

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

DEPARTMENT: Development Services Department
AGENDA DATE: Public Hearing: July 7, 2009
CONTACT PERSON/PHONE: Mathew McElroy, 541-4193
DISTRICT(S) AFFECTED: East ETJ (Adjacent to District 6)

SUBJECT:

Discussion and action on a Resolution authorizing the City Manager to sign an Annexation Agreement between the City and Walnut Creek, LLC., for 4.96 acres of real property located East of Shreya Street and Northeast of Windermere Avenue which will specify the terms and conditions in which the property will be annexed should the City annex the property.

BACKGROUND / DISCUSSION:

City Council, at a special council meeting on January 21, 2009, voted unanimously to consider only voluntary annexations, under guidance to staff that annexations be master planned and that all capital costs be recovered. There were eight annexations in process being evaluated by staff at the time, which were taken to the Planning and Development Legislative Review Committee on April 17, 2009 and referred to the full council. On April, 28, 2009 the council directed staff to proceed with the processing of the applications under the existing policy.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, Walnut Creek, LLC is the property owner of 4.96 of real property described in Exhibit “A” that is attached and incorporated for all purposes and which property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and

WHEREAS, Property Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and

WHEREAS, the City has determined that if the Property is annexed, such annexation should be subject to certain terms and conditions which will require the Property Owner to assist in bearing the costs for municipal infrastructure costs and costs for providing municipal services to the annexed area; and,

WHEREAS, Property Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and

WHEREAS, the City, after due and careful consideration, has concluded that should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

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

That the City Manager be authorized to sign an Annexation Agreement between the City and Walnut Creek, LLC., for 4.96 acres of real property located East of Shreya Street and Northeast of Windermere Avenue which will specify the terms and conditions in which the property will be annexed should the City annex the property.

ADOPTED this _____ day of _____, 2009.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar,
Assistant City Attorney

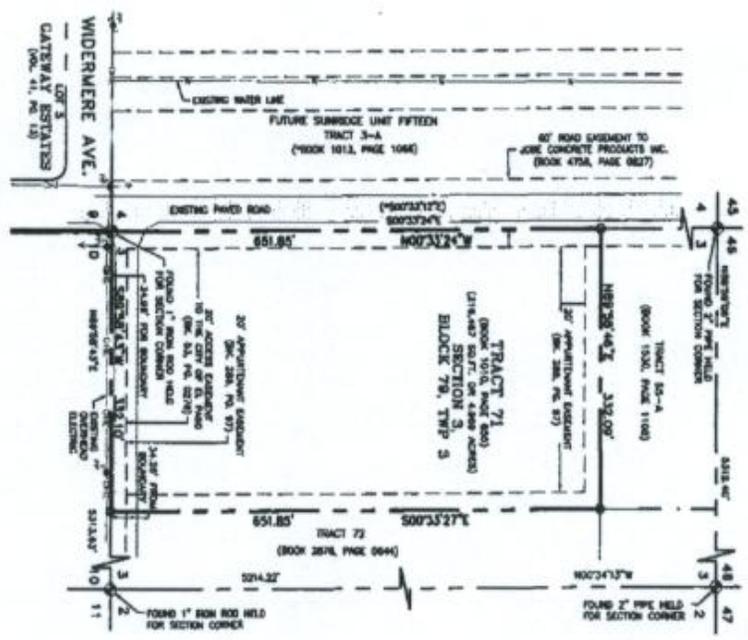
Mathew S. McElroy, Deputy Director
Deputy Director – Planning
Development Services Department

EXHIBIT A

EXHIBIT A

PLAT OF SURVEY
 TRACT 71, BEING THE WEST 1/2, OF THE SOUTHWEST 1/4, OF THE SOUTHWEST 1/4, OF SECTION 3, BLOCK 79, TSP. 3, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, EL PASO COUNTY, TEXAS, CONTAINING 4.969 ACRES

