

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

DEPARTMENT: Development Services - Planning Division

AGENDA DATE: 11/21/06 (Resolution)

CONTACT PERSON/PHONE: Esther Guerrero, Planner – 541-4720

DISTRICT(S) AFFECTED: # 5

SUBJECT:

That the City Manager be authorized to sign a Partial Release of Contract by and between Leavell Development Company, a corporation, and Individual Homes, Inc. (hereinafter the "Contract"), releasing Conditions 1 and 2, in the Contract dated March 2, 1977, for the property described as *a portion of Lot 17, Block 126, Pebble Hills Subdivision Unit 15, City of El Paso, El Paso County, Texas.*

Subject Property: Yarbrough Drive, North of Pebble Hills Boulevard. Applicant: EPT Pueblo Condominiums, L.P., ZON06-00119 (District 5)

BACKGROUND / DISCUSSION:

See attached report

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Development Coordinating Committee (DCC) – Approval Recommendation
City Plan Commission (CPC) – Approval Recommendation

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: Alan Shubert

APPROVED FOR AGENDA:

RESOLUTION

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

THAT the City Manager be authorized to sign a Partial Release of Contract by and between Leavell Development Company, a corporation, and Individual Homes, Inc. (hereinafter the "Contract"), releasing Conditions 1 and 2, in the Contract dated March 2, 1977, for the property described as *a portion of Lot 17, Block 126, Pebble Hills Subdivision Unit 15, City of El Paso, El Paso County, Texas.*

ADOPTED this _____ day of _____, 2006.

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Hillary S. McGinnes
Assistant City Attorney

APPROVED AS TO CONTENT:



Rodolfo Valdez, Chief Urban Planner
Development Services Department

THE STATE OF TEXAS } **PARTIAL**
 } **RELEASE OF CONTRACT**
COUNTY OF EL PASO }

WHEREAS, a contract was entered into on March 2, 1977, by and between Leavell Development Company, a corporation, and Individual Homes, Inc., attached as Exhibit "A" and incorporated by reference for all purposes (the "Contract"); placing conditions on real property being described as *Section 38, Block 80, Township 2, T & P RR Suveys* in the City of El Paso, El Paso County, Texas; and,

WHEREAS, EPT Condominiums, L.P., ("Owner") successor in title and interest to a portion of the property described above, has applied for a release of the conditions imposed on the property described in the Contract; and,

WHEREAS, the City Plan Commission and City Council have reviewed the conditions once made necessary by the rezoning and is now of the determination that, due to changed conditions in the area, such conditions are no longer necessary to ensure compatibility with adjacent land uses and should be partially released.

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

1. The Contract dated March 2, 1977, is hereby amended to release Conditions 1 and 2, as shown on the attached Exhibit "A", on the property described as *a portion of Lot 17, Block 126, Pebble Hills Subdivision Unit 15, City of El Paso, El Paso County, Texas*, and as more particularly described in the attached Exhibit "B."
2. Except as herein amended, the Contract dated March 2, 1977, shall remain in full force and effect.

EXECUTED this _____ day of _____, 2006.

THE CITY OF EL PASO

 Joyce A. Wilson, City Manager

(Signatures continue on the next page.)

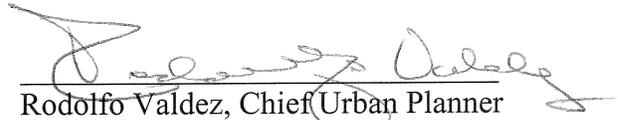
Zoning Case No: ZON06-00119

APPROVED AS TO FORM:



Hillary S. McGinnes
Assistant City Attorney

APPROVED AS TO CONTENT:



Rodolfo Valdez, Chief Urban Planner
Development Services Department

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this _____ day of _____, 2006, by Joyce Wilson as City Manager, on behalf of City of El Paso.

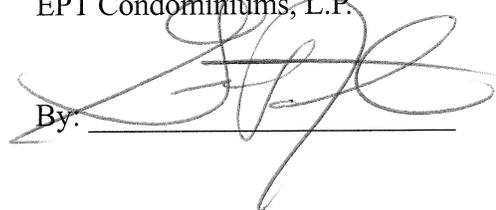
My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

ACCEPTANCE

The above Partial Release to Contract, with all conditions thereof, is hereby accepted this 26th day of October, 2006.

