

ORDINANCE NO. 2022-60

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY IN CASE NO. ZC-22-13, BY REZONING APPROXIMATELY 48.87 ACRES GENERALLY LOCATED ON THE NORTH SIDE OF CENTERPOINT ROAD BETWEEN OLD BASTROP HIGHWAY AND CENTERPOINT COURT FROM “SC” SMARTCODE DISTRICT TO “CD-5 CHARACTER DISTRICT-5 AND “CD-3 CHARACTER DISTRICT-3; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. On June 28, 2022, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “SC” SmartCode District to “CD-5” Character District-5 for approximately 48.87 acres generally located on the north side of Centerpoint Road between Old Bastrop Highway and Centerpoint Court (the “Property”), as described in Exhibit A, attached hereto and made a part hereof for all purposes.

2. The Property is comprised of three tracts of land, the surveys of which are included in Exhibit A. For purposes of this ordinance such tracts are as follows:

a. Tract A, being 7.22 acres;

b. Tract B, being 18.74 acres; and

c. Tract C, being 22.91 acres.

3. The Planning and Zoning Commission approved a recommendation to the City Council regarding the request.

4. The City Council held a public hearing on August 2, 2022, regarding the request.

5. The owner of the Property consented to Tract C being rezoned to a less intense zoning district classification of “CD-3” Character District-3 rather than that of “CD-5” Character District-5, as originally requested.

6. All requirements pertaining to Zoning Map amendments have been met.

7. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS,
TEXAS:**

SECTION 1. The Official Zoning Map of the City is amended to rezone:

a. Tracts A and B, from “SC” SmartCode District to “CD-5” Character District-5; and

b. Tract C from “SC” SmartCode District “CD-3” Character District-3.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. This ordinance will take effect after its passage, approval and adoption on second reading and the recording of a restrictive covenant agreement prohibiting residential uses within Tract B, substantially in the form provided in Exhibit B, attached hereto and made a part hereof.

PASSED AND APPROVED on first reading on August 2, 2022.

PASSED, APPROVED AND ADOPTED on second reading on September 6, 2022.

Jane Hughson
Mayor

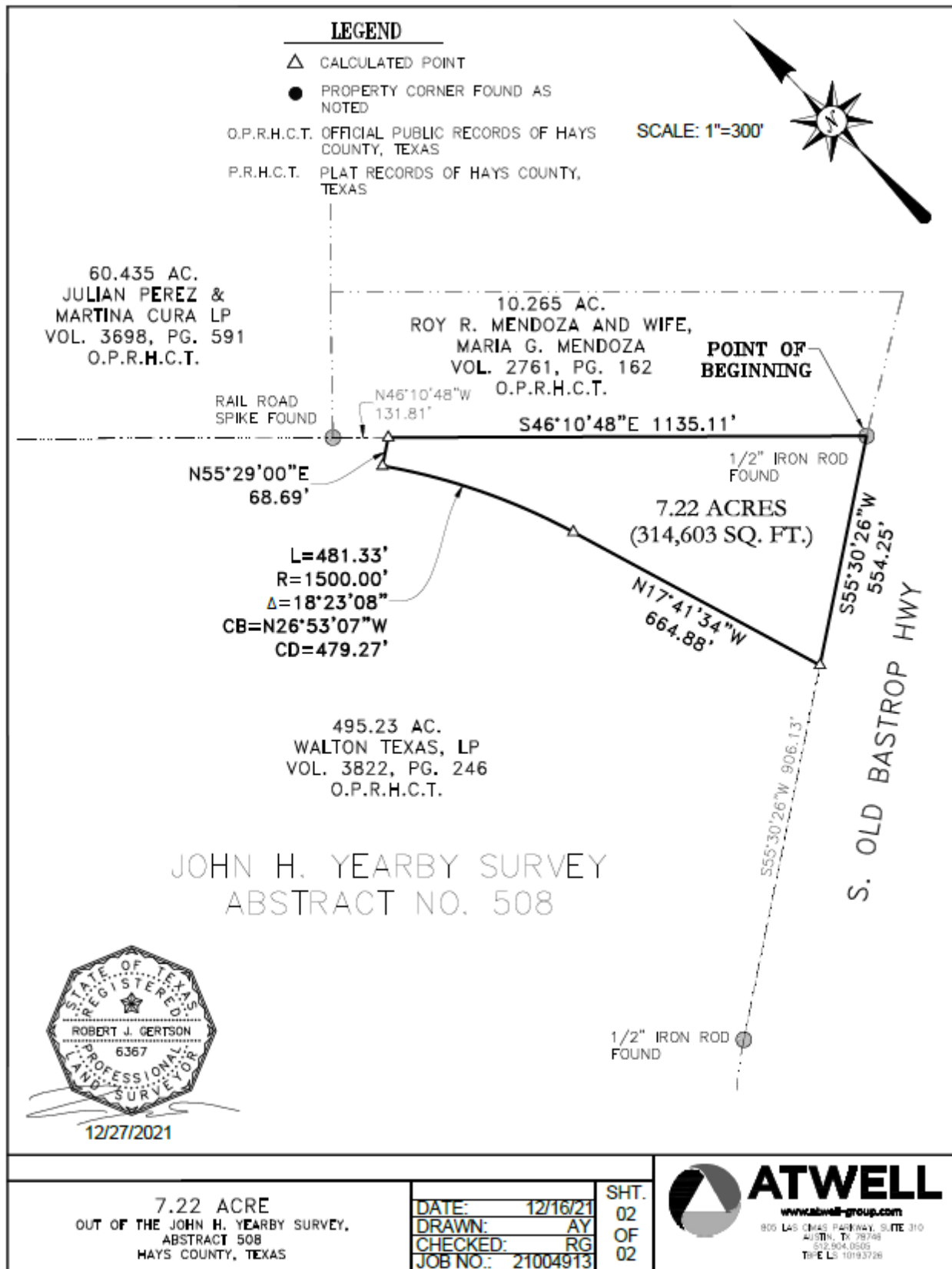
Attest:

Approved:

Elizabeth Trevino
Interim City Clerk

Michael J. Cosentino
City Attorney

EXHIBIT A

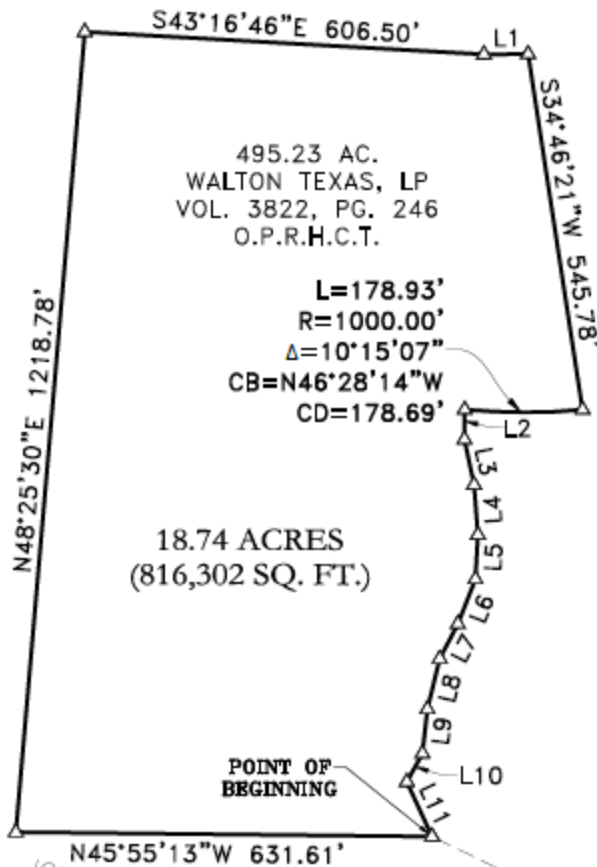


LEGEND

- △ CALCULATED POINT
- PROPERTY CORNER FOUND AS NOTED
- O.P.R.H.C.T. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
- P.R.H.C.T. PLAT RECORDS OF HAYS COUNTY, TEXAS



SCALE: 1"=250'



LINE DATA TABLE		
LINE #	DIRECTION	LENGTH
L1	S46°41'16"E	66.88'
L2	S44°12'02"W	45.39'
L3	S31°33'25"W	70.21'
L4	S39°01'30"W	76.09'
L5	S46°46'40"W	67.44'
L6	S64°53'45"W	72.82'
L7	S71°08'35"W	59.54'
L8	S57°09'17"W	78.76'
L9	S49°54'54"W	67.77'
L10	S72°24'23"W	49.18'
L11	S18°33'04"W	91.21'

JOHN H. YEARBY SURVEY
ABSTRACT NO. 508

495.23 AC.
WALTON TEXAS, LP
VOL. 3822, PG. 246
O.P.R.H.C.T.

2.183 AC. DOC. NO. 21026919
PABLO ZAPATA O.P.R.H.C.T.
VOL. 1165, PG. 11
D.R.H.C.T.

1.109 AC.
FLEUR GEIGER
O.P.R.H.C.T.

N20°27'56"W
3316.61'

1/2" IRON ROD FOUND
S64°35'28"E
705.63'

1/2" IRON ROD FOUND
S. OLD BASTROP HWY

POINT OF COMMENCING
CENTERPOINT RD.