POOR QUALITY ORIGINAL
 BEST AVAILABLE FILM



SYMBOL LEGEND

○	FOUND SECTION CORNER
○	SET 1/2" REBAR W/OUT STAKES
○	POINTER POLE
○	6" PIPE POLE

- NOTES**
1. SURVEY BASED ON STATE MAPS AND A TRANSDUCER MEASURED SURFACE PRODUCTION AS REFERENCED BY GPS METHOD SURVEY AS SET F' STATION WITH GPS 'TRAP' WITH COORDINATES LONGITUDE: 107° 07' 00" W HEIGHT: 3662.25' M
 2. REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FOR TITLE INSURANCE OF NO. 10848, DATED DECEMBER 8, 2008.
 3. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) SURVEY MAP AND PROPERTY MAP, NO. 10872-01000, DATED SEPTEMBER 8, 1991, THIS PROPERTY IS IN FLOOD HAZARD ZONE 1, OUTSIDE THE 100 YEAR FLOOD PLAIN.
 4. THE FOLLOWING REFERENCE COORDINATES OF RECORD POINTS RELATIVE TO THE PROPERTY ARE LISTED IN BOOK 1807, PAGE 504, PUBLIC PROPERTY RECORD OF EL PASO COUNTY, TEXAS.
 - 1. POINT AND CORNER AT SET POINT IN SECTION, QUARTER, MERIDIAN, DISTRICT, FROM EL PASO ANTIPOLO BANK, TRUSTEE TO HONORABLE PROBATEES OF EL PASO COUNTY, TEXAS, RECORDED IN BOOK 289, PAGE 57, PUBLIC PROPERTY RECORD OF EL PASO COUNTY, TEXAS.
 - 2. POINT AND CORNER AT SET POINT IN SECTION, QUARTER, MERIDIAN, DISTRICT, FROM EL PASO ANTIPOLO BANK, TRUSTEE TO HONORABLE PROBATEES OF EL PASO COUNTY, TEXAS, RECORDED IN BOOK 289, PAGE 57, PUBLIC PROPERTY RECORD OF EL PASO COUNTY, TEXAS.
 - 3. POINT AND CORNER AT SET POINT IN SECTION, QUARTER, MERIDIAN, DISTRICT, FROM EL PASO ANTIPOLO BANK, TRUSTEE TO HONORABLE PROBATEES OF EL PASO COUNTY, TEXAS, RECORDED IN BOOK 289, PAGE 57, PUBLIC PROPERTY RECORD OF EL PASO COUNTY, TEXAS.
 - 4. POINT AND CORNER AT SET POINT IN SECTION, QUARTER, MERIDIAN, DISTRICT, FROM EL PASO ANTIPOLO BANK, TRUSTEE TO HONORABLE PROBATEES OF EL PASO COUNTY, TEXAS, RECORDED IN BOOK 289, PAGE 57, PUBLIC PROPERTY RECORD OF EL PASO COUNTY, TEXAS.
 - 5. POINT AND CORNER AT SET POINT IN SECTION, QUARTER, MERIDIAN, DISTRICT, FROM EL PASO ANTIPOLO BANK, TRUSTEE TO HONORABLE PROBATEES OF EL PASO COUNTY, TEXAS, RECORDED IN BOOK 289, PAGE 57, PUBLIC PROPERTY RECORD OF EL PASO COUNTY, TEXAS.
 - 6. POINT AND CORNER AT SET POINT IN SECTION, QUARTER, MERIDIAN, DISTRICT, FROM EL PASO ANTIPOLO BANK, TRUSTEE TO HONORABLE PROBATEES OF EL PASO COUNTY, TEXAS, RECORDED IN BOOK 289, PAGE 57, PUBLIC PROPERTY RECORD OF EL PASO COUNTY, TEXAS.
 - 7. RESECTION OF AN ADJUTANT SURVEYOR OVER THE NORTH, SOUTH, EAST AND WEST QUARTERS OF SECTION 3, BLOCK 79, TSP. 3, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, EL PASO COUNTY, TEXAS, RECORDED IN BOOK 289, PAGE 57, PUBLIC PROPERTY RECORD OF EL PASO COUNTY, TEXAS.
 - 8. EXCEPT TO THE CITY OF EL PASO, DATED 12-12-94, RECORDED IN BOOK 28, PAGE 279, FOR PROPERTY RECORDS OF EL PASO COUNTY, TEXAS.