EPT Condominiums, L.P.

By: 

(Acknowledgment continues on next page.)

Zoning Case No: ZON06-00119

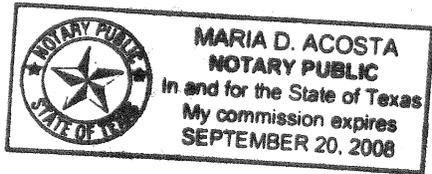
ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 26th day of October, 2006, by [Signature] as manager, on behalf of EPT Condominiums, L.P., as Owner/Applicant.

My Commission Expires:

Maria D. Acosta
Notary Public, State of Texas
Notary's Printed or Typed Name:
MARIA D. ACOSTA



Zoning Case No: ZON06-00119

CONTRACT

This contract, made this 2nd day of March, 1977, by and between LEAVELL DEVELOPMENT COMPANY, a corporation, and INDIVIDUAL HOMES, INC., a corporation, First Parties, and the CITY OF EL PASO, Second Party, witnesseth:

Application has been made to the City of El Paso for rezoning of a portion of Section 38, Block 80, Township 2, T & P RR Surveys in the City of El Paso, El Paso County, Texas, such property being more particularly described in Ordinance No. 5936 now pending before the City Council of the City of El Paso, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof by reference. - In order to remove certain objections to such rezoning, First Parties covenant that if the property is rezoned as indicated in the attached ordinance, it shall be subject to the following restrictions, conditions and covenants:

1. No building permits shall be issued for construction on the property until complete and detailed site development and architectural plans of the proposed development have been approved by the City Plan Commission of the City of El Paso.

2. No certificates of occupancy and compliance shall be issued by the City for any buildings constructed on the property until First Parties have, at no cost to the City, installed concrete sidewalks along the boundaries of the property adjacent to Pebble Hills Boulevard and Yarbrough Drive. Such sidewalks shall be installed in accordance with specifications to be approved by the City Engineer of the City of El Paso and the City Engineer must certify that such sidewalks have been satisfactorily installed before certificates of occupancy and compliance shall be issued.

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

Zoning Case
77-4043

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 release the above restrictions, conditions and covenants in its discretion without the consent of any third person who may be benefited thereby.

WITNESS the following signatures and seals:

LEAVELL DEVELOPMENT COMPANY, a corporation

By *[Signature]*
VICE President

ATTEST:

[Signature]
ASST Secretary

INDIVIDUAL HOMES, INC., a corporation

By *[Signature]*
VICE President

ATTEST:

D. Marshall
Secretary

THE CITY OF EL PASO

By *[Signature]*
Mayor *Pro-Tem*

ATTEST:

[Signature]
City Clerk

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

Before me, the undersigned authority, on this day personally appeared D.H. ELLIOTT, VICE President of LEAVELL DEVELOPMENT COMPANY, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged before me in my county aforesaid that the same was the act of said corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and official seal this 2nd day of March, 1977.

DONNA G. REARDON, Notary Public
In and for the County of El Paso, Texas
My Commission Expires June 1, 1977

Donna G. Reardon
Notary Public in and for El Paso
County, Texas.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

Before me, the undersigned authority, on this day personally appeared R. T. TAYLOR, VICE-President of INDIVIDUAL HOMES, INC., a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged before me in my county aforesaid that the same was the act of said corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and official seal this 2nd day of March, 1977.

Catherine Myers
Notary Public in and for El Paso
County, Texas.

CATHERINE MYERS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

Before me, the undersigned authority, on this day personally appeared E. H. BAERZA, Mayor Pro-Tem of the City of El Paso, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged before me in my county aforesaid that he had executed the same for the purposes and consideration and in the capacity therein expressed, and as the act and deed of the City of El Paso.

Given under my hand and official seal this 10th day of March, 1977.

Angela C. Guillen
Notary Public in and for El Paso
County, Texas.

ANGELA C. GUILLEN, Notary Public
In and for the County of El Paso, Texas
My Commission Expires June 1, 1977

K

RESOLUTION

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

That the Mayor be authorized to sign a contract with LEAVELL DEVELOPMENT COMPANY, et al., placing certain restrictions on property rezoned by Ordinance No. 5935.

