

## Conditional Use Permit (CUP) Staff Report

Planning & Zoning Commission Public Hearing Date: March 13, 2023

City Council Public Hearing Date: March 20, 2023

**Rezoning Case:** CUP23-01

**Property Owner(s):** Ideaco Investments, LLC

**Legal Description:** Lots 17 through 24, Block 18 of the Revised Map of Tomball

**Location:** 401-409 Commerce Street (Exhibit "A")

**Area:** 0.46 acres

**Comp Plan Designation:** Old Town (Exhibit "B")

**Present Zoning and Use:** Old Town & Mixed Use (OT&MU) / Vacant, Retail & Drinking Establishment (Exhibit "D")

**Proposed Use(s):** *Market, Open Air*

**Request:** Conditional Use Permit (CUP) to permit Market, Open Air land use.

**Adjacent Zoning & Land Uses:**

- North:** Old Town & Mixed Use / Single-family residences
- South:** Old Town & Mixed Use / Retail, Restaurant, Hair Salon
- West:** Old Town & Mixed Use/ Office & Residence
- East:** Old Town & Mixed Use / Single-family residence

### **BACKGROUND**

The subject properties have been located within the city limits since 1907. Lots 17 through 21 have remained vacant since that time. Lots 22 through 24 are currently occupied by three structures. According to the Harris County Appraisal District records, these structures have existed on these lots since at least 1941. These structures are currently occupied by retail, drinking establishment, and dance hall uses. In 2022, the City Council adopted Ordinance No. 2022-43 amending the Code of Ordinance to define the Open-Air Market land use and require a Conditional Use Permit (CUP) for open air market uses within Old Town & Mixed Use (OT&MU) zoning. Conditional Use Permits provide opportunities to further consider whether a location is appropriate for an open-air market, and where said use is deemed appropriate, a CUP provides an opportunity to apply enforceable conditions that promote the compatibility of the proposed use with the surrounding properties and land uses.

## **ANALYSIS**

According to Section 50-81 (f) of the Chapter 50 (Zoning), when considering applications for a CUP, the City shall, on the basis of the concept plan and other information submitted, evaluate the impact of the conditional use on and the compatibility of the use with surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location. Specific considerations shall include the extent to which:

**1. The proposed use at the specified location is consistent with the goals, objectives, and policies contained in the adopted Comprehensive Plan;**

The property is designated as Old Town by the Comprehensive Plan Future Land Use Map. This category is intended to promote a highly walkable environment that promotes a distinct sense of place. Land use should consist of a mixture of residential, office, retail, entertainment, restaurants, and public facilities. The desire to establish an open air market at this location will promote the Comprehensive Plans community livability goals, specifically by providing a variety of retail, and entertainment opportunities within Old Town Tomball and in close proximity to nearby residential neighborhoods. This proximity to existing residential neighborhoods further encourages the Comprehensive Plans objective of creating a mixture of land uses within a walkable environment. Additionally, the request achieves the goal of creating opportunities to promote Old Town Tomball and local entrepreneurship within the Old Town area. Furthermore, the allowance of an open air market within Old Town Tomball, achieves the community livability goal outlined in the Comprehensive Plan by promoting an event that will attract people to the community and provide opportunities for residents to socialize and fellowship.

**2. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;**

According to the Zoning Ordinance, “a conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through the imposition of certain standards and conditions.”

The property has been zoned Old Town & Mixed Use since the inception of zoning in 2008. All surrounding properties within the immediate area also fall within this Old Town & Mixed-Use zoning district. According to Section 50-79 (Old Town and Mixed-Use District), the Old Town is an area in which many diverse land uses currently exist. The nature of the area, therefore, is a mixture of retail, commercial and other non-residential uses, along with single-family and multi-family uses. The Comprehensive Plan endorses the continuation of the mixture of uses in this area of the city, and specifically states that retail, office, single-family, duplex, and multifamily are the most appropriate uses in the area. The Old Town and Mixed Use District is intended to provide a zoning mechanism for a variety of uses within the original town site.