CERTIFICATION
 I, **CONDE INC.**, A LIMITED LIABILITY COMPANY, DO HEREBY CERTIFY THAT THE SURVEYOR HAS REVIEWED THE RECORDS OF THE SURVEY AND THAT THE SURVEY IS IN ACCORDANCE WITH THE REQUIREMENTS OF THE SURVEYING ACT OF 1989, AS AMENDED, AND THE RULES OF THE BOARD OF SURVEYING AND MAPPING, TEXAS, AND THAT THE SURVEY IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEYED LAND.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

ANNEXATION AGREEMENT
AN08001

THIS AGREEMENT made and entered into this ____ day of _____ 2009, by and between the City of El Paso, Texas, a Municipal Corporation, of the County of El Paso in the State of Texas (hereinafter referred to as “City”), and Walnut Creek, LLC, (hereinafter referred to as “Owner”);

WHEREAS, Owner is the owner of record of 4.969 acres of real property described in Exhibit “A”, which is attached and incorporated into this Agreement for all purposes (which real property is hereinafter referred to as “Property”), and which real estate is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and

WHEREAS, Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and

WHEREAS, it is understood by the Owner that of paramount consideration for the City in entering into this Agreement is that the municipal infrastructure costs and costs for providing municipal services to the annexed area should be paid for, to the greatest extent allowed by law, by the Owner and not by the existing city taxpayers; and,

WHEREAS, Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and

WHEREAS, the City, after due and careful consideration, has concluded that should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

One: Should the City annex the Property such annexation shall be in accordance with the terms and conditions of this Agreement, provided that the terms and conditions of this Agreement are met by the Owner. It is understood by the Owner that there are significant costs to the City associated with the annexation of Property into the City and of paramount consideration for the City in entering into this Agreement is that the Owner participate in the municipal infrastructure costs and costs for providing municipal services as required in this Agreement. This Agreement shall be an exhibit to the ordinance which annexes the property and shall be incorporated for all purposes.

Two: Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and in Section Three and Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Section Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, and Owner

agrees to comply with the additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

1. No off-premise signs shall be permitted within any portion of the Property.
2. A twenty (20) foot-wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet-on-center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning districts. Any portion of the landscape buffer from the back building wall to the front Property line shall be counted toward the landscaping requirement. Any portion of the landscape buffer located from the back building wall toward the rear Property line will be in addition to the landscape requirements.
3. Park credit may be applied as allowed under the Code.

Three: Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall apply submit a subdivision plat for approval in accordance with the procedures of Title 19 (Subdivisions) of the Code.

Four: In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater Annexation Fee 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:

<u>Meter Size</u>	<u>(in Dollars)</u> <u>Water</u>	<u>(in Dollars)</u> <u>Wastewater</u>
5/8" x 3/4"	637	369
1"	1,571	911
1 1/2"	3,185	1,846
2"	5,096	2,954
3"	10,193	5,906
4"	15,926	9,229
6"	31,852	18,459
8"	59,457	34,455
10"	84,939	49,222

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 March 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater Annexation Fee shall be due at the time of application for water. 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 any other new or existing 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 Development Services Department of the City for validation of such non-conforming lot, use or structure within the Property.

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
2 Civic Center Plaza
El Paso, Texas 79901

Copy to: City Clerk
Same Address as above

(2) OWNER: Walnut Creek, LLC.
C/O: Carlos Bombach
12300 Montwood Drive
El Paso, Texas 79925

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 to completion as specified herein then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

Force Majeure: In the event 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 herefrom 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 RightsTo 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 effectuate 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 shall, in carrying out the terms of this Agreement, 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 even 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

Joyce Wilson
City Manager

SIGNATURES, ACKNOWLEDGEMENT AND ACCEPTANCE ON FOLLOWING PAGE

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2009, by
Joyce Wilson, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this ____
day of _____, 2009.

Owner(s):
By: _____

Title: _____
JNC Development, LP

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2009, by
_____, on behalf of **JNC Development, LP**, Owner.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires

DEVELOPMENT SERVICES DEPARTMENT
BUILDING PERMITS & INSPECTIONS DIVISION



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

FROM: Mathew McElroy, Deputy Director, DSD - Planning

DATE: June 29, 2009

RE: Annexation Agreement – AN08001

Walnut Creek, LLC. is requesting that the City annex 4.96 acres of property. At the April 28, 2009 city council meeting, council directed staff to proceed with negotiations with Walnut Creek, LLC. on an annexation agreement which would specify the terms and conditions under which the property, if annexed, would be annexed. If the Agreement is approved, then staff will proceed with the annexation public hearings required under the statute. The action taken today does not annex the property, nor does it bind City Council to annex the property at a later date. If approved, the annexation agreement will simply specify the terms and conditions under which the property, if annexed, would be annexed. Once the public hearings have been conducted, an ordinance will be brought to council for action and a determination will be made by City Council concerning whether the property should be annexed. If approved, this agreement will be an exhibit to the annexation ordinance and should the City Council approve the ordinance annexing the property, the annexation will be under the terms and conditions contained in the annexation agreement.