ADOPTED this 10th day of March, 1977.

EH Garza

Mayor *Pro-Tem*

ATTEST:

Whitney

City Clerk

City Clerk

MAR 14 1977

DEPT. OF
PLANNING



BROCK & BUSTILLOS INC.
CONSULTING CIVIL ENGINEERS LAND SURVEYORS

ROMAN BUSTILLOS, P.E.
President
RANDY P. BROCK, P.E.
Executive Vice President
SERGIO J. ADAME, P.E.
Vice President - Engineering
OSCAR V. PEREZ
Vice President - Operations
ISAAC CAMACHO, R.E.L.S.
Survey Manager

METES AND BOUNDS DESCRIPTION

A 2.7097 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas, as a portion of Lot 17, Block 126, Pebble Hills Subdivision Unit 15, as recorded in Volume 53, Page 18, Plat Records, El Paso County, Texas, and being more particularly described by metes and bounds as follows to wit:

COMMENCING for reference at a City Monument found at the centerline intersection of Yarbrough Drive (120.00 feet wide) and Pebble Hills Boulevard (60.00 feet wide); **WHENCE**, a City Monument found at the centerline intersection of Yarbrough Drive and Kinross Drive (60.00 feet wide), bears North $41^{\circ}08'25''$ East, a distance of 1,720.10 feet; **THENCE**, leaving the centerline of Pebble Hills Boulevard and following the centerline of Yarbrough Drive, North $49^{\circ}30'00''$ East, a distance of 331.61 feet; **THENCE**, leaving the centerline of Yarbrough Drive, South $40^{\circ}30'00''$ East, a distance of 60.00 feet to a 5/8" rebar found on the southeasterly right-of-way line of Yarbrough Drive for the southwest corner and **POINT OF BEGINNING** of the parcel herein described; Identical to the northwest corner of a portion of Lot 17, Block 126, Pebble Hills Subdivision Unit 15, as conveyed to The United States Government, recorded in Volume 1310, Page 1765, Real Property Records, El Paso County, Texas;

THENCE, following the southeasterly right-of-way line of Yarbrough Drive, North $49^{\circ}30'00''$ East, a distance of 27.31 feet to a chiseled 'X' in concrete set for a point of curvature;

THENCE, continuing along the southeasterly right-of-way line of Yarbrough Drive and with the arc of a curve to the left having a radius of 1,260.00 feet, a central angle of $11^{\circ}34'20''$ an arc length of 254.49 feet and a long chord which bears, North $43^{\circ}42'50''$ East, a distance of 254.05 feet to a chiseled 'X' in concrete set for a point of tangency;

THENCE, continuing along the southeasterly right-of-way line of Yarbrough Drive, North $37^{\circ}55'40''$ East, a distance of 76.47 feet to a concrete nail in concrete set on the southwesterly boundary line of an existing 10.00 feet wide Southwestern Bell Telephone Company Utility Easement, as recorded in Volume 3078, Page 127, Real Property Records, El Paso County, Texas, for the northwest corner of the parcel herein described; Identical to the southwest corner of a portion of Lot 17, Block 126, Pebble Hills Subdivision Unit 15, as conveyed to Pebble Hills/Yarbrough No. 108, recorded in Volume 1816, Page 1293, Real Property Records, El Paso County, Texas;

THENCE, leaving the southeasterly right-of-way line of Yarbrough Drive and following the southwesterly boundary line of said Southwestern Bell Easement, South $52^{\circ}04'20''$ East, a distance of 250.00 feet to a bridge nail in concrete set on the northwesterly boundary line of a 0.0489 acre parcel as conveyed to Southwestern Bell Telephone Company, recorded in Volume 3078, Page 132, Real Property Records, El Paso County, Texas, for an angle point;

THENCE, leaving the southwesterly boundary line of said Southwestern Bell Easement and following the northwesterly boundary line of said Southwestern Bell Parcel, South $37^{\circ}55'40''$ West, a distance of 30.00 feet to an 'X' painted on a chain link fence post for an angle point;

THENCE, following the southwesterly boundary line of said Southwestern Bell Parcel, South $52^{\circ}04'20''$ East, a distance of 55.08 feet to a concrete nail set on a rock wall and on the northwesterly boundary line of Lot 9, Block 126, Pebble Hills Subdivision Unit 15, for the northeast corner of the parcel herein described;

