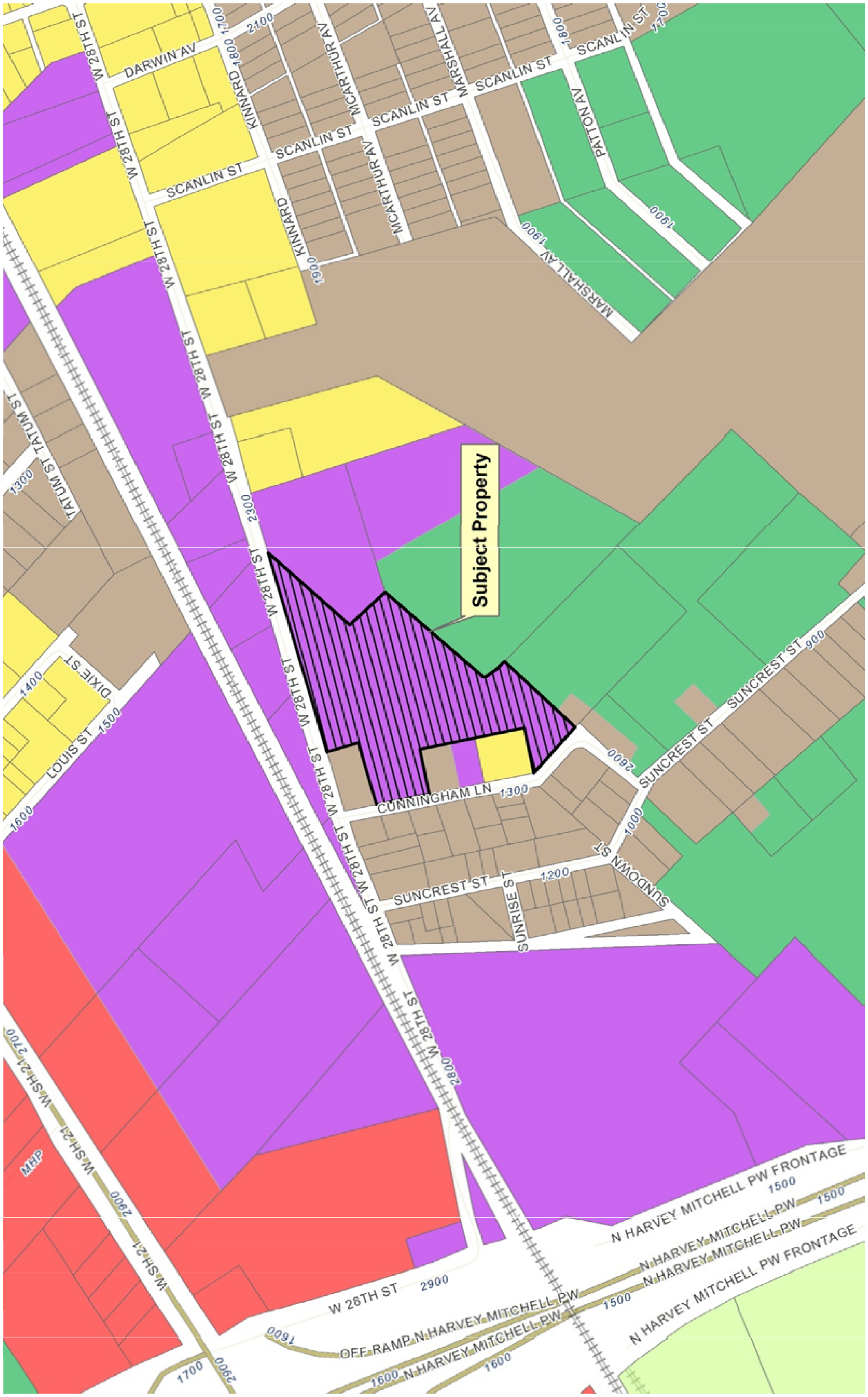
LOCATION MAP:



