



Planning & Zoning Commission Regular Meeting Agenda
Tuesday, March 26, 2024 6:30 PM
Kyle City Hall, 100 W. Center Street, Kyle, TX 78640

I. Call Meeting to Order and Roll Call

II. Approval of Minutes

1. Approval of the Planning and Zoning Commission March 12, 2024 Regular Meeting Minutes.
[Exhibit 1 - Draft Minutes March 12, 2024 P&Z Meeting](#)

III. Citizen Comment Period with Planning & Zoning Commission

Citizen Comment Period. The Planning and Zoning Commission welcomes comments from Citizens early in the agenda of regular meetings. Speakers are provided with an opportunity to speak during this time period on any agenda item or any other matter concerning city business, and they must observe the three-minute time limit.

IV. Consider and Possible Action

2. Consider approval of a conditional use permit to construct a 32,529 square foot expansion and reconfiguration of the curb side pick-up area located at 5401 S. 1626. (HEB Plus - CUP-23-0098)
(Item Presenter: Jason Lutz, Senior Planner)
[Exhibit 1 - Staff Memo](#)
[Exhibit 2 - Presentation](#)
[Exhibit 3 - Summary Letter](#)
[Exhibit 4 - Landowner Authorization Form](#)
[Exhibit 5 - Deed](#)
[Exhibit 6 - Deed](#)
[Exhibit 7 - Franchise Tax Account Status](#)

V. Reports and Presentations

3. Open Meetings Act Training.
(Item Presenter: Aimee Alcorn-Reed, City Attorney)
[Exhibit 1 - Presentation](#)

VI. Adjourn

One or more members of the board may participate in the meeting by videoconference pursuant to Section 551.127, Texas Government Code, provided that a quorum of the board will be present at Kyle City Hall.

NOTE: There may be a quorum of the City Council of Kyle, Texas present at the meeting who may participate in the discussion. No official action will be taken by the City Council members in attendance.

Posted this 22nd day of March, 2024, prior to 5:00 p.m.

At any time during the Planning and Zoning Commission meeting, the Planning and Zoning Commission may elect to go into an Executive Session to discuss any item on the agenda for which state law authorizes an Executive Session to be held. If the Planning and Zoning Commission elects to go into an Executive Session regarding an agenda item, the presiding officer will first announce the section of the law authorizing a closed meeting. The description of an item in Executive Sessions constitutes the written interpretation by the City Attorney of Chapter 551 of the Texas Government Code and the legal opinion of the City Attorney that said item may be discussed in a closed meeting.

Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Kyle City Hall is wheelchair accessible. Individuals who require auxiliary aids, interpretive services, and/or other services for this meeting should submit a request at <https://www.cityofkyle.com/contact> or call (512) 262-1010, 48 hours in advance of the meeting.

REGULAR CALLED MEETING OF THE PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission of the City of Kyle, Texas met in a regular called meeting on March 12, 2024, at 6:30 P.M. with the following people present:

Madam Chair Sarah Oncken
Vice-Chair Steve DeLory
Commissioner Mario Mata, Jr.
Commissioner Tracy Scheel
Commissioner Daniel Serrato
Commissioner Neil Stegall
Will Atkinson, Director of Planning
Jason Lutz, Senior Planner
Kaela Sharp, City Planner
Debbie A. Guerra, Project Development Coordinator
Aimee Alcorn-Reed, City of Kyle, City Attorney
Grant Bowling, Film & Audio Production Manager
Jeffery Banks, IT

CALL MEETING TO ORDER

Madam Chair Oncken called the meeting to order at 6:30 P.M.

ROLL CALL OF COMMISSION

Madam Chair Oncken called for a roll call. Commissioner James was absent from the meeting.

MINUTES

APPROVAL OF MINUTES FOR JANUARY 23, 2023. (REGULAR MEETING)

Commissioner Stegall moved to approve the minutes for February 13, 2024. Commissioner Serrato seconds the motion. All votes aye. Motion carried.

CITIZENS COMMENTS

Madam Chair Oncken opened the citizens comment period at 6:31 P.M. and called for comments on items not on the agenda or posted for public hearing. There were no comments. Madam Chair Oncken closed the citizens comment period at 6:31 P.M.

CONSIDER AND POSSIBLE ACTION

CONSIDER A REQUEST TO CONSTRUCT AN APPROXIMATELY 4,365 SQUARE- FOOT BANK LOCATED AT 19019 IH-35. (FROST BANK – CONDITIONAL USE PERMIT – CUP-24-0100)

Commissioner Scheel moved to approve the request. Commissioner Mata seconds the motion. All votes aye. Motion carried.

CONSIDER AND MAKE A RECOMMENDATION TO CITY COUNCIL REGARDING A REQUEST BY M'KENSIE ADAY ON BEHALF OF KDW HOLDINGS, LLC FOR A CONDITIONAL USE PERMIT FOR A MEDICAL OFFICE USE PURSUANT TO THE KALTERRA CAPITAL PARTNERS, LLC DEVELOPMENT AGREEMENT FOR A PROPERTY LOCATED AT 2220 KOHLER'S CROSSING, HAYS COUNTY, TEXAS 78640. (CUP-24-0101)

Madam Chair Oncken opened the public hearing at 6:35 P.M. There were no comments. Madam Chair Oncken closed the public hearing at 6:35 P.M.

Commissioner Scheel moved to approve the request. Commissioner Stegall seconds the motion. All votes aye. Motion carried.

CONSIDER APPROVAL AND MAKE A RECOMMENDATION TO THE CITY COUNCIL REGARDING THE PROPOSED LANDSCAPE CODE AMENDMENTS PER CHAPTER 54 OF THE CITY OF KYLE CODE OF ORDINANCES.

Madam Chair Oncken opened the public hearing at 6:40 P.M. There were no comments. Madam Chair Oncken closed the public hearing at 6:40 P.M.

Commissioner Scheel moved to approve the request. Commissioner Serrato seconds the motion.

Commissioner Stegall moved to amend the motion to include a tree protection/supervisor. Commissioner Scheel seconds the motion. Commissioners Stegall, DeLory, Mata, Scheel vote aye. Commissioners Oncken and Serrato voted nay. Motion carried. Madam Chair Oncken stated that the motion is to make a recommendation to council with the amendment. All votes aye. Motion carried.