**3. The proposed use meets all supplemental standards specifically applicable to the use as set forth in the Zoning Ordinance;**

Yes, the proposed use will meet all supplemental standards outlined in Chapter 50 of the Code of Ordinance. Prior to operation, an official site plan shall be submitted to the City of Tomball Community Development Office identifying the planned arrangement of the open-air market to ensure all standards applicable by the code of ordinance and/or required by this Conditional Use Permit are met.

- 4. The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances, includes improvements or modifications either on-site or within the public rights-of-way to mitigate development-related adverse impacts;**

The proposed use is consistent with surrounding existing land uses currently found within Old Town Tomball, such as the existing farmers market. It is customary to find retail uses near the existing neighborhoods immediately surrounding Old Town Tomball, particularly given the properties proximity to West Main Street (FM 2920). Further, with this Conditional Use Permit the City is recommending conditions that are aimed to help alleviate potential nuisances that could be presented by having outdoor retail uses near the surrounding residential land uses. Said conditions may include but are not limited to screening, hours of operation, and limitation on the number of vendors that can be at this location.

- 5. The proposed use is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.**

Staff does not anticipate any adverse effects on surrounding properties.

## **PUBLIC COMMENT**

Property owners within 300 feet of the project site were mailed notification of this proposal and a Notice of Public Hearing was published in the paper on March 1, 2023. Any public comment forms will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

## **RECOMMENDATION**

Based on the findings outlined in the analysis section of this staff report, City staff recommends approval of CUP23-01 with the following condition(s):

- Hours of operation: 7:00 AM to 10:00 PM
- No more than 12 outdoor vendors/booths/tents shall be permitted in total on Lots 17 through 24, Block 18 in Revised Map of Tomball.
- Restroom facilities must be provided during the open-air market hours of operation. Said restrooms may be provided on site or within adjacent businesses located within the boundaries of this Conditional Use Permit. Portable restroom facilities are prohibited.
- Adhere to Section 50-116 (d.2.a) *Temporary Outdoor Sales*, with an exception on the required distances from “main building”.
  - “Shall not be placed/located more than 30 feet from the main building in GR, and C Districts, and not more than 12 feet from the main building in the Old Town area.”
- An opaque fence/wall must be provided along the western boundary of Lot 17.
- Booths/tents and outdoor sales/displays must adhere to non-residential setback standards in OT & MU. Being the following:
  - Front & Rear setback – No Minimum

- Side Setback (adjacent to commercial use) – No Minimum
- Side Setback (adjacent to residential use) – 20 feet (20') Minimum

## **EXHIBITS**

- A. Location Map
- B. Future Land Use Plan Map
- C. Current Zoning Map
- D. Site Photo
- E. CUP Application
- F. Concept Plan

