALS.

FIRST FINANCIAL-A SAVINGS  
ASSOCIATION OF EL PASO  
First Party

By [Signature]  
Title \_\_\_\_\_

ATTEST:  
[Signature]  
Secretary, Assessor

THE CITY OF EL PASO  
Second Party

By [Signature]  
Mayor

ATTEST:  
[Signature]  
City Clerk

APPROVED AS TO CONTENT:  
[Signature]  
Planning Department

APPROVED AS TO FORM:  
[Signature]  
Assistant City Attorney

THE STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this 24 day of June, 1985, by CHARLES M. MORGAN JR., representative for First Financial-A Savings Association of El Paso, Texas.

[Signature]  
Notary Public, State of Texas  
CLAUDIA WHEELER

My Commission Expires:  
03/21/89

**ATTACHMENT 3: ORDINANCE 8361**

#305 P06

STATE OF TEXAS )  
                          )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this 26<sup>th</sup> day  
of Sept, 1985, by JONATHAN W. ROGERS, as Mayor  
of the City of El Paso.

Billie Ann Bradshaw  
Notary Public, State of Texas

My Commission Expires:

6/30/88



**ATTACHMENT 3: ORDINANCE 8361**

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

THAT the Mayor be authorized to sign an Amendment to Contract between BARTH FAMILY, LTD. and the CITY OF EL PASO amending the Contract imposed by Ordinance No. 008361 dated 21 May 1985 to amend Contract Condition No. 2 on *all of Lot 1, Block 35, COLONIA VERDE UNIT 6, City of El Paso, El Paso County, State of Texas* as further described in Exhibit "A" to said Contract Amendment.

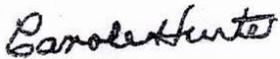
PASSED AND APPROVED this 12<sup>th</sup> day of June, 2001.

THE CITY OF EL PASO



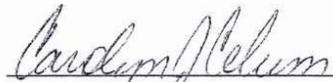
Mayor

ATTEST:



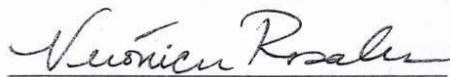
City Clerk

APPROVED AS TO FORM:



Carolyn J. Celum  
Assistant City Attorney

APPROVED AS TO CONTENT:



Verónica Rosales, Zoning Coordinator  
Dept. of Planning, Research & Development

CJC:pmc/77184

5/14/01  
SC-01004

**ATTACHMENT 3: ORDINANCE 8361**

THE STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO            )            **AMENDMENT TO CONTRACT**

**WHEREAS**, a contract was entered into on May 21, 1985, by and between FIRST FINANCIAL-A SAVINGS ASSOCIATION OF EL PASO, Texas and THE CITY OF EL PASO, a home-rule municipal corporation, a copy of which is attached hereto as Exhibit "A" and incorporated by reference herein and hereafter referred to as the "Contract," placing conditions on real property being described as *all of Lot 1, Block 35, COLONIA VERDE UNIT 6, City of El Paso, El Paso County, Texas*, and being more fully described in the Contract; and

**WHEREAS**, application for amendment of Contract Condition No. 2 placed on the property described herein has been made by BARTH FAMILY, LTD., the successor in title and interest to the property;

**NOW, THEREFORE**, the Contract imposed by Ordinance No. 008361 dated May 21, 1985, is hereby amended as follows:

1. That Subparagraph 2 of the Contract shall be deleted in its entirety and the following substituted therefor:

*"2. A 15-foot setback must be provided along the northerly property line."*

2. Except as herein amended, all other provisions of the Contract imposed by Ordinance No. 008361 dated May 21, 1985, shall remain in full force and effect.

**ADOPTED**, this 12<sup>th</sup> day of June, 2001.

**THE CITY OF EL PASO**

  
\_\_\_\_\_  
Mayor

**ATTEST:**  
  
\_\_\_\_\_  
City Clerk

(Signatures continue on following page)

CJC:pme/#77184

5/14/01  
**SC-01004**

**ATTACHMENT 3: ORDINANCE 8361**

APPROVED AS TO FORM:

Carolyn J. Celum  
Carolyn J. Celum  
Assistant City Attorney

APPROVED AS TO CONTENT:

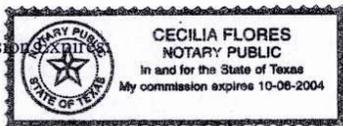
Verónica Rosales  
Verónica Rosales, Zoning Coordinator  
Dept. of Planning, Research & Development

ACKNOWLEDGMENT

THE STATE OF TEXAS     )  
  )  
COUNTY OF EL PASO     )

This instrument is acknowledged before me on this 17<sup>th</sup> day of June, 2001, by Raymond C. Curbakero as MAYOR of THE CITY OF EL PASO.