ADJOURN

With no further business to discuss, Commissioner Oncken adjourned the meeting at 7:38 P.M.

Prepared by: Debbie A. Guerra

Madam Chair Sarah Oncken



Planning & Zoning Commission Regular Meeting

DEPARTMENT: Community Development

FROM: Jason Lutz – Senior Planner

MEETING: March 26, 2024

SUBJECT:

Consider a request for H.E.B. to approve a CUP for Building Materials within the IH-35 Overlay Zoning District, located at FM-1626, Kyle Texas.

SUMMARY:

The applicant is seeking a 32,529 square foot expansion and reconfiguration of the curb side pick-up area for the existing facility.

The property is zoned Retail Services (RS) and is in the IH-35 Overlay Zoning District. The IH-35 Overlay District has additional standards for building materials and approvals, specifically certain requirements for brick, stone, and preferred color schemes.

The addition of approximately 35,000+ square feet for the existing H.E.B. does not trigger bringing the entire site/building up to code regarding building materials. The overlay district does exempt expansions that are not more than 50% of the existing building to meet the requirements of the zoning Code but does still necessitate that the project be reviewed & approved by the City's Planning & Zoning Commission.

The applicant has met the overlay requirements regarding wall lengths, articulation, and screening walls of loading areas but is requesting the plan be approved as presented and have listed the following reasons in citing why the entire building cannot be brought up to code.

Reasoning: The request to change existing concrete panel walls to masonry is not feasible. A new veneer masonry system is heavy, causes deflection, and can't be supported by existing walls. This would require demolition and rebuild of the walls and wall foundations and would impact the main structure of the building, which is outside the scope of the building remodel. We propose to keep the existing wall finishes on the existing walls. New expansion walls are designed to match and blend with the existing building, therefore EIFS is used to match existing EIFS and concrete panel. New windows are included where appropriate for the interior use of the building and blend with the existing look of the building. The existing entry tower is refinished in lightweight fiber cement material to give a fresh contemporary look. The expansion right side entry tower is designed to match the other tower.

The proposed additions consist of multiple materials including:

1. Limestone veneer
2. Cast Stone



-
3. Fiber Cement Board
 4. Brick
 5. Corrugated Metal Panels
 6. Succo
 7. Smooth Face CMU
 8. EIFS to match existing
 9. Glazing

The applicant is also updating their Site Development Plan to include required trees around the re-configured Curb Side parking area and along the perimeter of the property, adjacent to the public sidewalks to be constructed along Old Bridge Trail Rd. and IH-35. The updated site plan has not been submitted at this time.

OPTIONS:

1. Approve the CUP as requested, with the following conditions (staff recommended conditions):
 - Provide a sidewalk along all property boundaries, adjacent to r.o.w. as required.
 - Provide all street trees along property boundaries, adjacent to r.o.w. as required.
 - Provide required trees in the re-configured Curb Side parking areas.
2. Approve the CUP, with the staff recommended conditions, and any other conditions by the Commission.
3. Deny the application.

RECOMMENDATION:

Staff recommends approval of the requested CUP, with the staff recommended conditions listed in option 1.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

N/A

STAFF CONTACT:

Name: Jason Lutz
Title: Senior Planner
Jlutz@cityofkyle.com
Cell: (512) 644-5432

Planning & Zoning Meeting

Consider a request for H.E.B. to approve a CUP for Building Materials within the IH-35 Overlay Zoning District.

(CUP-23-0098)

Community Development



Summary - Request

- The applicant is seeking a 32,529 square foot expansion and reconfiguration of the curb side pick-up area for the existing facility.
- The property is zoned Retail Services (RS) and is in the IH-35 Overlay Zoning District. The IH-35 Overlay District has additional standards for building materials and approvals, specifically certain requirements for brick, stone, and preferred color schemes.