THENCE, leaving the southwesterly boundary line of said Southwestern Bell Parcel and following the northwesterly boundary line of Lot 9, South $37^{\circ}17'30''$ West, a distance of 10.72 feet to a concrete nail on a rock wall set at the northwest corner of Lot 10, Block 126, Pebble Hills Subdivision Unit 15, for an angle point;

THENCE, following the northwesterly boundary line of Lot 10, South $33^{\circ}23'40''$ West, a distance of 90.88 feet to a concrete nail on a rock wall set at the northwest corner of Lot 11, Block 126, Pebble Hills Subdivision Unit 15, for an angle point;

THENCE, following the northwesterly boundary line of Lot 11, South $26^{\circ}52'18''$ West, a distance of 90.88 feet to a concrete nail on a rock wall set at the northwest corner of Lot 12, Block 126, Pebble Hills Subdivision Unit 15, for an angle point;

THENCE, following the northwesterly boundary line of Lot 12, South $20^{\circ}20'56''$ West, a distance of 90.88 feet to a concrete nail on a rock wall set at the northwest corner of Lot 13, Block 126, Pebble Hills Subdivision Unit 15, for an angle point;

THENCE, following the northwesterly boundary line of Lot 13, South $13^{\circ}49'34''$ West, a distance of 53.49 feet to a concrete nail on a rock wall set for the southeast corner of the parcel herein described; Identical to the northeast corner of the aforementioned U.S. Government Parcel;

THENCE, leaving the northwesterly boundary line of Lot 13 and following the northeasterly boundary line of said U.S. Government Parcel, North $52^{\circ}04'20''$ West, a distance of 410.19 feet to the **TRUE POINT OF BEGINNING**.

Said Parcel contains 2.7097 acres (118,034.8 square feet) more or less.

Isaac Camacho
 Isaac Camacho, R.P.L.S. TX No. 5337
 Date: August 22, 2006
 Job No. S-6694-01



JOHN COOK
MAYOR

JOYCE WILSON
CITY MANAGER



CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
J. ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
PRESI ORTEGA, JR., DISTRICT 5
EDDIE HOLGUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

**DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION**

October 26, 2006

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

FROM: Esther Guerrero, Planner

SUBJECT: ZON06-00119

The City Plan Commission (CPC), on October 19, 2006, voted **(5-0)** to recommend **approval** to release the following conditions currently imposed on this parcel of land through contract dated March 2, 1977:

- 1. No building permits shall be issued for construction on the property until complete and detailed site development and architectural plans of the proposed development have been approved by the City Plan Commission of the City of El Paso.*
- 2. No certificates of occupancy and compliance shall be issued by the City for any buildings constructed on the property until First Parties have, at no cost to the City, installed concrete sidewalks along the boundaries of the property adjacent to Pebble Hills Boulevard and Yarbrough Drive.*

The Mayor and Council will also consider a related request on November 21, 2006 to rezone this property from C-1/sc (Commercial/special contract) to A-2 (Apartment) to allow condominium units (see case ZON06-00112).

The CPC found that the release of these conditions are in conformance with The Plan for El Paso; and the proposed use is in conformance with the Year 2025 Projected General Land Use Map, which designates the subject property for residential land uses. The CPC also determined that releasing these conditions protect the best interest, health, safety, and welfare of the public in general; that the proposed use is compatible with adjacent land uses; and the effects of the release of conditions will have no effects on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

There was no one in opposition to this application present at the meeting but a letter was received opposing this request (see attached).

STAFF REPORT

Zoning Condition Amendment/Release: ZON06-00119

Property Owner(s): EPT Pueblo Condominiums, L..P.

