

**CITY COUNCIL AND PLANNING AND ZONING COMMISSION
JOINT PUBLIC HEARING
CITY OF FAIR OAKS RANCH, TEXAS
February 9, 2023**

HEARING TOPIC: The City Council and the Planning and Zoning Commission of the City of Fair Oaks Ranch, Texas, will conduct a joint public hearing to receive public testimony on the following Rezoning request (Rezoning No. 2023-02-09): A request from the applicants and property owners Lauren Tijerina and Daniel Tijerina to change the zoning classification of 29243 Enchanted Glen, generally located northwest of the intersection of Dietz Elkhorn Road and Enchanted Glen, from Existing Residential Three (R3) to Community Facilities (CF).

DATE: February 9, 2023

DEPARTMENT: Public Works and Engineering Services

PRESENTED BY: Katherine Schweitzer, P.E., Manager of Engineering Services
Lata Krishnarao, AICP, LEED ND, Consultant, Ardurra Corporation

INTRODUCTION/BACKGROUND:

The applicant is proposing to change the zoning classification of approximately 1.57 acres contained in 29243 Enchanted Glen from Existing Residential Three (R3) to Community Facilities (CF). The purpose of this rezoning request is to allow for an appropriate zoning classification to be placed on the subject property to enable the applicant to establish a licensed childcare center. The sequence for conducting the joint public hearing is as follows:

1. Mayor opens the joint public hearing
2. Staff presentation of the proposed Rezoning request
3. Applicant presentation of the Rezoning request
4. City Council and the Planning and Zoning Commission (P&Z) receive public testimony for/against the proposed Rezoning request with the Mayor serving as the presiding officer
5. Mayor closes the joint public hearing
6. City Council and P&Z discuss the request, inclusive of asking questions of the owner and staff
7. Meeting is adjourned with no formal action necessary

Subsequent to the City Council's departure, the P&Z will convene into their regular business meeting to discuss the Rezoning request and make a recommendation for City Council consideration. The P&Z may recommend approval/denial. The P&Z may choose to table the request if they determine additional information from the applicant is warranted. The City Council is the final authority on all Rezoning requests. Accordingly, the City Council will consider the Rezoning request and the P&Z recommendation at their next regularly scheduled business meeting following P&Z action.

LEGAL ANALYSIS:

The attached staff report and today's joint public hearing demonstrate compliance with the requirements as prescribed in Texas Local Government Code and the City's Unified Development Code.

RECOMMENDATION/PROPOSED MOTION:

Conduct the joint public hearing.

STAFF REPORT

To: City Council and Planning and Zoning Commission
From: Public Works and Engineering Department
Date: February 9, 2023
Re: Rezoning request from the applicants and property owners Lauren Tijerina and Daniel Tijerina to change the zoning classification of 29243 Enchanted Glen, generally located northwest of the intersection of Dietz Elkhorn Road and Enchanted Glen, from Existing Residential Three (R3) to Community Facilities (CF).

SUMMARY:

The applicant is proposing to change the zoning classification of approximately 1.57 acres contained in 29243 Enchanted Glen from Existing Residential Three (R3) to Community Facilities (CF). The purpose of this rezoning request is to allow for an appropriate zoning classification to be placed on the subject property to enable the applicant to establish a licensed childcare center.

The Unified Development Code (UDC) describes the current and proposed zoning categories as follows:

Current Zoning - "The Existing Residential 3 (R3) category governs the existing rural residential lots with lot sizes generally between 1.3 acres and 5 acres. Exclusive of city permits and ordinances all lot, building, landscaping, and other standards will be controlled by the applicable deed restrictions in these neighborhoods, in compliance with City ordinance requirements."

Proposed Zoning - "The Community Facilities (CF) District is intended for locations at which facilities are provided for governmental, religious, educational, health care, public gatherings, and social services. Sites in the CF district are appropriate for direct access to primarily Arterial, Collector streets and Local Connector Streets. Development standards in this district will require new buildings to create pedestrian friendly building frontages and generally conform to a Hill Country Design aesthetic. Uses within this Zoning District include primarily Civic and places of worship."