CUP-23-0098
Page # 1

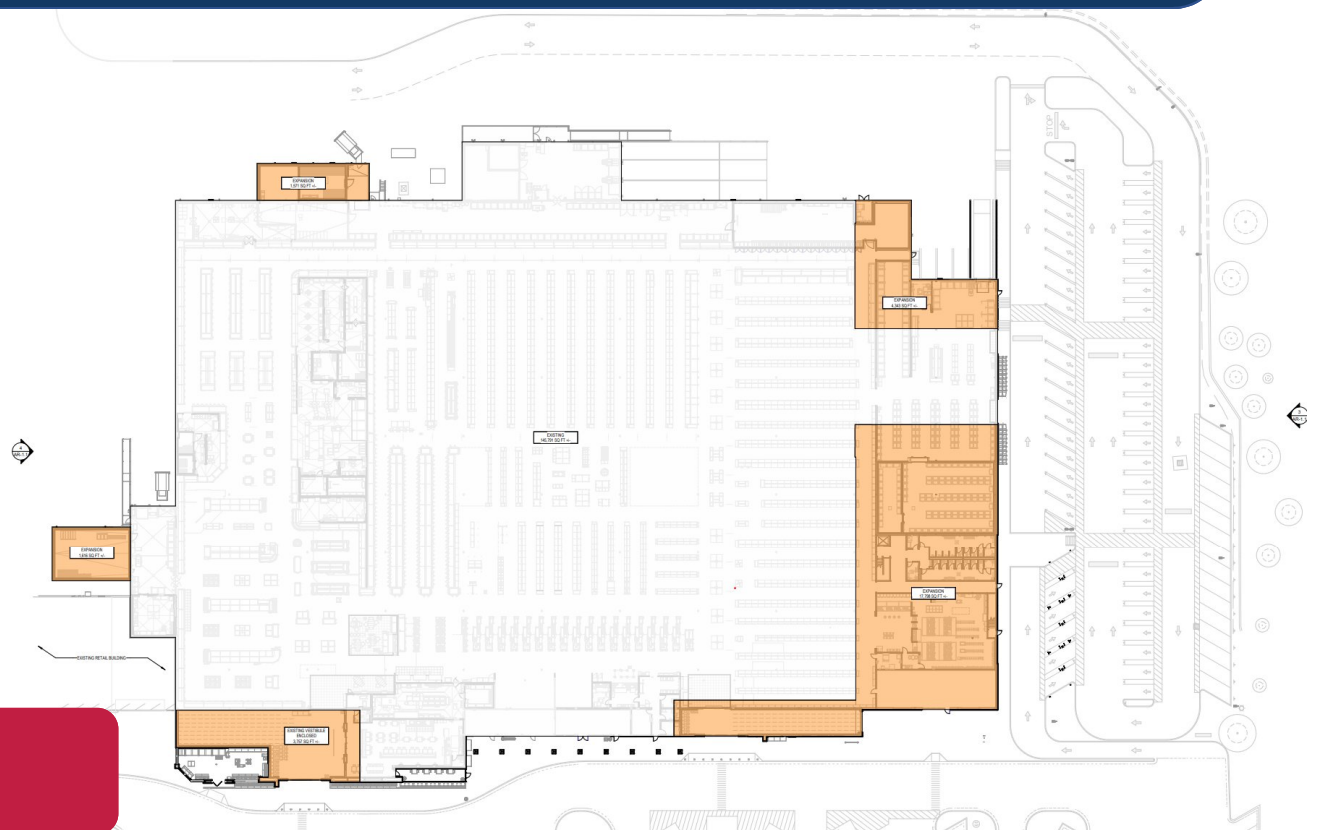
Summary - Request

- The addition of approximately 35,000+ square feet for the existing H.E.B. does not trigger bringing the entire site/building up to code regarding building materials.
- The overlay district does exempt expansions that are not more than 50% of the existing building to meet the requirements of the zoning Code but does still necessitate that the project be reviewed & approved by the City's Planning & Zoning Commission.

Summary - Request

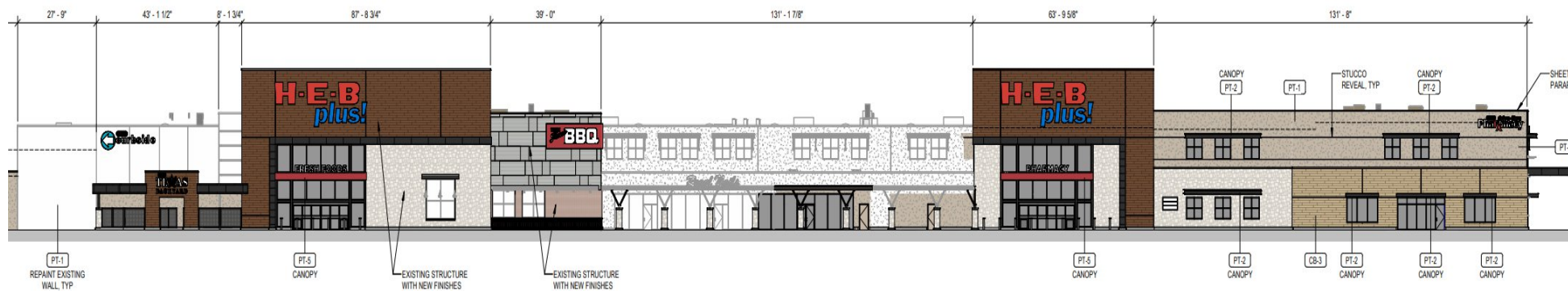
- The proposed additions consist of multiple materials including:
 - Limestone veneer
 - Cast Stone
 - Fiber Cement Board
 - Brick
 - Corrugated Metal Panels
 - Stucco
 - Smooth Face CMU
 - EIFS to match existing
 - Glazing

Summary – Proposed Site Plan



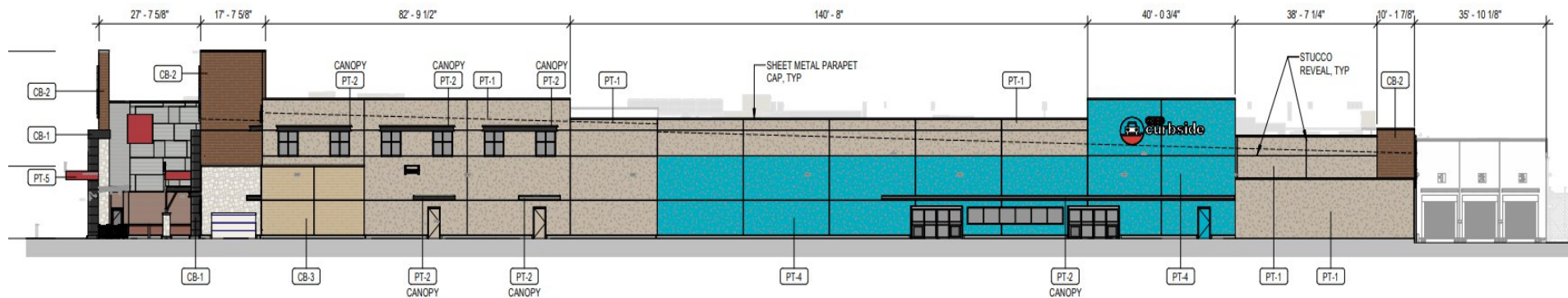
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Summary – Front Elevation



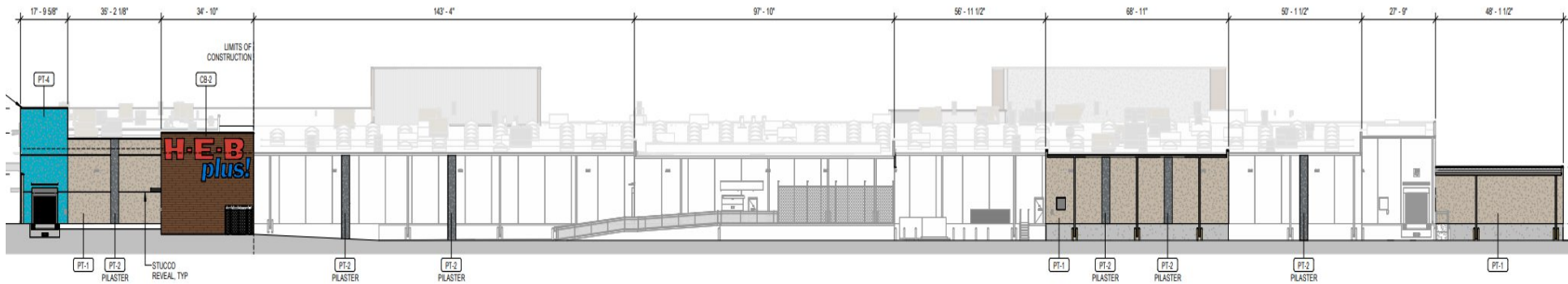
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Summary – Curb Side Elevation