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 130, ZONING, OF THE CITY OF BRYAN CODE OF ORDINANCES, BY CHANGING THE ZONING CLASSIFICATION FROM INDUSTRIAL DISTRICT (I) TO RESIDENTIAL DISTRICT – 5000 (RD-5) ON 9.081 ACRES OF LAND OUT OF STEPHEN F. AUSTIN LEAGUE NO. 9, A-62, LOCATED AT 2509 W. 28TH STREET, AND GENERALLY SOUTHEAST OF THE INTERSECTION OF CUNNINGHAM LANE AND W. 28TH STREET, AND BEING THE PROPOSED CUNNINGHAM OAKS SUBDIVISION – PHASE 3 IN BRYAN, BRAZOS COUNTY, TEXAS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH SAID ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan has adopted Chapter 130, Zoning, of the City of Bryan Code of Ordinances, as amended, which divides the City of Bryan into various zoning districts; and

WHEREAS, permanent zoning changes made after the date of passage of Chapter 130 are made by adopting ordinances amending Chapter 130 for each particular permanent zoning change; and

WHEREAS, this requested change to amend Chapter 130, Zoning, of the City of Bryan Code of Ordinances, by changing the zoning classification from Industrial District – (I) to Residential District – 5,000 (RD-5) on 9.081 acres of land out of Stephen F. Austin League No. 9, A-62, located at 2509 W. 28th Street, and generally southeast of the intersection of Cunningham Lane and W. 28th Street, and being the proposed Cunningham Oaks Subdivision – Phase 3 in Bryan, Brazos County, Texas, was recommended for approval by the Bryan Planning and Zoning Commission during its regular meeting on April 7, 2016 (case no. RZ16-04);

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

1.

That Chapter 130, Zoning, of the City of Bryan Code of Ordinances be amended by changing the zoning classification on 9.081 acres of land out of Stephen F. Austin League No. 9, A-62, located at 2509 W. 28th Street, and generally southeast of the intersection of Cunningham Lane and W. 28th Street, and being the proposed Cunningham Oaks Subdivision – Phase 3 in Bryan, Brazos County, Texas from Industrial District – (I) to Residential District – 5,000 (RD-5), said 9.081 acres being described more particularly by metes-and-bounds on attached Exhibit “A”.

2.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

3.

Should any section, paragraph, sentences, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this

ordinance shall not be affected thereby, and to this end the provisions of this ordinance are declared to be severable.

4.

The Code of the City of Bryan, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

5.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of time, place and purpose of said meetings was given.

6.

This ordinance shall take effect immediately upon its second and final reading and passage.

PRESENTED AND GIVEN first reading the 10th day of May 2016 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, PASSED AND APPROVED on the 24th day of May, 2016 by a vote of ___ yeses and ___ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

_____
Mary Lynne Stratta, City Secretary

CITY OF BRYAN:

_____
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

_____
Janis K. Hampton, City Attorney

EXHIBIT "A":

METES AND BOUNDS DESCRIPTION
OF A
9.081 ACRE TRACT
STEPHEN F. AUSTIN LEAGUE NO. 9, A-62
BRYAN, BRAZOS COUNTY, TEXAS

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN THE STEPHEN F. AUSTIN LEAGUE NO. 9, ABSTRACT NO. 62, BRYAN, BRAZOS COUNTY, TEXAS. SAID TRACT BEING THE REMAINDER OF A CALLED 11.04 ACRE TRACT AS DESCRIBED BY A DEED TO I. C. CUNNINGHAM RECORDED IN VOLUME 178, PAGE 197 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD FOUND ON THE EAST LINE OF CUNNINGHAM LANE (CALLED 40' R.O.W.) MARKING THE MOST WESTERLY NORTH CORNER OF SAID REMAINDER OF 11.04 ACRE TRACT AND THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, CUNNINGHAM OAKS SUBDIVISION, PHASE I, ACCORDING TO THE PLAT RECORDED IN VOLUME 2926, PAGE 239 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 73° 52' 24" E ALONG THE COMMON LINE OF SAID REMAINDER OF 11.04 ACRE TRACT AND SAID LOT 1 FOR A DISTANCE OF 230.64 FEET TO A 1/2 INCH IRON ROD FOUND MARKING THE SOUTHEAST CORNER OF SAID LOT 1;

THENCE: N 16° 11' 59" W CONTINUING ALONG THE COMMON LINE OF SAID REMAINDER OF 11.04 ACRE TRACT AND SAID LOT 1 FOR A DISTANCE OF 115.07 FEET TO THE SOUTH LINE OF W. 28TH STREET (VARIABLE WIDTH R.O.W.) AT THE NORTHEAST CORNER OF SAID LOT 1;