The subject property contains a single-family residence and is in the recorded subdivision Enchanted Oaks Unit 1 and is currently served by the Enchanted Oaks Water System and septic system. As per the deed restrictions applicable to this subdivision, no professional business or commercial activity to which the general public is invited is permitted. However, the City does not enforce private deed restrictions or HOA regulations.

LOCATION AND SURROUNDINGS:

The site is generally located northwest of the intersection of Dietz Elkhorn Road and Enchanted Glen. A summary of the surrounding land uses and zoning designations can be found in the following table:

Zoning		Land Use
NORTH	Existing Residential 3	Single Family Residential
SOUTH	Existing Residential 3	Single Family Residential
WEST	Existing Residential 1	Single Family Residential (Elkhorn Ridge Development)
EAST	Existing Residential 2	Single Family Residential

CONFORMANCE WITH COMPREHENSIVE PLAN:

Background:

The City adopted the current Comprehensive Plan in 2018 as part of a mission to strengthen and preserve the City’s character.

Purpose of the Comprehensive Plan:

The purpose of the Comprehensive Plan is to determine community vision, goals, and aspiration in regard to community development. This living document is intended to guide City’s land use, policies, and spending priorities for years to come. It addresses how “thoughtful design can maintain and improve quality of life for the people who live in Fair Oaks Ranch, and how to balance personal freedom with rules for common protection of property values, safety, and the preservation (and enhancement) of the community character.”

As per the Comprehensive Plan – “The Comprehensive Plan will help guide where and how the development happens, and to shape the future growth in ways that will complement and protect the values of the existing community, and serve as a foundational rulebook for the landowners, developers, surveyors, engineers, and architects and for the City employees who will shepherd them.”

The Comprehensive Plan serves as a guide to frame zoning regulations that regulate all development and land uses.

Process of Adoption of Comprehensive Plan:

The current Comprehensive Plan was created by the citizens of Fair Oaks Ranch and the process spanned over two years (2017-2018). It was led by a steering committee appointed by the City Council who worked with staff and the professional planning team. The citizens and other stakeholders were heard through workshops and City-wide “Town Hall” meetings, as well as numerous smaller meetings, planning exercises, and community surveys. The plan reflected the vision of the community.

Components of the Comprehensive Plan:

- 1) Text - The Comprehensive Plan contains a Future Land Use chapter that includes the descriptions of the various land use classifications, and recommendations on the appropriate land uses, development regulations, design standards, and zoning categories for each of these land use classifications.

- 2) Map - The Future Land Use Map (FLUM) included in the Comprehensive Plan shows suitable locations in the City for the various land use classifications. The FLUM classifications should be used in conjunction with associated text descriptions to assess the types of land uses and development desired for in a particular area.

Comprehensive Plan Recommendations for this Property:

The FLUM (Exhibit C: Future Land Use Map (FLUM) adopted in June 2018 designates this property as Existing Residential. The Comprehensive Plan recommends the following standards:

Existing Residential	
Permitted Uses	<ul style="list-style-type: none"> Defer to individual HOA rules and regulations
Lot and Block Standards	<ul style="list-style-type: none"> Defer to individual HOA rules and regulations
Building Form and Development Standards	<ul style="list-style-type: none"> Defer to individual HOA rules and regulations
Building Design Standards	<ul style="list-style-type: none"> Defer to individual HOA rules and regulations
Transportation (Street Types)	<ul style="list-style-type: none"> Local Multimodal Street Neighborhood Street

Relevant Excerpts from the Comprehensive Plan:

The Existing Residential designation is described as – “... The Existing Residential categories are intended to capture the neighborhoods already existing in Fair Oaks Ranch as the comprehensive plan exercise commenced. These neighborhoods were platted, and mostly built-out, before zoning districts were created. Construction standards and densities in these areas have historically been governed by land covenants and deed restriction committees. The four categories of Existing Residential zoning reflect the existing neighborhood character and densities already in place.”

The Comprehensive Plan states that - “Existing Residential 3 category governs areas where existing lot sizes are generally between approximately 1.3 acres and approximately five acres. All building, landscaping and other standards will be controlled by the applicable Restriction Committees”.

The proposed zoning category of CF is not recommended for the subject property by the Comprehensive Plan. As per the Comprehensive Plan, CF District is intended for governmental, religious, educational, health care, social service, and special facilities.