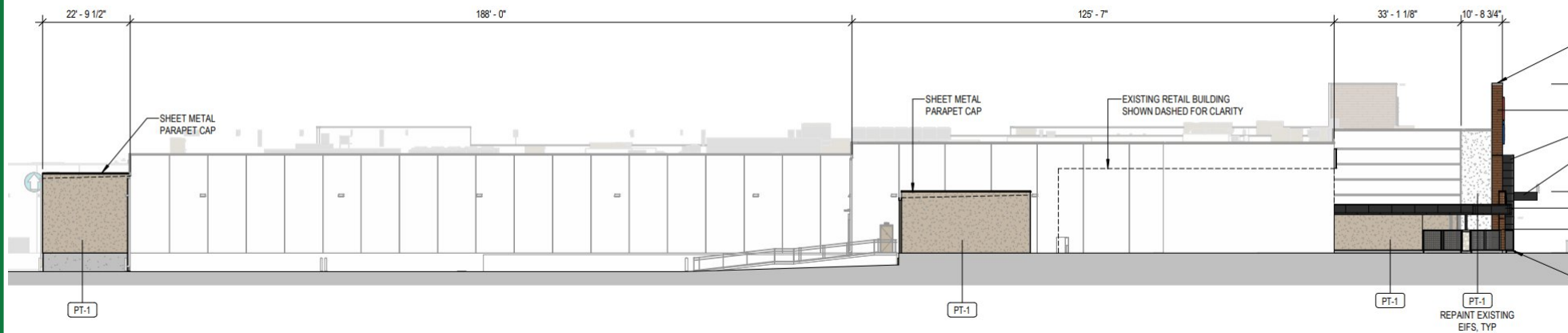
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Summary – Rear Elevation



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Summary – Interior Side Elevation



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Summary – Materials Breakdown

EXTERIOR MATERIAL PERCENTAGE SCHEDULE

FRONT ELEVATION

MATERIAL	SQUARE FOOTAGE	PERCENTAGE (19,034 SF)
GLAZING	3,203 SF	16.8%
NICHIHA	5,067 SF	26.6%
STUCCO	3,171 SF	16.6%
CORRUGATED METAL PANEL	817 SF	4.3%
STONE VENEER	2,207 SF	11.6%
EIFS (EXISTING)	2,503 SF	13.2%
TILT PANEL (EXISTING)	1,753 SF	9.2%

CURBSIDE ELEVATION

MATERIAL	SQUARE FOOTAGE	PERCENTAGE (11,774 SF)
GLAZING	466 SF	3.9%
NICHIHA	1,259 SF	10.7%
STUCCO *	7,993 SF	67.9%
BRICK	220 SF	1.9%
CORRUGATED METAL PANEL	483 SF	4.1%
STONE VENEER	294 SF	2.5%
TILT PANEL (EXISTING)	863 SF	7.3%

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Summary – Materials Breakdown

<u>FRESH ELEVATION</u>			
	MATERIAL	SQUARE FOOTAGE	PERCENTAGE (11,848 SF)
	NICHIHA	285 SF	2.4%
	STUCCO	1,353 SF	11.4%
	EIFS (EXISTING)	265 SF	2.2%
	TILT PANEL (EXISTING)	9,938 SF	83.9%
<u>FRESH ELEVATION</u>			
	MATERIAL	SQUARE FOOTAGE	PERCENTAGE (14,426 SF)
	NICHIHA	918 SF	6.3%
	STUCCO	3,464 SF	24%
	TILT PANEL (EXISTING)	7,573 SF	52.5%
<u>BUILDING TOTAL</u>			
	MATERIAL	SQUARE FOOTAGE	PERCENTAGE (57,082 SF)
	GLAZING	3,669 SF	6.4%
	NICHIHA	7,529 SF	13.2%
	STUCCO	15,981 SF	28%
	BRICK	526 SF	1%
	CORRUGATED METAL PANEL	1,300 SF	2.3%
	STONE VENEER	2,501 SF	4.4%
	EIFS (EXISTING)	2,768 SF	4.8%
	TILT PANEL (EXISTING)	20,127 SF	35.3%

CUP-23-0098
Page # 10

Summary



Questions?

CUP-23-0098
Page # 11



2809 Ajax Avenue Suite 100
Rogers, Arkansas 72758
Phone: 479.636.3545

November 27, 2023

City of Kyle
Planning Department
100 W. Center Street
Kyle, TX 78640

RE: Conditional Use Permit – Zoning Overlay Application
HEB
5401 S FM 1626
Kyle, TX

To Whom It May Concern:

Please consider this letter as a supplement to the Conditional Use Permit – Zoning Overlay application being filed for the upcoming expansion to HEB at 5401 South FM 1626 in Kyle. This application is being filed to secure approval for architectural elevations for the expansion based on the zoning overlay district assigned to the property.

Included in this application:

- Color exterior elevations showing proposed materials and colors for all sides of the building
- Landowner authorization and affidavit of ownership – signed and notarized
- Property deed

Please do not hesitate to contact me via email at amy.miles@pb2ae.com or via phone at 479.878.3510.

Thank you very much for your time and consideration.

Signed,

A handwritten signature in blue ink that reads 'Amy Miles'.

