

## Conditional Use Permit (CUP) Staff Report

Planning & Zoning Commission Public Hearing Date: July 11, 2022

City Council Public Hearing Date: July 18, 2022

**Rezoning Case:** P22-205

**Property Owner(s):** Michael Seitz

**Applicant(s):** Michael Seitz

**Legal Description:** 0.78 acres out of the Jesse Pruitt Survey, Abstract Number 629

**Location:** 817 E. Main Street (Exhibit "A")

**Area:** 0.78 acres

**Comp Plan Designation:** Neighborhood Commercial (Exhibit "B")

**Present Zoning and Use:** General Retail (GR) / legally nonconforming residence, and tool/machinery rental facility (Exhibit "D")

**Proposed Use(s):** *Single Family Residential* (Exhibit "D")

**Request:** Conditional Use Permit (CUP) to bring the existing residence into legal conformity.

**Adjacent Zoning & Land Uses:**

- North:** Single-Family 6 / Single-family residences
- South:** Planned Development (PD#7) / School
- West:** General Retail / Private Drive & Office
- East:** General Retail / Vacant Building

### **BACKGROUND**

The subject property has been located within the city limits since at least 1978 and the existing warehouse located on the property appears in aerial imagery as early as 1978. Prior to the current occupant, this warehouse was most recently occupied by a manufacturing use (Strackbein Machine Company). Sometime between 1995 and 2006 a log cabin was built in the rear of the subject property and occupied as a residence. These manufacturing and residential land uses became legally non-conforming when the City of Tomball adopted zoning in 2008. In 2021, the current owner purchased the property to operate a tool & machinery rental company with the intention of occupying the existing log cabin as a residence.

Per Section 50-31(a.2) in the City of Tomball Code of Ordinances, "a nonconforming use of a building may be changed to another nonconforming use of the same or more restrictive zoning classification, provided no structural alterations are made. In the event that a nonconforming use of a building is changed to a nonconforming use of a higher or more restrictive zoning

classification, it shall not later be reverted to use in the former or less restrictive zoning classification.” City staff believes that the changing of the existing warehouse building use from manufacturing to tool & machinery rental meets the intent and criteria of Section 50-31 by changing one legally nonconforming use to a nonconforming use of less intensity. However, the applicant is only seeking a Conditional Use Permit to bring the residential log cabin into legal conformity to lawfully allow additions/alterations to the existing cabin, as well as to be allowed the ability to construct residential accessory structure(s) (i.e. carport, storage building, and patio covers).

In 2022, the owner of the property constructed a carport, patio cover, and placed a freight container as accessory structures to this residence without obtaining building permits. These new accessory structures do not meet the required building setback standards, and will ultimately require variance approvals by the Board of Adjustments in order to remain. The Board of Adjustments is not authorized to grant variances to expand legal non-conforming uses, and thus the applicant is seeking to obtain legally conforming status for the residence with the requested CUP in order to apply for variance approvals for these structures. The information pertaining to these variances is to provide background to the request and should not have any bearing on the requested CUP.

## **ANALYSIS**

According to Section 50-81 (f) of 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 Neighborhood Commercial by the Comprehensive Plan Future Land Use Map. This category is intended for “commercial uses that are developed with the appropriate context, scale and design to compliment residential development.” Appropriate land uses include “restaurants, retail, professional services, clinics, and offices” and compatible zoning districts include Office, General Retail, and Planned Developments. The request is to bring the legally nonconforming residential use into legal conformity, although this land use is not specifically defined in the intent of the Neighborhood Residential land use category it is an existing use that has occupied the property since the 1990s. Further, the City staff believes that allowing this use to lawfully occupy the site would not be detrimental to surrounding properties.

- 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 General Retail, since the adoption of zoning in 2008. Surrounding properties are zoned Single-Family 6 to the north, General Retail to the east and west, and Planned Development (PD#4) located on the south side of East Main Street. According to Section 50-76 (General Retail District), the “General Retail District is established to provide areas for local neighborhood shopping and service facilities.” This would suggest that such zoning districts should be located in close proximity to neighborhoods and residential land uses. Therefore, the allowance of accessory residential land use in this zoning classification would appear consistent with this intent.