Exhibit "A"  
Location Map





Exhibit "B"  
Zoning Map

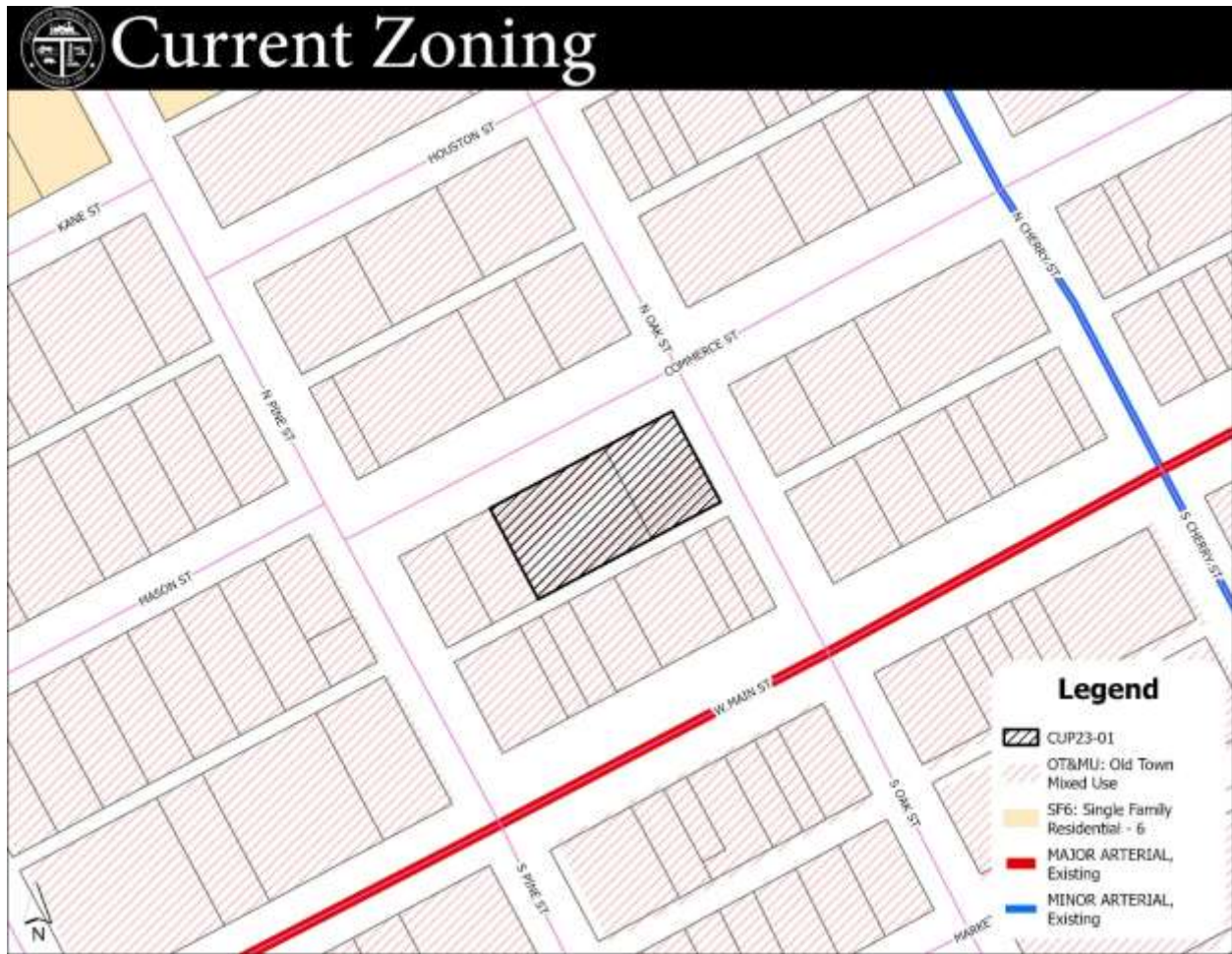


Exhibit "C"  
Future Land Use Map





**Exhibit “D”  
Site Photo**





**Exhibit "E"**  
**CUP Application**



Revised: 10/1/2022

**\$1,000 Paid 1/31/2023**

**APPLICATION FOR**  
**CONDITIONAL USE PERMIT**  
**Planning Division**

A conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through imposition of certain standards and conditions. This Section sets forth the standards used to evaluate proposed conditional uses and the procedures for approving conditional use permit (CUP) applications.

**APPLICATION SUBMITTAL:** Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

There is a \$1,000.00 application fee that must be paid at time of submission or the application will not be processed.

**DIGITAL PLAN SUBMITTALS:**

PLEASE SUBMIT YOUR APPLICATIONS AND PLANS DIGITALLY IN A SINGLE PDF BY FOLLOWING THE WEBSITE BELOW:

**WEBSITE:** [tomballtx.gov/securesend](http://tomballtx.gov/securesend)  
**USERNAME:** tomballdd  
**PASSWORD:** TomballI

**Applicant**

Name: Michael Pierce Title: Owner  
Mailing Address: 13607 ARLOTT BEND City: Tomball State: TX  
Zip: 77377 Contact: 832-474-4440 Michael Pierce  
Phone: (832) 474-4440 Email: \_\_\_\_\_

**Owner**

Name: Michael Pierce Title: Owner  
Mailing Address: 13607 ARLOTT BEND City: Tomball State: TX  
Zip: 77377 Contact: Michael Pierce  
Phone: ( ) Email: Michael Pierce Michael Dean Pierce @ Gmail com  
Michael Dean Pierce @ Gmail . com

**Engineer/Surveyor (if applicable)**

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_  
Zip: \_\_\_\_\_ Contact: \_\_\_\_\_  
Phone: ( ) Fax: ( ) Email: \_\_\_\_\_

(Mobile food cart) (Open Air Market)

Revised: 10/1/2022

Description of Proposed Project: Fam. l-1 Food Park & MARKET SPACE

Physical Location of Property: 401-409 Commerce ST.