My Commission Expires



Cecilia Flores  
Notary Public, State of Texas  
Notary's Printed or Typed Name:  
\_\_\_\_\_

**ATTACHMENT 4: SHARED ACCESS AGREEMENT**

Doc# 20090034767

THE STATE OF TEXAS

§  
§  
§

COUNTY OF EL PASO

**DECLARATION OF RECIPROCAL EASEMENTS,  
AND DRAINAGE EASEMENTS**

Barth Family, Ltd. (the "Declarant"), the owner of the following described property (collectively, the "Property):

- A. Lot 1, Block 35, Colonia Verde Unit 6, an addition to the City of El Paso, El Paso County, Texas according to the plat thereof on file in the Real Property Records of El Paso County ("Parcel 1"); and
- B. Lot 2, Block 35, Colonia Verde Unit 6, an addition to the City of El Paso, El Paso County, Texas according to the plat thereof on file in the Real Property Records of El Paso County ("Parcel 2");

and hereby covenants, agrees and declares that the Property shall hereinafter be subject to the following Reciprocal Easements and Drainage Easements which shall run with the land and shall be binding upon and inure to the benefit of Declarant, its successors and assigns, and any person or entity acquiring any right, title or interest in the Property or any part thereof, their heirs, devisees, successors and assigns:

1. Reciprocal Access Easement. Declarant establishes on and across Parcel 1 and Parcel 2 a free, reciprocal and non-exclusive perpetual easement, and the rights and privileges of access, passage and use, both pedestrian and vehicular, including, without limitation, and for ingress and egress to and from (i) the roadways adjacent to the Property and (ii) to and from the Parcel 1 and Parcel 2 by means of the internal driveways existing on the Property. These reciprocal easements are for use and benefit of the owner(s) of Parcel 1 and Parcel 2 and their Permittees. As used in this Declaration, the term "Permittees" shall mean the employees, agents, contractors, customers, tenants, vendors, suppliers, visitors, invitees, licensees, subtenants and concessionaires of each owner of Parcel 1 and Parcel 2.

Once the curb cuts on the Property have been established and the driveways are constructed on the Property, no change shall be made to the driveways or curb cuts without the prior written consent of all the then owners of Parcel 1 and Parcel 2. No owner of Parcel 1 and Parcel 2. No party may erect or construct any wall, fence, sign, or other obstruction of any kind on the driveways on its respective parcel.

2. Drainage Easement. Declarant establishes on Parcel 2 a non-exclusive perpetual easement for the drainage of storm and surface water generated from Parcel 1 on and across Parcel 2 into the existing storm water retention pond on Parcel 2. The owner of Parcel 1 will have the right to to construct, operate, maintain, repair and replace drainage improvements on Parcel 2 required by the City of El Paso to convey storm and surface water into the storm water

## ATTACHMENT 4: SHARED ACCESS AGREEMENT

retention pond on Parcel 2. No change or modification to the storm water retention pond on Parcel 2 will be permitted without the prior written consent of the owner of Parcel 1 and then only in compliance with all ordinances and regulations promulgated by the City of El Paso.

3. Maintenance of Easements. Each owner of Parcel 1 and Parcel 2 will be responsible for the maintenance, repair and replacement of the access easement on its parcel

4. Binding Effect. The servitudes, easements, privileges, agreements, maintenance obligations, restrictions, covenants and terms of this Declaration: (a) are made for the direct, mutual and reciprocal benefit or burden of the real property affected; (b) constitute covenants running with the land; and (c) shall be binding upon the owners of the Property or any portion thereof, their respective successors in interest, assigns, heirs, legal and personal representatives, and all other persons or entities having or hereafter acquiring any right, title or interest in and to the Property or any portion thereof and all other persons or entities claiming by, through or under such owners, their successors in interest, assigns, heirs and legal and personal representatives. Each and every mortgage instrument, deed of trust, lien or other encumbrance affecting any portion of the Parcels shall, at all times, be subject to the terms of this Declaration, and any party foreclosing any such mortgage, deed of trust, lien or encumbrance shall foreclose subject to all of the provisions hereof.

