

March 3, 2025

Ms. Robyn Claridy-Miga
Development Engineering Director
City of Pflugerville, Texas
100 W. Main Street
Pflugerville, TX 78691
robbyn@pflugerville.tx.gov

VIA EMAIL

Re: Rough Proportionality and Required Exactions for the proposed development (the “Project”) located on that certain 85.497-acre property known as the Deck and Wilke Tract (the “Property”).

Dear Ms. Claridy-Miga,

On behalf of the owner and developer (the “Owner”) of the Project, Drenner Group, PC, is providing this letter to take exception to and object to the infrastructure improvements, right-of-way (“ROW”) and public access easement dedications, and impact fees (collectively, the “Exactions”) being required by the City of Pflugerville (the “City”) in connection with the proposed development of the Project on the basis that said required improvements, dedications, and fees grossly exceed the Project’s rough proportionality, in violation of state and federal law and legal principals.

1. Rough Proportionality

Well-established federal and state case law specifically articulate the limitations on the government’s ability to require certain exactions, such as dedication of ROW or easements, payment of impact fees, and construction of onsite and offsite infrastructure improvements. Two landmark U.S. Supreme Court decisions – *Nollan vs. California Coastal Commission* (1987) and *Dolan vs. City of Tigard* (1994) – established the basic rule that conditioning development approval on dedication of land constitutes an unconstitutional “taking” of property unless the dedication is *reasonably related and roughly proportionate* to the impacts of development on the community. Simply stated, whenever a permit is conditioned on a land use exaction—i.e., the giving up of land or money—it must be roughly proportionate to a development’s likely impacts.

These legal principles, often called “nexus and proportionality,” were further developed in subsequent cases, including the Texas Supreme Court’s decision in *Town of Flower Mound vs. Stafford Estates*, 135 S.W.3d 620 (Tex. 2004) and, most recently, the U.S. Supreme Court’s decision

in *Koontz v. St. Johns River Water Management Dist.* (2013), which confirm that rough proportionality applies to payment of regulatory fees, in addition to land dedications. In *Town of Flower Mound*, the Texas Supreme Court restated the doctrine established in *Nollan* and *Dolan* and adopted these rules as the Texas standard, holding that conditioning government approval of the development of property on some exaction is presumed to be an unconstitutional “taking” unless the condition satisfies both the essential nexus and rough proportionality tests. Following that decision, the Texas Legislature amended the Local Government Code in 2005 to require that a professional engineer retained by the City approve proportionality determinations for required land dedications and infrastructure costs. The law also authorizes developers to appeal proportionality determinations to the City Council. Specifically, §212.904(a) of the Texas Local Government Code states, “If a municipality requires [...] as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer's portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is retained by the municipality.”

2. Project Background

As you are aware, the Preliminary Plan for the Project (*Permit No. 2023-9-PP*) was approved by the Planning and Zoning Commission on August 5, 2024 (the “Preliminary Plan”). The City issued a Vested Rights Determination Letter (*Case No. AR2024-000333*) on October 15, 2024, confirming May 15, 2023, as the vesting date of the Project. Thereafter, a Subdivision Waiver application (*Permit No. FP2024-000318*) was submitted on August 26, 2024, and is currently scheduled to be heard by the City’s Planning and Zoning Commission on March 3, 2025 (the “Subdivision Waiver”). In addition, a Final Plat application (*Permit No. FP2025-000003*) was submitted on January 6, 2025, for a portion of the Project (the “Phase 1 Final Plat”).

3. Required Infrastructure Improvements and Dedications

As a condition of approval of the Preliminary Plan, the City required the following on-site infrastructure improvements, including construction and dedication of ROW and easements as shown on Exhibit A attached hereto, to be provided by the Owner:

- i. Dedication of 3.003 acres ROW for Rowe Lane
- ii. Construction of Rowe Lane
- iii. Dedication of 1.729 acres ROW for Trinity Settlement Lane (aka Bark Way extension)
- iv. Construction of Trinity Settlement Lane (aka Bark Way extension)
- v. Dedication of 1.471 acres ROW for Trinity Acres Lane
- vi. Construction of Trinity Acres Lane
- vii. Dedication of 2.903 acres ROW for Peach Vista Drive
- viii. Construction of Peach Vista Drive
- ix. Dedication of 1.387 acres for 15' Public Access Pedestrian Pass Through Easements

In addition, per the Traffic Impact Analysis for the Deck and Wilke Tract, dated January 2024 (Rev. August 2024), prepared by Pape-Dawson Engineers, the following onsite and offsite infrastructure improvements and mitigation costs were identified for the Project:

Phase 1

- i. Construction of a deceleration lane at IH 45 Westbound Frontage Road
- ii. Construction of a deceleration lane off Trinity Acres Lane into Lot 2
- iii. City of Pflugerville Mitigation Fee (\$17,425)

Phase 2

- iv. Construction of Westbound left turn lane onto Trinity Acres Lane
- v. Construction of Eastbound left turn lane into Lot 3
- vi. Construction of Northbound right turn lane on Heatherwilde Blvd at Rowe Lane
- vii. Construction of Southbound left turn lane on Heatherwilde Blvd at Rowe Lane
- viii. City of Pflugerville Mitigation Fee (\$711,375)

TxDot

- ix. TXDOT Mitigation Fee (\$205,125)

The total estimated cost for the required infrastructure improvements and ROW and public access easement dedications are as follows:

ROW AND ACCESS EASEMENT DEDICATIONS

STREET	ACREAGE	LAND VALUE (TCAD)	LAND VALUE (MKT)
Rowe Lane	3.003	\$ 654,053	\$ 1,610,504
Trinity Settlement Lane (Bark Way extension)	1.729	\$ 376,576	\$ 927,260
Trinity Acres Lane	1.471	\$ 320,384	\$ 788,895
Peach Vista	2.903	\$ 632,274	\$ 1,556,874
15' Pass Through Easements	1.387	\$ 302,089	\$ 743,845
TOTAL	10.493	\$ 2,285,376	\$ 5,627,378

ESTIMATED CONSTRUCTION COSTS

STREET	CONSTRUCTION COST
Rowe Lane	\$ 2,786,397
Trinity Settlement Lane (Bark Way Ext)	\$ 1,600,000
Trinity Acres Lane	\$ 2,382,800
Peach Vista Drive	\$ 1,431,203
Decel Lane at 45	\$ 340,000
Rowe Lane Decel Lanes (Peach Vista Drive & Heatherwilde Blvd)	\$ 465,000
Engineering - Phase 1	\$ 272,280
Engineering - Phase 2	\$ 628,260
15% Contingency	\$ 1,485,891
TOTAL	\$ 11,391,831

MITIGATION FEES

PHASE	TOTAL FEE
TXDOT Mitigation	\$ 205,125
Mitigation Phase 1	\$ 17,425
Mitigation Phase 2	\$ 711,375
	\$ 933,925

4. Pflugerville Roadway Impact Fees Calculations

In addition to the above onsite and offsite roadway infrastructure improvements and dedications, the City is also requiring Owner to pay additional roadway impact fees for the Project. Chapter 395 of the Texas Local Government Code authorizes cities to enact or impose impact fees for roadway facilities within their corporate boundaries and identified in their capital improvements plan; provided, however, §395.001(4) prohibits a city from requiring an owner to construct or dedicate facilities *and* pay impact fees for those facilities. §395.023 further specifically requires that any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a city as a condition of development approval must be credited against roadway facilities impact fees otherwise due from the development.

Pursuant to the City of Pflugerville's Unified Development Code §152.107, the Maximum Assessable Roadway Impact Fee per Service Unit for Roadway Facilities is the "approximate and appropriate measure of the impacts generated by a new development unit on the City's roadway system" and "may be used in evaluating any claim by a property owner that the dedication or construction of a capital improvement within a Service Area imposed as a condition of development approval pursuant to the City's subdivision or development regulations is disproportionate to the impacts created by the development on the City's roadway system."

According to §152.105, the Maximum Assessable Roadway Impact Fee per Service Unit per Vehicle Mile for Multi-Family (Low-Rise) Residential Use within the Service Area in which the Project is located is $\$1,590.00 \times 2.41 = \$3,832$. Accordingly, per the Roadway Impact Fee Estimator Worksheet, attached hereto as Exhibit B, the estimated Roadway Impact Fees attributable to the Project under this calculation are as follows:

ROADWAY IMPACT FEES

PHASE	MAXIMUM FEE
RIF Phase 1	\$ 2,682,330
RIF Phase 2	\$ 3,621,145
TOTAL	\$ 6,303,475

It is important to note that UDC §152.109 provides that "the City may require construction greater than the Roadway Impact Fee Collection Rate for amounts *up to* the Maximum Assessable Roadway Impact Fee." In other words, the Maximum Assessable Roadway Impact Fee amount as calculated for the Project is the *total cost of impact fees plus construction costs* that the City can require of the Owner. In addition, UDC §152.110(H)(a) confirms that rights-of-ways and easements

shall not exceed the amount required for infrastructure improvements that are roughly proportionate to the new development. Therefore, the land value of the conveyed right-of-way and easements must also be factored in, along with impact fees and construction costs, when evaluating proportionality and cannot exceed the Maximum Assessable Roadway Impact Fee.

5. Austin and San Antonio Rough Proportionality/Impact Calculations

In contrast to the City of Pflugerville's Roadway Impact Fee Estimator Worksheet, the City of Austin and the City of San Antonio utilize a Rough Proportionality Worksheet for Roadway Infrastructure Improvements, attached as Exhibits C and D, respectively. Pursuant to those worksheets, for comparison purposes, the roughly proportionate share of the costs of improvements to roadway infrastructure reasonably related to the Project's impact on demand would be as follows:

- i. Austin: \$3,208,738.00
- ii. San Antonio: \$3,231,198.00

6. Total Calculations of All Required Exactions for the Project and Takings Claim

As noted above, the City of Pflugerville is charged with ensuring that required improvements, dedications, and fees are reasonably related and "roughly proportionate" to the estimated impact of proposed development, consistent with state law and well-established legal principles. The City's UDC §152.107 specifically states that the Maximum Assessable Roadway Impact Fee may be used in evaluating whether the total of exactions being required by the City as a condition of Project approval is disproportionate to the impacts created by the development on the City's roadway system. The Project's Maximum Assessable Roadway Impact Fee, and therefore its roughly proportionate impact as calculated per the City's UDC (which calculation is already exceedingly higher than other Central Texas municipalities) is **\$6,303,475.00**. Therefore, as further illustrated below, we contend, on behalf of Owner, that the total amount of Exactions being required by the City grossly exceeds (**by almost \$18 Million**) the roughly proportionate impact of the Project on the City's roadway infrastructure system and thus violates the unconstitutional-conditions doctrine.

REQUIRED EXACTIONS

TYPE	TOTAL AMOUNT
Construction of Infrastructure Improvements	\$ 11,391,831
Dedicated Land Value (Mkt)	\$ 5,627,378
Mitigation Fees	\$ 933,925
Roadway Impact Fees	\$ 6,303,475
TOTAL	\$ 24,256,609

Two recent U.S. Supreme Court decisions provide additional support for a property owner's ability to assert a claim against an unlawful government exaction that violates the rough proportionality requirement. In *George Sheetz v. County of El Dorado*, No. 22-1074, the Court confirmed what Texas courts have previously held, that there is no legislative exemption to the

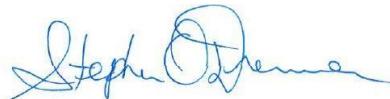
unconstitutional-conditions doctrine, and legislatively authorized development impact fees must be reasonably related and roughly proportional to the anticipated impacts of the proposed development. The Court held in *DeVillier et. al. v. Texas*, No. 22-913, that property owners should be permitted to pursue their claims under the Fifth Amendment Takings Clause, as applied to states through the Fourteenth Amendment, through the inverse-condemnation cause of action available under the Texas Constitution. Therefore, in the event a municipality is in violation of the unconstitutional-conditions doctrine for not properly applying the rough proportionality test, the landowner may assert a takings claim, or in the alternative, an inverse condemnation claim.

Therefore, Owner reasserts its contention that the cost of the Exactions being levied against the Project grossly exceeds the roughly proportionate impact of the Project on the City's roadway infrastructure system. Thus, as supported by the aforementioned U.S. Supreme Court decisions, these Exactions constitute an illegal taking, and Owner has grounds for asserting such claim and commencing active pursuit of every legal remedy available, including instituting mandamus proceedings against the City to compel the performance of City officials required under statute and requesting a declaratory judgment that the requirement of the Exactions in excess of the Project's roughly proportionate impact violates state and federal law. We trust, however, that we will not be required to do so.

On the Owner's behalf, we therefore request the City properly apply the rough proportionality test and limit the total required Exactions for the Project to not more than the maximum amount allowed under state and federal law, which according to the provisions of the City's UDC is equal to the Maximum Assessable Roadway Impact Fee amount (\$6,303,475.00). Provided however, in addition, we reserve the right to contest the City's calculation of the Maximum Assessable Roadway Impact Fee, as we believe that to be well in excess of other Central Texas jurisdictions' rough proportionality impact calculations.

Thank you for your time and attention to this matter.

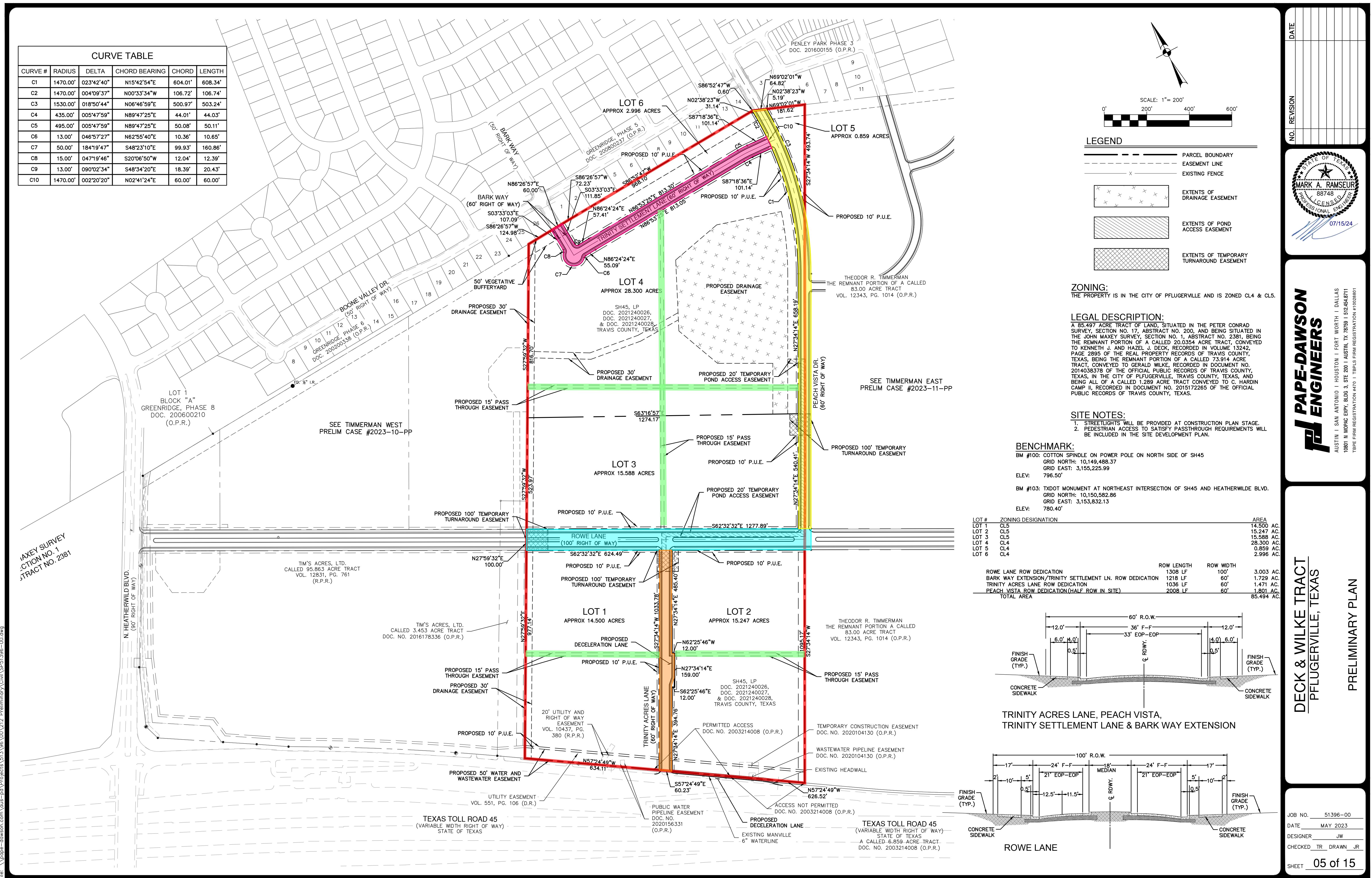
Sincerely,



Stephen O. Drenner

cc:	Charles Zech, City Attorney (cezech@rampagelaw.com)	VIA EMAIL
	Gordon Haws, Engineering Manager (gordonh@pflugervilletx.gov)	VIA EMAIL
	Jeremy Frazzell, Principal Planner (jeremyf@pflugervilletx.gov)	VIA EMAIL
	Michael Patroski, Senior Planner (michaelp@pflugervilletx.gov)	VIA EMAIL

Exhibit A
Preliminary Plan Infrastructure Improvements
[See attached]



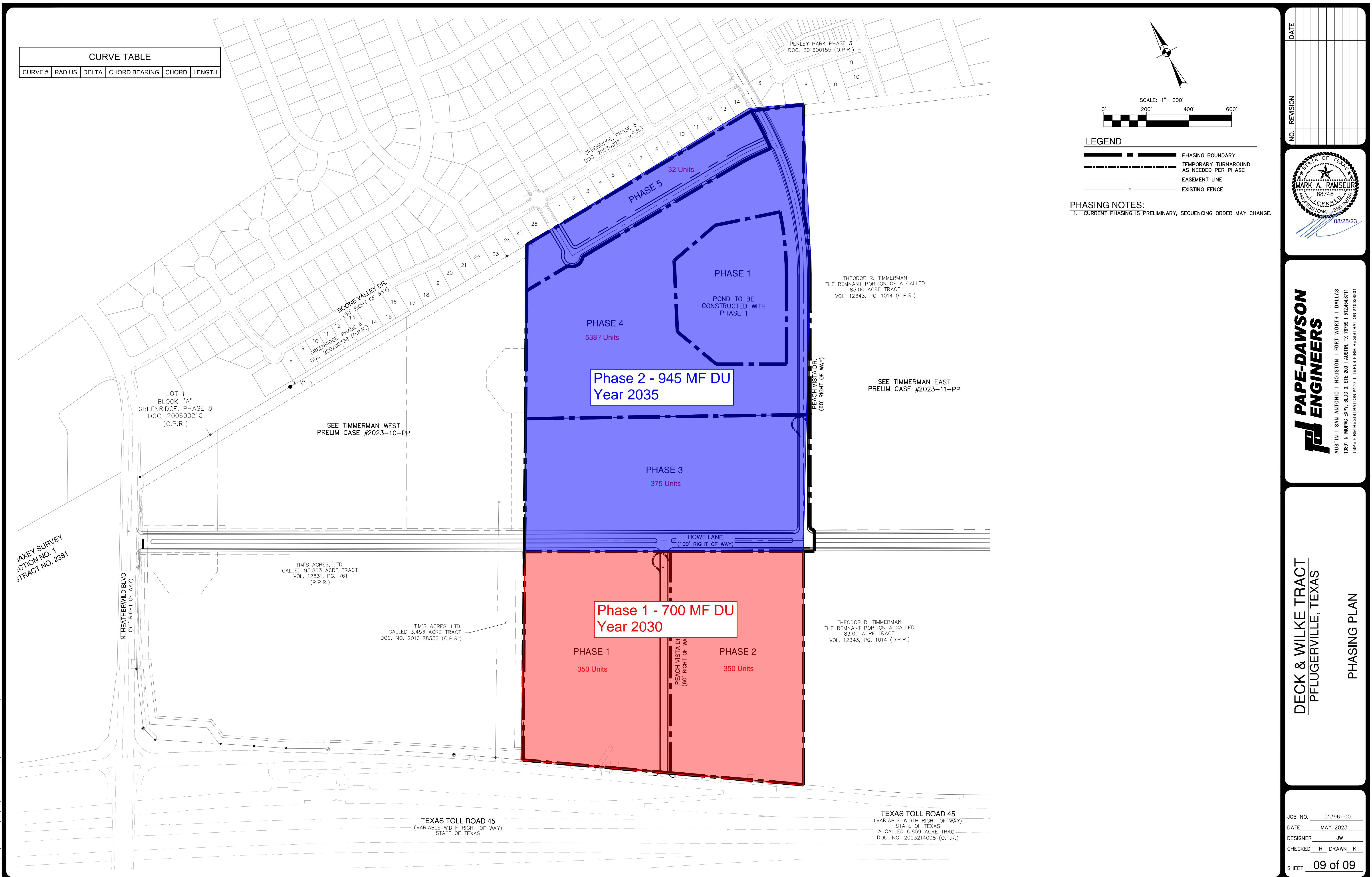


Exhibit B
Pflugerville Roadway Impact Fee Estimator Worksheets
[See attached]



**THIS WORKSHEET IS FOR ESTIMATION PURPOSES ONLY.
ACTUAL FEES COLLECTED WILL BE DETERMINED AT THE TIME
OF BUILDING PERMIT.**

Roadway Impact Fee Estimator Worksheet City of Pflugerville, Texas

<https://www.pflugervilletx.gov/city-government/development-services-center/building-inspections-permits/fee-schedule>

Development Name: Deck and Wilke Tract (Phase 1)

Legal Description (Lot, Block):

Case Number: *Insert Case Number*

Date: 10/13/2023

Date of Final Plat Approval: On or after January 1, 2023

Date of Building Permit Application: On or after January 1, 2022

Service Area (select from list): A

Worksheet Last Updated: 1/22/2021

Notes: (1) Applicant may be eligible for reductions or offsets for infrastructure built. Applicant to apply for either with Pflugerville Planning and Development Services.
(2) Total Roadway Impact Fee Collection Amount represents the sum of Schedule 2 less Existing Land Use Potential Fee Reduction amount.