As per the Comprehensive Plan, sites with direct access from Arterial, Collector streets and Local Connector Streets are suitable for the CF zoning category. The subject property that fronts on a local street is not appropriate for a CF category.

Finding:

- The proposed zone change is not consistent with the Comprehensive Plan and the FLUM.

CONFORMANCE WITH THE UNIFIED DEVELOPMENT CODE:

Current zoning: As per the UDC, Existing Residential Three (R3) zoning "... governs the existing rural residential lots with lot sizes generally between 1.3 acres and 5 acres." As per UDC, in R3 districts, all lot, building, landscaping and other standards will be controlled by the applicable Restriction Committees in compliance with City ordinance requirements.

As per the deed restrictions applicable to this subdivision, no professional business or commercial activity to which the general public is invited is permitted. However, the City does not enforce private deed restrictions or HOA regulations. The applicant has been notified of this deed restriction.

Proposed zoning: As per the UDC, CF district is intended for locations at which facilities are provided for governmental, religious, educational, health care, social service, public administration uses, and special facilities. Some of the areas in our city currently zoned as CF include:

- Along Dietz Elkhorn Road (Spring Creek United Methodist Church, City Hall, Van Raub Elementary School, Electrical Substation)
- Along Ralph Fair Road (Cibolo Creek Community Church, Fire Station)
- Intersection of Ralph Fair Road and Dietz Elkhorn Road (Fair Oaks Elementary School)

Based on the applicant's submittal and the pre-development meeting, the applicant proposes to use the existing residential structure as a licensed childcare facility for up to 48 kids depending on the state approval (including full time and part time childcare). It will not be a home day care and the applicant will not be using the structure as a residence. The existing residence and premises will need to be modified to meet the standards for a daycare center as required by the UDC and state requirements.

It should be noted that once a property is zoned, it can be developed or redeveloped for any use that is permitted in that zone, as long as all other development standards contained in the UDC are met. In other words, a zoning classification runs with the land and the land cannot be restricted to a daycare facility. Land uses permitted in CF district include hospital, fitness, recreational sports, gym, athletic club, dance or yoga studio, school, libraries, religious institutions, and bed and breakfast. (See attached Use Table).

As per UDC Sec. 4.10 (8), the proposed use of daycare center is permitted with conditions in the CF district. No additional conditions can be placed on the zone change. The required standards are:

- Meet the minimum state requirements for such facilities and be registered with the State of Texas.
- Meet applicable state regulations and the restrictions.
- Provide at least as much outdoor play area and indoor activity space per child as required by the state for licensed day care centers. All outdoor play to be located behind front building lines and a 6 ft. tall opaque screen to be provided to screen abutting property that is zoned residential at the time the child care facility is established.

- Provide regular care to children under fourteen years of age for less than twenty-four hours a day.
- Not located in residentially zoned areas.
- Conform to the off-street parking and loading requirements:
 - Loading zones must be off-street, drive-through and paved to a minimum width of ten feet and a maximum width of twenty feet.
 - Loading zones shall have a holding capacity of one vehicle per five hundred square feet of the facility, exclusive of parking spaces, provided that no facility shall be required to have a loading zone with a capacity in excess of six spaces.

Finding:

- Uses permitted - The proposed zone change would permit the use proposed by the applicant if the standards listed above are met without any additional conditions on site development or use. If the zone change is approved the property can be used for any other uses permitted in the CF zone and there will be no guarantee that the site will be developed as proposed as a daycare center.

CONFORMANCE WITH THE CHARACTER OF THE AREA:

The proposed use will change the existing use of single family residential into a use of commercial nature. Without adequate thought to placement, buffers, and other considerations, the proposed use and other uses permitted in this zone may not be compatible with the adjacent use of single family residential.

Findings:

- The density and character of the proposed use and other uses permitted in CF zone may adversely affect abutting existing single-family neighborhoods.
- The traffic generated by the proposed use and other uses permitted in CF zone, such as hospital, fitness, recreational sports, gym, athletic club, dance or yoga studio, school, libraries, religious institutions, bed and breakfast etc. may have an adverse impact on circulation and safety on surroundings due to inadequate capacity, street continuity, and linkages.

