

City Council  
Agenda Memo



City Council  
Meeting Date: 11/06/2014

**TO: David A. Vela, Interim City Manager**  
**FROM: Jon James, AICP**  
**Director of Planning and Development Services**  
**SUBJECT: Final reading and public hearing on an ordinance for Case No. Z-2014-41, a request from Timothy Smith, to rezone property from RS-12 (Single-Family Residential) to GR (General Retail) zoning, located at 5526 Buffalo Gap Rd.**

**GENERAL INFORMATION**

Currently the property is zoned RS-12 and is developed with a home. The surrounding area is developed generally residential uses. A church exists directly to the north. Another church exists close by across Buffalo Gap Rd and to the south. This property has frontage along Buffalo Gap Rd and gains access directly from Buffalo Gap Rd. The applicant is requesting the GR zoning for development of a fitness facility. This would be the 2<sup>nd</sup> fitness facility for the applicant.

The Future Land Use section of the Comprehensive Plan designates the area as low-density residential. The property is not close to a major intersection. The Buffalo Gap Corridor study indicates that retail & commercial zoning is allowable in nodes at intersections of major thoroughfares. The requested zoning would allow for retail & commercial uses, including a fitness facility. The requested zoning would not be compatible with the adjacent uses or the Comprehensive Plan.

When a written protest against the amendment is signed by the owners of twenty percent (20%) or more of either the area of the lots or land covered by the proposed change, or the area of the lots or land immediately adjoining the area covered by the proposed change and extending two hundred feet (200') from that area, a zoning amendment shall not become effective except by the favorable vote of three fourths of all members of the City Council. The opposition from the surrounding property owners equals approximately 26%; therefore, a super-majority vote is required for this item.

**STAFF RECOMMENDATION**

Staff recommends denial.

**BOARD OR COMMISSION RECOMMENDATION**

The Planning and Zoning Commission recommends approval of a PD zoning with restrictions by a vote of 4 in favor (Bixby, Calk, Ellinger, & Famble) and 2 opposed (McClarty & Rosenbaum).

**ATTACHMENTS**

Ordinance  
Staff Report with Maps

Prepared by:

Name: Ben Bryner

Title: Planning Services Manager

October 27, 2014

Item No. \_\_\_\_\_

Disposition by City Council

- Approved Ord/Res# \_\_\_\_\_
- Denied \_\_\_\_\_
- Other \_\_\_\_\_

\_\_\_\_\_  
City Secretary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, CONCERNING PD-147 A PLANNED DEVELOPMENT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 23, part known as the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 23<sup>rd</sup> day of October A.D. 2014.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 19<sup>th</sup> day of September, 2014, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 p.m., on the 6<sup>th</sup> day of November, 2014, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 6<sup>th</sup> day of November, A.D. 2014.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_

EXHIBIT "A"

PAGE 1

ORDINANCE NO. \_\_\_\_\_

Exhibit "A"

PART 1: Land Title. Title to land not dedicated to public use and services or for utility purposes and not otherwise designated for development purposes shall remain in possession of the owner thereof, his heirs, assigns, lessees and successors in interest and shall not be the responsibility of the City of Abilene for any purpose.

PART 2: Development Specifications. All development in the Planned Development shall be in accordance with any maps, topographical and drainage plans, utility plans, architectural drawings, site plan, plat, and any other required plans filed in connection with this requested Planned Development, which are hereby incorporated by reference and included as part of this ordinance. All use and development within the Planned Development must be in compliance with the general Comprehensive Zoning Ordinance of the City of Abilene except as otherwise specifically provided herein.

PART 3: Building Specifications. All structures in the herein said Planned Development shall be constructed in accordance with all pertinent building and construction codes of the City of Abilene.

PART 4: Zoning. That Chapter 23, Abilene Municipal Code, part known as the Land Development Code of the City of Abilene, is hereby further amended by changing the zoning district boundaries, as hereinafter set forth: From RS-12 (Single-Family Residential) to PD (Planned Development) zoning.

That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto.

ORDINANCE NO. \_\_\_\_\_

EXHIBIT "A"

PAGE 2

PART 5: Legal Description. The legal description of this PD is as follows:

HI-VU ACRES, LOT 1



Location:  
5526 Buffalo Gap Rd

ORDINANCE NO. \_\_\_\_\_

EXHIBIT "A"

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PART 6: Purpose. The purpose of the Planned Development (PD) request is to allow for neighborhood retail development and related activities for re-use of a building.

PART 7: Specific Modifications. This Planned Development shall be subject to the requirements of the NR (Neighborhood Retail) zoning district, except as modified below:

- 1) **ADDITIONAL PERMITTED USE:** A physical fitness facility shall be permitted.
- 2) **SITE DEVELOPMENT:** The development shall comply with the requirements of the Land Development Code with the following exceptions and additions:
  - a) The 'hours of operation' restriction in the NR district shall not apply when used as a physical fitness gym.
  - b) No ingress/egress access shall be allowed to the alley.

-END-

CASE #: 2-2014-41

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also fax or email your position to the fax number or email address also listed below. All correspondence must include your name and address.

Name: CARTER WILMA N  
Address: 3700 HI-VU DR

Mailing To: Planning and Development Services  
P.O. Box 60, Abilene TX 79604

Fax #: (325) 676-6242  
email: [planning@abilenetx.com](mailto:planning@abilenetx.com)

I am in favor

I am opposed

Additional Comments:

We have too much traffic here now. The previous tenants of the property went up and down our alley at all hours of the day & night. Loud traffic and music disrupted the neighborhood constantly. Trash was constantly blowing into our yard from excess use by the tenants of the property. We sometimes had 7 to 8 minute wait time to enter Buffalo Gap Rd. from Hi-Vu. This new retail business wants to use the alley as a main entrance to the property. we oppose this.