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

Because this cabin predates current zoning standards it does not appear to meet the minimum 60-foot rear building setback ordinarily applicable where General Retail backs up to residential zoning districts. Furthermore, as previously stated within the “Background” section of this report, new residential accessory structures have been erected on the site which do not meet the required building setback standards. These structures will ultimately require variance approvals by the Board of Adjustments in order to remain.

Should the CUP application be approved by City Council, and necessary variances granted by the Board of Adjustments the applicant will be required to submit site and building plan applications and supporting documents to the City of Tomball for review and approval illustrating any additions/alterations to the existing cabin and/or construction/placement of accessory structures.

**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 residential use of the existing log cabin on this subject site predates current zoning ordinances, and is a legally non-conforming use at this time. City staff believes that the continued use of this log cabin for residential purposes would not adversely impact the character and integrity of adjacent developments. The use of the northern portion of this site for residential purposes may serve as an effective transitional land use buffer between the commercial aspect of the property and the single family residential homes immediately north of the property.

**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 200 feet of the project site were mailed notification of this proposal and a Notice of Public Hearing was published in the paper on June 29, 2022. 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 Zoning Case P22-205 with the following condition(s):

- All outdoor storage of equipment and material must be screened from residential zoning districts and street right-of-ways by an opaque fence and/or wall with a minimum height of six feet. The screening may be made of wood, metal, vegetation or combination thereof.
- Accessory residence must remain subordinate to the principal land use and shall be no greater than 25% of the square footage for the existing principal building.
- Accessory residence shall be limited to no more than one (1) story in height.