The City Plan Commission voted to approve the annexation of the subject property on July 31, 2008. However, because the City Council hearing for the annexation was not scheduled within the time frame required by the Texas Local Government Code, new public hearings will have to be scheduled in accordance with the code.

Attachments: Location Map

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

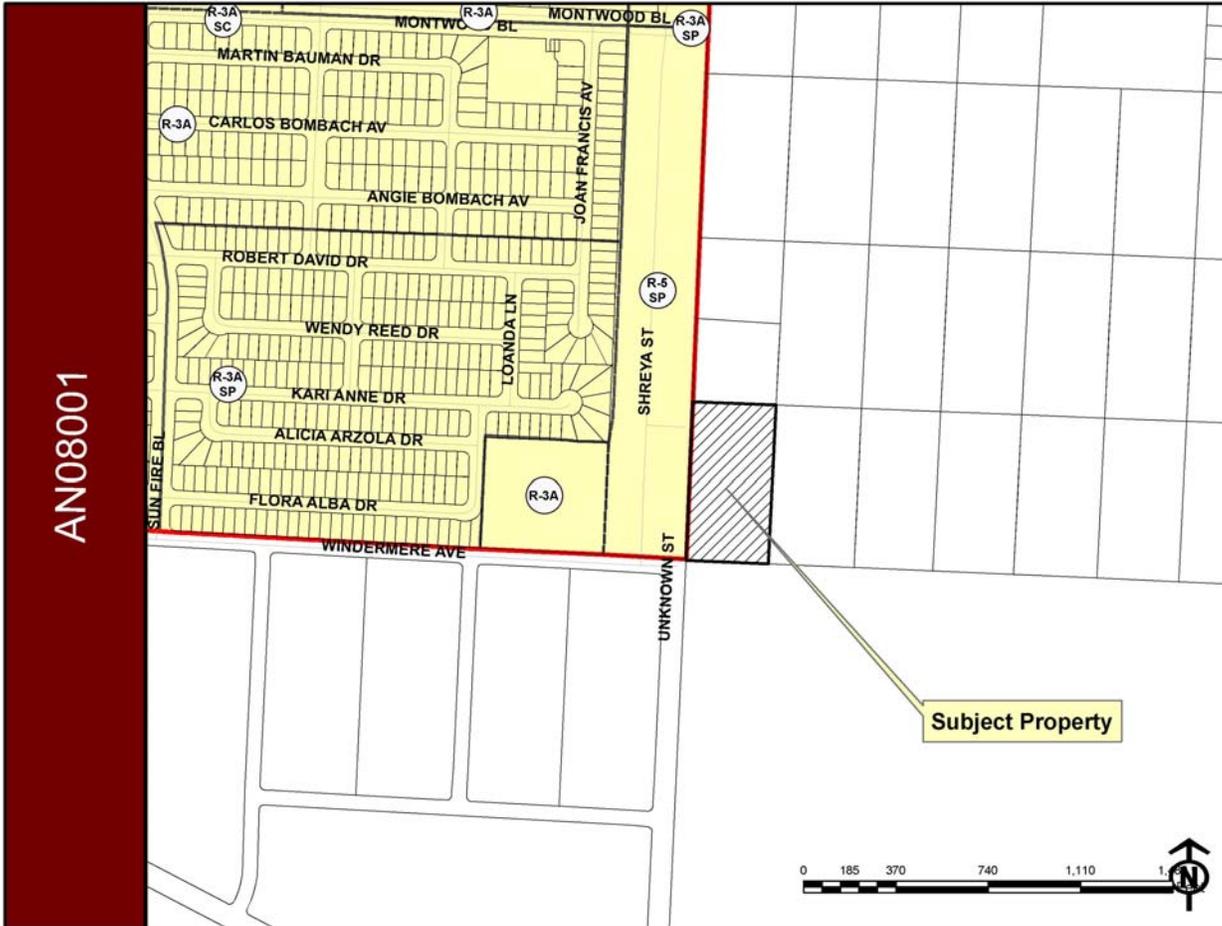
District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson



AN08001

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

Development Services Department

Victor Q. Torres – Director

2 Civic Center Plaza – 5th Floor · El Paso, Texas 79901 · (915) 541-4622 · Fax (915) 541-4799