THENCE: N 73° 51' 15" E ALONG THE SOUTH LINE OF W. 28TH STREET FOR A DISTANCE OF 736.54 FEET TO THE NORTHEAST CORNER OF THIS HEREIN DESCRIBED TRACT ON THE NORTHWEST LINE OF LOT 1, RUIZ SUBDIVISION NO. 2, ACCORDING TO THE PLAT RECORDED IN VOLUME 2189, PAGE 3 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: ALONG THE COMMON LINE OF SAID REMAINDER OF 11.04 ACRE TRACT AND RUIZ SUBDIVISION NO. 2 FOR THE FOLLOWING CALLS:

S 41°15' 02" W FOR A DISTANCE OF 385.10 FEET;

S 42° 47' 31" E FOR A DISTANCE OF 170.52 FEET;

S 40° 13' 33" W FOR A DISTANCE OF 474.62 FEET;

S 40° 04' 22" E FOR A DISTANCE OF 87.35 FEET TO A 1/2 INCH IRON ROD FOUND MARKING THE MOST SOUTHERLY EAST CORNER OF SAID REMAINDER OF 11.04 ACRE TRACT AND THE NORTH CORNER OF A CALLED TRACT OF LAND CURRENTLY OWNED BY LINDA CUNNINGHAM GUYDEN, TRUSTEE, ACCORDING TO A DEED RECORDED IN VOLUME 7697, PAGE 193 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, AND PER BRAZOS COUNTY APPRAISAL DISTRICT;

THENCE: S 42° 51' 05" W ALONG THE SOUTHEAST LINE OF SAID REMAINDER OF 11.04 ACRE TRACT FOR A DISTANCE OF 333.35 FEET TO A 3/8 INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF THIS HEREIN DESCRIBED TRACT;

THENCE: N 49° 05' 28" W ALONG THE NORTHEAST LINE OF CUNNINGHAM LANE FOR A DISTANCE OF 226.66 FEET TO A 1/2 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF LOT 3, BLOCK 1, CUNNINGHAM OAKS SUBDIVISION, PHASE II, ACCORDING TO THE PLAT RECORDED IN VOLUME 5616, PAGE 196 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 78° 50' 18" E ALONG THE COMMON LINE OF SAID REMAINDER OF 11.04 ACRE TRACT AND SAID LOT 3 FOR A DISTANCE OF 163.35 FEET TO THE SOUTHEAST CORNER OF SAID LOT 3;

THENCE: N 11° 09' 42" W CONTINUING ALONG THE COMMON LINE OF SAID REMAINDER OF 11.04 ACRE TRACT AND SAID LOT 3 FOR A DISTANCE OF 380.00 FEET TO THE NORTHEAST CORNER OF LOT 2, BLOCK 1, CUNNINGHAM OAKS SUBDIVISION, PHASE I (PLAT 2926/239);

THENCE: S 78° 50' 18" W ALONG THE COMMON LINE OF SAID REMAINDER OF 11.04 ACRE TRACT AND SAID LOT 2, AT 163.05 FEET PASS A 1/2 INCH IRON ROD FOUND, CONTINUE ON FOR A TOTAL DISTANCE OF 163.35 FEET TO THE EAST LINE OF CUNNINGHAM LANE FOR THE NORTHWEST CORNER OF SAID LOT 2;

THENCE: N 11° 09' 42" W ALONG THE EAST LINE OF CUNNINGHAM LANE FOR A DISTANCE OF 191.26 FEET TO THE POINT OF BEGINNING CONTAINING 9.081 ACRES OF LAND, MORE OR LESS, AS SURVEYED ON THE GROUND. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED BY GPS OBSERVATION.

Zimmermann, Martin

From: Linda Guyden <lguyden@aol.com>
Sent: Thursday, April 21, 2016 12:01 PM
To: Zimmermann, Martin; louise.barker@suddenlinkmail.com; Hilgemeier, Matthew
Subject: Re: Cunningham Oaks Phase 3

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks Louise. I spoke with Martin and the proposed zoning change does not appear to have any adverse implications for our plans for this property. Thanks you all for keeping the project moving.