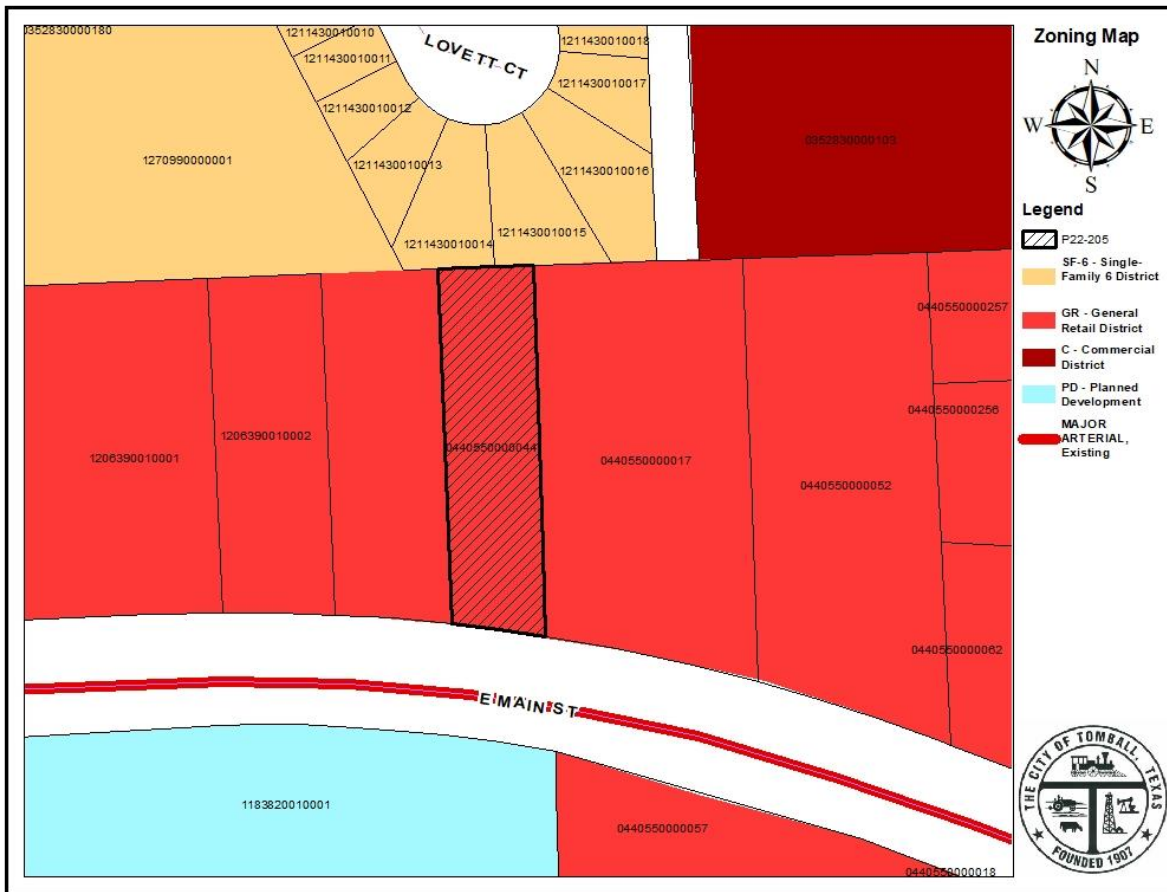
## **EXHIBITS**

- A. Aerial Photo
- B. Comprehensive Plan
- C. Zoning Map
- D. Site Photo
- E. CUP Application
- F. Concept Plan