[General Location - approximate distance to nearest existing street corner]

Legal Description of Property: \_\_\_\_\_

[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: \_\_\_\_\_ Acreage: \_\_\_\_\_

Current Use of Property: CAT STORAGE - Bm Sleeping - (Vacant / Commercial buildings)

Proposed Use of Property: A Family Friendly - Fair Price - Food Truck PARK - MARKET SPACE

**Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.**

**This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.**



X \_\_\_\_\_  
Signature of Applicant Date



X \_\_\_\_\_  
Signature of Owner Date

## Submittal Requirements

The following summary is provided for the applicant's benefit. However, fulfilling the requirements of this summary checklist does not relieve the applicant from the responsibility of meeting the regulations in the Zoning Ordinance, subdivision regulations, and other development related ordinances of the City of Tomball.

**Applications must be delivered to the City at least 40 calendar days prior to the City Planning and Zoning Commission hearing date.**

- ☐ Application Fee: \$1,000 (Non-Refundable) ✓
- ☐ Completed application form ✓
- ☐ \*Copy of Recorded/Final Plat ✓
- ☐ Concept/Site Plan \_\_\_\_\_
- ☐ Letter stating reason for request and issues relating to request. ✓
- ☐ Metes & Bounds of property ✓
- ☐ Payment of all indebtedness attributed to subject property must be paid with application or an arrangement in accordance with Sec. 12.1 C of the Zoning Ordinance as cited below: ✓

(No person who owes delinquent taxes, delinquent paving assessments, or any other fees, delinquent debts or obligations or is otherwise indebted to the City of Tomball, and which are directly attributed to a piece of property shall be allowed to submit any application for any type of rezoning, building permit, or plan review until the taxes, assessments, debts, or obligations directly attributable to said property and owed by the owner or previous owner thereof to the City of Tomball shall have been first fully discharged by payment, or until an arrangement satisfactory to the City has been made for the payment of such debts or obligations. It shall be the applicant's responsibility to provide evidence of proof that all taxes, fees, etc. have been paid, or that other arrangements satisfactory to the City have been made for payment of said taxes, fees, etc.)

**The City's staff may require other information and data for specific required plans. Approval of a required plan may establish conditions for construction based upon such information.**

**\*Legal Lot Information:** If property is not platted, a plat will be required to be filed with the Planning Department unless evidence of a legal lot is provided. To be an un-platted legal lot, the applicant is required to demonstrate that the tract existed in the same shape and form (same metes and bounds description) as it currently is described prior to August 15, 1983, the date the City adopted a subdivision ordinance.

## Application Process

1. The official filing date is the date the application and fee are received by the City.
2. The City will review the application for completeness and will notify the applicant in writing within 10 days if the application is deemed incomplete.
3. Property owners within two-hundred (300) feet of the project site will be notified by letter within 10 calendar days prior to the public hearing date and legal notice will appear in the official newspaper of the City before the eighth calendar day prior to the date of the hearing.
4. A public hearing will be held by the Planning and Zoning Commission at 6:00 p.m. in the City Council chambers, unless otherwise noted. The Planning and Zoning Commission meetings are scheduled on the second Monday of the month. The purpose of the public hearing is to allow the Planning and Zoning Commission to conduct a fact finding process. The staff will review the request with the Commission and after staff presentations the chair will open the public hearing. The applicant will have ten (10) minutes to present the request. The chair will then allow those present in favor of the request and those in opposition to the request to speak. The Commission may then ask staff or anyone present additional questions, after which the Commission may close or table the public hearing. The Commission may then vote to recommend approval or denial to the City Council. The Commission may also table the request to a future date before a recommendation is sent to the City Council.
5. A second public hearing will be scheduled before the City Council after fifteen (15) days of legal notice. The Council meetings are held on the first (1<sup>st</sup>) and third (3<sup>rd</sup>) Mondays of the month at 6:00 p.m. in the City Council chambers (401 Market Street, Tomball, Texas, 77375).
6. The City Council will conduct a public hearing on the request in the same manor as the Planning and Zoning Commission. In the event there has been filed with the City Secretary a petition of twenty percent (20%) of the adjoining property owners in opposition to the subject zoning request, it will require a three fourths (3/4) vote of the full Council to approve the request. Upon approval of the request by the City Council, an amended ordinance shall be prepared and adopted.