Regards, Linda

Linda Guyden
lguyden@aol.com

-----Original Message-----
From: Zimmermann, Martin <mzimmermann@bryantx.gov>
To: 'Louise' <louise.barker@suddenlinkmail.com>; Hilgemeier, Matthew <mhilgemeier@bryantx.gov>
Cc: lguyden <lguyden@aol.com>
Sent: Thu, Apr 21, 2016 10:09 am
Subject: RE: Cunningham Oaks Phase 3

Thanks Louise. We will proceed as originally scheduled with Council meetings on May 10 (public hearing/1st reading) and May 24 (2nd reading).

Sincerely,

Martin Zimmermann, AICP
Planning Manager
City of Bryan, Texas
979.209.5030 (phone)
979.209.5035 (fax)
www.bryantx.gov

If you have recently done business with our department, please take a moment to complete our online **Customer Service Survey.**

From: Louise [mailto:louise.barker@suddenlinkmail.com]
Sent: Thursday, April 21, 2016 9:06 AM
To: Zimmermann, Martin; Hilgemeier, Matthew
Cc: lguyden@aol.com
Subject: Cunningham Oaks Phase 3

Gentlemen,

As acting agent for Linda Cunningham Guyden, owner of the property being platted to Cunningham Oaks, Phase 3, I am hereby sending written notification of approval for the request of Zoning classification change from Industrial to Residential District 5000 (RD-5) as opposed to Mixed Use Residential District (MU-1) as recommended by the Planning

and Zoning Commission on April 7, 2016. This classification change does not impact any immediate proposed development of the property.

Louise Barker
Kerr Surveying, LLC

EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING MINUTES OF APRIL 7, 2016:

8. REQUESTS FOR APPROVAL OF ZONING CHANGES – A PUBLIC HEARING WILL BE HELD FOR EACH ITEM (Commission makes recommendation; City Council has final approval).

a. Rezoning RZ16-04: Linda Cunningham Guyden
A request to change the zoning classification from Industrial District (I) to Mixed Use Residential District (MU-1) on 9.081 acres of land located at 2509 West 28th Street, generally southeast of the intersection of Cunningham Lane and West 28th Street, and being the proposed Cunningham Oaks Subdivision – Phase 3 in Bryan, Brazos County, Texas. (M. Hilgemeier).

Mr. Hilgemeier presented the staff report (on file in the Development Service Department). Staff recommends approval of the request.

In response to questions from the Commission, Mr. Hilgemeier stated that staff had not discussed the option to rezoned the property Residential District – 5000 (RD-5) and that the only difference between MU-1 and RD-5 zoning was that manufactured homes are not allowed in RD-5 Districts.

The public hearing was opened.

No one came forward.

The public hearing was closed.

Commissioner Madison moved to recommend approval of Rezoning RZ16-04 to the Bryan City Council, and to adopt the written staff report and analysis, as the report, findings and evaluation of this Commission. Commissioner Gonzalez seconded the motion.

Commissioner Gutierrez moved to amend the main motion to recommend approval of a rezoning to Residential District – 5000 (RD-5). Commissioner Incardona seconded the motion.

Commissioners Gutierrez and Incardona commented on their desire to maintain the same development standard that had been set by the existing houses on Cunningham Lane. Commissioner Madison commented that he based his motion on the fact that there seemed to be all families in the lot and that any development would be blocked in.

The amendment to the main motion passed by a vote of 7 in favor and 2 in opposition with Commissioners Marin and Madison casting their votes in opposition.

The main motion, as amended, passed unanimously.

PLANNING AND ZONING COMMISSION
STAFF REPORT

April 7, 2016

CITY OF BRYAN

Rezoning Case: RZ16-04 Linda Cunningham Guyden

CASE DESCRIPTION: a request to change the zoning classification from Industrial District (I) to Mixed Use Residential District (MU-1)

LOCATION: 9.081 acres of land located at 2509 W. 28th Street, and generally southeast of the intersection of Cunningham Lane and W. 28th Street