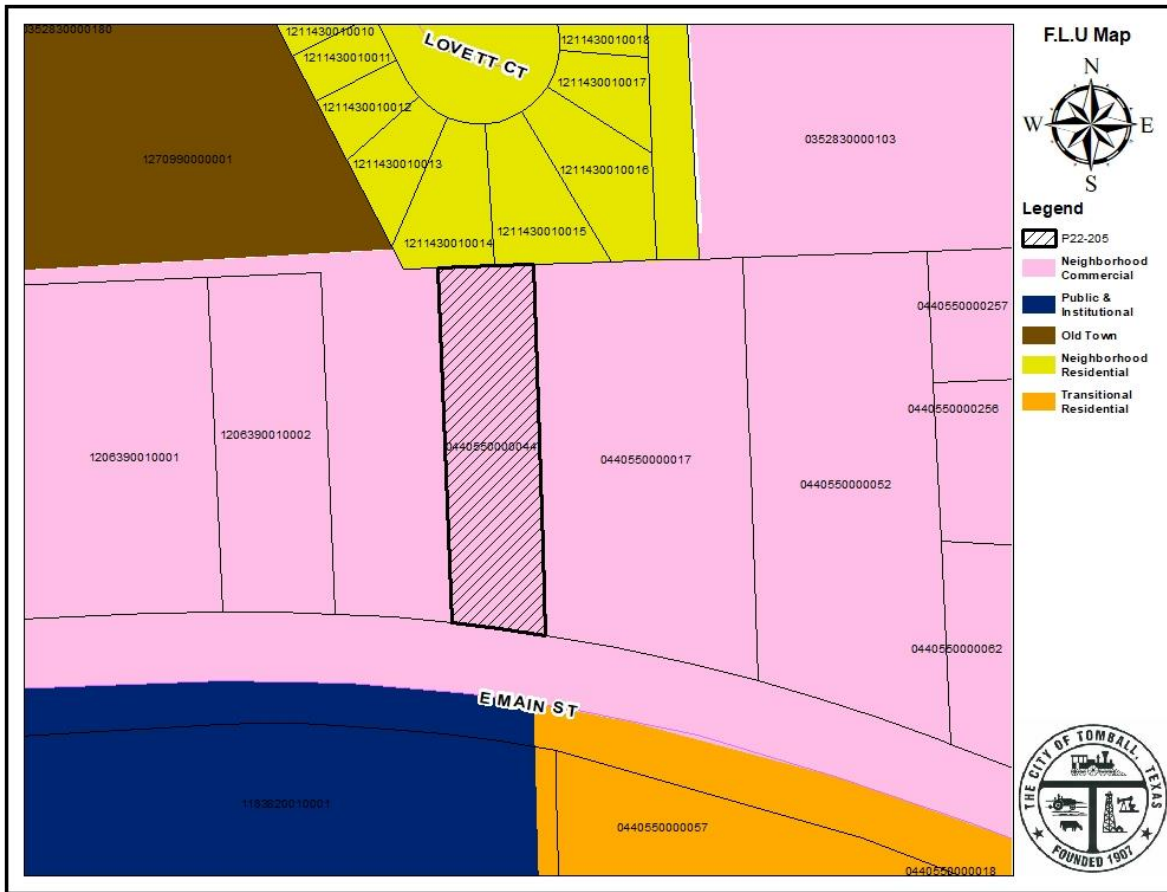
Exhibit "A"  
Aerial Map



## Exhibit "B" Zoning Map



# Exhibit "C" Future Land Use Map





**Exhibit “D”  
Site Photo**







## Exhibit "E"

### CUP Application



RECEIVED (KC)  
06/13/2022

Revised 5/19/15  
ZONING CASE P22-205  
\$600 PD

### APPLICATION FOR CONDITIONAL USE PERMIT

Community Development Department  
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.

No conditional use shall be established and no building permit shall be issued for any use designated as a conditional use within any zoning district until a conditional use permit (CUP) is approved and issued in accordance with the provisions of Section 50-34 of the Code of Ordinances.

**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.

#### Applicant

Name: Michael W. Seitz Title: \_\_\_\_\_  
Mailing Address: 817 E Main St City: Tomball State: TX  
Zip: 77375  
Phone: (832) 212 0963 Fax: (\_\_\_\_) \_\_\_\_\_ Email: Dr.michael.seitz@bluesky-global.com

#### Owner

Name: BlueSky Global LLC Title: \_\_\_\_\_  
Mailing Address: AS ABOVE City: \_\_\_\_\_ State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Phone: (\_\_\_\_) AS ABOVE Fax: (\_\_\_\_) \_\_\_\_\_ Email: AS ABOVE

#### Engineer/Surveyor (if applicable)

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

Description of Proposed Project: Request for continued use a personal residence

Physical Location of Property: East Main St & Tom Keating Dr  
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: J. Pruitt, A-629  
[Survey/Abstract No. and Tracts, or platted Subdivision Name with Lots/Block]

HCAD Identification Number: 1118610000071 Acreage: 7,800SF

Current Use of Property: Residential

Proposed Use of Property: Residential

**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

May 27, 2022

Date

X  
Signature of Owner

Date



**From:** [noreply@tomballtx.gov](mailto:noreply@tomballtx.gov)  
**To:** [Kimberly Chandler](#)  
**Subject:** Receipt #R01319741  
**Date:** Monday, June 13, 2022 1:27:12 PM

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401 Market Street  
401 Market Street  
Tomball, TX 77375  
(281) 351-5484

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DATE : 6/8/2022 4:16 PM  
OPER : JC  
TKBY : Juanita Cherety  
TERM : 5  
REC# : R01319741  
130.0000 PLANNING AND ZONING  
MICHAEL ASITC-BLUE SKY GLOBAL 600.00

Paid By:MICHAEL ASITC-BLUE SKY GLOBAL  
2-CK 600.00 REF:W 100





City of Tomball  
510 James Street  
Tomball, TX  
77375  
281-290-1405

31 May, 2022

To whom it may concern,

Application for conditional use permit

I am writing with a request for a permit for the continued use of the rear half of the property, zoned for General Retail Use for residential purposes (Conditional Use Permit). This request is based on my current use of the existing property as my personal home. The log cabin, which was built in 1999, was initially determined habitable during an informal visit by a city official prior to my purchase of the property. Subsequent to the purchase, I remodeled the interior of the cabin, and repaired the leaking roof with a metal roof. The cabin is now my primary residence, with my operating company located in the street-front portion of the property.