CONFORMANCE WITH THE AVAILABILITY OF UTILITIES:

The subject property is currently served by the Enchanted Oaks Water System and septic system. The adequacy of water, sewer, roadway, and storm drainage facilities will need to be reevaluated to ensure there is capacity for any proposed uses by the CF district.

Findings:

- There may not be adequate utilities for the intensity of the proposed use and other permitted uses in the CF district.
- Detailed study will be required to ascertain the improvements needed for this use.

CONFORMANCE WITH THE TRANSPORTATION MAP:

The traffic generated by the proposed development will impact Enchanted Glen, Enchanted Elm, Enchanted Park, and Dietz Elkhorn Road. Enchanted Glen is a Local Street with 60' right of way (ROW) according to the recorded plat. Improvements may be needed to adequately support any commercial scale development. A traffic study will be required to determine the extent of improvements.

Findings:

- City's roadway infrastructure may not be suitable and adequate for the proposed use and all permitted uses in the CF district.
- A traffic study will be required to ascertain what improvements will be needed for the proposed use and all uses permitted in the CF district.

PUBLIC COMMENTS:

All real property owners within 200 feet were notified and notice of the public hearing has been published. Staff has received zero (0) public comments in favor of the request and fifteen (15) in opposition.

UDC Ch 3.7 (4)(vii)(2) states "If a proposed rezoning of a tract of land has been protested in writing by the owners of at least 20 percent of the area within 200 feet of the tract (who are also resident inside the City Limits), the rezoning may not become effective except by three-fourths vote of the City Council." Staff has reviewed the public comments and has determined 62% of the area is in opposition of the proposed rezoning.

STAFF ANALYSIS:

Based on the review of the application and supporting documents, UDC, Comprehensive Plan, and other applicable City standards, the staff's observations are as follows:

1. The rezoning will not be consistent with the Comprehensive Plan.
2. Without additional considerations and or the ability to require adherence to any site plan (not permitted by straight zoning), the rezoning may not be compatible with the surrounding single family uses. Staff believes that the rezoning, will allow the proposed use and potentially other commercial uses such as a hospital or fitness center, without appropriate buffers and transitions, and without any safeguards or design standards, may have a detrimental effect on the health, safety, or general welfare of the City and to the adjacent residential neighborhoods.
3. Once rezoned, the property can be developed for any other uses permitted in the CF district as mentioned above.
4. The proposed use would generate commercial traffic on an existing residential community.
5. The permitted uses in the CF district are intense uses that may have a significant impact on public infrastructure such as roads, parking facilities, water, and sewer, and storm drainage systems.
6. The permitted uses in the CF district may have a significant impact on public services such as police, fire protection, and trash collection.

Due to the reasons listed above the staff is unable to recommend approval.

CRITERIA FOR REVIEW:

According to the UDC, zoning changes may be approved if the following criteria are met:

1. The zoning change is consistent with the Comprehensive Plan;
2. The zoning change promotes the health, safety, or general welfare of the City and the safe, orderly, and healthful development of the City;
3. The zoning change is compatible with and conforms with uses of nearby property and the character of the neighborhood;
4. The property affected by the zoning change is suitable for uses permitted by the proposed amendment to the zoning map;
5. Infrastructure, including roadway adequacy, sewer, water and storm water facilities, is or is committed to be available that is generally suitable and adequate for the proposed use; and
6. Zoning Variance requests will not be considered. Zoning changes must be made by Zoning Map Amendment. All amendments must be in accordance with the Comprehensive Plan, which may be amended according to the procedure in this Section. Newly annexed areas will be zoned during the annexation process.

In conclusion, it is staff's opinion that this rezoning request does not meet the criteria listed above. A rezoning process does not provide an opportunity to conduct additional review and detailed analysis to confirm that there will not be any detrimental effects to the City from all the uses permitted in CF district. These reviews occur later during the construction plan review and permitting phase. Also, rezoning does not allow the ability to impose restrictions and conditions to mitigate the adverse impacts.