18.74 ACRE
OUT OF THE JOHN H. YEARBY SURVEY,
ABSTRACT 508
HAYS COUNTY, TEXAS

DATE: 12/21/21
DRAWN: EB
CHECKED: RG
JOB NO.: 21004913

PG.
02
OF
02



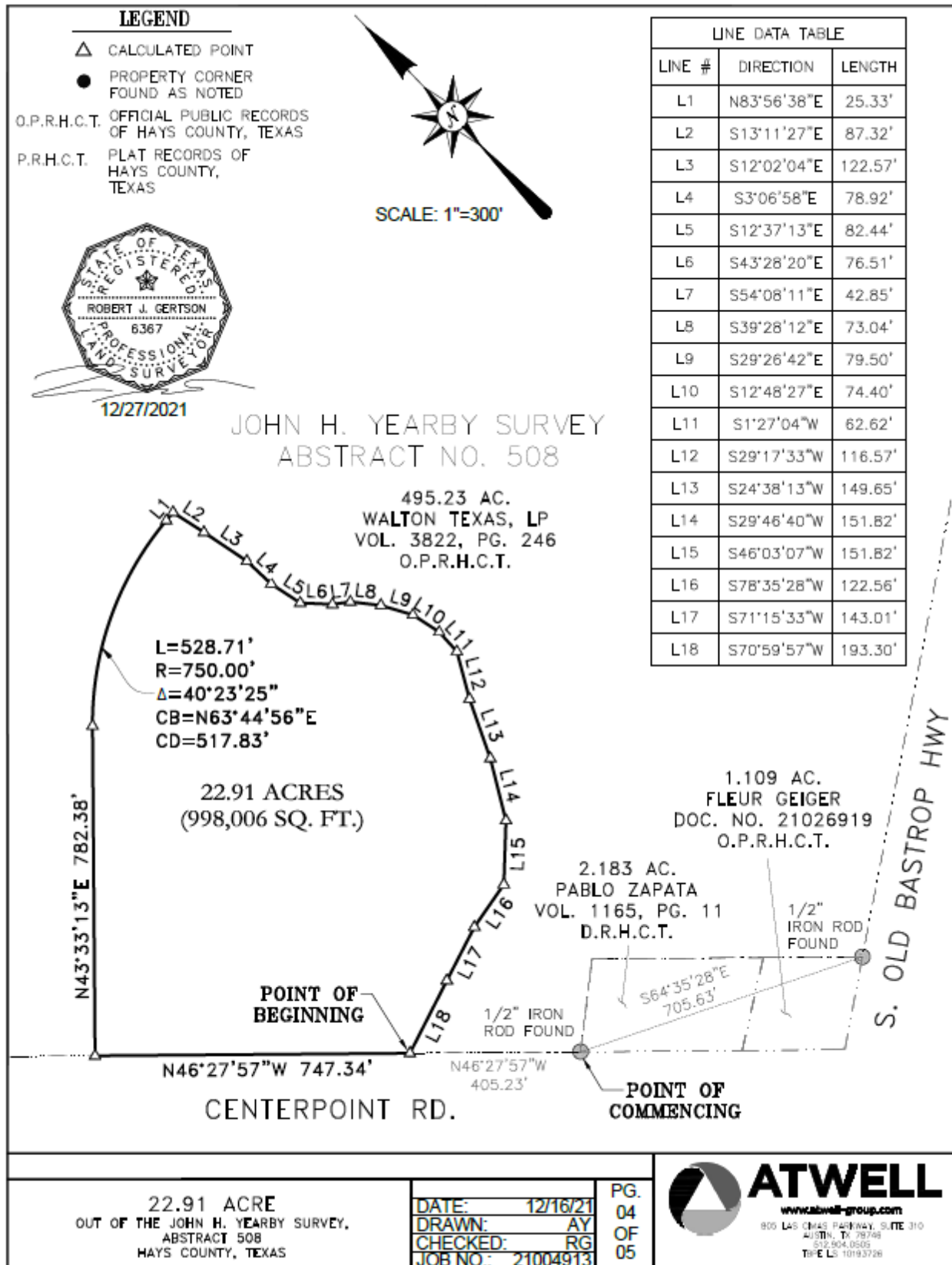


EXHIBIT B

[Form of Restrictive Covenant Agreement]

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 2022, by and between _____, (the "**Owner**"), and the City of San Marcos, Texas (the "**City**").