**FAILURE TO APPEAR:** It is the applicant/property owner's responsibility to attend all Planning and Zoning Commission and City Council meetings regarding their case. Failure of the applicant or his/her authorized representative to appear before the Planning and Zoning Commission or the City Council for more than one (1) hearing without approved delay by the City Manager, or his/her designee, shall constitute sufficient grounds for the Planning and Zoning Commission or the City Council to table or deny the application unless the City Manager or his/her designee is notified in writing by the applicant at least seventy-two (72) hours prior to the hearing. If the agenda item is tabled the Planning and Zoning Commission shall specify a specific date at which it will be reconsidered.



Dear City of Tomball Council

My name is Michael Pierce, and I am a Tomball resident and business owner and property owner in Old town Tomball mixed use area. I have lived in Tomball for 20 years and have loved watching our city grow.

We want to be a part of that growth and so on top of our other developments in town we have purchased property on commerce st between oak and pine. Approx. 401-409 commerce St. and have a fun plan for the area.

We are told we need a special use permit for this use so that is what we are applying for.

This area has been abandon for as long as I have been in Tomball and we are excited to revitalize this dead corner of old town. All other corners of old town are fully developed save this location and we want to fix that and round off the square of old tomabll with a fun new development.

Currently the spot is used mainly as a feline breeding ground & a place for cat lovers to feed stray cats. There are cats on the property as big as dogs. However unlike a duck pond or bird feeding area It smells of cat urine and if you get too close they will hiss at you for fear you are taking their food. To date no small children have been bit or contracted cat scratch fever. The space is also a nice spot for homeless to get a bite to eat from the community fridge and take a quick nap in the wooded area there. We have had to call the police a few times to wake the slumbering vagrant and remove them.

We think we can do better than the current use.

We would like to put a family friendly **market space & small food truck court** there instead and we are calling it "Commerce street market space" that will tie in the German heritage and be our small version of Luckenbach, Fredericksburg etc. and round top ere in Old Tomball. All bustling historic and travel destination in Texas. We think Old Tomball can be as popular as those areas with just a little work.

We already have had two business move on the location that are thriving and with the reminder of the location we want to build the commerce street market space. Eventually to have a unified identity and name to fit in with those iconic towns of old as mentioned above.

**Art & craft weekend vendor area**

Approx. 10-12 local vendors per weekend selling the things they make.

Face painting, balloon animals light out door acoustic music, flutes etc.

This is a space for local vendors who may not have the means to join the farmers market to still show off their wares. This in the trial run was wildly praised by the community

**Play area**

outdoor games, Corn hole court. Our door connect 4 and other fun engaging activities for passersby to play while they enjoy the space

**Sitting area**

There is plenty of sitting and tables and chairs in the space already, but we will be adding more

**Parking**

There is parking on the property , graveled in and ready to go to lessen the impact on the street parking in the area.

**Restrooms**

There are already 3 restrooms on the property, and we will be adding a 4<sup>th</sup> if approval is confirmed

**Food truck court area**

Approx. 2-3 food trucks of very style & taste

- Parking on site. Separate from city parking
- 3 restrooms on site. With a 4<sup>th</sup> to be added upon approval
- Plenty of seating area with more to be added upon approval.
- More than 10' space between trucks

**Music Room**

small indoor music room we are calling the " Old Tomball Honky Tonk" that we think will be as iconic as Luckenbach itself in time. Here locals can hear songs like " old Tomball" and "Tomball Saturday night" & "queen of old Tomball" this gathering place will be used for local musicians to meet up , play and share with the community on certain evenings.