Amy Miles
Senior Permit Coordinator

LANDOWNER AUTHORIZATION AND AFFIDAVIT OF OWNERSHIP

SUBJECT PROPERTY INFORMATION

Subdivision Name, Block, Lot, or legal description if not subdivided: Kyle Marketplace

of lots (if subdivided): 2 # of acres: 37.605

Site APN/Property ID #(s): P119143

Location: 5401 S FM 1626, Kyle, Texas 78640 County: Hayes

Development Name: HEB Kyle

OWNER

Company/Applicant Name: IVT Kyle Marketplace, LLC

Authorized Company Representative (if company is owner): Christy L. David

Type of Company and State of Formation: Delaware

Title of Authorized Company Representative (if company is owner): Chief Operating Officer, Executive Vice President, General Counsel, and Secretary

Applicant Address: 3025 Highland Parkway, Suite 350, Downers Grove, IL 60515,

Attn: Legal Department (#44757)

Applicant Fax: N/A

Applicant Phone: 630-570-0700

Applicant/Authorized Company Representative Email: www.InvenTrustProperties.com

APPLICANT REPRESENTATIVE

Check one of the following:

☐ I will represent the application myself; or

☒ I hereby designate Shayna Johnson to act in the capacity as the agent for filing, processing, representation, and/or presentation of this development application. The designated agent shall be the principal contact person for responding to all requests for information and for resolving all issues of concern relative to this application.

I hereby certify that the above-named owner is the rightful owner of the Property. I am either the owner of the property identified above or a partner/manager/officer/director/member of the company who is authorized to act on behalf of the company. I further certify that the information provided herein and in the application for the development is true and correct. By signing below, I agree that the City of Kyle (the "City") is authorized and permitted to provide information contained within this application, including the email address, to the public.

OWNER: IVT Kyle Marketplace, LLC, a Delaware limited liability company

By: IVT OP Limited Partnership, a Delaware limited partnership, its sole member

By: IVT OP GP, LLC, a Delaware limited liability company, its general partner

By: InvenTrust Properties Corp., a Maryland corporation, its sole member

By: Christy L. David

Title: Chief Operating Officer, Executive Vice President, General Counsel, and Secretary

Owner's Signature: _____

Christy L. David

Date: _____

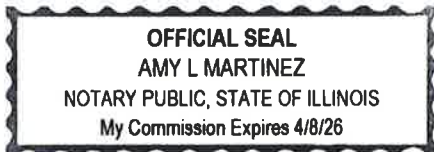
1/24/2024

State of ILLINOIS §
County of DUPAGE §

This instrument was acknowledged before me on January 24, 2024 by Christy L. David, who is the Chief Operating Officer, Executive Vice President, General Counsel and Secretary of InvenTrust Properties Corp., a Maryland corporation, sole member of IVT OP GP, LLC, a Delaware limited liability company, general partner of IVT OP Limited Partnership, a Delaware limited partnership, sole member of IVT Kyle Marketplace, LLC, a Delaware limited liability company.

SUBSCRIBED AND SWORN TO before me, this the 24 day of January, 2024.

(Notary Seal)



Amy L Martinez
Notary Public's Signature
4/8/2026
My Commission Expires

PROJECT REPRESENTATIVE:

Representative Name: Shayna Johnson, PE
Representative Address: 2727 Allen Pkwy, Suite 1350, Houston, TX 77019
Representative Phone: 832-730-1901
Representative Email: Shayna.johnson@wginc.com

Representative's Signature:

Date: 07/26/2023

ORIGIN: DENIA (630) 570-0700
MARY SIMMS
INVENTRUST PROPERTIES CORP
3025 HIGHLAND PARKWAY
STE 350
DOWNERS GROVE, IL 60515
SHIP DATE: 24JAN24
ACTWGT: 0.50 LB
CAD: 105631930/NET14535

BILL SENDER

TO **MARK VACLAVIK, PE, LEED AP**

HEB

646 SOUTH FLORES STREET

SAN ANTONIO TX 78204

(000) 000-0000

REF: HEB_KYLE

PO:

DEPT:



J241924011001uv

TRK# 7749 2888 7447
0201

THU - 25 JAN 5:00P
STANDARD OVERNIGHT

XA SVZA

78204

TX-US SAT



After printing this label:

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Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on [fedex.com](https://www.fedex.com). FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

General Warranty Deed

NOTICE OF CONFIDENTIALITY RIGHTS

IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: June 10, 2022

Grantor: Mad Monkey Investments LLC, a Texas limited liability company

Grantor's Mailing Address: 102 Wonderland Dr., Ste 100, San Marcos TX 78666

Grantee: IVT Kyle Marketplace, LLC, a Delaware limited liability company

Grantee's Mailing Address: 3025 Highland Parkway, Suite 350, Downers Grove, Illinois 60515

Consideration: Cash and other good and valuable consideration.

Property (including any improvements):

TRACT 1: Lot 2, Block "A" of the REPLAT OF LOT 1, BLOCK A, KYLE MARKETPLACE, SECTION 1, a subdivision in Hays County, Texas, according to the map or plat thereof, recorded in Volume 16, Page 198 of the Map and Plat Records of Hays County, Texas.

TRACT 2: Easement Estate appurtenant to Tract 1 pursuant to that certain Private Drainage Easement Agreement dated September 30, 2005, by and between Sheldon-Tanglewood, Ltd., as Grantor and Kyle Marketplace, Ltd., as Grantee recorded in Volume 2779, Page 716 of the Official Public Records of Hays County, Texas. Being over and across the property more particularly described in said Agreement.

TRACT 3: Easement Estate appurtenant to Tract 1 pursuant to that certain Declaration of Easement and Covenants dated December 30, 2011, created by Kyle Marketplace, Ltd., recorded in Volume 4253, Page 848 of the Official Public Records of Hays County, Texas, and being further affected by Volume 4254, Page 184, Volume 5064, Page 451, Document Nos. 17034076 and 18017690 of the Official Public Records of Hays County, Texas.

Reservations from Conveyance: None

Exceptions to Conveyance and Warranty:

All ad valorem taxes and assessments for the Property for the year in which this Deed is executed have been prorated by the parties hereto. If such proration was based upon an estimate of such taxes and assessments for such year, then upon demand the parties hereto shall promptly and equitably adjust all such taxes and assessments as soon as actual figures for the Property for such year are available.

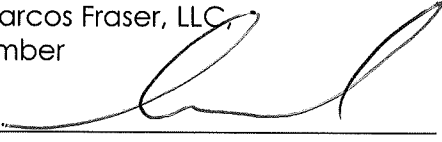
Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever, subject to the restrictions described on Exhibit A attached hereto. Grantor warrants that Grantor owns all of the Property in fee simple, has the right to convey the Property, and binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.