Applicant(s): Same

Representative(s): Frank X. Spencer and Greg Foster

Legal Description: A portion of Lot 17, Block 126, Pebble Hills Subdivision Unit 15, El Paso, El Paso County, Texas

Location: Yarbrough Drive, North of Pebble Hills Boulevard

Representative District: # 5

Area: 2.7097 Acres

Present Zoning: C-1/sc (Commercial/special contract)

Present Use: Vacant

Proposed Request: Release conditions imposed by Contract dated March 2, 1977

Proposed Use: Condominium Units / Townhouses

Recognized Neighborhood Associations Contacted: East Side Civic Association

Surrounding Land Uses:

North -	P-R2 (Planned Residential II) / Single-family Residential
South -	C-1/sc/sp (Commercial/special condition/special permit) / U.S. Post Office
East -	R-4 (Residential) / Single-family Residential
West-	C-1 (Commercial) / Condominium Units, Restaurant

Year 2025 Designation: Residential (East Planning Area)

**CITY PLAN COMMISSION HEARING, OCTOBER 19, 2006,
1:30 P.M., CITY COUNCIL CHAMBERS, 2ND FLOOR, CITY HALL
REZONING APPLICATION: ZON06-00119**

GENERAL INFORMATION:

The applicant is requesting to release the following zoning contract imposed by Ordinance No. 5935 dated March 2, 1977, on the property located at Yarbrough Drive, North of Pebble Hills Boulevard:

1. *No building permits shall be issued for construction on the property until complete and detailed site development and architectural plans of the proposed development have been approved by the City Plan Commission of the City of El Paso.*
2. *No certificates of occupancy and compliance shall be issued by the City for any buildings constructed on the property until First Parties have, at no cost to the City, installed concrete sidewalks along the boundaries of the property adjacent to Pebble Hills Boulevard and Yarbrough Drive.*

The contract release is necessary and desirable for condition no. 2 because sidewalks along both boundaries have been complied with. Release of condition no. 1 is desirable for the reason that when this property was rezoned in 1977 from A-2 (Apartment) to C-1(Commercial), the intent to require detailed site plan was to insure compatibility of any proposed development with surrounding residential land uses.

There is a proposed rezoning request in process which applies to this application (see ZON06-00112).

INFORMATION TO THE COMMISSION:

The Development Services Department – Planning Division has received several calls requesting further information on the proposed use for this parcel of land, but did not state whether for or against this application.

STAFF RECOMMENDATION:

The Development Coordinating Committee (DCC) recommends unanimous **approval** of the release of the zoning contract imposed on this property.

The Plan for El Paso City-Wide Land Use Goals recommends that El Paso “develop a balanced and complete community which contains a mix of land uses and densities, a wide range of housing types and styles that respond to the needs of all economic segments of the community.”

The Year 2025 Projected General Land Use Map for the East Planning Area designates this property for **Residential** land uses.

The Commission must determine the following:

- A. Will the release of the zoning contract protect the best interest, health, safety and

welfare of the public in general?

- B. What effects will this have on the natural environment, social and economic conditions, and property values in the vicinity and the city as a whole?
- C. What is the relation of the proposed contract release to the City's Comprehensive Plan?

INFORMATION TO THE APPLICANT:

Development Services Department - Planning Division Notes:

- A. The Year 2025 Projected General Land Use Map for the East Planning Area designates this property as Residential. Detailed site development review typically not required for residential uses.
- B. The release of this contract will not affect the compatibility with surrounding land uses.
- C. Sidewalks have been installed.

Development Services Department - Building Permits Division Notes:

Zoning Review:

No objections to releasing conditions imposed by contract dated March 2, 1977.

Development Services Department - Subdivision Plan Review Notes:

- A. ADA accessible Sidewalks, Wheel-chair ramp(s), and Driveway(s) will be required.*
- B. Grading plan and permit shall/may be required.*
- C. Storm Water Pollution Prevention plan and/or permit shall/may be required.*
- D. Drainage plans must be approved by the Development Services Department.*
- E. Additional Comments: Site location is not located within a Special Flood Hazard Area, Flood Zone(s) C, Panel(s) 480214 0036 C.

* This requirement will be applied at the time of development.

Engineering Department - Traffic Division Notes:

Recommend that detailed site plan review be required.

Fire Department Notes:

No comments received.

El Paso Water Utilities Notes:

Water

- A. There is an existing 20-inch diameter water transmission main along the Yarbrough Drive fronting the subject property. This water transmission main is not available for service.
- B. Water service is available from an existing 12-inch diameter water main located along Pebble Hills Boulevard. An off-site water main extension will be required to serve the proposed development.