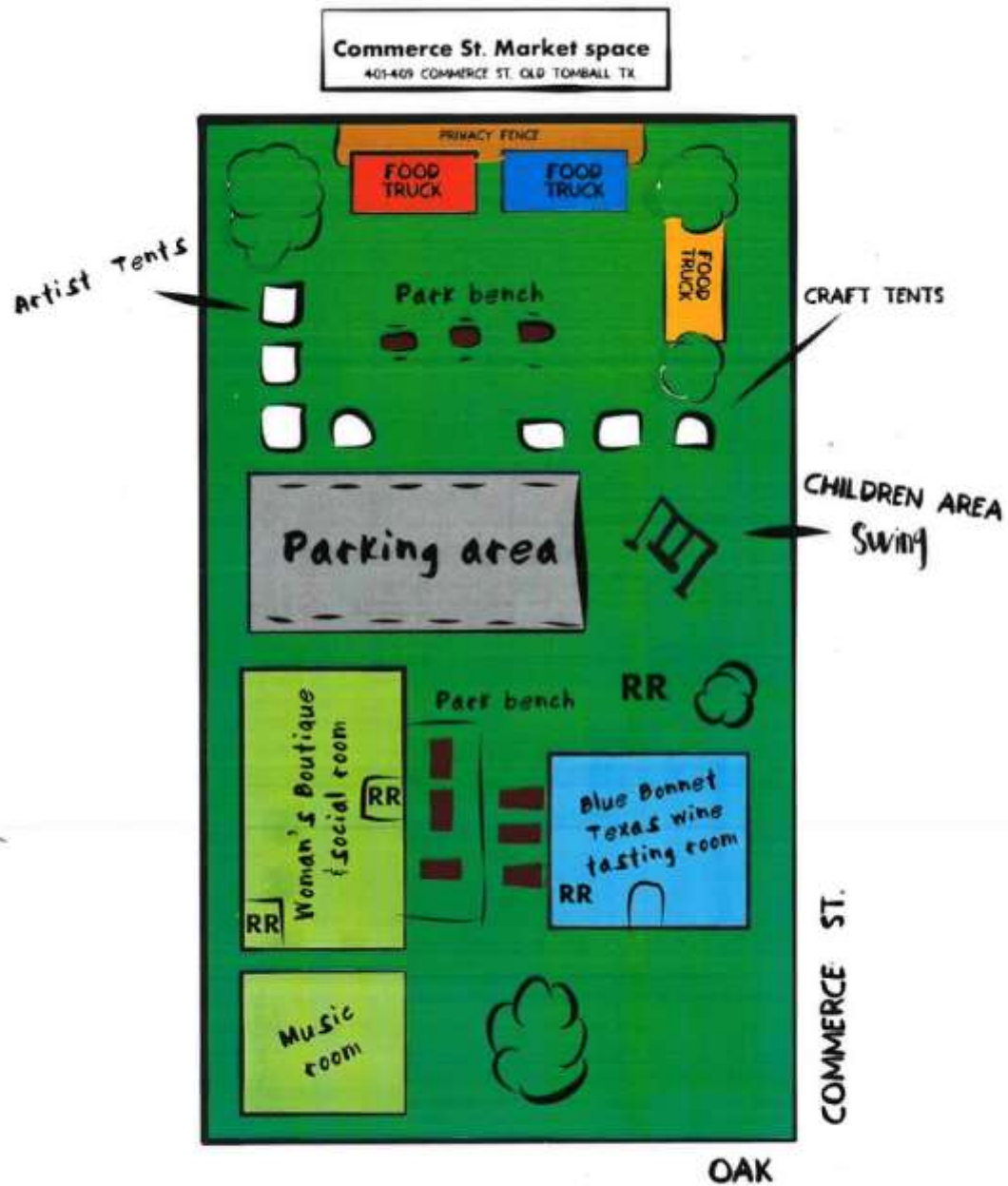
We hope you share with us the vision for this space and old Tomball and will grant us approval to go froward. We promise to be good stewards of the area and make it a community gather in place for all ages.