When the context requires, singular nouns and pronouns include the plural.

Mad Monkey Investments LLC

By: Fraser Family Limited Partnership,
Its Member

By: San Marcos Fraser, LLC,
Its Member

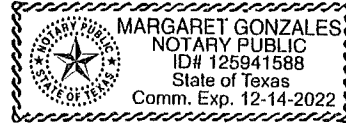
By: 
Name: Shane Fraser
Title: President

By: 
Name: Randall Lavender
Title: Member

State of Texas
 County of TRAVIS

This document was acknowledged before me on June 10, 2022 by Shane Fraser, President of San Marcos Fraser, LLC, a Texas limited liability company as Member of Fraser Family Limited Partnership, a Texas limited partnership as Member of Mad Monkey Investments LLC, on behalf of the Texas limited liability company.

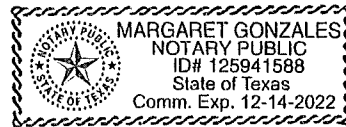
Margaret Gonzales
 Notary Public, State of Texas



State of Texas
 County of TRAVIS

This document was acknowledged before me on June 10, 2022 by Randall Lavender, Member of San Marcos Fraser, LLC, a Texas limited liability company as Member of Fraser Family Limited Partnership, a Texas limited partnership as Member of Mad Monkey Investments LLC, on behalf of the Texas limited liability company.

Margaret Gonzales
 Notary Public, State of Texas



Prepared By:
 Hancock McGill & Bleau, L.L.P.
 Attorneys at Law
 File No. 202201797-FW

After Recording Return To:

Exhibit A
Restrictions

1. Volume 14, Page 84 and Volume 16, Page 198 of the Map and Plat Records of Hays County, Texas. (TRACTS 1 AND 3) Volume 4253, Page 848, Volume 4254, Page 184, Volume 5064, Page 451, Document Nos. 17034076 and 18017690 of the Official Public Records of Hays County, Texas. (TRACTS 1 AND 3)
2. Terms and conditions of Private Drainage Easement Agreement dated September 30, 2005, executed by and between Sheldon-Tanglewood, Ltd., and Kyle MarketPlace, Ltd., recorded in Volume 2779, Page 716 of the Official Public Records of Hays County, Texas. (ALL TRACTS)
3. Utility easement 20 feet wide in favor of the City of Kyle, Texas dated April 26, 2006, recorded in Volume 2926, Page 283 of the Official Public Records of Hays County, Texas. (TRACT 3)
4. Utility easement in favor of Pedernales Electric Cooperative, Inc., set forth in instrument dated August 15, 2005, recorded in Volume 2859, Page 48 of the Official Public Records of Hays County, Texas. (TRACT 3)
5. The terms, conditions and stipulations set out in that certain lease evidenced by Memorandum dated June 30, 2006, recorded in Volume 3091, Page 826 of the Official Public Records of Hays County, Texas, by and between Kyle Marketplace, Ltd., as Landlord and HEB Grocery Company, LP, as Tenant, Amendment to Memorandum of Lease recorded under Document No. 18071691 of the Official Public Records of Hays County, Texas. (TRACTS 1 AND 3)
6. The terms, conditions and stipulations set out in that certain Ground Lease Agreement evidenced by Memorandum dated December 21, 2006, recorded in Volume 3160, Page 678 of the Official Public Records of Hays County, Texas, by and between Kyle Marketplace, Ltd., as Lessor and JPMorgan Chase Bank, N.A., as Lessee. (ALL TRACTS)
7. The terms, conditions and stipulations set out in that certain Ground Lease Agreement evidenced by Memorandum dated July 9, 2007, recorded in Volume 3212, Page 400 of the Official Public Records of Hays County, Texas. (ALL TRACTS)
8. Public utility easement 20 feet in width along the east property line(s) shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Map and Plat Records of Hays County, Texas. (TRACT 3)
9. Water and underground utility line easement 25 feet in width along the south property line(s) shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Map and Plat Records of Hays County, Texas. (TRACT 3)
10. Underground utility easement 15 feet in width along the west property line(s) shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Plat Records of Hays County, Texas. (TRACTS 1 AND 3)

11. Public utility easement 30 feet in width along the north, east and west property line(s) shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Plat Records of Hays County, Texas. (TRACT 3)
12. Building setback 20 feet along the east property line(s) shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Plat Records of Hays County, Texas. (TRACT 3)
13. Building setback 25 feet along the south property line(s) shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Plat Records of Hays County, Texas. (TRACT 3)
14. Building setback 15 feet along the west property line(s) shown on the plat recorded in Volume 14, Page 84 of the Plat Records of Hays County, Texas. (TRACTS 1 AND 3)
15. Building setback 30 feet along the north, west and east property line(s) shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Plat Records of Hays County, Texas. (TRACT 3)
16. Various utility and waterline easements extending inward from the west and north property lines and traversing the subject property shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Plat Records of Hays County, Texas. (TRACTS 1 AND 3)
17. Buried communication cable easement granted to GTE Southwest Incorporated dba Verizon Southwest by instrument dated August 1, 2007, recorded in Volume 3232, Page 276 of the Official Public Records of Hays County, Texas. (TRACT 3)
18. Utility easement granted to Pedernales Electric Cooperative, Inc., by instrument dated February 23, 2007, recorded in Volume 3393, Page 631 of the Official Records of Hays County, Texas. (ALL TRACTS)
19. Utility easement granted to Pedernales Electric Cooperative, Inc., by instrument dated May 10, 2007, recorded in Volume 3393, Page 638 of the Official Public Records of Hays County, Texas. (TRACT 3)
20. Utility easement granted to Pedernales Electric Cooperative, Inc., by instrument dated May 10, 2007, recorded in Volume 3393, Page 652 of the Official Public Records of Hays County, Texas. (TRACT 3)
21. The terms, conditions and stipulations of that certain Declaration of Easements and Covenants dated December 30, 2011, recorded in Volume 4253, Page 848 of the Official Public Records of Hays County, Texas, and being further affected by Volume 4254, Page 184, Volume 5064, Page 451, Document Nos. 17034076 and 18017690 of the Official Public Records of Hays County, Texas. (TRACTS 1 AND 3)

**THE STATE OF TEXAS
COUNTY OF HAYS**

I hereby certify that this instrument was FILED on the
date and the time stamped hereon by me and was duly
RECORDED in the Records of Hays County, Texas.