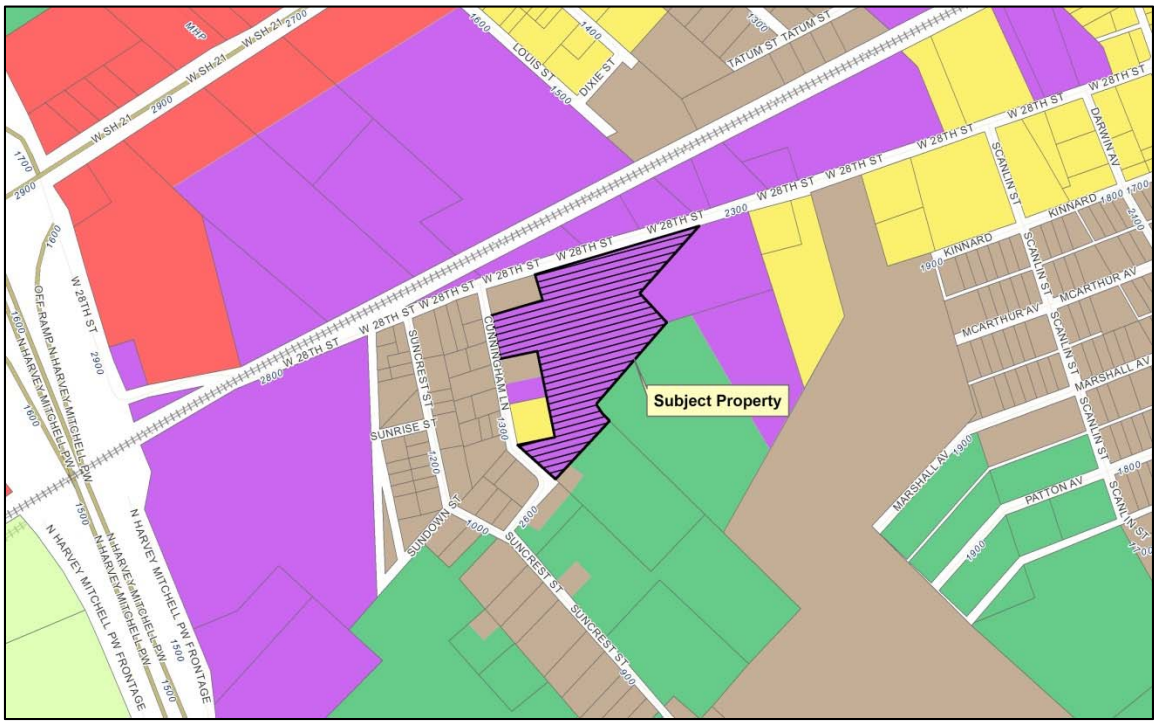
LEGAL DESCRIPTION: proposed Cunningham Oaks Subdivision, Phase 3