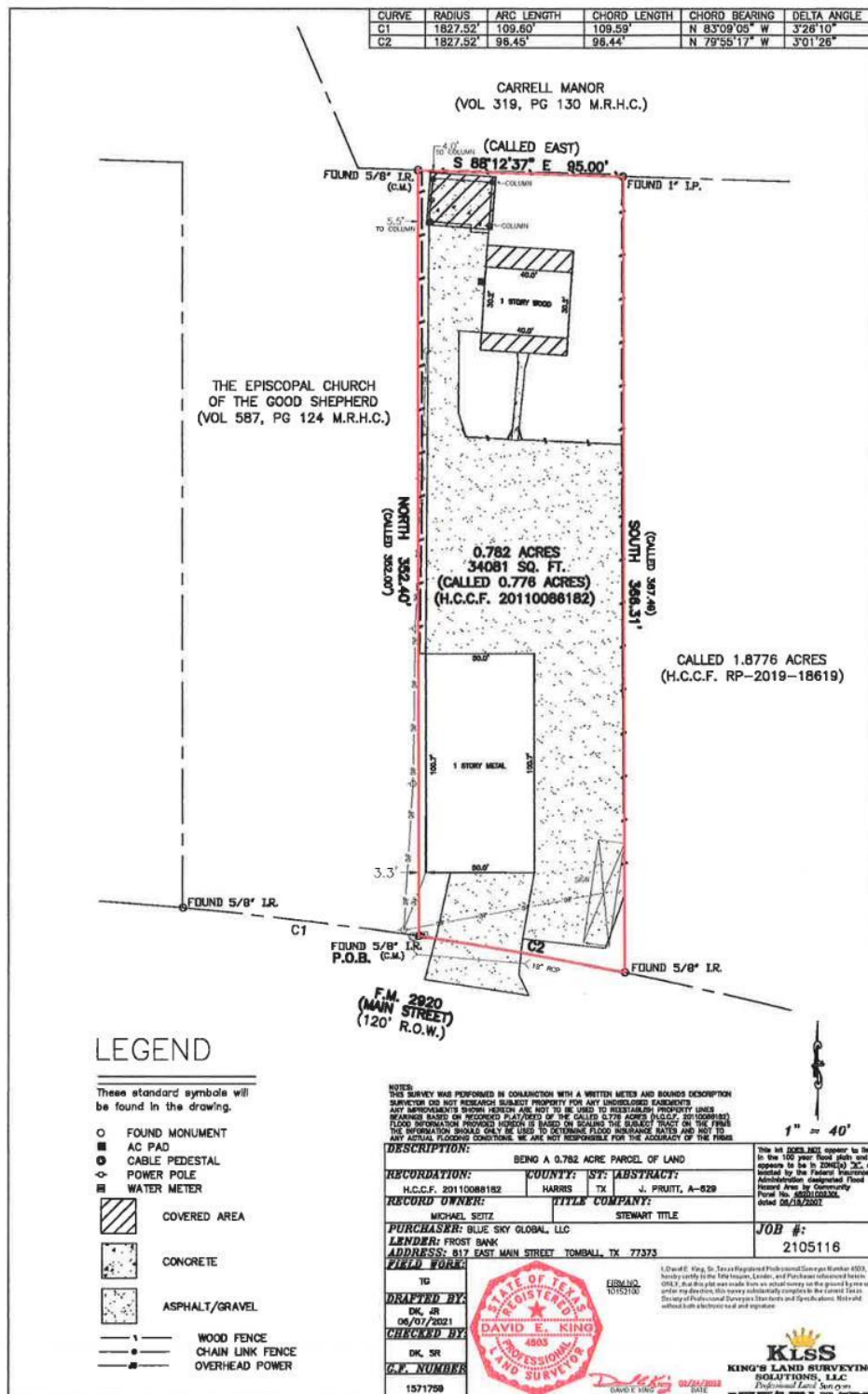
I hereby request that the zoning be amended for Residential Conditional Use.

Sincerely yours,

A handwritten signature in black ink, appearing to be "Michael Seitz", written in a cursive style.