5. Term of Agreement. The duration of this Declaration shall be perpetual or for such other period as all of the owners of all or any portion of the Property (or their successors and assigns) may agree by written instrument. This Declaration may not be modified, amended or canceled without the consent of all the then record owners of the Property, or their assigns or successors in interest. Any modification to this Declaration shall become effective only upon recordation of a written instrument executed by all of the respective owners of all or any portion of the Property in the Real Property Records of El Paso County, Texas.

6. Miscellaneous

a. This Declaration and the obligations of the parties thereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Texas. The headings are for convenience only and shall not be considered in construing this Declaration.

b. If any provision of this Declaration or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Declaration and the application of such provisions to the entities, persons or circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law.

c. The failure of any owner of the Property to avail itself of any of the servitudes, easements, privileges, rights, covenants, agreements, terms and conditions (collectively, the "Collective Rights") of this Declaration for any period of time or at any time, shall not be construed or deemed to be a waiver of any such Collective Rights, and nothing in this Declaration, nor anything done or omitted to be done by any such Owner pursuant hereto, shall be deemed a waiver of any such Owner of any of its rights and remedies hereunder or under the

**ATTACHMENT 4: SHARED ACCESS AGREEMENT**

laws of the State of Texas. The enforcement of any right or remedy hereunder by any such Owner, either prior to, simultaneously with, or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

d. All of the rights and obligations created hereby shall constitute covenants running with the land, and shall be binding upon and inure to the benefit of the parties hereto, their respective successors, heirs, legal representatives and assigns.

e. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the easements to the general public or for any public use or purpose whatsoever, it being the express intent of Declarant that all easements described shall remain private easements.

f. It is expressly understood and agreed that the parties hereto do not intend that there be, and there shall in no event be, a merger of the dominant and servient tenements in the Property by virtue of the present or future ownership of any portion of said tenements being vested in the same persons(s) or entity, but instead intend that the easement servitudes shall not be extinguished thereby and that said dominant and servient tenements be kept separate.

g. The easements granted by this Declaration are not exclusive and each Owner shall have the right to grant such other easements, rights or privileges on its property to such persons and for such purposes as such Owner may determine in its sole discretion, so long as such purposes do not unreasonably interfere with the easements granted by this Declaration.

Dated: May 21, 2009.

Barth Family, Ltd.

By: Barth Properties, L.C., its  
general partner

By: Carleen R. Barth  
Name: CARLEEN R. BARTH  
Title: Manager

**ATTACHMENT 4: SHARED ACCESS AGREEMENT**

THE STATE OF TEXAS

COUNTY OF EL PASO

§  
§  
§

This instrument was acknowledged before me on May 21 <sup>2009</sup>~~2008~~, by Carlton L. Barth as manager of Barth Properties, L.C., general partner of Barth Family, Ltd. on behalf of said limited partnership.



Diana Barrera  
Notary Public in and for the  
State of Texas

RECORDED

**ATTACHMENT 4: SHARED ACCESS AGREEMENT**

Doc# 2009034767  
Pages 4 Images 1  
Filed/Recorded in  
El Paso County  
of El Paso County  
County Clerk  
Fee \$20.00

**SCANNED**

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.