ROADWAY IMPACT FEE CALCULATION:

PROPOSED LAND USES

Land Uses (select from list):

Multifamily Housing (Low-Rise)

Development Unit: # of Units:

Dwelling Unit	700

Schedule 1: Maximum Assessable Fee

Maximum Fee Per Development Unit:	Maximum Fee:
\$ 3,832.00	\$ 2,682,400.00

Schedule 2: Potential Collection Amounts

Impact Fee Per Development Unit:	Street Impact Fee:
\$ 3,831.90	\$ 2,682,330.00

Note: Plat Approval and Building Permit dates must be selected prior to selecting land use.

ROUGHLY PROPORTIONATE IMPACT OF DEVELOPMENT: \$ 2,682,400.00

EXISTING LAND USES

Land Uses (select from list):

Development Unit: # of Units:

Existing Land Use Potential Fee Reduction

Impact Fee Per Development Unit:	Street Impact Fee:
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TOTAL POTENTIAL STREET IMPACT FEE COLLECTION AMOUNT : \$ 2,682,330.00

Land Use Selection Note: The land use categories are based on the descriptions contained within the ITE Trip Generation Manual. Questions regarding the appropriate category for a particular use may be directed to Planning staff.

Total Value of any Street Impact Fee Offsets (for construction or contribution towards the City's Roadway Capacity Plan):

TOTAL STREET IMPACT FEE COLLECTION AMOUNT AFTER OFFSETS AND REDUCTIONS: \$ 2,682,330.00



**THIS WORKSHEET IS FOR ESTIMATION PURPOSES ONLY.
ACTUAL FEES COLLECTED WILL BE DETERMINED AT THE TIME
OF BUILDING PERMIT.**

Roadway Impact Fee Estimator Worksheet City of Pflugerville, Texas

<https://www.pflugervilletx.gov/city-government/development-services-center/building-inspections-permits/fee-schedule>

Development Name: Deck and Wilke Tract (Phase 2)

Legal Description (Lot, Block):

Case Number: *Insert Case Number*

Date: 10/13/2023

Date of Final Plat Approval: On or after January 1, 2023

Date of Building Permit Application: On or after January 1, 2022

Service Area (select from list): A

Worksheet Last Updated: 1/22/2021

Notes: (1) Applicant may be eligible for reductions or offsets for infrastructure built. Applicant to apply for either with Pflugerville Planning and Development Services.
(2) Total Roadway Impact Fee Collection Amount represents the sum of Schedule 2 less Existing Land Use Potential Fee Reduction amount.

ROADWAY IMPACT FEE CALCULATION:

PROPOSED LAND USES

Land Uses (select from list):

Multifamily Housing (Low-Rise)

Development Unit: # of Units:

Dwelling Unit	945

Schedule 1: Maximum Assessable Fee

Maximum Fee Per Development Unit:	Maximum Fee:
\$ 3,832.00	\$ 3,621,240.00

Schedule 2: Potential Collection Amounts

Impact Fee Per Development Unit:	Street Impact Fee:
\$ 3,831.90	\$ 3,621,145.50

Note: Plat Approval and Building Permit dates must be selected prior to selecting land use.

ROUGHLY PROPORTIONATE IMPACT OF DEVELOPMENT: \$ 3,621,240.00

EXISTING LAND USES

Land Uses (select from list):

Development Unit: # of Units:

Existing Land Use Potential Fee Reduction

Impact Fee Per Development Unit:	Street Impact Fee:
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TOTAL POTENTIAL STREET IMPACT FEE COLLECTION AMOUNT : \$ 3,621,145.50

Land Use Selection Note: The land use categories are based on the descriptions contained within the ITE Trip Generation Manual. Questions regarding the appropriate category for a particular use may be directed to Planning staff.

Total Value of any Street Impact Fee Offsets (for construction or contribution towards the City's Roadway Capacity Plan):

TOTAL STREET IMPACT FEE COLLECTION AMOUNT AFTER OFFSETS AND REDUCTIONS: \$ 3,621,145.50

Exhibit C
Austin Rough Proportionality Worksheet
[See attached]

Exhibit D
San Antonio Rough Proportionality Worksheet
[See attached]



Rough Proportionality Worksheet
for Roadway Infrastructure Improvements
City of San Antonio, Texas

Development Name: **Deck and Wilke Tract**

Applicant:

Legal Description (Lot, Block):

Case / Plat Number:

Date: **February 10, 2025**

Worksheet Last Updated: 05/14/2010

DEMAND - Traffic Generated by Proposed Development:

Peak Period to Analyze:

AM Peak
 PM Peak

Trip Generation Method:

Linear Rates
 Regression Equations

Land Use Type¹:

Development Unit:

Intensity²:

Peak Hour Trip Rate³:

Internal Capture Rate⁴:

Trip Length⁵:

Demand:

Impact of Development⁶ (\$)

Apartment/Multi-family

Dwelling Unit

700

0.58

0%

1.50

603.98

\$1,384,020

Apartment/Multi-family

Dwelling Unit

945

0.57

0%

1.50

806.10

\$1,847,178

This row allows for the entry of unique or uncommon land uses not included within the current ITE Trip Generation; or when circumstances require manual entry of the development unit and/or trip rate. It shall only be used when (a) sufficient data is available to support an alternative calculation; and (b) it is agreed to by the City during the TIA scoping meeting.

IMPACT OF DEMAND PLACED ON THOROUGHFARE SYSTEM: **1,410.08** **\$3,231,198**

Estimated Average Cost Per Vehicle-Mile⁷: **\$ 2,291.50**

Notes: ¹ Per the ITE Trip Generation Manual; ² Intensity is the amount of the development unit that is proposed; ³ Trip Rate is the trip generation rate with a reduction for pass-by's per the ITE Trip Generation Handbook. When regression equations are used, the rate is derived from the equation at the given intensity. When this results in a negative value, the rate defers back to the linear method and the cell is shaded blue. For uses without a regression equation, the rate defers back to the linear method and the cell is shaded gray. ITE does not have data available for all land uses during the AM Peak; when data is unavailable the PM Peak Period may be used. ⁴ Internal Capture should only be used when supported by a traffic study. ⁵ Trip length shall not (1) exceed the SA/BC MPO Modeled Trip Length, (2) exceed 1.5 miles, or (3) be less than 1.0 mile; ⁶ Based on an estimated average cost to provide the capacity (construction, engineering, and right-of-way dedication) for one vehicle mile. ⁷ Estimated average cost per vehicle-mile is derived from the 'Summary of Roadway Costs' worksheet.

Roadway Supply- Off-Site Roads to be Built or Funded by the Applicant:

COST ESTIMATES BASED ON DETAILED OPCC

Roadway Name:

Classification:

Roadway Length: (Feet)

Number of Thru Lanes:

Supply Cost Estimate⁸: (\$)

Cost Estimate based on Detailed OPCC⁹: (\$)

Peach Vista/Trinity Acres

\$4,183,968

Bark Way/Trinity Settlement

\$1,879,687

Rowe Lane

\$2,600,764

ROADWAY SUPPLY ADDED TO SYSTEM SUBTOTAL:

\$8,664,419

Intersection Improvements - Specific Improvements to be Built or Funded by the Applicant:

Intersection:

Description of Improvement:

Estimated Cost¹⁰: (\$)

Decel IH-45 WB Frontage Road

Deceleration Lane

\$267,500

Decel NB Trinity Acres

Deceleration Lane

\$67,500

Decel WB/EB on Rowe turning Trinity Acres/Lot 3

Deceleration Lanes

\$305,000

Decel NB/SB on Heatherwilde turning Rowe Lane

Deceleration Lanes

\$160,000

Phase 1 & Phase 2 CoP & TxDOT Mitigation Fees

Mitigation Fee

\$933,925

INTERSECTION IMPROVEMENTS ADDED TO SYSTEM SUBTOTAL:

\$1,733,925

Right-of-Way Dedication - ROW to be dedicated by the Applicant:

ROW Dedication:

General Description of ROW Dedication:

Estimated Cost¹¹: (\$)

Peach Vista/Trinity Acres

\$1,754,768

Bark Way/Trinity Settlement

\$927,260

Rowe Lane

\$1,610,504

RIGHT-OF-WAY DEDICATION SUPPLY ADDED TO SYSTEM SUBTOTAL:

\$4,292,532

TOTAL VALUE OF SUPPLY ADDED TO THOROUGHFARE SYSTEM: \$14,690,876

Notes: ⁸ Based on an estimated cost to provide the roadway supply (construction and engineering) based on the classification; ⁹ Revised cost estimate, if available, for construction and engineering based on more detailed preliminary engineering and/or design; ¹⁰ Estimated intersection improvement costs; ¹¹ Cost of right-of-way should be estimated using Appraisal District values (number of square feet of dedication multiplied by the unimproved land values).

SUPPLY / DEMAND COMPARISON:

A comparison of the capacity provided by a development against the traffic impacts of the proposed development.

Cost Comparison

TOTAL IMPACT OF DEMAND PLACED ON THOROUGHFARE SYSTEM: \$3,231,198 SUPPLY > DEMAND

TOTAL VALUE OF CAPACITY (SUPPLY) ADDED TO THOROUGHFARE SYSTEM: \$14,690,876 21.99%

Based on the results of this rough proportionality analysis, the value of capacity (supply) provided by the proposed development exceeds the anticipated impact of demand it places on the system. Given these assumptions, only 21.99% of the value of capacity supplied can be attributed to the proposed development. Therefore, the roadway improvements are NOT roughly proportional to the impact of demand placed on the system (i.e. the applicant is adding more capacity than needed to support their development).

Note: Minimum Standards for access to and from a development may supersede the results of this analysis.

TECHNICAL MEMORANDUM

To: Robyn Claridy-Miga
Development Engineering Director
City of Pflugerville

From: Benjamin Plett, P.E., PTOE
Jeff Whitacre, P.E., AICP, PTP
Kimley-Horn and Associates, Inc.
TBPE Firm Number F-928

Date: March 26, 2025

Subject: Deck Wilke Tract
Rough Proportionality Analysis
City of Pflugerville, Texas

Purpose

On March 3, 2025, the City of Pflugerville (City) received a request for the City to conduct a rough proportionality analysis on behalf of Drenner Group, PC, representative of the owner of the 1,645-unit multi-family development (Deck Wilke Tract). The City of Pflugerville has requested several infrastructure improvements in accordance with the City's adopted Transportation Master Plan (TMP), system infrastructure intersection improvements to facilitate the development, right-of-way dedication, roadway impact fees, and pro-rata fees in accordance with the approved traffic impact analysis (TIA). These are summarized, below:

- Design, construction and dedication of right-of-way for the full cross section as shown in the TMP for the following roadways:
 - Rowe Lane
 - Peach Vista Drive
- Design and construction for the following system intersection improvements:
 - Rowe Lane Deceleration Lanes
- Roadway Impact Fees

Based on the memorandum dated March 3, 2025 to the City of Pflugerville provided by the applicant, the cost of the above is \$10,164,131. This figure includes offsets to roadway impact fees for the construction of Rowe Lane in accordance with the adopted roadway impact fee capital improvement projects list. Specific calculations can be found in **Appendix A**.

The purpose of this memorandum is to provide a "rough proportionality" calculation of the Deck Wilke Tract development. The rough proportionality calculation is a comparison of the capacity provided by a development to the traffic impacts of the proposed development.

Development approval conditions must be directly linked to the municipality's legitimate interests in requiring infrastructure improvements. These improvements, based on the City's Transportation Master Plan (TMP), include intersection upgrades, right-of-way dedication, roadway impact fees, and pro-rata fees as outlined in the approved Traffic Impact Analysis (TIA). They meet the nexus requirement as they are essential for the transportation network improvements needed to support the development.

Proportionality Methodology

Traffic generation of new development impacts the area roadway system by using available capacity. To measure system impacts, an analysis using vehicle-miles of travel in the PM peak hour was conducted. Using the vehicle-miles of travel (demand), the cost of the provided roadway improvements (supply) can be compared with the cost of traffic generated by a proposed development.

Demand

Based upon information provided by the applicant, the Deck Wilke Tract Development proposes 945 multifamily units in phase 1 and 700 multifamily units in phase 2.

Based on the adopted February 22, 2022 Roadway Impact Fee Study, the following are the vehicle-miles traveled generated by the proposed development:

- Phase 1 - 945 dwelling units * 2.41 vehicle-miles/dwelling unit
 - 2,277 vehicle-miles
- Phase 2 - 700 dwelling units * 2.41 vehicle-miles/dwelling unit
 - 1,687 vehicle-miles

TOTAL DEMAND: 3,964 vehicle-miles

The proposed Deck Wilke Tract is within the city limits. The cost per vehicle-mile utilized for the overall city limits is \$3,454 /vehicle-mile. This represents the cost to deliver a vehicle-mile (Table 8: Line 4 / Line 1) in the Roadway Impact Fee Study. It is anticipated that the cost per vehicle-mile from the Impact Fee Study is an approximate indication of the demand on the system.

- 3,964 vehicle-miles * \$3,454/vehicle-mile

TOTAL DEMAND: \$13,691,656

The total impact of the proposed development on the transportation network in the City of Pflugerville is \$13,691,656.

Based upon information provided by the City of Pflugerville and the applicant, the following is required by the Deck Wilke Tract:

- Design, construction, and dedication of right-of-way for the full cross section as shown in the TMP for the following roadways:
 - Rowe Lane
 - Peach Vista Drive
- Design and construction for the following system intersection improvements:
 - Rowe Lane Deceleration Lanes
- Roadway Impact Fees

Based on information provided by the applicant, the cost of the above is \$10,164,131. This figure includes offsets to roadway impact fees for the construction of Rowe Lane in accordance with the adopted roadway impact fee capital improvement projects list. The table in **Appendix A** provided below provides a summary of these costs.

Improvements Not Considered in Rough Proportionality Analysis

Based on the memorandum dated March 3, 2025, to the City of Pflugerville provided by the applicant, several improvements were included that do not contribute to rough proportionality. Explanations have been given for each below.

Market Value of Land

Travis County Appraisal District values of land should be used in rough proportionality assessments.

Site Specific Improvements

The following improvements and right-of-way required serve the proposed site only and are not system transportation improvements. The vehicles utilizing these improvements will only do so to access the site. Additionally, these projects are not identified in the Transportation Master Plan and thus not required by the City of Pflugerville:

- Trinity Settlement Lane (Bark Way Extension)
- Trinity Acres Lane
- Westbound right-turn deceleration Lane at 45 westbound frontage road & Trinity Acres Lane
- 15' Pass through easement

Roadway Impact Fee Offsets

It should be noted here that only roadways that are identified in the Roadway Impact Fee Capital Improvement Plan are eligible for offsets. Therefore, only the design and construction of Rowe Lane has been assessed a roadway impact fee offset.

Mitigations fees are generally eligible to count toward rough proportionality, assuming that these fees are being paid toward system improvements. However, within the Opinion of Probable Cost of Improvements section of the August 20th, 2024, version of the TIA associated with this development the following conclusion is proposed regarding pro-rata cost share:

“As shown in Table 16, the developer owes a Pro-Rata of \$17,425.00 in Phase 1 and \$711,375.00 in Phase 2. The Pro-Rata for the Extended Build Condition is \$0.00. Therefore, the overall Pro-Rata fee owed to the City of Pflugerville is \$728,800.00. However, the identified total roadway improvement cost is \$8,325,188.45 for construction of Bark Way extension, Peach Vista, and Rowe Lane and should be credited toward the Pro-Rata cost. Therefore, the developer should not be required to pay toward Pro-Rata as their contribution to the roadway network exceeds the Pro-Rata amount. However, for the proposed improvements on IH 45 at N Heatherwilde Boulevard interchange that are feasible under the conditions of widening the bridge or relocating the retaining wall, the developer is responsible for paying their pro-rata to TxDOT which was estimated to be \$205,125.00.”

No pro-rata cost contribution to the City of Pflugerville is proposed. Additionally, more documentation is required to verify the TxDOT pro-rata cost contribution. If this donation agreement has been completed, this amount would be eligible to count toward rough proportionality.

Conclusion

A comparison of projected demand of the site relative to the roadway supply being provided reveals that the projected demand exceeds the capacity supplied, making the request for contributions to the transportation system improvements by the City of Pflugerville reasonable and roughly proportionate.

\$13,691,656 of demand > \$10,164,131 of supply

It should be noted that this calculation assumes a roadway impact fee of \$2,820,479 to be paid to the City of Pflugerville after offsets for Rowe Lane have been considered.

Appendix A: Rough Proportionality Determination Cost Estimates

Construction Cost Estimates	
Roadway	Construction Cost
Rowe Lane	\$2,786,397
<i>10% Engineering</i>	\$278,640
<i>15% Contingency</i>	\$417,960
Peach Vista Drive	\$1,431,203
<i>10% Engineering</i>	\$143,120
<i>15% Contingency</i>	\$214,680
Rowe Lane Decel Lanes (Peach Vista Drive & Heatherwilde Blvd)	\$628,260
<i>10% Engineering</i>	\$62,826
<i>15% Contingency</i>	\$94,239
Subtotal	\$6,057,325
ROW Dedication	
Location	Cost
Rowe Lane	\$654,053
Peach Vista	\$632,274
Subtotal	\$1,286,327
Roadway Impact Fee	
Phase	Cost
RIF Phase 1	\$2,682,330
RIF Phase 2	\$3,621,145
Rowe Lane Construction Offset	(\$3,482,996)
Subtotal	\$2,820,479
Grand Total	\$10,164,131

DRENNER GROUP

April 28, 2025

Charles E. Zech
City Attorney
City of Pflugerville, Texas
cezech@rampagelaw.com

VIA ELECTRONIC MAIL

Re: Response to Rough Proportionality Analysis prepared on behalf of the City of Pflugerville (the “City”) by Kimley-Horn and Associates, Inc., and provided in that certain Technical Memo, dated March 26, 2025 (the “RP Analysis”), related to the proposed development (the “Project”) located on that certain 85.497-acre property known as the Deck and Wilke Tract (the “Property”).

Dear Mr. Zech,

As you know, on behalf of SH45, LP, a Texas limited partnership, the owner and developer (“Owner”) of the Project, Drenner Group, PC, submitted that certain Rough Proportionality Request Letter dated March 3, 2025, setting forth specific objections to the infrastructure improvements, right-of-way (“ROW”) dedications, public access easements, and impact fees (collectively referred to herein as, the “Exactions”) being required by the City in connection with the Project on the basis that said required Exactions grossly exceed the Project’s impact, in violation of state and federal rough proportionality law and therefore constitute an unconstitutional taking. With this letter, we reassert said objections, set forth additional objections to the statements and calculations provided in the RP Analysis, and reserve our right to formally appeal the RP Analysis, including any subsequently revised versions thereof, pursuant to Texas Local Government Code Section 212.904(b).

It should also be noted that prior to requiring said Exactions as a condition of approval of the Deck & Wilke Tract Preliminary Plan (2023-9-PP) (the “Preliminary Plan”) for the Property, the City made no attempt to determine whether the required Exactions were roughly proportionate to the estimated impact of the Project, and Owner was not provided a rough proportionality assessment prior to submitting said Rough Proportionality Request Letter.

Purpose

Contrary to assertions made in the RP Analysis, each of the following Exactions is a government-imposed condition to permit approval involving the giving up of private property for public use. As such, regardless of the specific code provision or legislative authority relied upon by the City as authorization for such requirement, all Exactions must be accounted for in determining rough proportionality. To fail to do so would be in direct violation of the Takings Clause of the Fifth Amendment of the United States Constitution, as incorporated against the States by the Fourteenth Amendment (the “Takings Clause”), Article I, §17 of the Texas State Constitution, and the two-part test established by the U.S. Supreme Court in *Nollan vs. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan vs. City of Tigard*, 512 U.S. 374 (1994) and modeled on the “unconstitutional conditions doctrine” (the “*Nollan/Dolan Test*”). This two-prong scrutiny test prohibits the government from requiring a person to give up a constitutional right (including the right to just compensation for the taking of property for public use) in exchange for a discretionary benefit (such as permit approval) unless the conditions have an “essential nexus to a legitimate state interest” and are “roughly proportionate” to the impact of the proposed development on the public infrastructure system. More recently, in *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013) and *George Sheetz v. County of El Dorado*, 601 U.S. 267 (2024), the Court has continued to clarify that the *Nollan/Dolan Test* is applicable to all government exactions, including, without limitation, the payment of fees rather than a dedication of land (*Koontz*) and legislatively-established fees as well as administratively-imposed fees. Simply put, in exercising its land use authority, the City cannot pick and choose which Exactions are included in the RP Analysis. We, therefore, disagree with the limited list of exactions enumerated in the RP Analysis and reassert our contention that all of the following Exactions are required under well-established federal and state caselaw and statutes to be included and calculated in the RP Analysis.