Also we are a little confused how this process works so if you could have someone reach out to guide us thru it would be helpful we are very nervous about missing any meeting or requirement from us on you side.

Thanks!

Michael Pierce  
832-474-4440  
13607 arcott bend Tomball tx 77377

### Figure “F” Concept Plan



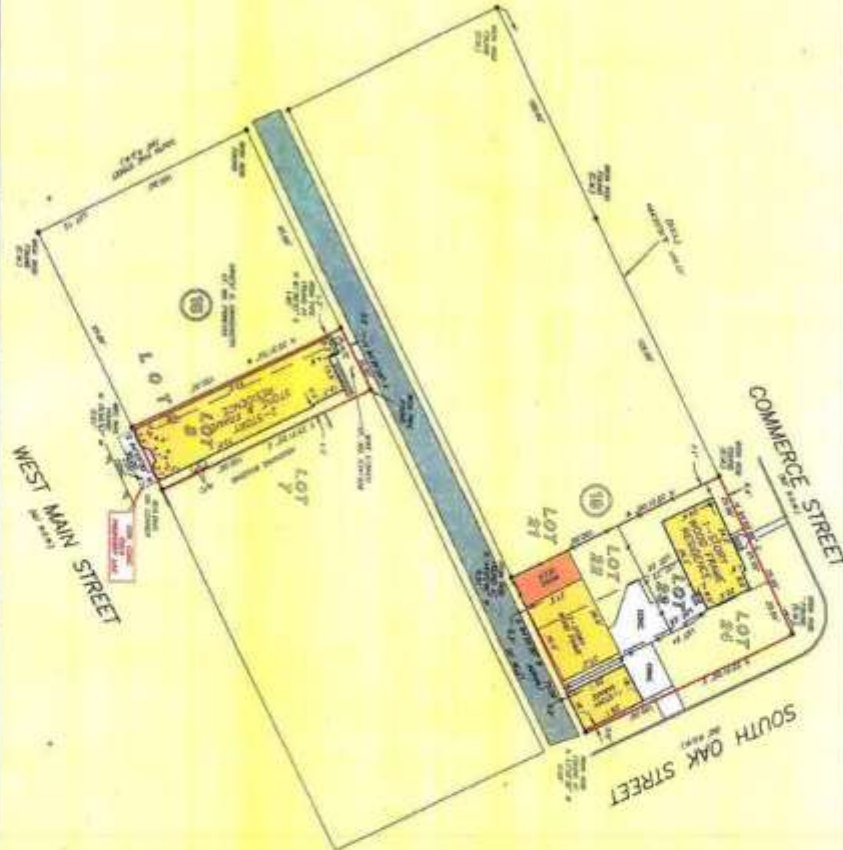






**PRECISION**  
surveyors

**J. Biol. Sci.** 2009, 15(1): 1-10  
doi:10.5554/JBS.2009.15.1.1



SCALE 1" = 40'

17 AND 137719 STREET TIRE  
ANNEXES 418 WEST MAIN STREET & 401 COMMERCE STREET  
TOMBALL, TEXAS 77375  
RECOMMEND AN INTERESTING SITE

TRACT 1  
LOT 8 AND THE ADJOINING  
5 FEET OF BY 100 FEET OF  
LOT 9, BLOCK 18

REVISED MAP OF TOMBALL TOWNSITE  
ACCORDING TO THE MAP ON PLAT THEREOF RECORDED  
IN VOLUME 4, PAGE 25 OF THE MAP RECORDS  
OF HARRIS COUNTY, TEXAS

TRACT 2  
LOTS 22, 23 AND 24  
BLOCK 18

FOR MORE INFORMATION  
CONTACT THE MAP OR PLAN DEPARTMENT  
AT 10000 2. MAIL IS OF THE MAP RECORDS  
OF HANCOCK COUNTY, IDAHO

[illegible]