

Date: August 2, 2021

To: Mark D. Israelson, ICMA-CM, City Manager
Jack Carr, P.E., Deputy City Manager

From: Christina D. Day, AICP, Director of Planning

Subject: Zoning Case 2020-016: North Texas Municipal Water District SUP Request

This memo is in response to three questions from City Council regarding Zoning Case 2020-016. These questions relate to the impacts of zoning decisions. There are several layers of regulation that apply to treatment plants. Zoning regulates land use. It is distinct from the regulation of waste water and waste water treatment for environmental or engineering purposes. Zoning decisions need to be considered on the merits of the proposed land use and based on the facts and standards of planning practice.

1. What are the impacts of moving the SUP boundary to the east, away from Los Rios Boulevard, to the edge of the existing treatment units and rezoning the property along Los Rios, planned for a berm and landscaping, as Neighborhood Office (O-1)?

Only the area within the SUP boundary can include development restrictions. If City Council decided to move the boundary to the east, the current recommendation from P&Z would be impacted by this change. The SUP boundary as it stands includes the following requirements:

- No sewage treatment process units will be added outside the operational boundaries as they existed on January 1, 2021.
- Development along Los Rios Boulevard is restricted to a one-story office building and associated parking spaces with a minimum setback of 150 feet from the Los Rios Boulevard right of way.
- A living screen, consisting of a variety of evergreen trees must be planted and maintained to screen the sewage treatment plant equipment and facilities, except for the office building from Los Rios Boulevard.

Each of these restrictions is focused on placing legal restrictions on the area between Los Rios Boulevard and the existing development, to limit what can occur in this area. Moving the SUP boundary to the east, to the edge of the existing treatment units would eliminate the ability to have explicit control over the area closest to the residential subdivisions, in the form of zoning stipulations, since the SUP request would no longer cover the area. The area would revert to the base zoning, and development would be allowed by right consistent with the allowances of the district.

The current zoning is Agricultural (A), which requires a Specific Use Permit for Sewage Treatment Facility. O-1 zoning does not allow Sewage Treatment Plant, by-right or by SUP, but would allow other forms of development by right. Development under O-1 zoning could occur along Los Rios based on the city's normal property rights, and the restrictions proposed today (such as the requirement for a living screen and development restrictions to a single story building with setback)

would not be included in the zoning standards. Neighborhood Office zoning would allow by-right development of two story, 35-foot buildings at a 50-foot setback with a ten-foot landscape edge. If there is interest in rezoning the frontage to O-1, this would require a new zoning case to be submitted. The new case would restart the zoning process for a new case, including notices, public feedback, and P&Z and City Council public hearings.

The current plant boundary can be viewed in Exhibit B, Sheet 6 of 8 in the ordinance for Zoning Case 2020-016. The proposed boundaries of the SUP can be found in the same ordinance, and include area for the service yard.

2. What are the impacts of separating the operations building from the remainder of the sewage treatment facility, from a zoning and land use perspective?

Staff has considered the operations building as part of the sewage treatment facility for a number of reasons.

- 1) The current operations building is part of the sewage treatment facility, so it is consistent with the status quo and current land use condition on the site.
- 2) By including the operations building as part of the sewage treatment facility, it removes any questions as to the nature of the functions occurring in the building – whether they are actually an office use or something more intensive.
- 3) The definition of Professional/General Administrative office is defined as “business offices” of public utilities, and includes “provision of executive, management or administrative functions”. In this case, the function of the operations building may exceed the professional office definition.
- 4) Consideration of the city-wide impacts of any land-use decision are always a priority. The NTMWD has a number of facilities in Plano. If the operations building is considered an office here, outside the district facility, and allowed under less intense zoning restrictions, this interpretation would need to be consistent on other properties in Plano. Other public utility operations buildings would likely need to be treated as office buildings and allowed without consideration of SUP or other zoning restrictions. The full impact of such a determination is unknown, so a conservative approach was taken to limit any negative consequences and protect the value and enjoyment of land in proximity to these facilities.

Based on all these land use considerations, it was considered best to continue to include the operations building a part and function of the sewage treatment facility and, therefore, keep it within the boundary of the SUP for Sewage Treatment Facility.

3. Is the zoning of the property legally impactful?

Zoning is adopted by city ordinance and is legally enforceable in court, resulting in fines and criminal penalties if properties owners are found out of compliance with the Zoning Ordinance. Responsibilities for enforcement of the Zoning Ordinance lie with the Neighborhood Services department and Municipal Prosecutor’s office. Over the past two years, 96 notice to appear or probable cause affidavits have been issued for zoning violations. Furthermore, the Code of Ordinances was recently updated to enhance penalties for repeat or continued zoning violations, demonstrating the city’s attention to zoning infractions.

CC: Eric Hill, AICP, Sr. Planning Manager, Zoning & Development
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