Government-Required Exactions

- Design, Construction, and Dedication of ROW for the following Public Roadways:
 - Rowe Lane (3.003 acres)
 - Trinity Settlement Lane/Bark Way Extension (1.729 acres)
 - Trinity Acres Lane (1.471 acres)
 - Peach Vista Drive (2.903 acres)
- Dedication of 15' Public Access Pedestrian Pass Through Easements (1.387 acres)
- Design and Construction of the following System Intersection Improvements:
 - IH 45 Westbound Frontage Road Deceleration Lane
 - Rowe Lane Deceleration Lanes
 - i. Northbound Right Turn Lane on Heatherwilde Blvd
 - ii. Southbound Left Turn Lane on Heatherwilde Blvd
- City of Pflugerville Mitigation Fee – Phase 1
- City of Pflugerville Mitigation Fee – Phase 2
- TxDOT Mitigation Fee
- Pflugerville Roadway Impact Fee – Phase 1
- Pflugerville Roadway Impact Fee – Phase 2

Accordingly, due to the inaccurate and incomplete list of Exactions provided in this section of the RP Analysis, the calculated cost of the Exactions asserted in the RP Analysis (\$10,164,131) is incorrect and deficient, and we hereby assert our objection to, and reserve the right to appeal, said total. Further, we assert that the correct total of the cost of the Exactions assessed on this Project by the City is **\$22,712,120**, the calculation of which is provided in further detail below. *Note: The difference between this total and the amount asserted in our Rough Proportionality Request Letter is due, in part, to the corrected calculation of the Roadway Impact Fee assessable to the Project, as described herein.*

As stated in the RP Analysis, we agree that a credit against the RIF due from the Project (“RIF Credit”) should be awarded for the total cost of the design and construction of Rowe Lane, as Project A-3 of that certain Roadway Impact Fee Study, originally adopted by the City per Ordinance No. 1470-20-11-24 on November 24, 2020, and as subsequently updated and amendments thereto adopted on March 8, 2022, per Ordinance No. 1543-22-03-08, October 10, 2023, per Ordinance No. 1612-23-10-10, and on October 8, 2024, per Ordinance No. 1638-24-10-08 (the “RIF Study”). However, as detailed herein, we disagree with the incorrect total asserted by the RP Analysis for said RIF Credit and assert that the total RIF Credit for Rowe Lane should be \$3,524,793. We also assert, as supported in further detail below, that RIF Credit should be awarded for the total cost of the design and construction of Peach Vista Lane (\$1,810,472) and Trinity Acres Lane (\$3,014,242) under City Code §152.110(F)(2) as both roadways are either on or qualifies for inclusion on the Transportation Master Plan (the “TMP”). We further reserve our right to assert any additional RIF Credit or adjusted total values of said RIF Credits awarded to the Project. In addition, also as confirmed in the RP Analysis, we agree that according to the Opinion of Probable Cost of Improvements in the TIA dated August 20, 2024, no pro-rata contribution to the City of Pflugerville should be required, and therefore, the total amount of \$728,800 in Mitigation Fees charged by the City of Pflugerville should not be required. *Provided, however, RIF Credits and Mitigation Fee offsets are separate from and should not be factored into a rough proportionality calculation of the total value of the government Exactions required against a Project. Such offsets and credits are intended to address disproportionality after the total calculation of Exactions is established. Therefore, while these amounts may (and must) be applied to the Project, it is not appropriate to do so in the calculation of Exactions for purposes of the Nollan/Dolan Test.*

The RP Analysis states, “*the rough proportionality calculation is a comparison of the capacity provided by a development to the traffic impacts of the proposed development.*” This statement mislabels arguably the most pertinent factor of the equation. More accurately, it is a comparison of the costs of government-required infrastructure improvements (including dedications of land, payment of fees, and payment of design and construction costs), imposed as a condition of land use permit approval to the traffic impacts attributable to the proposed development. Thus, the rough proportionality calculation is necessary because such government-imposed conditions create a conflict between the right to just compensation under the Takings Clause and the States’ police power to engage in land use planning. In addressing this conflict, the U.S. Supreme Court established in *Nollan* and *Dolan*, and the Texas Supreme Court affirmed in

Town of Flower Mound vs. Stafford Estates, 135 S.W.3d 620 (Tex. 2004) and the Texas Legislature codified in Texas Local Government Code §212.904, that for an exaction to be valid, cities have the burden to prove that the exactions assessed against a project satisfy the *Nollan/Dolan* Test. We assert that the City has not met this burden.

Nexus

The RP Analysis claims that the required Exactions “are essential for the transportation network improvements needed to support the development,” however, simply stating that there is a nexus, does not, in fact, satisfy this legal burden of proof. In accordance with the Supreme Court’s decision in *Nollan* and *Dolan*, the City must establish a valid exercise of its land use powers by proving that each Exaction is specifically related to that certain legitimate government purpose alleged for each Exaction, in both nature and extent, based on an individualized assessment. The blanket statement made in this RP Analysis does not come close to satisfying the level of scrutiny required by law, and we request that such be addressed for each Exaction being required of Owner for the Project.

Proportionality Methodology

Pursuant to the City of Pflugerville’s Code of Ordinances (“City Code”) §152.107, the Maximum Assessable Roadway Impact Fee is the “*approximate and appropriate measure of the impacts generated by a new development unit on the City’s roadway system*” and “*may be used in evaluating any claim by a property owner that the dedication or construction of a capital improvement within a Service Area imposed as a condition of development approval pursuant to the City’s subdivision or development regulations is disproportionate to the impacts created by the development on the City’s roadway system.*” It cannot be stated more clearly that the Maximum Assessable Roadway Impact Fee is the legally required multiplier to be used in evaluating the monetary value of the demand attributable to a new development, and thus the appropriate factor for evaluating the proportionality of the dedication or construction imposed as a condition of development approval.

This argument is further affirmed by the clear language provided in City Code §152.109 stating that “the City may require construction greater than the Roadway Impact Fee *Collection Rate* for amounts up to the Maximum Assessable Roadway Impact Fee.” In other words, the Maximum Assessable Roadway Impact Fee amount as calculated for the Project is the *total monetary value of impact fees plus construction costs* that the City can require of the Owner. In addition, City Code §152.110(H)(a) confirms that rights-of-ways and easements required to be dedicated shall not exceed the amount required for infrastructure improvements that are roughly proportionate to the new development. In other words, the land value of the dedicated ROWs and easements must also be factored in, along with impact fees and construction costs, when evaluating proportionality.

Demand/Impact

Although the RP Analysis does not provide detailed support for the calculation of the multiplier used (\$3,454.00), it appears the RP Analysis divided the sum total of the Total Cost of RIF CIP + Study for all three Service Areas [\$225,436,925] by the sum total of the Total Vehicle-Miles of Capacity added by the RIF CIP for all three Service Areas [65,268].

- Table 8: Line 4 / Line 1
 - $\$225,436,925 / 65,268 = \$3,454$

This calculation appears to utilize an outdated methodology for monetizing the demand for roadway improvements created by a new development, which some cities used prior to the adoption of roadway impact fee studies and the implementation of maximum assessable roadway impact fees specifically for purposes of determining rough proportionality. As detailed above, the City's own aforementioned Code provisions unambiguously state that Maximum Assessable Roadway Impact Fee per Service Unit is the appropriate measure of the impact of the Project. Thus, the statement in the RP Analysis that the cost per vehicle-mile utilized for the overall city limits is the "approximate indication of the demand on the system" is in direct conflict and wholly incorrect. The City's own Rough Proportionality Worksheet synthesizes this most succinctly in bold, underlined, and capital letters, stating that that Maximum Assessable Fee is the "**ROUGHLY PROPORTIONATE IMPACT OF DEVELOPMENT.**" It does not get much clearer than that.

Not only does the use of the gross, city-wide average cost estimate of \$3,454/vehicle-mile in the "Total Demand" calculation conflict with the explicit language of City Code, it also violates state and federal law requiring that the rough proportionality test must include an *individualized assessment*. In this case, the RIF Study clearly states that the "Maximum Roadway Impact Fee per Service Unit for Roadway Facilities is considered an appropriate measure of the impacts generated by a new unit of development on the City's Roadway System" (page 1), specifically because the resulting fees are directly related to the amount of traffic generated by a development and are based on the system impacts, taking into consideration the specific Service Area, impacts of future projections, and increases in ad valorem tax revenue to be generated by the new service units. Accordingly, subject to the reservation of rights hereafter noted to challenge the calculation of the multiplier, we reassert that the correct multiplier to be used in calculating the monetary value of the demand attributable to the proposed development is the Maximum Assessable Roadway Impact Fee, which according to City Code §152.105(1) is \$1,590.00, as the Project is located in Service Area A.

Furthermore, upon further review of City Code §152.105(3) and the RIF Study Table 9 and Table 10, we assert that the correct Land Use / Vehicle-Mile Equivalency for this Project should be Multifamily Housing (Mid-Rise) / 1.89 Veh-Mile/Dev-Unit. Per the RIF Study Table 10, Multifamily (Low-Rise) is described as "one or two levels (floor) per building such as duplexes or townhomes." Whereas, Multifamily (Mid-Rise) is described as "multi-family housing between three and ten levels (floors) per building." Pursuant to the City's Unified Development Code ("UDC"), the majority of the Property is zoned CL-5, with a portion zoned CL-4. According to that certain Vested Rights

Determination Letter, dated October 15, 2024, the City confirmed May 15, 2023, as the vesting date of the Project, and, as such, the UDC in effect as of said date is the version applicable to be Project. Per §4.4.2 thereof, neither Townhome nor Duplex are currently Permitted Uses in the CL-5 zoning district. Additionally, in the CL-4 zoning district, Duplex is not a Permitted Use, while Single Family Attached (3 or More) Townhome is a Conditional Use. Given such zoning use restrictions, our proposed development density of 1,645 units on 85 acres, and the applicable UDC Development Regulations in §4.4.4, the appropriate Land Use for the Property should be Multifamily (Mid-Rise) and, therefore, the correct vehicle-mile per development unit multiplier (previously referred to as the Transportation Demand Factor) is 1.89.

We therefore assert that the Project's total demand should be calculated as follows:

- Phase 1: 945 dwelling units * 1.89 vehicle-miles/dwelling unit
 - 1,786 vehicle-miles
- Phase 2: 700 dwelling units * 1.89 vehicle-miles/dwelling unit
 - 1,323 vehicle-miles

Total Demand: 3,109 vehicle-miles

As stated above, pursuant to City Code §152.107, the Maximum Assessable Roadway Impact Fee is the *“approximate and appropriate measure of the impacts generated by a new development unit on the City’s roadway system,”* therefore, the monetized impact of the Project is calculated as follows:

- 3,109 vehicle-miles * \$1,590.00/vehicle-mile

Value of Total Demand: \$4,943,310

The total value of the impact of the Project on the transportation network in the City of Pflugerville is \$4,943,310, *not \$13,691,656.00 as incorrectly stated in the RP Analysis.* Provided however, in addition to our objection to the City's calculation methodology, we reserve the right to contest the calculation of the Maximum Assessable Roadway Impact Fee per City Code and the RIF Study, in light of the recent U.S. Supreme Court decision in *Sheetz*, which calls into question the level of individualized analysis required for the imposition of legislatively authorized and broadly applicable permit conditions such as traffic impact fees.

Supply/Government-Required Exactions

As stated above, pursuant to well-settled federal and state law, all Exactions required by the City in exercising its land use authority must be included in the RP Analysis. We, therefore, reassert our contention that all of the following Exactions are required to be calculated in the RP Analysis. Accordingly, the correct total of the cost of the Exactions assessed on this Project by the City are detailed on the following chart.

Design, Construction, and Dedication of ROW for the following Public Roadways: ROW Dedication values based on market value of land ⁽¹⁾ Construction Cost totals include 10% Engineering, plus 15% Contingency ⁽²⁾		
<i>Rowe Lane (3.003 acres)</i> (\$1,610,504 + \$3,524,793)		\$5,135,297
<i>Trinity Settlement Lane/Bark Way Extension (1.729 acres)</i> (\$927,260 + \$2,024,000)		\$2,951,260
<i>Trinity Acres Lane (1.471 acres)</i> (\$788,895 + \$3,014,242)		\$3,803,137
<i>Peach Vista Drive (2.903 acres)</i> (\$1,556,874 + \$1,810,472)		\$3,367,346
Dedication of 15' Public Access Pedestrian Pass Through Easements (1.387 acres)		\$ 743,845
Design and Construction of the following System Intersection Improvements: ROW Dedication values based on market value of land ⁽¹⁾ Construction Cost totals include 10% Engineering, plus 15% Contingency ⁽²⁾		
<i>IH 45 Westbound Frontage Road Deceleration Lane</i>		\$430,100
<i>Rowe Lane Deceleration Lanes</i>		\$588,225
City of Pflugerville Mitigation Fee – Phase 1		\$17,425
City of Pflugerville Mitigation Fee – Phase 2		\$711,375
TxDOT Mitigation Fee⁽³⁾		\$20,800
Pflugerville Roadway Impact Fee – Phase 1		\$2,839,740
Pflugerville Roadway Impact Fee – Phase 2		\$2,103,570
TOTAL		\$22,712,120

⁽¹⁾The Property Owner Rule is well-settled Texas law qualifying a property owner to testify to the value of his own property.

⁽²⁾We contend that the RP Analysis incorrectly calculated the 15% Contingency amount for each Exaction by excluding the 10% Engineering costs. The 15% Contingency amount should be a percentage of Construction Costs + 10% Engineering, not Construction Costs alone, as both hard and soft costs are interrelated.

⁽³⁾Updated amount based on final mitigation fee amount approved by TxDOT on March 19, 2025.

Improvements Not Considered in Rough Proportionality Analysis

Market Value of Land

Pursuant to Texas caselaw, legal precedence, and common practice in takings valuations, the market value of land affirmed and disclosed by the property owner should be used in rough proportionality assessments and takings claims. Pursuant to the "Property Owner Rule" established by the Texas Supreme Court in *Redman Homes v. Ivy*, 920 S.W.2d 664 (Tex. 1996), a property owner is qualified to testify to the market value of his property, even if the property

owner is not an expert and would not be qualified to testify as to the value of other property. *Reid Road Mun. Util. Dist. No. 2 v. Speedy Stop Food Stores, Ltd.*, 337 S.W.3d 846, 852-53 (Tex. 2011). Additionally, in *Natural Gas Pipeline Co. of America v. Justiss*, 397 S.W.3d 150 (Tex. 2012), the Texas Supreme Court narrowed the scope of the Property Owner Rule by holding that landowners must provide factual basis of their opinion of value.

Therefore, in accordance with well-settled Texas law, Owner of the Property is presumed to have knowledge of the Property's market value. **Furthermore, the land values provided in this Response Letter are based upon factual evidence, which Owner can provide, and as such, are the appropriate land value amounts that should be used in the RP Analysis.**

Site Specific Improvements

As stated throughout this Response Letter, pursuant to well-established constitutional law, any taking of private property by a government entity for public purpose is subject to the Takings Clause, and the U.S. Supreme Court, as well as the Texas Supreme Court, have repeatedly held that the legal principles of essential nexus and rough proportionality apply to a government exercise of land use powers when imposing permit conditions. Therefore, none of the items listed in this section of the RP Analysis should be excluded from the Project's rough proportionality determination, and the City's attempt to do so would amount to an unconstitutional taking of private property without just compensation in violation of the Fifth Amendment, and the failure to apply the *Nollan/Dolan* Test is a violation of federal and state caselaw and the unconstitutional conditions doctrine. Despite all legal precedence and principles to the contrary, however, the RP Analysis quite incorrectly states that the following Exactions do not contribute to rough proportionality, and therefore, did not include the value of these Exactions in their calculations:

- Design, Construction and Dedication of ROW for the following Public Roadways:
 - Trinity Settlement Lane/Bark Way Extension (1.729 acres)
 - Trinity Acres Lane (1.471 acres)
- Dedication of 15' Public Access Pedestrian Pass Through Easements (1.387 acres)
- Design and Construction of the following system intersection improvements:
 - IH 45 Westbound Frontage Road Deceleration Lane

It is stated in the RP Analysis that these Exactions “serve the proposed site only and are not system transportation improvements.” The RP Analysis goes further, claiming “the vehicles utilizing these improvements will only do so to access the site” and that because the projects are “not identified in the Transportation Master Plan” they are “thus not required by the City of Pflugerville.” This basis for not considering these Exactions in the RP Analysis is factually and legally flawed for many reasons, as detailed below, specific to each Exaction.

- *Design, Construction and Dedication of ROW for Trinity Settlement Lane/Bark Way Extension (1.729 acres) and the Dedication of 15' Public Access Pedestrian Pass Through Easements (1.387 acres):*

The statement in the RP Analysis claiming these Exactions are not required by the City is wholly inaccurate, egregiously false, and grossly misrepresents the facts of this Project. These Exactions have repeatedly been specifically required by the City and have been directly imposed as a condition-precedent to approval of the land use permits for the Project. Not only did the City condition its approval of the Preliminary Plan for this Project on the dedication and construction of the extension of this roadway [citing UDC §15.16.3(C)] and the dedication of these passthrough easements [citing UDC §15.6.6(C)], the Zoning and Platting Commission on March 5, 2025, voted unanimously to deny Owner's Subdivision Waiver Request (FP2024-000318) to waive the City's subdivision requirements for this roadway extension and these easements and allow Owner to eliminate said items from the Preliminary Plan. Furthermore, the fact that the City is requiring these items pursuant to the City's UDC subdivision regulations does not render such a taking outside the bounds of being subject to rough proportionality. The U.S. Supreme Court in *Sheetz* specifically addressed this issue and confirmed that legislatively-enacted permit conditions must satisfy the well-established *Nollan/Dolan* Test for takings. The Court could not be clearer in summarizing its opinion that "there is no basis for affording property rights less protection in the hands of legislators than administrators. The Takings Clause applies equally to both – which means that it prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits." *Sheetz*, 601 U.S., at 279.

In addition, regardless of whether said Exactions are identified on the TMP, the dedication of land for public ROW, the cost to design and construct the roadway, and the dedication of the land for public easements, as city-imposed conditions to land use permit approvals, most certainly constitute uncompensated takings of private property, and as such, must be subject to the *Nollan/Dolan* Test under state and federal law, as previously discussed at length. Furthermore, long-held federal case law confirms that the appropriation of a public easement across a landowner's premises constitutes a taking. In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the U.S. Supreme Court held that where government action results in a "permanent physical occupation" of the property, whether by the government or the public, it is a taking. The Court in *Nollan* restated this, and went further holding, "that a 'permanent physical occupation' has occurred, for purposes of that rule, where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed [...]." 483 U.S. at 831-832.

In fact, the Court in *Dolan* addressed a similar exaction to the pedestrian passthrough easements that the City is requiring of this Project and applied the two-prong nexus and proportionality test to said exaction. In that case, the City of Tigard conditioned permit approval on compliance with dedication of land for a pedestrian/bicycle pathway

intended to relieve traffic congestion. In applying the *Nollan/Dolan* Test in that case, the Court went further in establishing that an individualized assessment is required in determining rough proportionality. Therefore, to exclude the passthrough easements from the RP Analysis in this Project is in direct conflict with U.S. Supreme Court caselaw.

Another misstatement in the RP Analysis that must be addressed is the claim that the Exactions excluded from the RP Analysis serve only the proposed site and are not system transportation improvements. On the contrary, these Exactions do not serve the proposed site only and are claimed by the City to be system transportation improvements. Staff Comments to the Subdivision Waiver application, dated September 20, 2024 (the “Staff Comments”), confirmed this specifically in stating, the “*connectivity of the roadway, trail, bike, and pedestrian system is critical in Pflugerville per the Transportation Master Plan and development code. The requested waivers do not support connectivity goals.*” This is yet another example of the statements in this RP Analysis directly conflicting with City actions and Code-related requirements.

Additionally, the Staff Comments also explicitly contradict the RP Analysis claim that the Bark Way Extension and the Public Access Pedestrian Pass Through Easements are site-specific improvements to be utilized only by vehicles accessing the site by stating, the “*extension of Bark Way has been anticipated since the Greenridge subdivision was initially planned, platted, and constructed. The extension of streets ensures the city transportation network is constructed as envisioned through the city codes and plans. A cul-de-sac removes the ability for the neighborhood to have additional opportunities to enter and exit the neighborhood, relying more heavily and adding to congestion on the arterial network.*”

Either these Exactions are not required by the City, and thus our Subdivision Waiver should be granted such that Owner is not required to dedicate or construct either, or the Exactions are required, and thus must be considered in the RP Analysis, and in so doing, such Exactions put the Project grossly out of rough proportionality.