22028891 DEED
06/10/2022 02:51:37 PM Total Fees: \$42.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HAYS §

That **BRE DDR BR KYLE TX LLC**, a Delaware limited liability company ("**Grantor**"), whose address is c/o Blackstone Real Estate Advisors L.P., 345 Park Avenue, New York, New York 10154 for and in consideration of the sum of \$10 and other good and valuable consideration to it in hand paid by **IVT KYLE MARKETPLACE 1031, LLC**, a Delaware limited liability company ("**Grantee**"), whose address is c/o InvenTrust Properties Corp., 3025 Highland Parkway, Suite 350, Downers Grove, Illinois 60515, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGAIN, SELL and CONVEY unto the Grantee, those certain parcels of land located at 5401 Farm to Market 1626, Kyle, Texas 78640 as more particularly described on Exhibit A attached hereto and made a part hereof (the "**Land**"), together with all rights and appurtenances pertaining to the Land, including any right, title and interest of Seller in and to adjacent streets, alleys, easements or rights-of-way (said real property herein collectively referred to as the "**Property**").

TO HAVE AND TO HOLD the Property together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns, forever, subject to the restrictions set forth hereinafter and the other matters described on Exhibit B attached hereto (collectively, the "**Permitted Exceptions**"); and Grantor does hereby bind itself and its successors, to warrant and forever defend all and singular the Property, subject to Permitted Exceptions unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

This conveyance is made on an "As Is", "Where Is" and "With All Faults" basis. The Property is sold in its present condition, **AS IS** and no warranties, express or implied, are made or inferred by virtue of this conveyance, except for a Warranty of Title and those representations and warranties made by Grantor to Grantee's predecessor in interest in that certain Purchase and Sale Agreement dated June 22, 2017, as amended.

All ad valorem taxes and assessments for the Property for the year in which this Deed is executed have been prorated by the parties hereto and Grantee hereby expressly assumes liability for the payment thereof. If such proration was based upon an estimate of such taxes and assessments for such year, then upon demand the parties hereto shall promptly and equitably adjust all such taxes and assessments as soon as actual figures for the Property for such year are available.

EXECUTED on the date of the acknowledgment set forth below to be effective for all purposes as of the 21st day of September 2017.

BRE DDR BR KYLE TX LLC,
a Delaware limited liability company

By: 
Name: Phillip Solomond
Title: Vice President

THE STATE OF New York
COUNTY OF Westchester

This instrument was acknowledged before me on the 18th day of September 2017, by Phillip Solomond Vice President of BRE DDR BR KYLE TX LLC, a Delaware limited liability company on behalf of said company.

Notary Public in and for the State of New York

My Commission Expires: 10/15/2019

GINA SANTANASTASIO
Notary Public, State of New York
No 01SA6175572
Qualified in Westchester County
Commission Expires Oct. 15, 2019

Signature Page to Deed

EXHIBIT A TO SPECIAL WARRANTY DEED

LEGAL DESCRIPTION

That certain land situated in the County of Hays, State of Texas, and described as follows:

TRACT 1:

LOT 1, BLOCK "A" OF KYLE MARKETPLACE, SECTION 1, REPLAT OF LOT 1, BLOCK A, A SUBDIVISION IN HAYS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET 16, PAGES 198-199 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS.

TRACT 2:

EASEMENT ESTATE APPURTENANT TO TRACT 1 PURSUANT TO THAT CERTAIN PRIVATE DRAINAGE EASEMENT AGREEMENT DATED SEPTEMBER 30, 2005, BY AND BETWEEN SHELDON-TANGLEWOOD, LTD., AS GRANTOR AND KYLE MARKETPLACE, LTD., AS GRANTEE RECORDED IN VOLUME 2779, PAGE 716 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. BEING OVER AND ACROSS THE PROPERTY MORE PARTICULARLY DESCRIBED IN SAID AGREEMENT.

TRACT 3:

EASEMENT ESTATE APPURTENANT TO TRACT 1 PURSUANT TO THAT CERTAIN DECLARATION OF EASEMENT AND COVENANTS DATED DECEMBER 30, 2011, CREATED BY KYLE MARKETPLACE, LTD., RECORDED IN VOLUME 4253, PAGE 848 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

AFFECTED BY ASSIGNMENT OF DECLARANT'S RIGHTS FILED FOR RECORD IN VOLUME 4254, PAGE 184, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

AFFECTED BY ASSIGNMENT AND ASSUMPTION OF DECLARATION OF EASEMENTS AND COVENANTS FILED FOR RECORD IN VOLUME 5064, PAGE 451, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

EXHIBIT B TO SPECIAL WARRANTY DEED

Permitted Exceptions

1. Building setback lines as shown on plat recorded in Volume 14, Page 84 and Cabinet 16, Pages 198-199.
2. Public Utility Easement as shown on plat and dedication recorded in Volume 14, Page 84.
3. Water Underground Utility Line Easement as shown on plat and dedication recorded in Volume 14, Page 84.
4. Underground Utility Easements as shown on plat and dedication recorded in Volume 14, Page 84.
5. Public Utility Easement as shown on plat and dedication recorded in Volume 14, Page 84 and Cabinet 16, Pages 198-199.
6. Underground Electric, Telephone and Cable Easement as shown on plat and dedication recorded in Cabinet 16, Pages 198-199.
7. Utility Easement to City of Kyle, Texas recorded in Volume 2926, Page 283 of the Official Public Records of Hays County.
8. Utility Easement to Pedernales Electric Cooperative, Inc. recorded in Volume 2859, Page 48 of the Official Public Records of Hays County.
9. Buried Communication Cable Easement to GTE Southwest Incorporated dba Verizon Southwest recorded in Volume 3232, Page 276 of the Official Public Records of Hays County, Texas.
10. Utility Easement to Pedernales Electric Cooperative, Inc. recorded in Volume 3393, Page 631 of the Official Public Records of Hays County, Texas.
11. Utility Easement to Pedernales Electric Cooperative, Inc. recorded in Volume 3393, Page 638 of the Official Public Records of Hays County, Texas.
12. Utility Easement to Pedernales Electric Cooperative, Inc. recorded in Volume 3393, Page 652 of the Official Public Records of Hays County, Texas.
13. Various Utility and Waterline Easements shown on the plats recorded in Volume 14, Page 84 and Volume 16, Page 198 of the Plat Records of Hays County, Texas.
14. Detention pond, drainage, underground utility, public utility, waterline, underground telephone and cable easements shown on plat recorded in Volume 16, Page 198 of the Plat Records of Hays County, Texas.