- C. The Texas Commission on Environmental Quality (TCEQ) requires that owners/managers of new apartment houses with five or more dwelling units provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of submeters or individual meters for each dwelling or rental unit. The cost of the plumbing system that is compatible with the installation of the meters is the responsibility of the owner. For more information about this State Law, please contact TCEQ Region 6 at 834-4949.

Sanitary Sewer

There is an existing 8-inch diameter sanitary sewer main along Yarbrough Drive fronting the subject property.

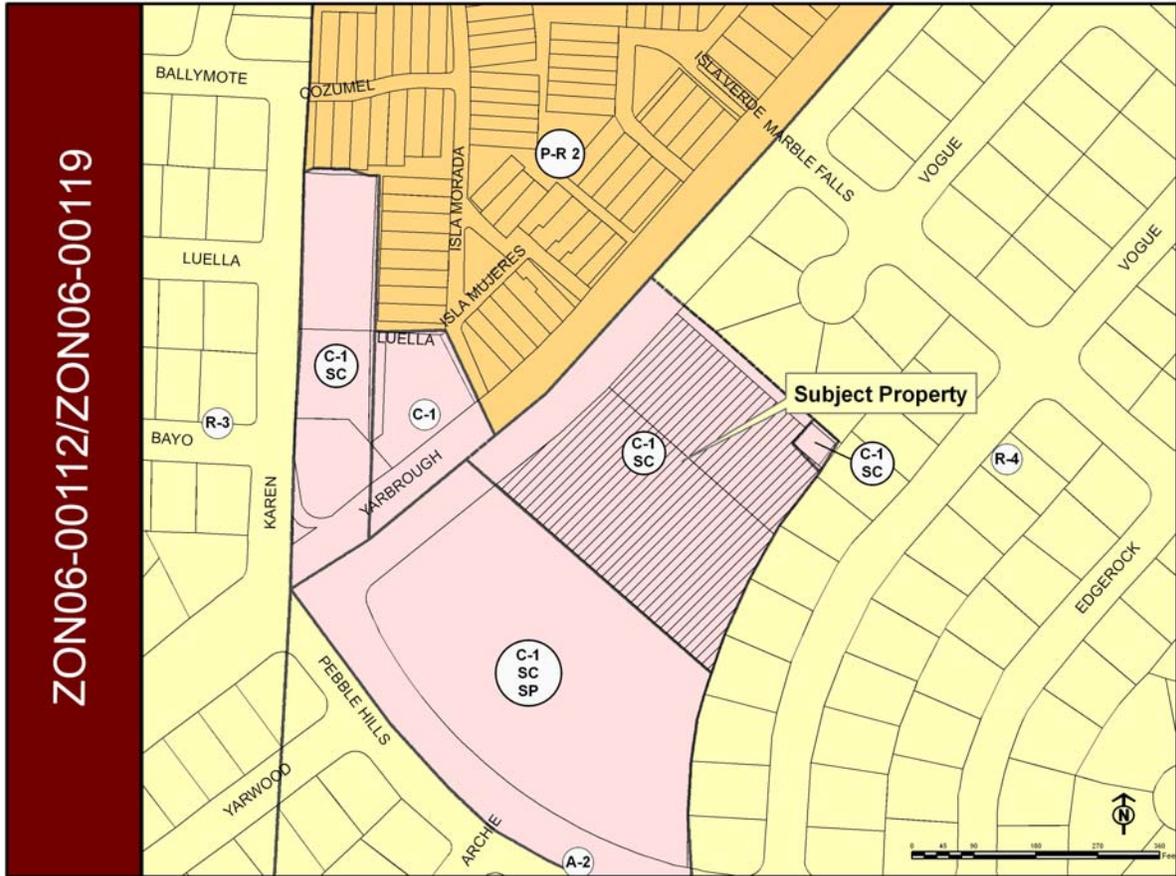
General

- A. On-site sanitary sewer and water main extensions within an on-site easement will be required in order to serve the proposed development. The water system is required to be looped.
- B. EPWU-PSB requires access to the proposed facilities within the easement 24 hours a day, seven (7) days a week.
- C. No building, reservoir, structure or other improvement, other than asphaltic paving (HMAC), shall be constructed or maintained on the above referenced El Paso Water Utilities - Public Service Board Easements (EPWU-PSB) without the written consent of EPWU-PSB.
- D. Easement grantor shall indemnify, defend, and hold harmless the El Paso Water Utilities–Public Service Board from and against any and all claims, liability, actions, and damages for bodily injury and property damage to third parties or to the El Paso Water Utilities–Public Service Board which may be caused by or arise out of the maintenance and existence of said water and sanitary sewer mains in the easement area.
- E. Application for water and sanitary sewer services should be made 6 to 8 weeks prior to any construction to ensure water for construction work. A site plan, a utility plan, grading and drainage plans, landscaping plan, the legal description of the property, and a certificate-of-compliance are required at the time of application. The owner is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

EPWU does not object to this request.