Whether or not this roadway extension or the public easements are included in the RIF Study has no effect on the fact that such Exaction is a government taking of private property and thus must be included in the RP Analysis. The City is conditioning its approval of the permits for this Project on the dedication of these Exactions, and thus, they must be included in the RP Analysis.

Furthermore, Texas Local Government Code §212.010(c) prohibits a city from requiring the dedication of land within a subdivision for a future street or alley that is not intended by the owner of the tract and that is not included, funded, and approved in a capital improvement plan adopted by the municipality. Specifically, Texas Local Government Code Section 212.010(c), states that “the municipal authority responsible for approving plats may not require the dedication of land within a subdivision for a future street or alley that is not intended by the owner of the tract and not included, funded, and approved in a capital improvement plan adopted by the municipality or a similar plan

adopted by a county in which the municipality is located or the state.” The extension of Bark Way was not reflected in the previously adopted Pflugerville Comprehensive Plan 2030, nor is it reflected on the current Pflugerville Transportation Master Plan (within Aspire Pflugerville 2040 Comprehensive Plan). Owner does not want the extension of Bark Way in the Project and has requested the elimination thereof in the Subdivision Waiver. Therefore, state law prohibits the City from requiring the extension of Bark Way as a condition to plat approval.

➤ *Design, Construction, and Dedication of ROW for Trinity Acres Lane (1.471 acres):*

Similar to the arguments detailed above, the claims made in the RP Analysis that Trinity Acres Lane (i) will only serve the Project, (ii) will only be utilized by vehicles accessing the Project, (iii) is not a system transportation improvement, (iv) is not identified in the TMP, and (v) is not required by the City, are completely inaccurate and egregiously false. First of all, the City specifically required the inclusion of this roadway on the Preliminary Plan as a condition to permit approval. If this roadway were not required by the City and intended to serve only the Project and be utilized only by vehicles accessing the Project, then there is no justification for the City to require Owner to dedicate the ROW for public use and design and construct the roadway to City standards. If this is the City’s position regarding Trinity Acres Lane, Owner will promptly remove this segment of roadway from the Preliminary Plan and proceed with a private road within the Project.

In the alternative, if the City does not agree to the aforementioned solution removing this Exaction, then it must be determined that Trinity Acres Lane is a system transportation improvement required by the City as a condition to permit approval, and thus the Exaction must be considered in the RP Analysis and subject to the *Nollan/Dolan* Test. In addition, because Trinity Acres Lane is the southern leg of Peach Vista Lane, which is shown on the TMP and labeled as a Minor Collector, Owner is entitled to an offset from RIF through a credit agreement pursuant to City Code §152.110(F)(2).

As currently included on the TMP, Peach Vista Lane is shown as a direct connection from north of the Property and south to SH-45, however, it was determined through multiple meetings and collaboration with the City and the Texas Department of Transportation (“TxDOT”), that the intersection of Peach Vista Lane and SH-45, as shown on the TMP, does not meet TxDOT’s spacing requirements for SH-45, and was in fact, within a TxDOT no-build zone. Not only that, it was also determined in consultation with City, TxDOT, and our engineers at the design-level stage that there is a sight distance issue to the east on the neighboring property due to the topography of the land. Therefore, to accommodate these issues and ensure that the intersection meet TxDOT standards, the location of this portion of Peach Vista Lane, south of Rowe Lane, was therefore required to be revised from what is shown on the TMP. The renaming of the segment from Peach Vista Lane to Trinity Acres Lane came at the requirement of the City. Given the fact that the City’s TMP shows a roadway that does not meet TxDOT standards, it would be unjust and illogical

for the City to hold the position that Trinity Acres Lane does not meet the Transportation Master Plan, and therefore deny any credit offset for such construction costs on that basis.

➤ *Design, Construction, and ROW Dedication for the IH 45 Westbound Frontage Road Deceleration Lane:*

As detailed above, to be a valid land use permit condition, all public dedications of private property required by a governmental entity must be counted toward the Project's rough proportionality calculation, regardless of whether the government entity enforcing the requirements is the City, the County, or the State (including TxDOT). To interpret the *Nollan/Dolan* Test as so limited as to include only certain government-required dedications, and not take a holistic view of all of the government takings being required of the Project, would clearly subvert the purpose of 'proportionality' all together. This Exaction is a condition to permit approval involving the taking of private property by a government entity, and therefore, by law must be included in the RP Analysis.

Roadway Impact Fee Offsets

As stated above, while we contend that it is not appropriate to calculate RIF Credits and Mitigation/Pro-Rata Fee offsets in calculating the total of government-required Exactions in a rough proportionality determination, because the RP Analysis incorrectly interpreted the City Code provisions related to said RIF Credit and offsets, we must address the inaccuracy and preserve our objections thereto in this Response Letter. The RP Analysis states that "only roadways that are identified in the RIF Capital Improvement Plan are eligible for offsets" and therefore, the RP Analysis incorrectly concludes that only the construction cost for the design and construction of Rowe Lane may be credited against the RIF assessed against the Project. However, that is an incorrect and incomplete interpretation of the applicable City Code provision regarding RIF Credits. As referenced above, City Code §152.110(F)(2) provides an exception to the limitation that no credit shall be given to roadway facilities which are not identified on the RIF CIP, specifically stating "UNLESS (emphasis added) the facility is on or qualifies for inclusion on the Transportation Master Plan, as amended, and the City agrees that such improvement supplies capacity to New Developments other than the development paying the Roadway Impact Fee and provisions for Credits are incorporated in an agreement for Credits pursuant to this Subchapter."

Therefore, in light of the facts enumerated above proving the extension of Peach Vista Lane, including the segment of Trinity Acres Lane, is in fact "on or qualifies for inclusion on the TMP" and considering the grossly disproportionate Exactions being required of this Project as demonstrated by the corrected valuations of Exactions vs Demand in this Response Letter, Owner asserts that the RIF assessable to the Project should be offset by the cost of design and construction of all of the following roadways: (i) Rowe Lane, (ii) Peach Vista Lane, and (iii) Trinity Acres Lane.

Conclusion

In conclusion, we assert that an accurate rough proportionality analysis conducted in accordance with well-established federal and state law clearly illustrates that the Exactions being required of this Project unreasonably and disproportionately exceed the monetary value of the Project's impact on the public infrastructure system and therefore constitute an unconstitutional regulatory taking.

\$4,943,310 Value of Project's Demand/Impact < **\$22,712,120** Cost of Required Exactions

Further, we assert that the RP Analysis provided by the City is inaccurate and inconsistent with state and federal law, as well as the City's own City Code, and misrepresentative of the City's dedication requirements assessed against this Project. On the Owner's behalf, we therefore request that, upon consideration of this Response Letter and the issues raised herein, the City revise the RP Analysis to properly apply federal and state law and City Code and accurately represent the City's requirements of this Project as detailed herein. Secondly, we reserve our right to formally file an appeal of this RP Analysis, and any subsequently revised versions thereof, to the Pflugerville City Council pursuant to Texas Local Government Code Section 212.904(b).

Thank you for your time and attention to this matter.

Sincerely,



Stephen O. Drenner

cc: **VIA EMAIL**

Gordon Haws, Engineering Manager, City of Pflugerville	(gordonh@pflugervilletx.gov)
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Katie King Ogden, Drenner Group PC	(<i>of the Firm</i>)
Amanda Swor, Drenner Group PC	(<i>of the Firm</i>)
Aneil Naik, Drenner Group PC	(<i>of the Firm</i>)

TECHNICAL MEMORANDUM

To: Robyn Claridy-Miga
Development Engineering Director
City of Pflugerville

CC: Charles Zech
City Attorney
2500 W. William Cannon, Suite 609
Austin, Texas 78745

From: Benjamin Plett, P.E., PTOE
Jeff Whitacre, P.E., AICP, PTP
Kimley-Horn and Associates, Inc.
TBPE Firm Number F-928

Date: May 27, 2025

Subject: Deck Wilke Tract
Rough Proportionality Analysis
City of Pflugerville, Texas

Purpose

A brief history is provided, below:

1. On March 3, 2025, the City of Pflugerville (City) received a request for the City to conduct a rough proportionality analysis on behalf of Drenner Group, PC, for the 1,645-unit multi-family development (Deck Wilke Tract).
2. On March 26, 2025, the City provided the requested Rough Proportionality Analysis for the proposed 1,645-unit multi-family development (Deck Wilke Tract).
3. On April 28, 2025, the City received a response to the provided Rough Proportionality Analysis from the Drenner Group, PC, for the 1,645-unit multi-family development (Deck Wilke Tract).

This Technical Memorandum is provided as an update to provide clarity to the Proportionality Analysis provided March 26, 2025.

The City of Pflugerville has requested several infrastructure improvements in accordance with the City's adopted Transportation Master Plan (TMP), system infrastructure intersection improvements to facilitate the development, right-of-way dedication, roadway impact fees, and pro-rata fees in accordance with the approved traffic impact analysis (TIA). These are summarized, below:

- Design, construction and dedication of right-of-way for the full cross section as shown in the TMP for the following roadways:
 - Rowe Lane
 - Peach Vista Drive
- Design and construction for the following system intersection improvements:
 - Rowe Lane Deceleration Lanes

- Roadway Impact Fees

It should be noted that TIA mitigation fees are excluded from this list but would count toward rough proportionality. Similarly to roadway impact fees, these will only be charged up to but not to exceed rough proportionality. However, no documentation has been provided showing TIA mitigation fees are required by the City or by TxDOT.

Based on the memorandum dated March 3, 2025, to the City of Pflugerville provided by the applicant, the cost of the above is \$10,164,131. This figure includes offsets to roadway impact fees for the construction of Rowe Lane in accordance with the adopted roadway impact fee capital improvement projects list, should the owner build that portion of the roadway. Specific calculations can be found in **Appendix A**.

The purpose of this memorandum is to provide a “rough proportionality” calculation of the Deck Wilke Tract development. The rough proportionality calculation is a comparison of the capacity provided by a development to the traffic impacts of the proposed development.

Nexus

Development approval conditions must be directly linked to the municipality's legitimate interest in requiring infrastructure improvements. These improvements, based on the City's Transportation Master Plan (TMP), include intersection upgrades, right-of-way dedication, roadway impact fees, and pro-rata fees as outlined in the approved Traffic Impact Analysis (TIA). They meet the nexus requirement as they are essential for the transportation network improvements needed to support the development.

Proportionality Methodology

Traffic generation of new development impacts the area roadway system by using available capacity. To measure system impacts, an analysis using vehicle-miles of travel in the PM peak hour was conducted. Using the vehicle-miles of travel (demand), the cost of the provided roadway improvements (supply) can be compared with the cost of traffic generated by a proposed development.

Demand

Based upon information provided by the applicant, the Deck Wilke Tract Development proposes 945 multifamily units in phase 1 and 700 multifamily units in phase 2.

Based on the adopted February 22, 2022, Roadway Impact Fee Study, the following are the vehicle-miles traveled generated by the proposed development:

- Phase 1 - 945 dwelling units * 2.41 vehicle-miles/dwelling unit
 - 2,277 vehicle-miles
- Phase 2 - 700 dwelling units * 2.41 vehicle-miles/dwelling unit
 - 1,687 vehicle-miles

TOTAL DEMAND: 3,964 vehicle-miles

The proposed Deck Wilke Tract is within the city limits. The cost per vehicle-mile utilized for the overall city limits is \$3,454 /vehicle-mile. This represents the cost to deliver a vehicle-mile (Table 8: Line 4 / Line 1) in the Roadway Impact Fee Study. It is anticipated that the cost per vehicle-mile from the Impact Fee Study is an approximate indication of the demand on the system.

- 3,964 vehicle-miles * \$3,454/vehicle-mile

TOTAL DEMAND: \$13,691,656

The total impact of the proposed development on the transportation network in the City of Pflugerville is \$13,691,656.

To provide verification of the above methodology, another individualized methodology is provided below to show the cost to deliver a vehicle-mile per the cost to construct Rowe Lane as provided by the developer. This methodology represents what the developer suggests a vehicles-mile costs to construct by their own provided cost estimate.

The cost to construct Rowe Lane (using cost of right-of-way per the Travis County Appraisal District) is shown as \$3,482,996. The length of Rowe Lane being constructed is approximately 1,300'. The capacity added for a 4-lane roadway per the Pflugerville Roadway Impact fee report is 840 vehicles per hour per lane (vphpl).

$$\frac{\$3,482,996}{1,300'} \times \frac{5,280'}{1mi} \times \frac{1}{4 \text{ Lanes} \times 840 \text{ vphpl}} = \$4,210 \text{ per vehicle - mile}$$

The developer provided cost estimate shows that the cost to construct a vehicle-mile of capacity exceeds the originally provided estimate of \$3,454 per vehicle-mile. For the purpose of this memo, \$3,454 per vehicle-mile will still be used for the cost per vehicle mile to provide consistency.

Supply

Based upon information provided by the City of Pflugerville and the applicant, the following is required by the Deck Wilke Tract:

- Design, construction, and dedication of right-of-way for the full cross section as shown in the TMP for the following roadways:
 - Rowe Lane
 - Peach Vista Drive
- Design and construction for the following system intersection improvements:
 - Rowe Lane Deceleration Lanes
- Roadway Impact Fees

It should be noted that TIA mitigation fees are excluded from this list but would count toward rough proportionality. Similarly to roadway impact fees, these will only be charged up to but not to exceed rough proportionality. However, no documentation has been provided showing TIA mitigation fees are required by the City or by TxDOT.

Based on information provided by the applicant, the cost of the above is \$10,164,131. This figure includes offsets to roadway impact fees for the construction of Rowe Lane in accordance with the adopted roadway impact fee capital improvement projects list. The table in **Appendix A** provided below provides a summary of these costs.

Improvements Not Considered in Rough Proportionality Analysis

Based on the memorandum dated March 3, 2025, to the City of Pflugerville provided by the applicant, several improvements were included that do not contribute to rough proportionality. Explanations have been given for each below.

Market Value of Land

Travis County Appraisal District (TCAD) values of land should be used in rough proportionality assessments per the city of Pflugerville code.

City of Pflugerville Code section 152.110 (H) (a-b) No credit for rights-of-way reads as follows:

(H) No credits for rights-of-way or easements.

- a) *Rights-of-way and easements are not included in the study, and no Credits shall be granted for the dedication of rights-of-way or easements. Rights-of-way and easements are dedicated as required by the ordinances of the city, necessitated by and attributable to a new development, but shall not exceed the amount required for infrastructure improvements that are roughly proportionate to the new development. The fair market value of the conveyed right-of-way in evaluating proportionality will be determined by the appropriate central appraisal district values.*
- b) *If an applicant for roadway impact fee credits desires an alternate fair market value determination, the applicant must supply an alternative value in an agreement between the city and applicant and may be determined by an MAI appraisal obtained by the city at the applicant's cost.*

Site Specific Improvements

The following improvements and right-of-way required serve the proposed site only and are not system transportation improvements. Summary of these costs is provided in **Appendix B** and are shown below. Note these costs have been updated to reflect TCAD costs for right-of-way since there is not an agreement between the city and owner/applicant for a third-party appraisal, as described above.

The vehicles utilizing these improvements will only do so to access the site. Additionally, these projects are not identified in the Transportation Master Plan and thus not required by the City of Pflugerville:

- Trinity Settlement Lane (Bark Way Ext) - \$3,184,053
 - This extension is not required to be constructed by the city in the manner shown but was chosen to be constructed this way by the developer.
 - The developer may alternatively construct this in the following way, however these also would still be site specific improvements and would not count toward rough proportionality:
 - Cul-de-sac this extension
 - A subsequent update to the Preliminary Plan will be required to show this change, if so desired, and that will also need to be updated in the Traffic Impact Analysis.
- Trinity Acres Lane - \$2,109,388
 - This roadway does not match the Transportation Master Plan and does not provide a continuous roadway between the SH 45 frontage road and existing Peach Vista Drive.

- Westbound right-turn deceleration Lane at 45 westbound frontage road & Trinity Acres Lane - \$425,000
 - Trinity Acres Lane, as outlined above, is not a system improvement. Therefore, turn lanes to this improvement are not system improvements. This turn lane is required by TxDOT only necessitated by the development, to serve the development.
- 15' Pass through easement - \$302,089
 - The site plan could be modified where these are not required, the applicant chose to lay out/subdivide the site in a manner which required these.
 - This is not required to be constructed by the city in the manner shown but was chosen to be constructed this way by the developer to meet block length requirements. Alternative solutions exist. Alternative solutions also would likely not count toward rough proportionality as they would likely still be site specific improvements.

Roadway Impact Fee Offsets

It should be noted that only roadways that are identified in the Roadway Impact Fee Capital Improvement Plan are eligible for offsets. Therefore, only the design and construction of Rowe Lane has been assessed a roadway impact fee offset.

Traffic Impact Analysis Mitigation Fees

Mitigation fees are generally eligible to count toward rough proportionality, assuming that these fees are being paid toward system improvements. However, within the Opinion of Probable Cost of Improvements section of the August 20th, 2024, version of the TIA associated with this development the following conclusion is proposed regarding pro-rata cost share:

“As shown in Table 16, the developer owes a Pro-Rata of \$17,425.00 in Phase 1 and \$711,375.00 in Phase 2. The Pro-Rata for the Extended Build Condition is \$0.00. Therefore, the overall Pro-Rata fee owed to the City of Pflugerville is \$728,800.00. However, the identified total roadway improvement cost is \$8,325,188.45 for construction of Bark Way extension, Peach Vista, and Rowe Lane and should be credited toward the Pro-Rata cost. Therefore, the developer should not be required to pay toward Pro-Rata as their contribution to the roadway network exceeds the Pro-Rata amount. However, for the proposed improvements on IH 45 at N Heatherwilde Boulevard interchange that are feasible under the conditions of widening the bridge or relocating the retaining wall, the developer is responsible for paying their pro-rata to TxDOT which was estimated to be \$205,125.00.”

No documentation showing a pro-rata cost contribution to the City of Pflugerville or TxDOT is proposed by the developer. However, it should be noted that TIA mitigation fees would count toward rough proportionality and thus would not be charged in excess of rough proportionality. The amount combined to TxDOT and the City of Pflugerville claimed by the developer is \$933,925.

Conclusion

A comparison of projected demand of the site relative to the roadway supply being provided reveals that the projected demand exceeds the capacity supplied, making the request for contributions to the transportation system improvements by the City of Pflugerville reasonable and roughly proportionate.

\$13,691,656 of demand > \$10,164,131 of supply

Kimley»Horn

It should be noted that this calculation assumes a roadway impact fee of \$2,820,479 to be paid to the City of Pflugerville after offsets for Rowe Lane have been considered.

Appendix A: Rough Proportionality Determination Cost Estimates

Construction Cost Estimates	
Roadway	Construction Cost
Rowe Lane	\$2,786,397
<i>10% Engineering</i>	\$278,640
<i>15% Contingency</i>	\$417,960
Peach Vista Drive	\$1,431,203
<i>10% Engineering</i>	\$143,120
<i>15% Contingency</i>	\$214,680
Rowe Lane Deceleration Lanes (Peach Vista Drive & Heatherwilde Blvd)	\$628,260
<i>10% Engineering</i>	\$62,826
<i>15% Contingency</i>	\$94,239
Subtotal	\$6,057,325
ROW Dedication	
Location	Cost
Rowe Lane	\$654,053
Peach Vista	\$632,274
Subtotal	\$1,286,327
Roadway Impact Fee	
Phase	Cost
RIF Phase 1	\$2,682,330
RIF Phase 2	\$3,621,145
Rowe Lane Construction Offset	(\$3,482,996)
Subtotal	\$2,820,479
Grand Total	\$10,164,131

Appendix B: Cost Estimates not contributing to Rough Proportionality Determination

Construction Cost Estimates	
Roadway	Construction Cost
Trinity Settlement Lane (Bark Way Ext)	\$2,024,000
<i>10% Engineering</i>	\$202,400
<i>15% Contingency</i>	\$303,600
<i>ROW Dedication</i>	\$654,053
Trinity Acres Lane	\$1,431,203
<i>10% Engineering</i>	\$143,120
<i>15% Contingency</i>	\$214,680
<i>ROW Dedication</i>	\$320,384
Trinity Acres Deceleration Lane	\$340,000
<i>10% Engineering</i>	\$34,000
<i>15% Contingency</i>	\$51,000
<i>ROW Dedication</i>	\$0
15' Pass-through Easement	\$0
<i>ROW</i>	\$302,089
Total	\$6,020,530

DRENNER GROUP

June 20, 2025

City of Pflugerville
City Council
201-B E Pecan Street
Pflugerville, TX 78660

Via Electronic Delivery

Re: Appeal of the Rough Proportionality Analysis provided by the City of Pflugerville (the “*City*”) for the proposed development (the “*Project*”) located on that certain 85.497-acre piece of property known as the Deck and Wilke Tract, located along State Highway 45 in Pflugerville, Travis County, Texas (the “*Property*”), as contemplated by the Deck & Wilke Tract Preliminary Plan (2023-9-PP) (the “*Preliminary Plan*”).

Dear Honorable Members of the Pflugerville City Council:

As representatives of the owner of the Property, we submit this letter as a formal appeal of the City’s Rough Proportionality Analysis for the Project pursuant to Texas Local Government Code Section 212.904(b).