Michael Seitz  
Business owner  
BlueSky Global  
Dr.michael.seitz@bluesky-global.com  
832.212.0963

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1827.52'	109.60'	109.59'	N 83°09'05" W	3°26'10"
C2	1827.52'	98.45'	98.44'	N 79°55'17" W	3°01'26"



HARRIS COUNTY APPRAISAL DISTRICT  
REAL PROPERTY ACCOUNT INFORMATION  
1118610000071

Tax Year: 2022

 [Print](#)

Owner and Property Information								
Owner Name & Mailing Address: <b>BLUESKY GLOBAL LLC 1200 BLALOCK RD STE 210 HOUSTON TX 77055-6441</b>				Legal Description: <b>LT 71 BLK 19 BEAR CREEK VILLAGE SEC 10 R/P</b> Property Address: <b>4727 HIDDEN SPRINGS DR HOUSTON TX 77084</b>				
State Class Code	Land Use Code	Land Area	Total Living Area	Neighborhood	Neighborhood Group	Market Area	Map Facet	Key Map 1/2
A1 -- Real, Residential, Single-Family	1001 -- Residential Improved	7,800 SF	1,837 SF	2906	19036	340 -- ISD 19 - North of I-10 Katy Freeway	4760B	448B

**Value Status Information**

Value Status	Notice Date	Hearing Status	Shared CAD
Noticed	3/31/2022	Protest Received	Yes

**Exemptions and Jurisdictions**

Exemption Type	Districts	Jurisdictions	Exemption Value	ARB Status	2021 Rate	2022 Rate
None	019	KATY ISD		Not Certified	1.351700	
	040	HARRIS COUNTY		Not Certified	0.376930	
	041	HARRIS CO FLOOD CNTRL		Not Certified	0.033490	
	042	PORT OF HOUSTON AUTHY		Not Certified	0.008720	
	043	HARRIS CO HOSP DIST		Not Certified	0.162210	
	044	HARRIS CO EDUC DEPT		Not Certified	0.004990	
	556	HC UD 6		Not Certified	0.177900	
	633	HC EMERG SRV DIST 9		Not Certified	0.057628	

Texas law prohibits us from displaying residential photographs, sketches, floor plans, or information indicating the age of a property owner on our website. You can inspect this information or get a copy at [HCAD's information center at 13013 NW Freeway](#).

**Valuations**

Value as of January 1, 2021			Value as of January 1, 2022		
	Market	Appraised		Market	Appraised
Land	52,710		Land	52,710	
Improvement	114,190		Improvement	224,484	
Total	166,900	166,900	Total	277,194	277,194

**Land**

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	1001 -- Res Improved Table	SF1	SF	7,500	1.00	1.00	1.00	--	1.00	7.00	7.00	52,500.00

<https://public.hcad.org/records/jPrint.asp?crypt=%94%AD%AE%A9...80XzU%90%7D%86%CO%AB%A8%AD%86%5EY%98%4%90ul>

5/27/22, 11:08  
Page 1 of 2

	Value											
2	1001 -- Res Improved Table Value	SF3	SF	300	1.00	0.10	1.00	--	0.10	7.00	0.70	210.00

#### Building

Building	Year Built	Remodeled	Type	Style	Quality	Impr Sq Ft	Building Details
1	1981	2018	Residential Single Family	Residential 1 Family	Average	1,837 *	Displayed

\* All HCAD residential building measurements are done from the exterior, with individual measurements rounded to the closest foot. This measurement includes all closet space, hallways, and interior staircases. Attached garages are not included in the square footage of living area, but valued separately. Living area above *attached* garages is included in the square footage living area of the dwelling. Living area above *detached* garages is not included in the square footage living area of the dwelling but is valued separately. This method is used on all residential properties in Harris County to ensure the uniformity of square footage of living area measurements district-wide. There can be a reasonable variance between the HCAD square footage and your square footage measurement, especially if your square footage measurement was an interior measurement or an exterior measurement to the inch.

#### Building Details (1)

Building Data	
Element	Detail
Cond / Desir / Util	Very Good
Foundation Type	Slab
Grade Adjustment	C+
Heating / AC	Central Heat/AC
Physical Condition	Very Good
Exterior Wall	Brick / Veneer
Cost and Design	Extensive
Element	Units
Room: Total	5
Room: Full Bath	2
Room: Bedroom	3
Fireplace: Masonry Firebrick	1

Building Areas	
Description	Area
BASE AREA PRI	1,837
OPEN FRAME PORCH PRI	91
MAS/BRK GARAGE PRI	529
OPEN FRAME PORCH PRI	48



**Figure “F”  
Concept Plan**