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 18.74 acres situated in Hays County, Texas, more particularly described in Exhibit "A", attached hereto (the "**Property**").

B. Owner and the City desire to subject the Property to the terms of this Declaration.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Owner and the City do hereby agree as follows:

1. **Establishment of Restrictive Covenant.** The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the restriction that no residential uses shall be permitted on the Property.

2. **No Consent Required.** The Owner and the City each hereby represent and warrant to the other that they have full requisite power and authority to enter into this Agreement without the joinder or further consent of any other party, including without limitation that of any lender, lienholder or tenant, and that this Agreement will not be subordinate to any existing lien or other monetary encumbrance.

3. **Remedies.** The City may pursue any remedies available at law or in equity to enforce the provisions of this Agreement, including the recovery of reasonable attorney's fees and court costs.

4. **No Waiver.** The failure of the City or Owner to avail itself of any of the privileges, rights, covenants, agreements, terms and conditions of this Agreement for any period of time or at any time shall not be construed or deemed to be a waiver thereof, and nothing herein contained, nor anything done or omitted to be done by the City or Owner pursuant hereto, shall be deemed a waiver by the other of any of its rights and remedies hereunder or under the laws of the State of Texas. The enforcement of any right or remedy hereunder by the City, either prior to, simultaneously with, or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

5. **Modification.** This Agreement may not be modified or amended unless such modification or amendment has been reduced to writing approved by the city council of the City and signed by all of the then-existing owners of the Property or portions thereof, and by the City, and has been recorded in the Official Public Records of Hays County, Texas.

6. **Binding Effect.** The obligations created hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

7. **Partial Invalidity.** If any provision of this Agreement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

[SIGNATURES ON NEXT PAGE]

[INSERT OWNER NAME]:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me this _____ day of -
_____, 2022, by _____, _____ of
_____, in such capacity, on behalf of said entity.

Notary Public, State of Texas

CITY:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me this _____ day of
_____, 2022, by _____, _____ of the City of
San Marcos, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

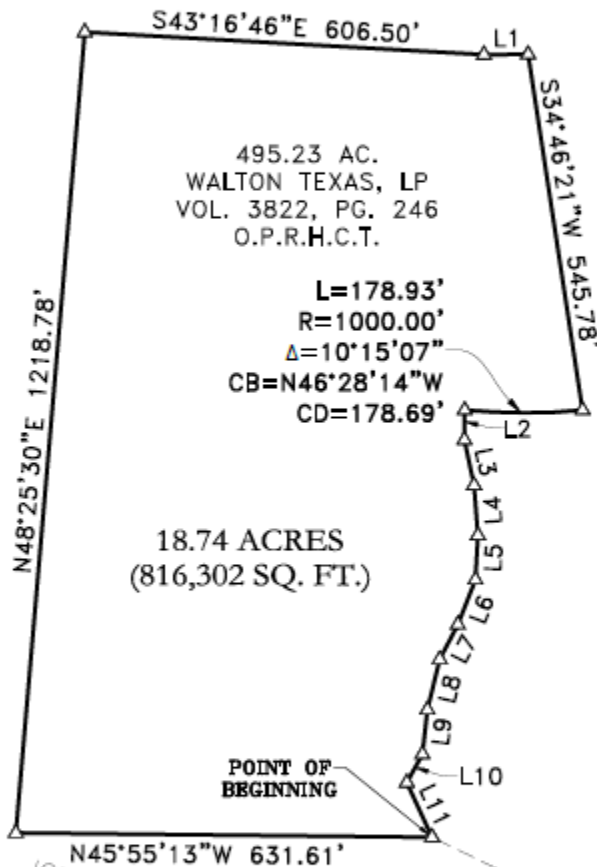
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PG.
02
OF
02



To be completed by City Clerk and attached as last page of this ordinance:

Date Restrictive Covenant Recorded: _____

County in Which Recorded: _____

Instrument No. _____