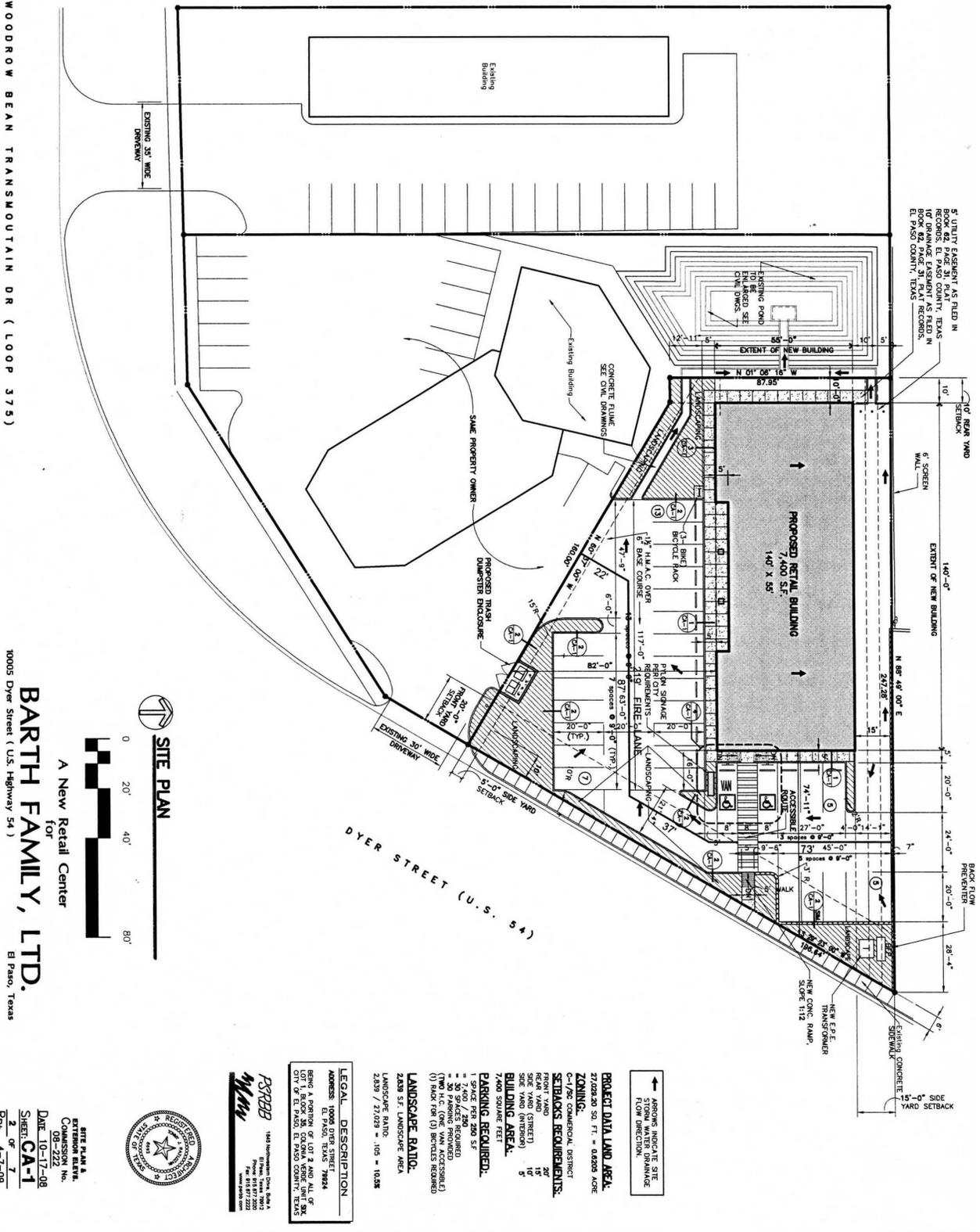


EL PASO COUNTY, TEXAS

*Ruth Brimer*



# ATTACHMENT 5: DETAILED SITE DEVELOPMENT PLAN



WOODROW BEAN TRANSMOUNTAIN DR (LOOP 375)

10005 Dyer Street (U.S. Highway 54)

**BARTH FAMILY, LTD.**  
A New Retail Center  
for

El Paso, Texas



**LEGAL DESCRIPTION**  
Address: 10005 DYER STREET  
EL PASO, TEXAS 79924  
BEING A PORTION OF LOT 2 AND ALL OF  
LOT 3 OF BLOCK 10, SUBDIVISION  
OF EL PASO, EL PASO COUNTY, TEXAS

**PROJECT DATA**  
PROJECT NO. 2008-00095  
DATE: 10/17/08  
SHEET: CA-1  
Rev: 4-7-09

**PROJECT DATA LAND AREA:**  
27,024.20 SQ. FT. = 6.2406 ACRE

**ZONING:**  
C-1/262 COMMERCIAL DISTRICT

**SETBACKS REQUIREMENTS:**  
FRONT YARD: 20'  
SIDE YARD (STREET): 15'  
SIDE YARD (INTERIOR): 5'  
BUILDING AREA: 7,400 SQUARE FEET

**PARKING REQUIRED:**  
1 SPACE PER 200 SF  
= 37 SPACES REQUIRED  
= 30 SPACES REQUIRED  
(1) BICYCLE RACK (2) BICYCLE REPAIR STATION  
(1) BICYCLE STORAGE (3) BICYCLE REPAIR STATION

**LANDSCAPE RATIO:**  
2,839 S.F. LANDSCAPE AREA  
LANDSCAPE RATIO: .105 = 10.5%

**PSRBB**  
1944 Woodmont Court, Suite A  
El Paso, Texas 79915  
Phone: 915.817.2222  
Fax: 915.817.2222  
www.psrbb.com