Exhibit A: Aerial Map and Existing Site Conditions



Source: Google

Exhibit B: Current Zoning Map

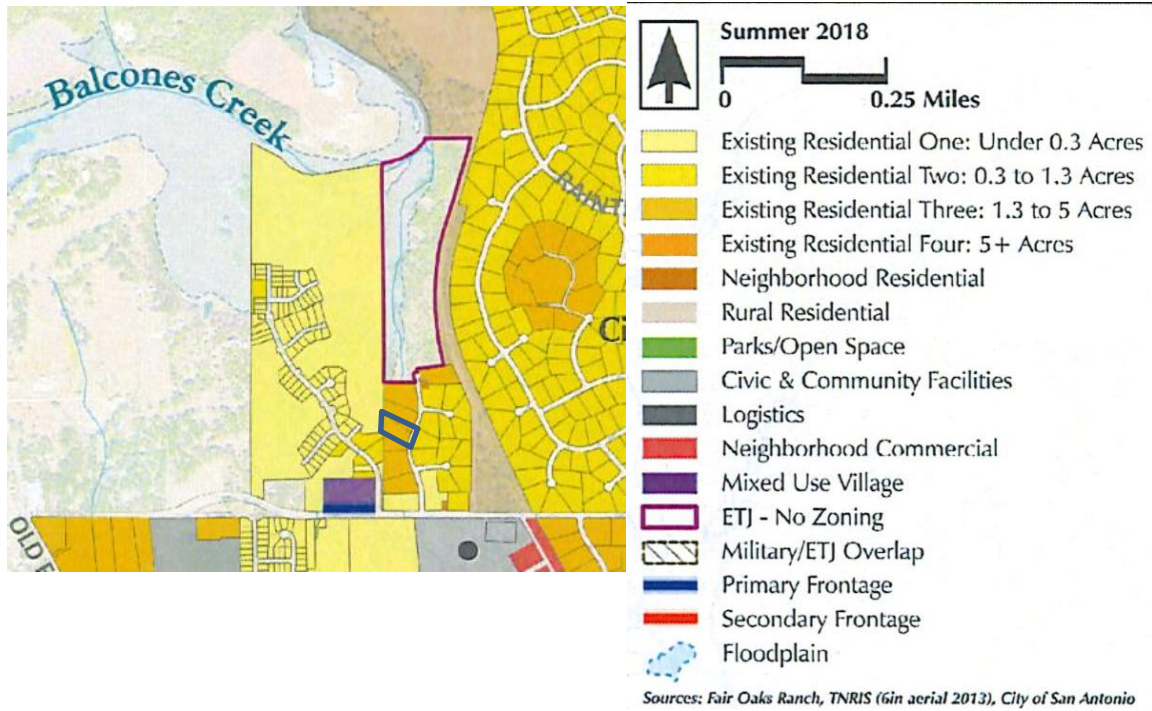


Exhibit C: Future Land Use Map (FLUM)