EXISTING LAND USE: Single-family Residential

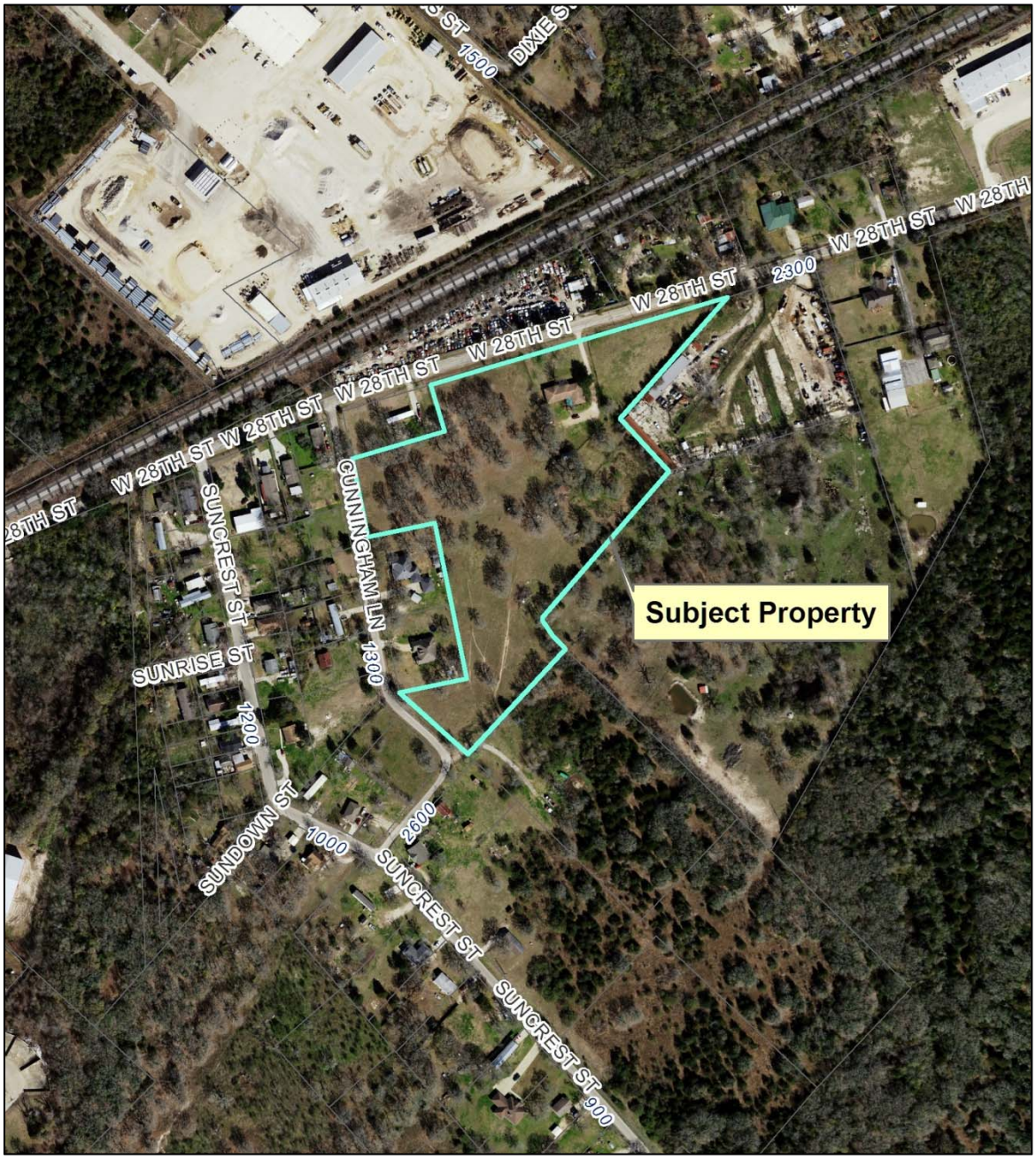
APPLICANT(S): Linda Cunningham Guyden, Trustee

STAFF CONTACT: Matthew Hilgemeier, AICP

SUMMARY RECOMMENDATION: Staff recommends **approving** this request.



AERIAL PHOTOGRAPH, 2015:



EXCERPT FROM REZONING APPLICATION:

Rezoning
Supplement A

CITY OF BRYAN
The Good Life, Texas Style.

Minimum Requirements:

- ☐ Metes and Bounds description of property
- ☐ If Planned Development required, then include 15 folded copies and a .pdf of the development site plan

Please list the reasons for this rezoning request:

Property is currently being used as a residential site and will be creating additional lots for residential use.

List the changed or changing conditions in the area or City which make this zone change necessary:

Portions of the original parent tract have already been platted and rezoned to mixed use residential. The area to the west and south are currently residential use - Southeast area is undeveloped at this time.

Indicate whether or not this zone change is in accordance with the Future Land Use Plan. If it is not, explain why the Plan is incorrect:

yes - (as shown on the land use Policy Map 2006-2007)

List any other reasons to support this zone change:

BACKGROUND:

The applicant, Mrs. Linda Cunningham Guyden, is requesting to change the zoning classification on 9.081 acres of land adjoining the south side of West 28th Street located generally southeast of the intersection West 28th Street and Cunningham Lane, from Industrial District (I) to Mixed Use Residential District (MU-1). The subject property is located in an area that has developed over the years as a patch work of residential uses and locally-owned, quasi industrial/commercial uses. The property located directly east of the subject property, along West 28th Street is also zoned Industrial District (I) and is developed as a salvage yard. Property further east is zoned Residential District – 5,000 (RD-5) and developed with a single-family residence that also has an auto repair shop ("AJ's Transmission") located on the same property. Directly north of the subject property, across West 28th Street, lies another auto salvage yard ("Cruz Salvage Yard") and smaller single-family residential uses on land that is zoned Industrial District. Cunningham Lane abuts portions of the western side of the subject property and is adjoined by properties that are zoned I, MU-1 or RD-5 District and occupied by single-family homes. The area to the south of the subject property is mainly vacant, undeveloped land zoned Agricultural-Open District (A-O).