On March 3, 2025, we submitted a detailed letter to the City objecting to the infrastructure improvements, right-of-way and public access easement dedications, and impact fees (the “*Government Exactions*”) being required by the City in connection with the Project, setting forth factual and legal arguments related to rough proportionality, and requesting the City properly apply these well-settled state and federal laws and legal principles (the “*Original Letter*” - attached hereto as Exhibit A).

The City responded via email from Robyn Miga dated March 29, 2025, with a technical memorandum prepared by Kimley-Horn and Associates, Inc., (“*Kimley-Horn*”) setting forth the City’s rough proportionality analysis for the Project, which conflicted significantly with the legal and factual information provided in the Original Letter and failed to address any of the legal arguments or issues raised therein (the “*Technical Memo #1*” – attached hereto as Exhibit B).

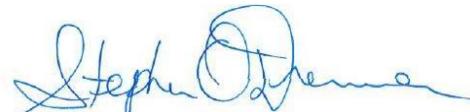
On April 28, 2025, we replied to the City’s Technical Memo #1 with a response letter expounding upon the legal arguments and factual information provided in the Original Letter, providing additional state and federal caselaw instructive on the principles of rough proportionality and related issues, and reasserting the list of Government Exactions being required by the City in connection with the Project (the “*Response Letter*” – attached hereto as Exhibit C).

On May 27, 2025, the City responded to the Response Letter with an updated technical memorandum prepared by Kimley-Horn, reasserting the same information provided in the Technical Memo #1 without addressing any of the legal arguments presented in the Original Letter nor the Response Letter (the “*Technical Memo #2*” – attached hereto as Exhibit D). The Technical Memo #1 and Technical Memo #2, collectively referred to herein as the “*Rough Proportionality Analysis*”).

In light of the fact that City staff has repeatedly ignored and incorrectly dismissed the factual information provided in the Original Letter and the Response Letter and failed to address or correctly apply the well-established state and federal laws related to rough proportionality, we hereby submit this formal appeal of the City’s Rough Proportionality Analysis to the Pflugerville City Council and request this body resolve this issue consistent with state and federal law.

Thank you for your time and attention to this project.

Sincerely,



Stephen O. Drenner

cc: **VIA EMAIL**

Charles Zech, City Attorney	(cezech@rampagelaw.com)
Gordon Haws, Engineering Manager, City of Pflugerville	(gordonh@pflugervilletx.gov)
Jeremy Frazzell, Principal Planner, City of Pflugerville	(jeremyf@pflugervilletx.gov)
Michael Patroski, Senior Planner, City of Pflugerville	(michaelp@pflugervilletx.gov)
Robyn Claridy-Miga, Engineering Director, City of Pflugerville	(robynm@pflugervilletx.gov)
Benjamin Plett, P.E., PTOE, Kimley-Horn and Associates, Inc.	(ben.plett@kimley-horn.com)
Jeff Whitacre, P.E., AICP, PTP, Kimley-Horn and Associates, Inc.	(jeff.whitacre@kimley-horn.com)
Katie King Ogden, Drenner Group PC	(of the Firm)
Amanda Swor, Drenner Group PC	(of the Firm)
Aneil Naik, Drenner Group PC	(of the Firm)

EXHIBIT "A"
Original Letter

[See attached]

March 3, 2025

Ms. Robyn Claridy-Miga
Development Engineering Director
City of Pflugerville, Texas
100 W. Main Street
Pflugerville, TX 78691
robbyn@pflugerville.tx.gov

VIA EMAIL

Re: Rough Proportionality and Required Exactions for the proposed development (the “Project”) located on that certain 85.497-acre property known as the Deck and Wilke Tract (the “Property”).

Dear Ms. Claridy-Miga,

On behalf of the owner and developer (the “Owner”) of the Project, Drenner Group, PC, is providing this letter to take exception to and object to the infrastructure improvements, right-of-way (“ROW”) and public access easement dedications, and impact fees (collectively, the “Exactions”) being required by the City of Pflugerville (the “City”) in connection with the proposed development of the Project on the basis that said required improvements, dedications, and fees grossly exceed the Project’s rough proportionality, in violation of state and federal law and legal principals.

1. Rough Proportionality

Well-established federal and state case law specifically articulate the limitations on the government’s ability to require certain exactions, such as dedication of ROW or easements, payment of impact fees, and construction of onsite and offsite infrastructure improvements. Two landmark U.S. Supreme Court decisions – *Nollan vs. California Coastal Commission* (1987) and *Dolan vs. City of Tigard* (1994) – established the basic rule that conditioning development approval on dedication of land constitutes an unconstitutional “taking” of property unless the dedication is *reasonably related and roughly proportionate* to the impacts of development on the community. Simply stated, whenever a permit is conditioned on a land use exaction—i.e., the giving up of land or money—it must be roughly proportionate to a development’s likely impacts.

These legal principles, often called “nexus and proportionality,” were further developed in subsequent cases, including the Texas Supreme Court’s decision in *Town of Flower Mound vs. Stafford Estates*, 135 S.W.3d 620 (Tex. 2004) and, most recently, the U.S. Supreme Court’s decision

in *Koontz v. St. Johns River Water Management Dist.* (2013), which confirm that rough proportionality applies to payment of regulatory fees, in addition to land dedications. In *Town of Flower Mound*, the Texas Supreme Court restated the doctrine established in *Nollan* and *Dolan* and adopted these rules as the Texas standard, holding that conditioning government approval of the development of property on some exaction is presumed to be an unconstitutional “taking” unless the condition satisfies both the essential nexus and rough proportionality tests. Following that decision, the Texas Legislature amended the Local Government Code in 2005 to require that a professional engineer retained by the City approve proportionality determinations for required land dedications and infrastructure costs. The law also authorizes developers to appeal proportionality determinations to the City Council. Specifically, §212.904(a) of the Texas Local Government Code states, “If a municipality requires [...] as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer's portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is retained by the municipality.”

2. Project Background

As you are aware, the Preliminary Plan for the Project (*Permit No. 2023-9-PP*) was approved by the Planning and Zoning Commission on August 5, 2024 (the “Preliminary Plan”). The City issued a Vested Rights Determination Letter (*Case No. AR2024-000333*) on October 15, 2024, confirming May 15, 2023, as the vesting date of the Project. Thereafter, a Subdivision Waiver application (*Permit No. FP2024-000318*) was submitted on August 26, 2024, and is currently scheduled to be heard by the City’s Planning and Zoning Commission on March 3, 2025 (the “Subdivision Waiver”). In addition, a Final Plat application (*Permit No. FP2025-000003*) was submitted on January 6, 2025, for a portion of the Project (the “Phase 1 Final Plat”).

3. Required Infrastructure Improvements and Dedications

As a condition of approval of the Preliminary Plan, the City required the following on-site infrastructure improvements, including construction and dedication of ROW and easements as shown on Exhibit A attached hereto, to be provided by the Owner:

- i. Dedication of 3.003 acres ROW for Rowe Lane
- ii. Construction of Rowe Lane
- iii. Dedication of 1.729 acres ROW for Trinity Settlement Lane (aka Bark Way extension)
- iv. Construction of Trinity Settlement Lane (aka Bark Way extension)
- v. Dedication of 1.471 acres ROW for Trinity Acres Lane
- vi. Construction of Trinity Acres Lane
- vii. Dedication of 2.903 acres ROW for Peach Vista Drive
- viii. Construction of Peach Vista Drive
- ix. Dedication of 1.387 acres for 15' Public Access Pedestrian Pass Through Easements

In addition, per the Traffic Impact Analysis for the Deck and Wilke Tract, dated January 2024 (Rev. August 2024), prepared by Pape-Dawson Engineers, the following onsite and offsite infrastructure improvements and mitigation costs were identified for the Project:

Phase 1

- i. Construction of a deceleration lane at IH 45 Westbound Frontage Road
- ii. Construction of a deceleration lane off Trinity Acres Lane into Lot 2
- iii. City of Pflugerville Mitigation Fee (\$17,425)

Phase 2

- iv. Construction of Westbound left turn lane onto Trinity Acres Lane
- v. Construction of Eastbound left turn lane into Lot 3
- vi. Construction of Northbound right turn lane on Heatherwilde Blvd at Rowe Lane
- vii. Construction of Southbound left turn lane on Heatherwilde Blvd at Rowe Lane
- viii. City of Pflugerville Mitigation Fee (\$711,375)

TxDot

- ix. TXDOT Mitigation Fee (\$205,125)

The total estimated cost for the required infrastructure improvements and ROW and public access easement dedications are as follows:

ROW AND ACCESS EASEMENT DEDICATIONS

STREET	ACREAGE	LAND VALUE (TCAD)	LAND VALUE (MKT)
Rowe Lane	3.003	\$ 654,053	\$ 1,610,504
Trinity Settlement Lane (Bark Way extension)	1.729	\$ 376,576	\$ 927,260
Trinity Acres Lane	1.471	\$ 320,384	\$ 788,895
Peach Vista	2.903	\$ 632,274	\$ 1,556,874
15' Pass Through Easements	1.387	\$ 302,089	\$ 743,845
TOTAL	10.493	\$ 2,285,376	\$ 5,627,378

ESTIMATED CONSTRUCTION COSTS

STREET	CONSTRUCTION COST
Rowe Lane	\$ 2,786,397
Trinity Settlement Lane (Bark Way Ext)	\$ 1,600,000
Trinity Acres Lane	\$ 2,382,800
Peach Vista Drive	\$ 1,431,203
Decel Lane at 45	\$ 340,000
Rowe Lane Decel Lanes (Peach Vista Drive & Heatherwilde Blvd)	\$ 465,000
Engineering - Phase 1	\$ 272,280
Engineering - Phase 2	\$ 628,260
15% Contingency	\$ 1,485,891
TOTAL	\$ 11,391,831

MITIGATION FEES

PHASE	TOTAL FEE
TXDOT Mitigation	\$ 205,125
Mitigation Phase 1	\$ 17,425
Mitigation Phase 2	\$ 711,375
	\$ 933,925

4. Pflugerville Roadway Impact Fees Calculations

In addition to the above onsite and offsite roadway infrastructure improvements and dedications, the City is also requiring Owner to pay additional roadway impact fees for the Project. Chapter 395 of the Texas Local Government Code authorizes cities to enact or impose impact fees for roadway facilities within their corporate boundaries and identified in their capital improvements plan; provided, however, §395.001(4) prohibits a city from requiring an owner to construct or dedicate facilities *and* pay impact fees for those facilities. §395.023 further specifically requires that any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a city as a condition of development approval must be credited against roadway facilities impact fees otherwise due from the development.

Pursuant to the City of Pflugerville's Unified Development Code §152.107, the Maximum Assessable Roadway Impact Fee per Service Unit for Roadway Facilities is the "approximate and appropriate measure of the impacts generated by a new development unit on the City's roadway system" and "may be used in evaluating any claim by a property owner that the dedication or construction of a capital improvement within a Service Area imposed as a condition of development approval pursuant to the City's subdivision or development regulations is disproportionate to the impacts created by the development on the City's roadway system."

According to §152.105, the Maximum Assessable Roadway Impact Fee per Service Unit per Vehicle Mile for Multi-Family (Low-Rise) Residential Use within the Service Area in which the Project is located is $\$1,590.00 \times 2.41 = \$3,832$. Accordingly, per the Roadway Impact Fee Estimator Worksheet, attached hereto as Exhibit B, the estimated Roadway Impact Fees attributable to the Project under this calculation are as follows:

ROADWAY IMPACT FEES

PHASE	MAXIMUM FEE
RIF Phase 1	\$ 2,682,330
RIF Phase 2	\$ 3,621,145
TOTAL	\$ 6,303,475

It is important to note that UDC §152.109 provides that "the City may require construction greater than the Roadway Impact Fee Collection Rate for amounts *up to* the Maximum Assessable Roadway Impact Fee." In other words, the Maximum Assessable Roadway Impact Fee amount as calculated for the Project is the *total cost of impact fees plus construction costs* that the City can require of the Owner. In addition, UDC §152.110(H)(a) confirms that rights-of-ways and easements

shall not exceed the amount required for infrastructure improvements that are roughly proportionate to the new development. Therefore, the land value of the conveyed right-of-way and easements must also be factored in, along with impact fees and construction costs, when evaluating proportionality and cannot exceed the Maximum Assessable Roadway Impact Fee.

5. Austin and San Antonio Rough Proportionality/Impact Calculations

In contrast to the City of Pflugerville's Roadway Impact Fee Estimator Worksheet, the City of Austin and the City of San Antonio utilize a Rough Proportionality Worksheet for Roadway Infrastructure Improvements, attached as Exhibits C and D, respectively. Pursuant to those worksheets, for comparison purposes, the roughly proportionate share of the costs of improvements to roadway infrastructure reasonably related to the Project's impact on demand would be as follows:

- i. Austin: \$3,208,738.00
- ii. San Antonio: \$3,231,198.00

6. Total Calculations of All Required Exactions for the Project and Takings Claim

As noted above, the City of Pflugerville is charged with ensuring that required improvements, dedications, and fees are reasonably related and "roughly proportionate" to the estimated impact of proposed development, consistent with state law and well-established legal principles. The City's UDC §152.107 specifically states that the Maximum Assessable Roadway Impact Fee may be used in evaluating whether the total of exactions being required by the City as a condition of Project approval is disproportionate to the impacts created by the development on the City's roadway system. The Project's Maximum Assessable Roadway Impact Fee, and therefore its roughly proportionate impact as calculated per the City's UDC (which calculation is already exceedingly higher than other Central Texas municipalities) is **\$6,303,475.00**. Therefore, as further illustrated below, we contend, on behalf of Owner, that the total amount of Exactions being required by the City grossly exceeds (**by almost \$18 Million**) the roughly proportionate impact of the Project on the City's roadway infrastructure system and thus violates the unconstitutional-conditions doctrine.

REQUIRED EXACTIONS

TYPE	TOTAL AMOUNT
Construction of Infrastructure Improvements	\$ 11,391,831
Dedicated Land Value (Mkt)	\$ 5,627,378
Mitigation Fees	\$ 933,925
Roadway Impact Fees	\$ 6,303,475
TOTAL	\$ 24,256,609

Two recent U.S. Supreme Court decisions provide additional support for a property owner's ability to assert a claim against an unlawful government exaction that violates the rough proportionality requirement. In *George Sheetz v. County of El Dorado*, No. 22-1074, the Court confirmed what Texas courts have previously held, that there is no legislative exemption to the

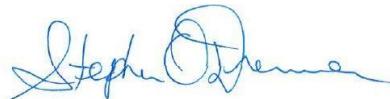
unconstitutional-conditions doctrine, and legislatively authorized development impact fees must be reasonably related and roughly proportional to the anticipated impacts of the proposed development. The Court held in *DeVillier et. al. v. Texas*, No. 22-913, that property owners should be permitted to pursue their claims under the Fifth Amendment Takings Clause, as applied to states through the Fourteenth Amendment, through the inverse-condemnation cause of action available under the Texas Constitution. Therefore, in the event a municipality is in violation of the unconstitutional-conditions doctrine for not properly applying the rough proportionality test, the landowner may assert a takings claim, or in the alternative, an inverse condemnation claim.

Therefore, Owner reasserts its contention that the cost of the Exactions being levied against the Project grossly exceeds the roughly proportionate impact of the Project on the City's roadway infrastructure system. Thus, as supported by the aforementioned U.S. Supreme Court decisions, these Exactions constitute an illegal taking, and Owner has grounds for asserting such claim and commencing active pursuit of every legal remedy available, including instituting mandamus proceedings against the City to compel the performance of City officials required under statute and requesting a declaratory judgment that the requirement of the Exactions in excess of the Project's roughly proportionate impact violates state and federal law. We trust, however, that we will not be required to do so.

On the Owner's behalf, we therefore request the City properly apply the rough proportionality test and limit the total required Exactions for the Project to not more than the maximum amount allowed under state and federal law, which according to the provisions of the City's UDC is equal to the Maximum Assessable Roadway Impact Fee amount (\$6,303,475.00). Provided however, in addition, we reserve the right to contest the City's calculation of the Maximum Assessable Roadway Impact Fee, as we believe that to be well in excess of other Central Texas jurisdictions' rough proportionality impact calculations.

Thank you for your time and attention to this matter.

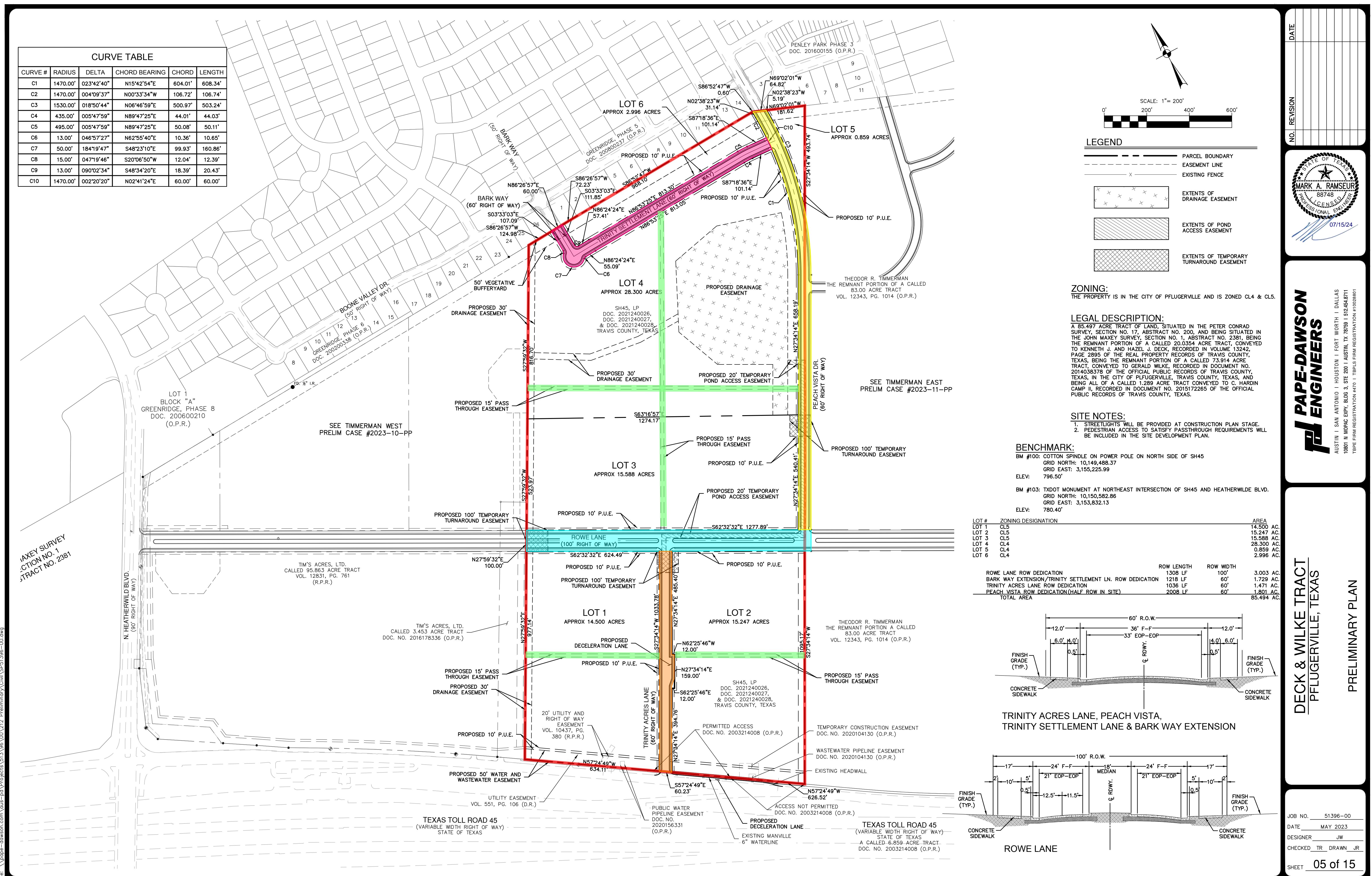
Sincerely,



Stephen O. Drenner

cc:	Charles Zech, City Attorney (cezech@rampagelaw.com)	VIA EMAIL
	Gordon Haws, Engineering Manager (gordonh@pflugervilletx.gov)	VIA EMAIL
	Jeremy Frazzell, Principal Planner (jeremyf@pflugervilletx.gov)	VIA EMAIL
	Michael Patroski, Senior Planner (michaelp@pflugervilletx.gov)	VIA EMAIL

Exhibit A
Preliminary Plan Infrastructure Improvements
[See attached]