15. Terms, Conditions, and Stipulations in the Agreement by and between Sheldon-Tanglewood, Ltd., and Kyle MarketPlace, Ltd. recorded in Volume 2779, Page 716 of the Official Public Records of Hays County, Texas.
16. Terms, Conditions, and Stipulations in Memorandum of Lease Agreement by and between Kyle Marketplace, Ltd. and HEB Grocery Company, LP recorded in Volume 3091, Page 826 of the Official Public Records of Hays County, Texas, as affected by UCC Financing Statement recorded August 22, 2012, in Volume 4731, Page 515 of the Official Public Records of Hays County, Texas.
17. Terms, Conditions, and Stipulations in Memorandum of Lease Agreement by and between Kyle Marketplace, Ltd and JPMorgan Chase Bank, N .A. recorded in Volume 3160, Page 678 of the Official Public Records of Hays County, Texas.
18. Terms, Conditions, and Stipulations in Memorandum of Ground Lease Agreement by and between Kyle Marketplace, Ltd. and Whataburger Restaurants LP recorded in Volume 3212, Page 400 of the Official Public Records of Hays County, Texas.
19. Terms, Conditions, provisions, easements, restrictions, reservations and other matters in Declaration of Easements and Covenants recorded in Volume 4253, Page 848 and as affected in Volume 4254, Page 184, and Assignment and Assumption of Declaration of Easements and Covenants in Volume 5064, Page 451 of the Official Public Records of Hays County, Texas.
20. Drainage Easement for Storm Sewer as shown on the plat recorded in Cabinet 16, Pages 198-199 of the Plat Records of Hays County, Texas.
21. Terms, conditions and stipulations contained in Development Agreement -- Purchaser's Work recorded in Volume 2779, Page 655, of the Official Public Records of Hays County, Texas.
22. Terms, Conditions, provisions, easements, restrictions, reservations and other matters in Declaration of Slope Easement and Restrictive Covenant recorded in Volume 2779, Page 688 of the Official Public Records of Hays County, Texas.
23. Critical Access Drive Easement recorded on July 20, 2007 in Volume 3212, Page 400 of the Official Public Records of Hays County, Texas and as shown on recorded plat filed for record under Cabinet 16, Pages 198-199 Plat Records of Hays County, Texas.

NAI-1503041766v2
2607604.2

C-5



Instrument # 17034074 Number: 5 of 5 Filed and Recorded: 9/26/2017 1:52 PM
Liz Q. Gonzalez, Hays County Clerk, Texas Rec \$42.00 Deputy Clerk: MCASTRO



Franchise Tax Account Status

As of : 03/12/2024 14:25:51

This page is valid for most business transactions but is not sufficient for filings with the Secretary of State

IVT KYLE MARKETPLACE 1031, LLC	
Texas Taxpayer Number	32064906020
Mailing Address	3601 MINNESOTA DR STE 100 BLOOMINGTON, MN 55435-5253
❓ Right to Transact Business in Texas	FRANCHISE TAX ENDED
State of Formation	DE
Effective SOS Registration Date	09/21/2017
Texas SOS File Number	0802820331
Registered Agent Name	Not on file
Registered Office Street Address	

Open Meetings Act Refresher

Legal



General Rule - Meetings

- Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by the Texas Open Meetings Act.
- The Act generally applies whenever there is:
 - a gov't body, and
 - that body is meeting.
- Planning and Zoning Commissions are greater than advisory committees, accordingly the Texas Open Meetings Act applies.

Definition of Meeting

- Meeting is a gathering of a quorum of the governmental body and a discussion about the public business between the members or with a third party
- Gathering at a social function, regional/state/local convention or workshop, ceremonial event, or press conference is not a meeting if:
 - No formal action and
 - Any discussion of public business is merely incidental to the organized event

Examples of Meetings

- Quorum appears at regular meeting of the Board.
- Quorum meets at a social function related to board business and discusses board business.
- Quorum attends a meeting of another entity and discusses board business.
- Quorum meets with City Staff outside regular meeting.
- Electronic communications between a quorum – ex: email to at least a quorum, group texts, or Facebook.

Meetings Must Be Open

- Noticed – 72 hours notice of time and place of meeting and subjects to be discussed
- Located in Texas
- Accessible to Public, including persons with disabilities
- Public must be given a chance to speak
- Governmental body may not vote in an open session by secret written ballot.
- Governmental body may not take action by circulated letter without a meeting.
- All action must be in open session.

Criminal Violations of TOMA

- Participating in a “closed meeting” other than a permissible executive session
 - This means participating in a meeting of a quorum that is not open to the public
- Participating in a “closed meeting” w/ knowledge that no certified agenda or minutes being made
- Disclosure of certified agenda of executive session.
- Walking Quorum

Walking Quorum

- Courts have defined “walking quorum” as:
 - “serial meetings of less than a quorum.” *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003).
 - “overlapping series of meetings or telephone conferences [when] a quorum of members was not in the same room at the same time” *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433 (W.D. Tex. 2001).

Emails and Social Media

- A “deliberation” is a verbal exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person.
 - AG has stated that deliberation need not be oral. Meeting can be by written letter, email, memo, etc.
- Dangers:
 - Reply all to e-mails – Councilmembers have been prosecuted for replying to all in emails
 - Facebook, Twitter - Befriending other members

Best Practices

- Staff should bcc instead of cc'ing all Board Members in e-mails, to avoid accidental reply-to-all
- No Public Business on Facebook or Twitter
- No quorum present at meetings of other entities
- No discussion of public business at social functions where a quorum might be present
- No independent conversations regarding Board business that might constitute a walking quorum
- Always err on the side of caution