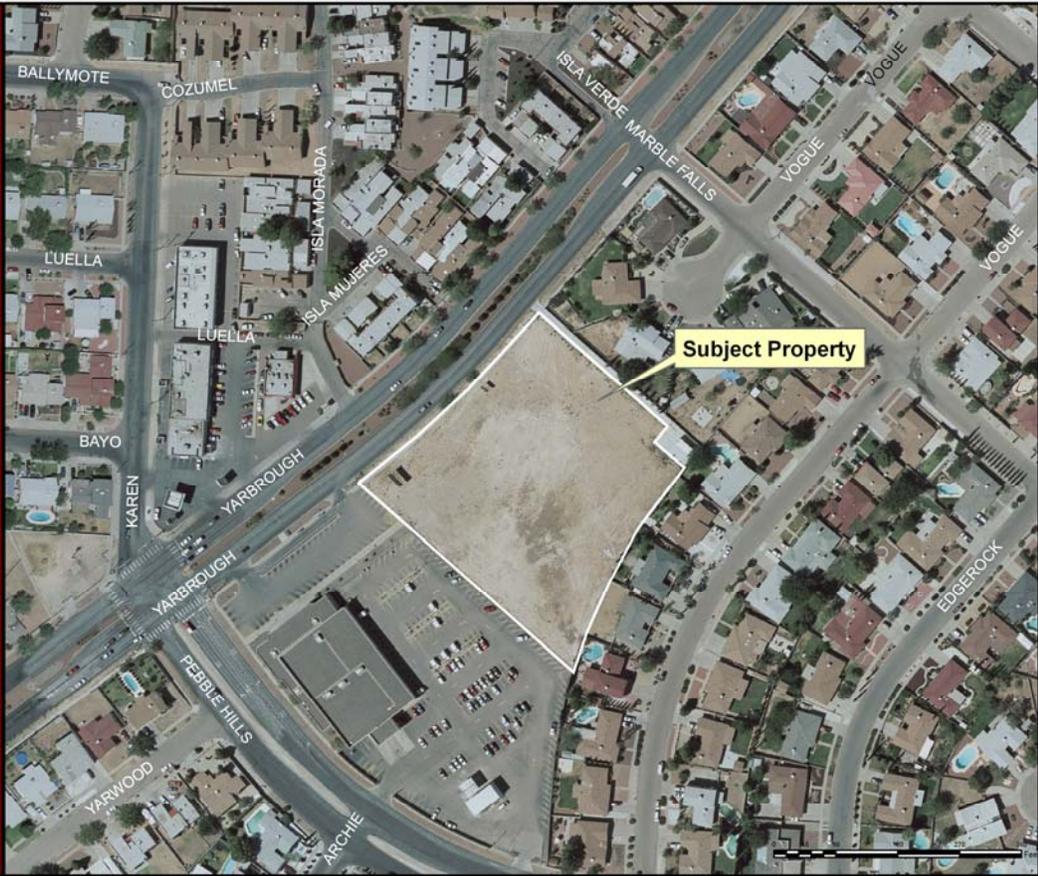
NOTE TO THE PROPERTY OWNER: CITY PLAN COMMISSION POLICY REQUIRES THAT THE APPLICANT OR REPRESENTATIVE BE PRESENT AT THE PUBLIC HEARING FOR THIS ITEM. PLEASE DIRECT ANY QUESTIONS CONCERNING THIS REPORT TO THE DEVELOPMENT SERVICES DEPARTMENT - PLANNING DIVISION (915) 541-4056.

LOCATION MAP



AERIAL

ZON06-00112 & ZON06-00119



SITE PLAN