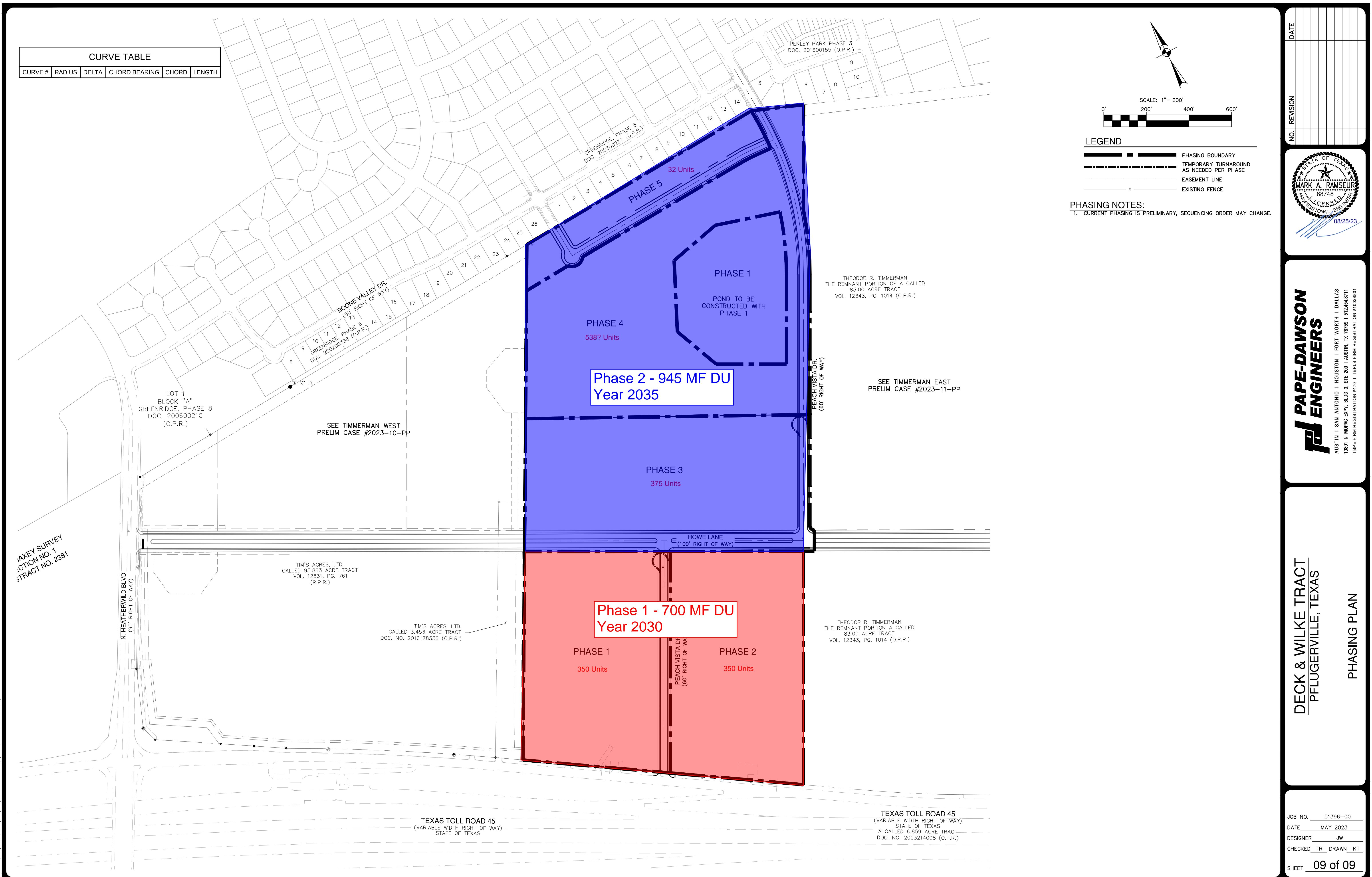


Exhibit B
Pflugerville Roadway Impact Fee Estimator Worksheets
[See attached]



**THIS WORKSHEET IS FOR ESTIMATION PURPOSES ONLY.
ACTUAL FEES COLLECTED WILL BE DETERMINED AT THE TIME
OF BUILDING PERMIT.**

Roadway Impact Fee Estimator Worksheet City of Pflugerville, Texas

<https://www.pflugervilletx.gov/city-government/development-services-center/building-inspections-permits/fee-schedule>

Development Name: Deck and Wilke Tract (Phase 1)

Legal Description (Lot, Block):

Case Number: *Insert Case Number*

Date: 10/13/2023

Date of Final Plat Approval: On or after January 1, 2023

Date of Building Permit Application: On or after January 1, 2022

Service Area (select from list): A

Worksheet Last Updated: 1/22/2021

Notes: (1) Applicant may be eligible for reductions or offsets for infrastructure built. Applicant to apply for either with Pflugerville Planning and Development Services.
(2) Total Roadway Impact Fee Collection Amount represents the sum of Schedule 2 less Existing Land Use Potential Fee Reduction amount.

ROADWAY IMPACT FEE CALCULATION:

PROPOSED LAND USES

Land Uses (select from list):

Multifamily Housing (Low-Rise)

Development Unit: # of Units:

Dwelling Unit	700

Schedule 1: Maximum Assessable Fee

Maximum Fee Per Development Unit:	Maximum Fee:
\$ 3,832.00	\$ 2,682,400.00

Schedule 2: Potential Collection Amounts

Impact Fee Per Development Unit:	Street Impact Fee:
\$ 3,831.90	\$ 2,682,330.00

Note: Plat Approval and Building Permit dates must be selected prior to selecting land use.

ROUGHLY PROPORTIONATE IMPACT OF DEVELOPMENT: \$ 2,682,400.00

EXISTING LAND USES

Land Uses (select from list):

Development Unit: # of Units:

Existing Land Use Potential Fee Reduction

Impact Fee Per Development Unit:	Street Impact Fee:
----------------------------------	--------------------

TOTAL POTENTIAL STREET IMPACT FEE COLLECTION AMOUNT : \$ 2,682,330.00

Land Use Selection Note: The land use categories are based on the descriptions contained within the ITE Trip Generation Manual. Questions regarding the appropriate category for a particular use may be directed to Planning staff.

Total Value of any Street Impact Fee Offsets (for construction or contribution towards the City's Roadway Capacity Plan):

TOTAL STREET IMPACT FEE COLLECTION AMOUNT AFTER OFFSETS AND REDUCTIONS: \$ 2,682,330.00

Exhibit C
Austin Rough Proportionality Worksheet
[See attached]

Exhibit D
San Antonio Rough Proportionality Worksheet
[See attached]



Rough Proportionality Worksheet

for Roadway Infrastructure Improvements

City of San Antonio, Texas

Development Name: **Deck and Wilke Tract**

Applicant:

Legal Description (Lot, Block):

Case / Plat Number:

Date: **February 10, 2025**

Worksheet Last Updated: 05/14/2010

DEMAND - Traffic Generated by Proposed Development:

Peak Period to Analyze:

AM Peak
 PM Peak

Trip Generation Method:

Linear Rates
 Regression Equations

Land Use Type¹:

Development Unit:

Intensity²:

Peak Hour Trip Rate³:

Internal Capture Rate⁴:

Trip Length⁵:

Demand:

Impact of Development⁶ (\$)

Apartment/Multi-family

Dwelling Unit

700

0.58

0%

1.50

603.98

\$1,384,020

Apartment/Multi-family

Dwelling Unit

945

0.57

0%

1.50

806.10

\$1,847,178

This row allows for the entry of unique or uncommon land uses not included within the current ITE Trip Generation; or when circumstances require manual entry of the development unit and/or trip rate. It shall only be used when (a) sufficient data is available to support an alternative calculation; and (b) it is agreed to by the City during the TIA scoping meeting.

IMPACT OF DEMAND PLACED ON THOROUGHFARE SYSTEM: **1,410.08** **\$3,231,198**

Estimated Average Cost Per Vehicle-Mile⁷: **\$ 2,291.50**

Notes: ¹ Per the ITE Trip Generation Manual; ² Intensity is the amount of the development unit that is proposed; ³ Trip Rate is the trip generation rate with a reduction for pass-by's per the ITE Trip Generation Handbook. When regression equations are used, the rate is derived from the equation at the given intensity. When this results in a negative value, the rate defers back to the linear method and the cell is shaded blue. For uses without a regression equation, the rate defers back to the linear method and the cell is shaded gray. ITE does not have data available for all land uses during the AM Peak; when data is unavailable the PM Peak Period may be used. ⁴ Internal Capture should only be used when supported by a traffic study. ⁵ Trip length shall not (1) exceed the SA/BC MPO Modeled Trip Length, (2) exceed 1.5 miles, or (3) be less than 1.0 mile; ⁶ Based on an estimated average cost to provide the capacity (construction, engineering, and right-of-way dedication) for one vehicle mile. ⁷ Estimated average cost per vehicle-mile is derived from the 'Summary of Roadway Costs' worksheet.

Roadway Supply- Off-Site Roads to be Built or Funded by the Applicant:

COST ESTIMATES BASED ON DETAILED OPCC

Roadway Name:

Classification:

Roadway Length: (Feet)

Number of Thru Lanes:

Supply Cost Estimate⁸: (\$)

Cost Estimate based on Detailed OPCC⁹: (\$)

Peach Vista/Trinity Acres

\$4,183,968

Bark Way/Trinity Settlement

\$1,879,687

Rowe Lane

\$2,600,764

ROADWAY SUPPLY ADDED TO SYSTEM SUBTOTAL:

\$8,664,419

Intersection Improvements - Specific Improvements to be Built or Funded by the Applicant:

Intersection:

Description of Improvement:

Estimated Cost¹⁰: (\$)

Decel IH-45 WB Frontage Road

Deceleration Lane

\$267,500

Decel NB Trinity Acres

Deceleration Lane

\$67,500

Decel WB/EB on Rowe turning Trinity Acres/Lot 3

Deceleration Lanes

\$305,000

Decel NB/SB on Heatherwilde turning Rowe Lane

Deceleration Lanes

\$160,000

Phase 1 & Phase 2 CoP & TxDOT Mitigation Fees

Mitigation Fee

\$933,925

INTERSECTION IMPROVEMENTS ADDED TO SYSTEM SUBTOTAL:

\$1,733,925

Right-of-Way Dedication - ROW to be dedicated by the Applicant:

ROW Dedication:

General Description of ROW Dedication:

Estimated Cost¹¹: (\$)

Peach Vista/Trinity Acres

\$1,754,768

Bark Way/Trinity Settlement

\$927,260

Rowe Lane

\$1,610,504

RIGHT-OF-WAY DEDICATION SUPPLY ADDED TO SYSTEM SUBTOTAL:

\$4,292,532

TOTAL VALUE OF SUPPLY ADDED TO THOROUGHFARE SYSTEM: \$14,690,876

Notes: ⁸ Based on an estimated cost to provide the roadway supply (construction and engineering) based on the classification; ⁹ Revised cost estimate, if available, for construction and engineering based on more detailed preliminary engineering and/or design; ¹⁰ Estimated intersection improvement costs; ¹¹ Cost of right-of-way should be estimated using Appraisal District values (number of square feet of dedication multiplied by the unimproved land values).

SUPPLY / DEMAND COMPARISON:

A comparison of the capacity provided by a development against the traffic impacts of the proposed development.

Cost Comparison

TOTAL IMPACT OF DEMAND PLACED ON THOROUGHFARE SYSTEM: \$3,231,198 **SUPPLY > DEMAND**

TOTAL VALUE OF CAPACITY (SUPPLY) ADDED TO THOROUGHFARE SYSTEM: \$14,690,876 **21.99%**

Based on the results of this rough proportionality analysis, the value of capacity (supply) provided by the proposed development exceeds the anticipated impact of demand it places on the system. Given these assumptions, only 21.99% of the value of capacity supplied can be attributed to the proposed development. Therefore, the roadway improvements are NOT roughly proportional to the impact of demand placed on the system (i.e. the applicant is adding more capacity than needed to support their development).

Note: Minimum Standards for access to and from a development may supersede the results of this analysis.

EXHIBIT "B"
Technical Memo #1

[See attached]

TECHNICAL MEMORANDUM

To: Robyn Claridy-Miga
Development Engineering Director
City of Pflugerville

From: Benjamin Plett, P.E., PTOE
Jeff Whitacre, P.E., AICP, PTP
Kimley-Horn and Associates, Inc.
TBPE Firm Number F-928

Date: March 26, 2025

Subject: Deck Wilke Tract
Rough Proportionality Analysis
City of Pflugerville, Texas

Purpose

On March 3, 2025, the City of Pflugerville (City) received a request for the City to conduct a rough proportionality analysis on behalf of Drenner Group, PC, representative of the owner of the 1,645-unit multi-family development (Deck Wilke Tract). The City of Pflugerville has requested several infrastructure improvements in accordance with the City's adopted Transportation Master Plan (TMP), system infrastructure intersection improvements to facilitate the development, right-of-way dedication, roadway impact fees, and pro-rata fees in accordance with the approved traffic impact analysis (TIA). These are summarized, below:

- Design, construction and dedication of right-of-way for the full cross section as shown in the TMP for the following roadways:
 - Rowe Lane
 - Peach Vista Drive
- Design and construction for the following system intersection improvements:
 - Rowe Lane Deceleration Lanes
- Roadway Impact Fees

Based on the memorandum dated March 3, 2025 to the City of Pflugerville provided by the applicant, the cost of the above is \$10,164,131. This figure includes offsets to roadway impact fees for the construction of Rowe Lane in accordance with the adopted roadway impact fee capital improvement projects list. Specific calculations can be found in **Appendix A**.

The purpose of this memorandum is to provide a "rough proportionality" calculation of the Deck Wilke Tract development. The rough proportionality calculation is a comparison of the capacity provided by a development to the traffic impacts of the proposed development.

Development approval conditions must be directly linked to the municipality's legitimate interests in requiring infrastructure improvements. These improvements, based on the City's Transportation Master Plan (TMP), include intersection upgrades, right-of-way dedication, roadway impact fees, and pro-rata fees as outlined in the approved Traffic Impact Analysis (TIA). They meet the nexus requirement as they are essential for the transportation network improvements needed to support the development.

Proportionality Methodology

Traffic generation of new development impacts the area roadway system by using available capacity. To measure system impacts, an analysis using vehicle-miles of travel in the PM peak hour was conducted. Using the vehicle-miles of travel (demand), the cost of the provided roadway improvements (supply) can be compared with the cost of traffic generated by a proposed development.

Demand

Based upon information provided by the applicant, the Deck Wilke Tract Development proposes 945 multifamily units in phase 1 and 700 multifamily units in phase 2.

Based on the adopted February 22, 2022 Roadway Impact Fee Study, the following are the vehicle-miles traveled generated by the proposed development:

- Phase 1 - 945 dwelling units * 2.41 vehicle-miles/dwelling unit
 - 2,277 vehicle-miles
- Phase 2 - 700 dwelling units * 2.41 vehicle-miles/dwelling unit
 - 1,687 vehicle-miles

TOTAL DEMAND: 3,964 vehicle-miles

The proposed Deck Wilke Tract is within the city limits. The cost per vehicle-mile utilized for the overall city limits is \$3,454 /vehicle-mile. This represents the cost to deliver a vehicle-mile (Table 8: Line 4 / Line 1) in the Roadway Impact Fee Study. It is anticipated that the cost per vehicle-mile from the Impact Fee Study is an approximate indication of the demand on the system.

- 3,964 vehicle-miles * \$3,454/vehicle-mile

TOTAL DEMAND: \$13,691,656

The total impact of the proposed development on the transportation network in the City of Pflugerville is \$13,691,656.

Based upon information provided by the City of Pflugerville and the applicant, the following is required by the Deck Wilke Tract:

- Design, construction, and dedication of right-of-way for the full cross section as shown in the TMP for the following roadways:
 - Rowe Lane
 - Peach Vista Drive
- Design and construction for the following system intersection improvements:
 - Rowe Lane Deceleration Lanes
- Roadway Impact Fees

Based on information provided by the applicant, the cost of the above is \$10,164,131. This figure includes offsets to roadway impact fees for the construction of Rowe Lane in accordance with the adopted roadway impact fee capital improvement projects list. The table in **Appendix A** provided below provides a summary of these costs.

Improvements Not Considered in Rough Proportionality Analysis

Based on the memorandum dated March 3, 2025, to the City of Pflugerville provided by the applicant, several improvements were included that do not contribute to rough proportionality. Explanations have been given for each below.

Market Value of Land

Travis County Appraisal District values of land should be used in rough proportionality assessments.

Site Specific Improvements

The following improvements and right-of-way required serve the proposed site only and are not system transportation improvements. The vehicles utilizing these improvements will only do so to access the site. Additionally, these projects are not identified in the Transportation Master Plan and thus not required by the City of Pflugerville:

- Trinity Settlement Lane (Bark Way Extension)
- Trinity Acres Lane
- Westbound right-turn deceleration Lane at 45 westbound frontage road & Trinity Acres Lane
- 15' Pass through easement

Roadway Impact Fee Offsets

It should be noted here that only roadways that are identified in the Roadway Impact Fee Capital Improvement Plan are eligible for offsets. Therefore, only the design and construction of Rowe Lane has been assessed a roadway impact fee offset.

Mitigations fees are generally eligible to count toward rough proportionality, assuming that these fees are being paid toward system improvements. However, within the Opinion of Probable Cost of Improvements section of the August 20th, 2024, version of the TIA associated with this development the following conclusion is proposed regarding pro-rata cost share:

"As shown in Table 16, the developer owes a Pro-Rata of \$17,425.00 in Phase 1 and \$711,375.00 in Phase 2. The Pro-Rata for the Extended Build Condition is \$0.00. Therefore, the overall Pro-Rata fee owed to the City of Pflugerville is \$728,800.00. However, the identified total roadway improvement cost is \$8,325,188.45 for construction of Bark Way extension, Peach Vista, and Rowe Lane and should be credited toward the Pro-Rata cost. Therefore, the developer should not be required to pay toward Pro-Rata as their contribution to the roadway network exceeds the Pro-Rata amount. However, for the proposed improvements on IH 45 at N Heatherwilde Boulevard interchange that are feasible under the conditions of widening the bridge or relocating the retaining wall, the developer is responsible for paying their pro-rata to TxDOT which was estimated to be \$205,125.00."

No pro-rata cost contribution to the City of Pflugerville is proposed. Additionally, more documentation is required to verify the TxDOT pro-rata cost contribution. If this donation agreement has been completed, this amount would be eligible to count toward rough proportionality.

Conclusion

A comparison of projected demand of the site relative to the roadway supply being provided reveals that the projected demand exceeds the capacity supplied, making the request for contributions to the transportation system improvements by the City of Pflugerville reasonable and roughly proportionate.

\$13,691,656 of demand > \$10,164,131 of supply

It should be noted that this calculation assumes a roadway impact fee of \$2,820,479 to be paid to the City of Pflugerville after offsets for Rowe Lane have been considered.

Appendix A: Rough Proportionality Determination Cost Estimates

Construction Cost Estimates	
Roadway	Construction Cost
Rowe Lane	\$2,786,397
<i>10% Engineering</i>	\$278,640
<i>15% Contingency</i>	\$417,960
Peach Vista Drive	\$1,431,203
<i>10% Engineering</i>	\$143,120
<i>15% Contingency</i>	\$214,680
Rowe Lane Decel Lanes (Peach Vista Drive & Heatherwilde Blvd)	\$628,260
<i>10% Engineering</i>	\$62,826
<i>15% Contingency</i>	\$94,239
Subtotal	\$6,057,325
ROW Dedication	
Location	Cost
Rowe Lane	\$654,053
Peach Vista	\$632,274
Subtotal	\$1,286,327
Roadway Impact Fee	
Phase	Cost
RIF Phase 1	\$2,682,330
RIF Phase 2	\$3,621,145
Rowe Lane Construction Offset	(\$3,482,996)
Subtotal	\$2,820,479
Grand Total	\$10,164,131

EXHIBIT "C"
Response Letter

[See attached]

DRENNER GROUP

April 28, 2025

Charles E. Zech
City Attorney
City of Pflugerville, Texas
cezech@rampagelaw.com

VIA ELECTRONIC MAIL

Re: Response to Rough Proportionality Analysis prepared on behalf of the City of Pflugerville (the "City") by Kimley-Horn and Associates, Inc., and provided in that certain Technical Memo, dated March 26, 2025 (the "RP Analysis"), related to the proposed development (the "Project") located on that certain 85.497-acre property known as the Deck and Wilke Tract (the "Property").

Dear Mr. Zech,

As you know, on behalf of SH45, LP, a Texas limited partnership, the owner and developer ("Owner") of the Project, Drenner Group, PC, submitted that certain Rough Proportionality Request Letter dated March 3, 2025, setting forth specific objections to the infrastructure improvements, right-of-way ("ROW") dedications, public access easements, and impact fees (collectively referred to herein as, the "Exactions") being required by the City in connection with the Project on the basis that said required Exactions grossly exceed the Project's impact, in violation of state and federal rough proportionality law and therefore constitute an unconstitutional taking. With this letter, we reassert said objections, set forth additional objections to the statements and calculations provided in the RP Analysis, and reserve our right to formally appeal the RP Analysis, including any subsequently revised versions thereof, pursuant to Texas Local Government Code Section 212.904(b).

It should also be noted that prior to requiring said Exactions as a condition of approval of the Deck & Wilke Tract Preliminary Plan (2023-9-PP) (the "Preliminary Plan") for the Property, the City made no attempt to determine whether the required Exactions were roughly proportionate to the estimated impact of the Project, and Owner was not provided a rough proportionality assessment prior to submitting said Rough Proportionality Request Letter.