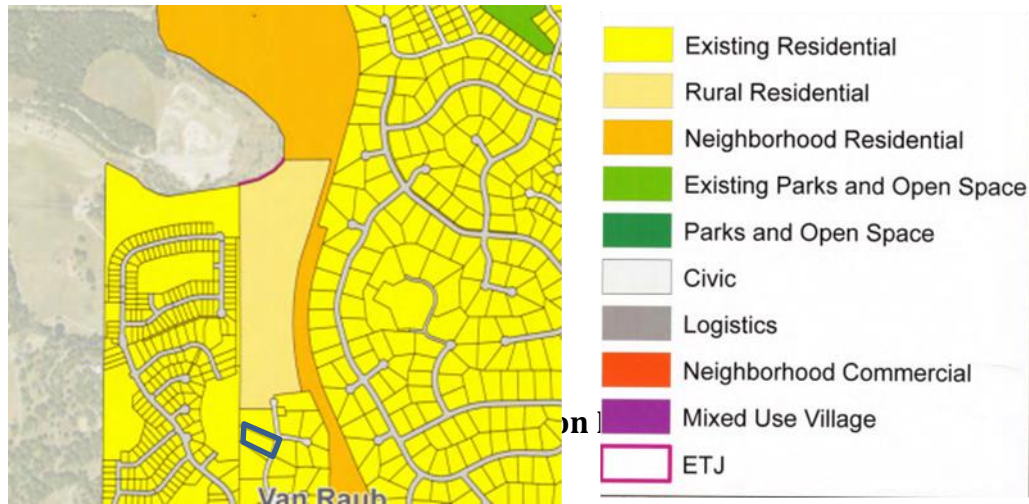
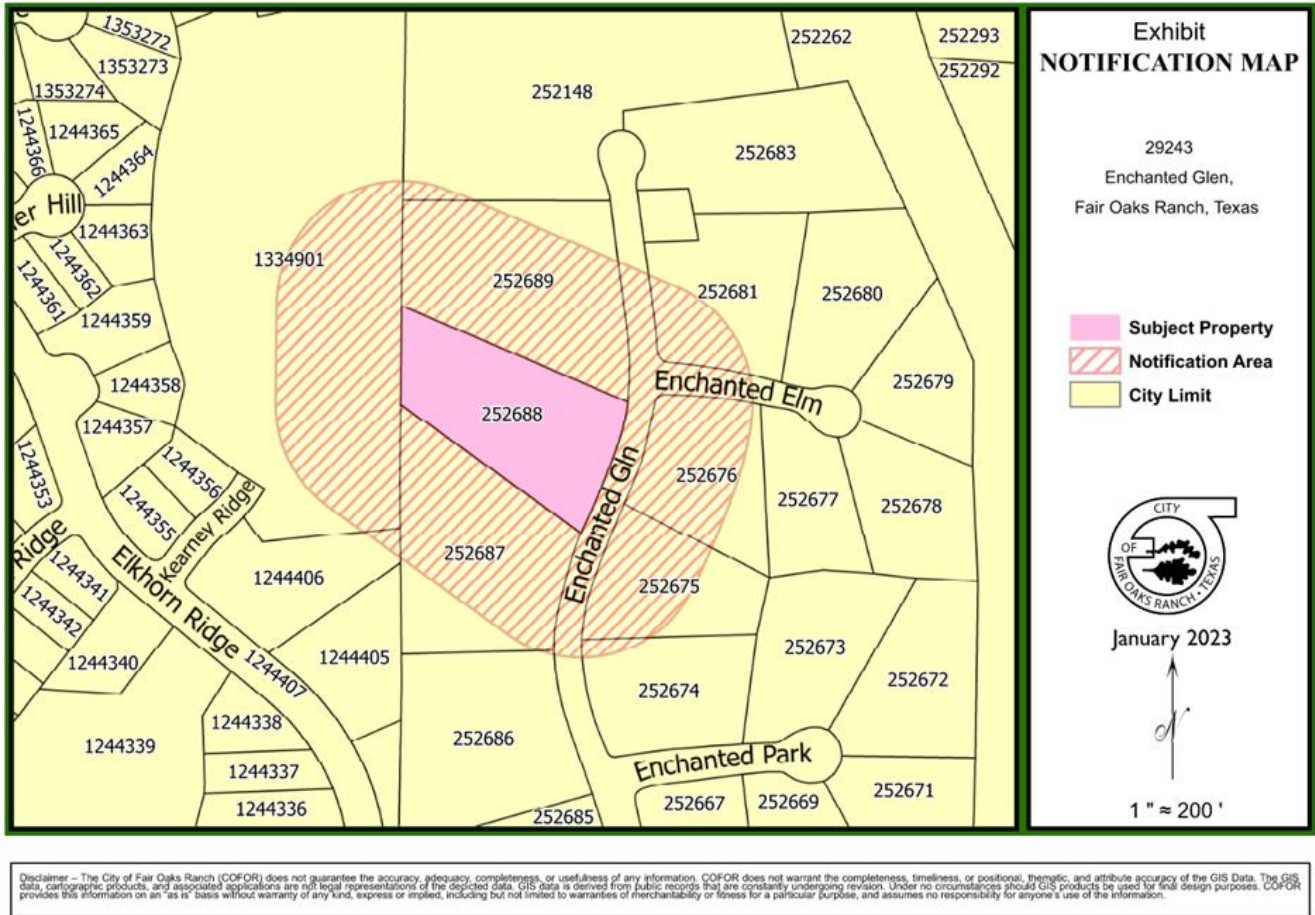


Exhibit D: Notification Map



Attachments:

1. Universal Application
2. S2 Rezoning Application Form
3. Supporting Documents Provided by the Applicant
4. Use Table
5. Property Owner Response Map
6. Property Owner Comment Forms