The subject property is the remaining portion of a larger 11-acre tract that has been subdivided and rezoned for residential use over the past 15 years. The property has been zoned Industrial District since 1989 when the City of Bryan adopted zoning regulations. The owner is requesting the change in zoning classification to MU-1 District to further subdivide the property for future residential development.

RELATION TO BRYAN'S COMPREHENSIVE PLAN:

The City of Bryan Comprehensive Plan is the framework for the establishment of zoning and other regulatory tools. The current plan includes policies and recommendations related to the various physical aspects of the community. These aspects are supported by a set of goals and objectives. The Planning and Zoning Commission should consider the following when making its recommendation regarding this proposed zoning change:

Chapter 5: Land Use

5.5. Land Use Policies

Use-Specific Land Use Policies

Low Density Residential land serves to provide housing and living units for a variety of people with a range of incomes and needs. It predominantly consists of detached single family dwellings but may consist of other housing types as long as densities remain low; up to 8 dwelling units per acre.

Redevelopment and Infill Policies

Policy statements:

- The City of Bryan will encourage and promote compatible infill and redevelopment in areas where these activities will benefit the city as a whole and the area specifically.

- Residential redevelopment and infill shall be sensitive to the context within which it occurs. Contextual standards shall be included to ensure compatibility with surrounding residential areas, to include lot size, setbacks, density, building height and mass and architectural design.

Land Use Goal #1:

Achieve a balance of land uses within the city.

Land Use Goal #1, Objective A:

Achieve a sustainable mix of land use types in suitable locations, densities and patterns.

ANALYSIS:

In making its recommendation regarding a proposed zoning change, the Planning and Zoning Commission shall consider the following factors.

1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned and their relationship to general area and the City as a whole.

   Staff contends that due to the mix of residential and commercial properties located in the immediate vicinity of the subject property that the proposed change from Industrial District (I) to a Mixed Use – Residential (MU-1) zoning classification is an appropriate change in land use and consistent with the land use recommendations of the Comprehensive Plan. The Comprehensive Plan encourages providing housing units for a variety of people with a range of income and needs and promoting compatible infill that is sensitive to the context within which it occurs.

   The Industrial zoning classification is the one that allows the most intense land uses in the City of Bryan, allowing uses such as salvage yards, manufacturing plants, flea markets, commercial industries, and concrete or asphalt batching plants. While there are industrial and commercial uses currently located in the vicinity of the subject property, staff maintains that changing the land use classification from industrial to residential, in this particular case, provides better land use protections to neighboring properties. More homes are needed in this area to help build and maintain a viable residential environment. Changing the zoning classification on the subject property to MU-1 District may encourage such new housing.

2. Whether there is availability of water, wastewater, storm water, and transportation facilities generally suitable and adequate for the proposed use.

   The subject property has direct access to water and wastewater services, both of which are located along West 28th Street and Cunningham Lane. Development of the subject property may require the extension of public water service. Any issues regarding capacity and utility extensions will be addressed at the time of development.

3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.

   Staff believes that this zone change request, if approved, would not make land classified for similar development in the vicinity and elsewhere in the City unavailable for residential development.

4. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.

   Staff contends that the rate at which land is being developed in the vicinity of the subject property has been slow to none. Other areas zoned MU-1 District seem to have experienced a similar growth pattern.

5. How other areas designated for similar development will be, or are unlikely to be, affected if the proposed amendment is approved, and whether such designation for other areas should be modified also.

   As stated above, the areas in the immediate vicinity of the subject property is a mix of property zoned Industrial and MU-1 Districts. Approving the requested change in zoning classification on the subject property will allow it to develop for residential purposes. This requested change in zoning classification should no effect on the development potential of other properties designated for similar development in the area.

6. Any other factors which will substantially affect the health, safety, morals, or general welfare.

   Changing the zoning to a residential zoning classification on this property will affect the future development potential of adjacent land, due to adopted buffer-area requirement. Staff is unable to discern other factors resulting from this requested zoning change that will affect health, safety, morals or general welfare.

RECOMMENDATION:

Based on the reason stated above, staff recommends **approving** this request to change the zoning classification of the subject property from Industrial District (I) to Mixed Use – Residential District (MU-1).