Purpose

Contrary to assertions made in the RP Analysis, each of the following Exactions is a government-imposed condition to permit approval involving the giving up of private property for public use. As such, regardless of the specific code provision or legislative authority relied upon by the City as authorization for such requirement, all Exactions must be accounted for in determining rough proportionality. To fail to do so would be in direct violation of the Takings Clause of the Fifth Amendment of the United States Constitution, as incorporated against the States by the Fourteenth Amendment (the “Takings Clause”), Article I, §17 of the Texas State Constitution, and the two-part test established by the U.S. Supreme Court in *Nollan vs. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan vs. City of Tigard*, 512 U.S. 374 (1994) and modeled on the “unconstitutional conditions doctrine” (the “*Nollan/Dolan Test*”). This two-prong scrutiny test prohibits the government from requiring a person to give up a constitutional right (including the right to just compensation for the taking of property for public use) in exchange for a discretionary benefit (such as permit approval) unless the conditions have an “essential nexus to a legitimate state interest” and are “roughly proportionate” to the impact of the proposed development on the public infrastructure system. More recently, in *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013) and *George Sheetz v. County of El Dorado*, 601 U.S. 267 (2024), the Court has continued to clarify that the *Nollan/Dolan Test* is applicable to all government exactions, including, without limitation, the payment of fees rather than a dedication of land (*Koontz*) and legislatively-established fees as well as administratively-imposed fees. Simply put, in exercising its land use authority, the City cannot pick and choose which Exactions are included in the RP Analysis. We, therefore, disagree with the limited list of exactions enumerated in the RP Analysis and reassert our contention that all of the following Exactions are required under well-established federal and state caselaw and statutes to be included and calculated in the RP Analysis.

Government-Required Exactions

- Design, Construction, and Dedication of ROW for the following Public Roadways:
 - Rowe Lane (3.003 acres)
 - Trinity Settlement Lane/Bark Way Extension (1.729 acres)
 - Trinity Acres Lane (1.471 acres)
 - Peach Vista Drive (2.903 acres)
- Dedication of 15' Public Access Pedestrian Pass Through Easements (1.387 acres)
- Design and Construction of the following System Intersection Improvements:
 - IH 45 Westbound Frontage Road Deceleration Lane
 - Rowe Lane Deceleration Lanes
 - i. Northbound Right Turn Lane on Heatherwilde Blvd
 - ii. Southbound Left Turn Lane on Heatherwilde Blvd
- City of Pflugerville Mitigation Fee – Phase 1
- City of Pflugerville Mitigation Fee – Phase 2
- TxDOT Mitigation Fee
- Pflugerville Roadway Impact Fee – Phase 1
- Pflugerville Roadway Impact Fee – Phase 2

Accordingly, due to the inaccurate and incomplete list of Exactions provided in this section of the RP Analysis, the calculated cost of the Exactions asserted in the RP Analysis (\$10,164,131) is incorrect and deficient, and we hereby assert our objection to, and reserve the right to appeal, said total. Further, we assert that the correct total of the cost of the Exactions assessed on this Project by the City is **\$22,712,120**, the calculation of which is provided in further detail below. *Note: The difference between this total and the amount asserted in our Rough Proportionality Request Letter is due, in part, to the corrected calculation of the Roadway Impact Fee assessable to the Project, as described herein.*

As stated in the RP Analysis, we agree that a credit against the RIF due from the Project (“RIF Credit”) should be awarded for the total cost of the design and construction of Rowe Lane, as Project A-3 of that certain Roadway Impact Fee Study, originally adopted by the City per Ordinance No. 1470-20-11-24 on November 24, 2020, and as subsequently updated and amendments thereto adopted on March 8, 2022, per Ordinance No. 1543-22-03-08, October 10, 2023, per Ordinance No. 1612-23-10-10, and on October 8, 2024, per Ordinance No. 1638-24-10-08 (the “RIF Study”). However, as detailed herein, we disagree with the incorrect total asserted by the RP Analysis for said RIF Credit and assert that the total RIF Credit for Rowe Lane should be \$3,524,793. We also assert, as supported in further detail below, that RIF Credit should be awarded for the total cost of the design and construction of Peach Vista Lane (\$1,810,472) and Trinity Acres Lane (\$3,014,242) under City Code §152.110(F)(2) as both roadways are either on or qualifies for inclusion on the Transportation Master Plan (the “TMP”). We further reserve our right to assert any additional RIF Credit or adjusted total values of said RIF Credits awarded to the Project. In addition, also as confirmed in the RP Analysis, we agree that according to the Opinion of Probable Cost of Improvements in the TIA dated August 20, 2024, no pro-rata contribution to the City of Pflugerville should be required, and therefore, the total amount of \$728,800 in Mitigation Fees charged by the City of Pflugerville should not be required. *Provided, however, RIF Credits and Mitigation Fee offsets are separate from and should not be factored into a rough proportionality calculation of the total value of the government Exactions required against a Project. Such offsets and credits are intended to address disproportionality after the total calculation of Exactions is established. Therefore, while these amounts may (and must) be applied to the Project, it is not appropriate to do so in the calculation of Exactions for purposes of the Nollan/Dolan Test.*

The RP Analysis states, “*the rough proportionality calculation is a comparison of the capacity provided by a development to the traffic impacts of the proposed development.*” This statement mislabels arguably the most pertinent factor of the equation. More accurately, it is a comparison of the costs of government-required infrastructure improvements (including dedications of land, payment of fees, and payment of design and construction costs), imposed as a condition of land use permit approval to the traffic impacts attributable to the proposed development. Thus, the rough proportionality calculation is necessary because such government-imposed conditions create a conflict between the right to just compensation under the Takings Clause and the States’ police power to engage in land use planning. In addressing this conflict, the U.S. Supreme Court established in *Nollan* and *Dolan*, and the Texas Supreme Court affirmed in

Town of Flower Mound vs. Stafford Estates, 135 S.W.3d 620 (Tex. 2004) and the Texas Legislature codified in Texas Local Government Code §212.904, that for an exaction to be valid, cities have the burden to prove that the exactions assessed against a project satisfy the *Nollan/Dolan* Test. We assert that the City has not met this burden.

Nexus

The RP Analysis claims that the required Exactions “are essential for the transportation network improvements needed to support the development,” however, simply stating that there is a nexus, does not, in fact, satisfy this legal burden of proof. In accordance with the Supreme Court’s decision in *Nollan* and *Dolan*, the City must establish a valid exercise of its land use powers by proving that each Exaction is specifically related to that certain legitimate government purpose alleged for each Exaction, in both nature and extent, based on an individualized assessment. The blanket statement made in this RP Analysis does not come close to satisfying the level of scrutiny required by law, and we request that such be addressed for each Exaction being required of Owner for the Project.

Proportionality Methodology

Pursuant to the City of Pflugerville’s Code of Ordinances (“City Code”) §152.107, the Maximum Assessable Roadway Impact Fee is the “*approximate and appropriate measure of the impacts generated by a new development unit on the City’s roadway system*” and “*may be used in evaluating any claim by a property owner that the dedication or construction of a capital improvement within a Service Area imposed as a condition of development approval pursuant to the City’s subdivision or development regulations is disproportionate to the impacts created by the development on the City’s roadway system.*” It cannot be stated more clearly that the Maximum Assessable Roadway Impact Fee is the legally required multiplier to be used in evaluating the monetary value of the demand attributable to a new development, and thus the appropriate factor for evaluating the proportionality of the dedication or construction imposed as a condition of development approval.

This argument is further affirmed by the clear language provided in City Code §152.109 stating that “the City may require construction greater than the Roadway Impact Fee *Collection Rate* for amounts up to the Maximum Assessable Roadway Impact Fee.” In other words, the Maximum Assessable Roadway Impact Fee amount as calculated for the Project is the *total monetary value of impact fees plus construction costs* that the City can require of the Owner. In addition, City Code §152.110(H)(a) confirms that rights-of-ways and easements required to be dedicated shall not exceed the amount required for infrastructure improvements that are roughly proportionate to the new development. In other words, the land value of the dedicated ROWs and easements must also be factored in, along with impact fees and construction costs, when evaluating proportionality.

Demand/Impact

Although the RP Analysis does not provide detailed support for the calculation of the multiplier used (\$3,454.00), it appears the RP Analysis divided the sum total of the Total Cost of RIF CIP + Study for all three Service Areas [\$225,436,925] by the sum total of the Total Vehicle-Miles of Capacity added by the RIF CIP for all three Service Areas [65,268].

- Table 8: Line 4 / Line 1
 - $\$225,436,925 / 65,268 = \$3,454$

This calculation appears to utilize an outdated methodology for monetizing the demand for roadway improvements created by a new development, which some cities used prior to the adoption of roadway impact fee studies and the implementation of maximum assessable roadway impact fees specifically for purposes of determining rough proportionality. As detailed above, the City's own aforementioned Code provisions unambiguously state that Maximum Assessable Roadway Impact Fee per Service Unit is the appropriate measure of the impact of the Project. Thus, the statement in the RP Analysis that the cost per vehicle-mile utilized for the overall city limits is the "approximate indication of the demand on the system" is in direct conflict and wholly incorrect. The City's own Rough Proportionality Worksheet synthesizes this most succinctly in bold, underlined, and capital letters, stating that that Maximum Assessable Fee is the "ROUGHLY PROPORTIONATE IMPACT OF DEVELOPMENT." It does not get much clearer than that.

Not only does the use of the gross, city-wide average cost estimate of \$3,454/vehicle-mile in the "Total Demand" calculation conflict with the explicit language of City Code, it also violates state and federal law requiring that the rough proportionality test must include an *individualized assessment*. In this case, the RIF Study clearly states that the "Maximum Roadway Impact Fee per Service Unit for Roadway Facilities is considered an appropriate measure of the impacts generated by a new unit of development on the City's Roadway System" (page 1), specifically because the resulting fees are directly related to the amount of traffic generated by a development and are based on the system impacts, taking into consideration the specific Service Area, impacts of future projections, and increases in ad valorem tax revenue to be generated by the new service units. Accordingly, subject to the reservation of rights hereafter noted to challenge the calculation of the multiplier, we reassert that the correct multiplier to be used in calculating the monetary value of the demand attributable to the proposed development is the Maximum Assessable Roadway Impact Fee, which according to City Code §152.105(1) is \$1,590.00, as the Project is located in Service Area A.

Furthermore, upon further review of City Code §152.105(3) and the RIF Study Table 9 and Table 10, we assert that the correct Land Use / Vehicle-Mile Equivalency for this Project should be Multifamily Housing (Mid-Rise) / 1.89 Veh-Mile/Dev-Unit. Per the RIF Study Table 10, Multifamily (Low-Rise) is described as "one or two levels (floor) per building such as duplexes or townhomes." Whereas, Multifamily (Mid-Rise) is described as "multi-family housing between three and ten levels (floors) per building." Pursuant to the City's Unified Development Code ("UDC"), the majority of the Property is zoned CL-5, with a portion zoned CL-4. According to that certain Vested Rights

Determination Letter, dated October 15, 2024, the City confirmed May 15, 2023, as the vesting date of the Project, and, as such, the UDC in effect as of said date is the version applicable to be Project. Per §4.4.2 thereof, neither Townhome nor Duplex are currently Permitted Uses in the CL-5 zoning district. Additionally, in the CL-4 zoning district, Duplex is not a Permitted Use, while Single Family Attached (3 or More) Townhome is a Conditional Use. Given such zoning use restrictions, our proposed development density of 1,645 units on 85 acres, and the applicable UDC Development Regulations in §4.4.4, the appropriate Land Use for the Property should be Multifamily (Mid-Rise) and, therefore, the correct vehicle-mile per development unit multiplier (previously referred to as the Transportation Demand Factor) is 1.89.

We therefore assert that the Project's total demand should be calculated as follows:

- Phase 1: 945 dwelling units * 1.89 vehicle-miles/dwelling unit
 - 1,786 vehicle-miles
- Phase 2: 700 dwelling units * 1.89 vehicle-miles/dwelling unit
 - 1,323 vehicle-miles

Total Demand: 3,109 vehicle-miles

As stated above, pursuant to City Code §152.107, the Maximum Assessable Roadway Impact Fee is the *“approximate and appropriate measure of the impacts generated by a new development unit on the City’s roadway system,”* therefore, the monetized impact of the Project is calculated as follows:

- 3,109 vehicle-miles * \$1,590.00/vehicle-mile

Value of Total Demand: \$4,943,310

The total value of the impact of the Project on the transportation network in the City of Pflugerville is \$4,943,310, *not \$13,691,656.00 as incorrectly stated in the RP Analysis.* Provided however, in addition to our objection to the City's calculation methodology, we reserve the right to contest the calculation of the Maximum Assessable Roadway Impact Fee per City Code and the RIF Study, in light of the recent U.S. Supreme Court decision in *Sheetz*, which calls into question the level of individualized analysis required for the imposition of legislatively authorized and broadly applicable permit conditions such as traffic impact fees.

Supply/Government-Required Exactions

As stated above, pursuant to well-settled federal and state law, all Exactions required by the City in exercising its land use authority must be included in the RP Analysis. We, therefore, reassert our contention that all of the following Exactions are required to be calculated in the RP Analysis. Accordingly, the correct total of the cost of the Exactions assessed on this Project by the City are detailed on the following chart.

Design, Construction, and Dedication of ROW for the following Public Roadways: ROW Dedication values based on market value of land ⁽¹⁾ Construction Cost totals include 10% Engineering, plus 15% Contingency ⁽²⁾		
<i>Rowe Lane (3.003 acres)</i> (\$1,610,504 + \$3,524,793)		\$5,135,297
<i>Trinity Settlement Lane/Bark Way Extension (1.729 acres)</i> (\$927,260 + \$2,024,000)		\$2,951,260
<i>Trinity Acres Lane (1.471 acres)</i> (\$788,895 + \$3,014,242)		\$3,803,137
<i>Peach Vista Drive (2.903 acres)</i> (\$1,556,874 + \$1,810,472)		\$3,367,346
Dedication of 15' Public Access Pedestrian Pass Through Easements (1.387 acres)		\$ 743,845
Design and Construction of the following System Intersection Improvements: ROW Dedication values based on market value of land ⁽¹⁾ Construction Cost totals include 10% Engineering, plus 15% Contingency ⁽²⁾		
<i>IH 45 Westbound Frontage Road Deceleration Lane</i>		\$430,100
<i>Rowe Lane Deceleration Lanes</i>		\$588,225
City of Pflugerville Mitigation Fee – Phase 1		\$17,425
City of Pflugerville Mitigation Fee – Phase 2		\$711,375
TxDOT Mitigation Fee⁽³⁾		\$20,800
Pflugerville Roadway Impact Fee – Phase 1		\$2,839,740
Pflugerville Roadway Impact Fee – Phase 2		\$2,103,570
TOTAL		\$22,712,120

⁽¹⁾The Property Owner Rule is well-settled Texas law qualifying a property owner to testify to the value of his own property.

⁽²⁾We contend that the RP Analysis incorrectly calculated the 15% Contingency amount for each Exaction by excluding the 10% Engineering costs. The 15% Contingency amount should be a percentage of Construction Costs + 10% Engineering, not Construction Costs alone, as both hard and soft costs are interrelated.

⁽³⁾Updated amount based on final mitigation fee amount approved by TxDOT on March 19, 2025.

Improvements Not Considered in Rough Proportionality Analysis

Market Value of Land

Pursuant to Texas caselaw, legal precedence, and common practice in takings valuations, the market value of land affirmed and disclosed by the property owner should be used in rough proportionality assessments and takings claims. Pursuant to the "Property Owner Rule" established by the Texas Supreme Court in *Redman Homes v. Ivy*, 920 S.W.2d 664 (Tex. 1996), a property owner is qualified to testify to the market value of his property, even if the property

owner is not an expert and would not be qualified to testify as to the value of other property. *Reid Road Mun. Util. Dist. No. 2 v. Speedy Stop Food Stores, Ltd.*, 337 S.W.3d 846, 852-53 (Tex. 2011). Additionally, in *Natural Gas Pipeline Co. of America v. Justiss*, 397 S.W.3d 150 (Tex. 2012), the Texas Supreme Court narrowed the scope of the Property Owner Rule by holding that landowners must provide factual basis of their opinion of value.

Therefore, in accordance with well-settled Texas law, Owner of the Property is presumed to have knowledge of the Property's market value. **Furthermore, the land values provided in this Response Letter are based upon factual evidence, which Owner can provide, and as such, are the appropriate land value amounts that should be used in the RP Analysis.**

Site Specific Improvements

As stated throughout this Response Letter, pursuant to well-established constitutional law, any taking of private property by a government entity for public purpose is subject to the Takings Clause, and the U.S. Supreme Court, as well as the Texas Supreme Court, have repeatedly held that the legal principles of essential nexus and rough proportionality apply to a government exercise of land use powers when imposing permit conditions. Therefore, none of the items listed in this section of the RP Analysis should be excluded from the Project's rough proportionality determination, and the City's attempt to do so would amount to an unconstitutional taking of private property without just compensation in violation of the Fifth Amendment, and the failure to apply the *Nollan/Dolan* Test is a violation of federal and state caselaw and the unconstitutional conditions doctrine. Despite all legal precedence and principles to the contrary, however, the RP Analysis quite incorrectly states that the following Exactions do not contribute to rough proportionality, and therefore, did not include the value of these Exactions in their calculations:

- Design, Construction and Dedication of ROW for the following Public Roadways:
 - Trinity Settlement Lane/Bark Way Extension (1.729 acres)
 - Trinity Acres Lane (1.471 acres)
- Dedication of 15' Public Access Pedestrian Pass Through Easements (1.387 acres)
- Design and Construction of the following system intersection improvements:
 - IH 45 Westbound Frontage Road Deceleration Lane

It is stated in the RP Analysis that these Exactions "serve the proposed site only and are not system transportation improvements." The RP Analysis goes further, claiming "the vehicles utilizing these improvements will only do so to access the site" and that because the projects are "not identified in the Transportation Master Plan" they are "thus not required by the City of Pflugerville." This basis for not considering these Exactions in the RP Analysis is factually and legally flawed for many reasons, as detailed below, specific to each Exaction.

- *Design, Construction and Dedication of ROW for Trinity Settlement Lane/Bark Way Extension (1.729 acres) and the Dedication of 15' Public Access Pedestrian Pass Through Easements (1.387 acres):*

The statement in the RP Analysis claiming these Exactions are not required by the City is wholly inaccurate, egregiously false, and grossly misrepresents the facts of this Project. These Exactions have repeatedly been specifically required by the City and have been directly imposed as a condition-precedent to approval of the land use permits for the Project. Not only did the City condition its approval of the Preliminary Plan for this Project on the dedication and construction of the extension of this roadway [citing UDC §15.16.3(C)] and the dedication of these passthrough easements [citing UDC §15.6.6(C)], the Zoning and Platting Commission on March 5, 2025, voted unanimously to deny Owner's Subdivision Waiver Request (FP2024-000318) to waive the City's subdivision requirements for this roadway extension and these easements and allow Owner to eliminate said items from the Preliminary Plan. Furthermore, the fact that the City is requiring these items pursuant to the City's UDC subdivision regulations does not render such a taking outside the bounds of being subject to rough proportionality. The U.S. Supreme Court in *Sheetz* specifically addressed this issue and confirmed that legislatively-enacted permit conditions must satisfy the well-established *Nollan/Dolan* Test for takings. The Court could not be clearer in summarizing its opinion that "there is no basis for affording property rights less protection in the hands of legislators than administrators. The Takings Clause applies equally to both – which means that it prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits." *Sheetz*, 601 U.S., at 279.

In addition, regardless of whether said Exactions are identified on the TMP, the dedication of land for public ROW, the cost to design and construct the roadway, and the dedication of the land for public easements, as city-imposed conditions to land use permit approvals, most certainly constitute uncompensated takings of private property, and as such, must be subject to the *Nollan/Dolan* Test under state and federal law, as previously discussed at length. Furthermore, long-held federal case law confirms that the appropriation of a public easement across a landowner's premises constitutes a taking. In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the U.S. Supreme Court held that where government action results in a "permanent physical occupation" of the property, whether by the government or the public, it is a taking. The Court in *Nollan* restated this, and went further holding, "that a 'permanent physical occupation' has occurred, for purposes of that rule, where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed [...]." 483 U.S. at 831-832.

In fact, the Court in *Dolan* addressed a similar exaction to the pedestrian passthrough easements that the City is requiring of this Project and applied the two-prong nexus and proportionality test to said exaction. In that case, the City of Tigard conditioned permit approval on compliance with dedication of land for a pedestrian/bicycle pathway

intended to relieve traffic congestion. In applying the *Nollan/Dolan* Test in that case, the Court went further in establishing that an individualized assessment is required in determining rough proportionality. Therefore, to exclude the passthrough easements from the RP Analysis in this Project is in direct conflict with U.S. Supreme Court caselaw.

Another misstatement in the RP Analysis that must be addressed is the claim that the Exactions excluded from the RP Analysis serve only the proposed site and are not system transportation improvements. On the contrary, these Exactions do not serve the proposed site only and are claimed by the City to be system transportation improvements. Staff Comments to the Subdivision Waiver application, dated September 20, 2024 (the “Staff Comments”), confirmed this specifically in stating, the “*connectivity of the roadway, trail, bike, and pedestrian system is critical in Pflugerville per the Transportation Master Plan and development code. The requested waivers do not support connectivity goals.*” This is yet another example of the statements in this RP Analysis directly conflicting with City actions and Code-related requirements.

Additionally, the Staff Comments also explicitly contradict the RP Analysis claim that the Bark Way Extension and the Public Access Pedestrian Pass Through Easements are site-specific improvements to be utilized only by vehicles accessing the site by stating, the “*extension of Bark Way has been anticipated since the Greenridge subdivision was initially planned, platted, and constructed. The extension of streets ensures the city transportation network is constructed as envisioned through the city codes and plans. A cul-de-sac removes the ability for the neighborhood to have additional opportunities to enter and exit the neighborhood, relying more heavily and adding to congestion on the arterial network.*”

Either these Exactions are not required by the City, and thus our Subdivision Waiver should be granted such that Owner is not required to dedicate or construct either, or the Exactions are required, and thus must be considered in the RP Analysis, and in so doing, such Exactions put the Project grossly out of rough proportionality.

Whether or not this roadway extension or the public easements are included in the RIF Study has no effect on the fact that such Exaction is a government taking of private property and thus must be included in the RP Analysis. The City is conditioning its approval of the permits for this Project on the dedication of these Exactions, and thus, they must be included in the RP Analysis.

Furthermore, Texas Local Government Code §212.010(c) prohibits a city from requiring the dedication of land within a subdivision for a future street or alley that is not intended by the owner of the tract and that is not included, funded, and approved in a capital improvement plan adopted by the municipality. Specifically, Texas Local Government Code Section 212.010(c), states that “the municipal authority responsible for approving plats may not require the dedication of land within a subdivision for a future street or alley that is not intended by the owner of the tract and not included, funded, and approved in a capital improvement plan adopted by the municipality or a similar plan

adopted by a county in which the municipality is located or the state.” The extension of Bark Way was not reflected in the previously adopted Pflugerville Comprehensive Plan 2030, nor is it reflected on the current Pflugerville Transportation Master Plan (within Aspire Pflugerville 2040 Comprehensive Plan). Owner does not want the extension of Bark Way in the Project and has requested the elimination thereof in the Subdivision Waiver. Therefore, state law prohibits the City from requiring the extension of Bark Way as a condition to plat approval.

➤ *Design, Construction, and Dedication of ROW for Trinity Acres Lane (1.471 acres):*

Similar to the arguments detailed above, the claims made in the RP Analysis that Trinity Acres Lane (i) will only serve the Project, (ii) will only be utilized by vehicles accessing the Project, (iii) is not a system transportation improvement, (iv) is not identified in the TMP, and (v) is not required by the City, are completely inaccurate and egregiously false. First of all, the City specifically required the inclusion of this roadway on the Preliminary Plan as a condition to permit approval. If this roadway were not required by the City and intended to serve only the Project and be utilized only by vehicles accessing the Project, then there is no justification for the City to require Owner to dedicate the ROW for public use and design and construct the roadway to City standards. If this is the City’s position regarding Trinity Acres Lane, Owner will promptly remove this segment of roadway from the Preliminary Plan and proceed with a private road within the Project.

In the alternative, if the City does not agree to the aforementioned solution removing this Exaction, then it must be determined that Trinity Acres Lane is a system transportation improvement required by the City as a condition to permit approval, and thus the Exaction must be considered in the RP Analysis and subject to the *Nollan/Dolan* Test. In addition, because Trinity Acres Lane is the southern leg of Peach Vista Lane, which is shown on the TMP and labeled as a Minor Collector, Owner is entitled to an offset from RIF through a credit agreement pursuant to City Code §152.110(F)(2).

As currently included on the TMP, Peach Vista Lane is shown as a direct connection from north of the Property and south to SH-45, however, it was determined through multiple meetings and collaboration with the City and the Texas Department of Transportation (“TxDOT”), that the intersection of Peach Vista Lane and SH-45, as shown on the TMP, does not meet TxDOT’s spacing requirements for SH-45, and was in fact, within a TxDOT no-build zone. Not only that, it was also determined in consultation with City, TxDOT, and our engineers at the design-level stage that there is a sight distance issue to the east on the neighboring property due to the topography of the land. Therefore, to accommodate these issues and ensure that the intersection meet TxDOT standards, the location of this portion of Peach Vista Lane, south of Rowe Lane, was therefore required to be revised from what is shown on the TMP. The renaming of the segment from Peach Vista Lane to Trinity Acres Lane came at the requirement of the City. Given the fact that the City’s TMP shows a roadway that does not meet TxDOT standards, it would be unjust and illogical

for the City to hold the position that Trinity Acres Lane does not meet the Transportation Master Plan, and therefore deny any credit offset for such construction costs on that basis.

➤ *Design, Construction, and ROW Dedication for the IH 45 Westbound Frontage Road Deceleration Lane:*

As detailed above, to be a valid land use permit condition, all public dedications of private property required by a governmental entity must be counted toward the Project's rough proportionality calculation, regardless of whether the government entity enforcing the requirements is the City, the County, or the State (including TxDOT). To interpret the *Nollan/Dolan* Test as so limited as to include only certain government-required dedications, and not take a holistic view of all of the government takings being required of the Project, would clearly subvert the purpose of 'proportionality' all together. This Exaction is a condition to permit approval involving the taking of private property by a government entity, and therefore, by law must be included in the RP Analysis.

Roadway Impact Fee Offsets

As stated above, while we contend that it is not appropriate to calculate RIF Credits and Mitigation/Pro-Rata Fee offsets in calculating the total of government-required Exactions in a rough proportionality determination, because the RP Analysis incorrectly interpreted the City Code provisions related to said RIF Credit and offsets, we must address the inaccuracy and preserve our objections thereto in this Response Letter. The RP Analysis states that "only roadways that are identified in the RIF Capital Improvement Plan are eligible for offsets" and therefore, the RP Analysis incorrectly concludes that only the construction cost for the design and construction of Rowe Lane may be credited against the RIF assessed against the Project. However, that is an incorrect and incomplete interpretation of the applicable City Code provision regarding RIF Credits. As referenced above, City Code §152.110(F)(2) provides an exception to the limitation that no credit shall be given to roadway facilities which are not identified on the RIF CIP, specifically stating "UNLESS (emphasis added) the facility is on or qualifies for inclusion on the Transportation Master Plan, as amended, and the City agrees that such improvement supplies capacity to New Developments other than the development paying the Roadway Impact Fee and provisions for Credits are incorporated in an agreement for Credits pursuant to this Subchapter."

Therefore, in light of the facts enumerated above proving the extension of Peach Vista Lane, including the segment of Trinity Acres Lane, is in fact "on or qualifies for inclusion on the TMP" and considering the grossly disproportionate Exactions being required of this Project as demonstrated by the corrected valuations of Exactions vs Demand in this Response Letter, Owner asserts that the RIF assessable to the Project should be offset by the cost of design and construction of all of the following roadways: (i) Rowe Lane, (ii) Peach Vista Lane, and (iii) Trinity Acres Lane.

Conclusion

In conclusion, we assert that an accurate rough proportionality analysis conducted in accordance with well-established federal and state law clearly illustrates that the Exactions being required of this Project unreasonably and disproportionately exceed the monetary value of the Project's impact on the public infrastructure system and therefore constitute an unconstitutional regulatory taking.

\$4,943,310 Value of Project's Demand/Impact < **\$22,712,120** Cost of Required Exactions

Further, we assert that the RP Analysis provided by the City is inaccurate and inconsistent with state and federal law, as well as the City's own City Code, and misrepresentative of the City's dedication requirements assessed against this Project. On the Owner's behalf, we therefore request that, upon consideration of this Response Letter and the issues raised herein, the City revise the RP Analysis to properly apply federal and state law and City Code and accurately represent the City's requirements of this Project as detailed herein. Secondly, we reserve our right to formally file an appeal of this RP Analysis, and any subsequently revised versions thereof, to the Pflugerville City Council pursuant to Texas Local Government Code Section 212.904(b).

Thank you for your time and attention to this matter.

Sincerely,



Stephen O. Drenner

cc: **VIA EMAIL**

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Katie King Ogden, Drenner Group PC	(<i>of the Firm</i>)
Amanda Swor, Drenner Group PC	(<i>of the Firm</i>)
Aneil Naik, Drenner Group PC	(<i>of the Firm</i>)

EXHIBIT "D"
Technical Memo #2

[See attached]

TECHNICAL MEMORANDUM

To: Robyn Claridy-Miga
Development Engineering Director
City of Pflugerville

CC: Charles Zech
City Attorney
2500 W. William Cannon, Suite 609
Austin, Texas 78745

From: Benjamin Plett, P.E., PTOE
Jeff Whitacre, P.E., AICP, PTP
Kimley-Horn and Associates, Inc.
TBPE Firm Number F-928

Date: May 27, 2025

Subject: Deck Wilke Tract
Rough Proportionality Analysis
City of Pflugerville, Texas

Purpose

A brief history is provided, below:

1. On March 3, 2025, the City of Pflugerville (City) received a request for the City to conduct a rough proportionality analysis on behalf of Drenner Group, PC, for the 1,645-unit multi-family development (Deck Wilke Tract).
2. On March 26, 2025, the City provided the requested Rough Proportionality Analysis for the proposed 1,645-unit multi-family development (Deck Wilke Tract).
3. On April 28, 2025, the City received a response to the provided Rough Proportionality Analysis from the Drenner Group, PC, for the 1,645-unit multi-family development (Deck Wilke Tract).

This Technical Memorandum is provided as an update to provide clarity to the Proportionality Analysis provided March 26, 2025.

The City of Pflugerville has requested several infrastructure improvements in accordance with the City's adopted Transportation Master Plan (TMP), system infrastructure intersection improvements to facilitate the development, right-of-way dedication, roadway impact fees, and pro-rata fees in accordance with the approved traffic impact analysis (TIA). These are summarized, below:

- Design, construction and dedication of right-of-way for the full cross section as shown in the TMP for the following roadways:
 - Rowe Lane
 - Peach Vista Drive
- Design and construction for the following system intersection improvements:
 - Rowe Lane Deceleration Lanes

- Roadway Impact Fees

It should be noted that TIA mitigation fees are excluded from this list but would count toward rough proportionality. Similarly to roadway impact fees, these will only be charged up to but not to exceed rough proportionality. However, no documentation has been provided showing TIA mitigation fees are required by the City or by TxDOT.

Based on the memorandum dated March 3, 2025, to the City of Pflugerville provided by the applicant, the cost of the above is \$10,164,131. This figure includes offsets to roadway impact fees for the construction of Rowe Lane in accordance with the adopted roadway impact fee capital improvement projects list, should the owner build that portion of the roadway. Specific calculations can be found in **Appendix A**.

The purpose of this memorandum is to provide a “rough proportionality” calculation of the Deck Wilke Tract development. The rough proportionality calculation is a comparison of the capacity provided by a development to the traffic impacts of the proposed development.

Nexus

Development approval conditions must be directly linked to the municipality's legitimate interest in requiring infrastructure improvements. These improvements, based on the City's Transportation Master Plan (TMP), include intersection upgrades, right-of-way dedication, roadway impact fees, and pro-rata fees as outlined in the approved Traffic Impact Analysis (TIA). They meet the nexus requirement as they are essential for the transportation network improvements needed to support the development.

Proportionality Methodology

Traffic generation of new development impacts the area roadway system by using available capacity. To measure system impacts, an analysis using vehicle-miles of travel in the PM peak hour was conducted. Using the vehicle-miles of travel (demand), the cost of the provided roadway improvements (supply) can be compared with the cost of traffic generated by a proposed development.

Demand

Based upon information provided by the applicant, the Deck Wilke Tract Development proposes 945 multifamily units in phase 1 and 700 multifamily units in phase 2.

Based on the adopted February 22, 2022, Roadway Impact Fee Study, the following are the vehicle-miles traveled generated by the proposed development:

- Phase 1 - 945 dwelling units * 2.41 vehicle-miles/dwelling unit
 - 2,277 vehicle-miles
- Phase 2 - 700 dwelling units * 2.41 vehicle-miles/dwelling unit
 - 1,687 vehicle-miles

TOTAL DEMAND: 3,964 vehicle-miles

The proposed Deck Wilke Tract is within the city limits. The cost per vehicle-mile utilized for the overall city limits is \$3,454 /vehicle-mile. This represents the cost to deliver a vehicle-mile (Table 8: Line 4 / Line 1) in the Roadway Impact Fee Study. It is anticipated that the cost per vehicle-mile from the Impact Fee Study is an approximate indication of the demand on the system.

- 3,964 vehicle-miles * \$3,454/vehicle-mile

TOTAL DEMAND: \$13,691,656

The total impact of the proposed development on the transportation network in the City of Pflugerville is \$13,691,656.

To provide verification of the above methodology, another individualized methodology is provided below to show the cost to deliver a vehicle-mile per the cost to construct Rowe Lane as provided by the developer. This methodology represents what the developer suggests a vehicles-mile costs to construct by their own provided cost estimate.

The cost to construct Rowe Lane (using cost of right-of-way per the Travis County Appraisal District) is shown as \$3,482,996. The length of Rowe Lane being constructed is approximately 1,300'. The capacity added for a 4-lane roadway per the Pflugerville Roadway Impact fee report is 840 vehicles per hour per lane (vphpl).

$$\frac{\$3,482,996}{1,300'} \times \frac{5,280'}{1mi} \times \frac{1}{4 \text{ Lanes} \times 840 \text{ vphpl}} = \$4,210 \text{ per vehicle - mile}$$

The developer provided cost estimate shows that the cost to construct a vehicle-mile of capacity exceeds the originally provided estimate of \$3,454 per vehicle-mile. For the purpose of this memo, \$3,454 per vehicle-mile will still be used for the cost per vehicle mile to provide consistency.

Supply

Based upon information provided by the City of Pflugerville and the applicant, the following is required by the Deck Wilke Tract:

- Design, construction, and dedication of right-of-way for the full cross section as shown in the TMP for the following roadways:
 - Rowe Lane
 - Peach Vista Drive
- Design and construction for the following system intersection improvements:
 - Rowe Lane Deceleration Lanes
- Roadway Impact Fees

It should be noted that TIA mitigation fees are excluded from this list but would count toward rough proportionality. Similarly to roadway impact fees, these will only be charged up to but not to exceed rough proportionality. However, no documentation has been provided showing TIA mitigation fees are required by the City or by TxDOT.

Based on information provided by the applicant, the cost of the above is \$10,164,131. This figure includes offsets to roadway impact fees for the construction of Rowe Lane in accordance with the adopted roadway impact fee capital improvement projects list. The table in **Appendix A** provided below provides a summary of these costs.

Improvements Not Considered in Rough Proportionality Analysis

Based on the memorandum dated March 3, 2025, to the City of Pflugerville provided by the applicant, several improvements were included that do not contribute to rough proportionality. Explanations have been given for each below.

Market Value of Land

Travis County Appraisal District (TCAD) values of land should be used in rough proportionality assessments per the city of Pflugerville code.

City of Pflugerville Code section 152.110 (H) (a-b) No credit for rights-of-way reads as follows:

(H) No credits for rights-of-way or easements.

- a) *Rights-of-way and easements are not included in the study, and no Credits shall be granted for the dedication of rights-of-way or easements. Rights-of-way and easements are dedicated as required by the ordinances of the city, necessitated by and attributable to a new development, but shall not exceed the amount required for infrastructure improvements that are roughly proportionate to the new development. The fair market value of the conveyed right-of-way in evaluating proportionality will be determined by the appropriate central appraisal district values.*
- b) *If an applicant for roadway impact fee credits desires an alternate fair market value determination, the applicant must supply an alternative value in an agreement between the city and applicant and may be determined by an MAI appraisal obtained by the city at the applicant's cost.*

Site Specific Improvements

The following improvements and right-of-way required serve the proposed site only and are not system transportation improvements. Summary of these costs is provided in **Appendix B** and are shown below. Note these costs have been updated to reflect TCAD costs for right-of-way since there is not an agreement between the city and owner/applicant for a third-party appraisal, as described above.

The vehicles utilizing these improvements will only do so to access the site. Additionally, these projects are not identified in the Transportation Master Plan and thus not required by the City of Pflugerville:

- Trinity Settlement Lane (Bark Way Ext) - \$3,184,053
 - This extension is not required to be constructed by the city in the manner shown but was chosen to be constructed this way by the developer.
 - The developer may alternatively construct this in the following way, however these also would still be site specific improvements and would not count toward rough proportionality:
 - Cul-de-sac this extension
 - A subsequent update to the Preliminary Plan will be required to show this change, if so desired, and that will also need to be updated in the Traffic Impact Analysis.
- Trinity Acres Lane - \$2,109,388
 - This roadway does not match the Transportation Master Plan and does not provide a continuous roadway between the SH 45 frontage road and existing Peach Vista Drive.

- Westbound right-turn deceleration Lane at 45 westbound frontage road & Trinity Acres Lane - \$425,000
 - Trinity Acres Lane, as outlined above, is not a system improvement. Therefore, turn lanes to this improvement are not system improvements. This turn lane is required by TxDOT only necessitated by the development, to serve the development.
- 15' Pass through easement - \$302,089
 - The site plan could be modified where these are not required, the applicant chose to lay out/subdivide the site in a manner which required these.
 - This is not required to be constructed by the city in the manner shown but was chosen to be constructed this way by the developer to meet block length requirements. Alternative solutions exist. Alternative solutions also would likely not count toward rough proportionality as they would likely still be site specific improvements.

Roadway Impact Fee Offsets

It should be noted that only roadways that are identified in the Roadway Impact Fee Capital Improvement Plan are eligible for offsets. Therefore, only the design and construction of Rowe Lane has been assessed a roadway impact fee offset.

Traffic Impact Analysis Mitigation Fees

Mitigation fees are generally eligible to count toward rough proportionality, assuming that these fees are being paid toward system improvements. However, within the Opinion of Probable Cost of Improvements section of the August 20th, 2024, version of the TIA associated with this development the following conclusion is proposed regarding pro-rata cost share:

“As shown in Table 16, the developer owes a Pro-Rata of \$17,425.00 in Phase 1 and \$711,375.00 in Phase 2. The Pro-Rata for the Extended Build Condition is \$0.00. Therefore, the overall Pro-Rata fee owed to the City of Pflugerville is \$728,800.00. However, the identified total roadway improvement cost is \$8,325,188.45 for construction of Bark Way extension, Peach Vista, and Rowe Lane and should be credited toward the Pro-Rata cost. Therefore, the developer should not be required to pay toward Pro-Rata as their contribution to the roadway network exceeds the Pro-Rata amount. However, for the proposed improvements on IH 45 at N Heatherwilde Boulevard interchange that are feasible under the conditions of widening the bridge or relocating the retaining wall, the developer is responsible for paying their pro-rata to TxDOT which was estimated to be \$205,125.00.”

No documentation showing a pro-rata cost contribution to the City of Pflugerville or TxDOT is proposed by the developer. However, it should be noted that TIA mitigation fees would count toward rough proportionality and thus would not be charged in excess of rough proportionality. The amount combined to TxDOT and the City of Pflugerville claimed by the developer is \$933,925.

Conclusion

A comparison of projected demand of the site relative to the roadway supply being provided reveals that the projected demand exceeds the capacity supplied, making the request for contributions to the transportation system improvements by the City of Pflugerville reasonable and roughly proportionate.

\$13,691,656 of demand > \$10,164,131 of supply

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It should be noted that this calculation assumes a roadway impact fee of \$2,820,479 to be paid to the City of Pflugerville after offsets for Rowe Lane have been considered.

Appendix A: Rough Proportionality Determination Cost Estimates

Construction Cost Estimates	
Roadway	Construction Cost
Rowe Lane	\$2,786,397
<i>10% Engineering</i>	\$278,640
<i>15% Contingency</i>	\$417,960
Peach Vista Drive	\$1,431,203
<i>10% Engineering</i>	\$143,120
<i>15% Contingency</i>	\$214,680
Rowe Lane Deceleration Lanes (Peach Vista Drive & Heatherwilde Blvd)	\$628,260
<i>10% Engineering</i>	\$62,826
<i>15% Contingency</i>	\$94,239
Subtotal	\$6,057,325
ROW Dedication	
Location	Cost
Rowe Lane	\$654,053
Peach Vista	\$632,274
Subtotal	\$1,286,327
Roadway Impact Fee	
Phase	Cost
RIF Phase 1	\$2,682,330
RIF Phase 2	\$3,621,145
Rowe Lane Construction Offset	(\$3,482,996)
Subtotal	\$2,820,479
Grand Total	\$10,164,131

Appendix B: Cost Estimates not contributing to Rough Proportionality Determination

Construction Cost Estimates	
Roadway	Construction Cost
Trinity Settlement Lane (Bark Way Ext)	\$2,024,000
<i>10% Engineering</i>	\$202,400
<i>15% Contingency</i>	\$303,600
<i>ROW Dedication</i>	\$654,053
Trinity Acres Lane	\$1,431,203
<i>10% Engineering</i>	\$143,120
<i>15% Contingency</i>	\$214,680
<i>ROW Dedication</i>	\$320,384
Trinity Acres Deceleration Lane	\$340,000
<i>10% Engineering</i>	\$34,000
<i>15% Contingency</i>	\$51,000
<i>ROW Dedication</i>	\$0
15' Pass-through Easement	\$0
<i>ROW</i>	\$302,089
Total	\$6,020,530