## Bryner, Ben

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**From:** James, Jon  
**Sent:** Monday, October 27, 2014 8:41 AM  
**To:** Bryner, Ben  
**Subject:** FW: Abilene City Council-- rezoning request for property at 5526 buffalo gap rd, abilene,tx.

Ben,  
FYI. I met with Mr. Wicker last week and he is withdrawing his support for this case and wants to be reflected on the notification map as OPPOSED. Please update the map and PowerPoint to reflect this change and make sure this email gets into the Council packet.

Thank you,  
Jon

-----Original Message-----

From: hdw@suddenlink.net [mailto:hdw@suddenlink.net]  
Sent: Sunday, October 26, 2014 10:31 PM  
To: James, Jon  
Subject: Abilene City Council-- rezoning request for property at 5526 buffalo gap rd, abilene,tx.

I hereby request that the change in the zone of this property from residential to business be denied. For the sake of simplicity I will list my reasons for denial. 1)The area in question is and has been a part of the HiVu Acres residential addition for many, many years. 2)This area adjoins my property on the north and will destroy the privacy both in my home and yard. 3)The area behind this house (west) will be a parking lot which will require special lighting which will also interfere with the privacy of my yard and especially my home.4) We, all home owners in this addition, realize that this business will devalue our homes and property. 5) A driving hazard will be created on Buffalo Gap Rd. as the entrance to this property and the entrance to the Silver Oaks residential addition will enter the turning lane at approximately the same place, depending on the direction of travel. 6) Traffic will be increased on a street that is already congested at all hours of the day. THANK YOU FOR YOUR ATTENTION TO THIS SERIOUS MATTER AND I ASK YOU TO VOTE ' NO' REGARDING THIS CHANGE. Harold Wicker, 3602 Hi Vu, Abilene, Texas ph. 692-9757

## Bryner, Ben

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**From:** James, Jon  
**Sent:** Monday, October 27, 2014 8:42 AM  
**To:** Bryner, Ben  
**Subject:** FW: rezoning of 5526 Buffalo Gap Road Property

Mrs. Wicker also emailed her reasons for opposition.

-----Original Message-----

**From:** hdw@suddenlink.net [mailto:hdw@suddenlink.net]  
**Sent:** Sunday, October 26, 2014 10:50 PM  
**To:** James, Jon  
**Subject:** rezoning of 5526 Buffalo Gap Road Property

Abilene City Council and whom it my concern:

Cercerning pproperty at 5526 Buffalo Gap Road requesting rezoning for business, we, the Harold Wickers whose backyard joining this property, are highly AGAINST this business. There are many reasons why this request should be denied. Some are:

1. The parking lot that is planned behind the house is next to our backyard.
- 2 Car lights shining in our backyard and house and noise at all hours of day and night with a 24 hour business would be horrible.
3. Decrease the value of our lot and house we have owned for 44 years.
4. Why do we have to constantly have to fight for our property ? Is money more important than feelings and a home?
- 5.Traffic Hazard..The lleft turn lane into the Silver Oaks housing addition is right in front of property being rezoned, therefore the persons turning in and out of said property would definitely become a terrible situation along with the present over crowded corridor.
6. The property is between a church and HiVu Acres {not on an acessible corner} which is unreasonable for a business.
7. All 14 propety owners on HiVu Drive are so AGAINST this rezoning because of devaluiong of their property and additional traffic it will cause.
8. The Wicker Home privacy would be destroyed forever.

Please, you are our councilman also, consider this every seriously and DENY this rezoing change. NO BUSINESS PLEASE! You would not want a business in your backyard either.

Thank you and trust this will be DENIED,



Oct. 17, 2014

Attn.: Brad Stone

OCT 20 PM 2:43

Planning and Zoning Commissioners  
P.O. Box 60  
Abilene, Texas 79604

Dear Sirs:

In regard to rezoning property of 5526 Buffalo Gap Rd. to commercial, to accomodate opening a Firehouse Workout Center, will lower property values, all homes on Hi-Vu Dr. The noise, lights from the parking lot, honking horns, and customers will diminish the tranquility of Hi-Vu residents.

Buffalo Gap Rd. is already overburdened with too much traffic. It is dangerous! Sunday, Oct. 5, at 9:40 p.m. a car "northbound" on Buffalo Gap Rd. was driven left across three lanes of traffic, through my wood fence, my chainlink fence, and into my backyard. It came to rest only feet from where I sat in my den.

pg. 2

Our six zoning commissioners are too wise and too honorable to crowd out a neighborhood of solid citizens. I request you vote "no" on rezoning to commercial and keep it zoned residential. 5526 Buffalo Gap Rd. is an important buffer area for Hi-Vu Dr. residents.

Thank you,  
Virginia S. McDole  
3641 Hi-Vu Dr.  
Abilene, Texas 79606

P.S. I did not receive notice from this office of the first meeting on Oct. 6, at 1:30 p.m. Please keep me advised on all business concerning my property and its value.

## Bryner, Ben

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**From:** James, Jon  
**Sent:** Tuesday, October 28, 2014 4:23 PM  
**To:** Bryner, Ben  
**Subject:** Fwd: 5526 Buffalo Gap Rd

Please add this to the opposition.

----- Forwarded message -----

**From:** doug.may@suddenlink.net  
**Date:** Oct 28, 2014 12:04 PM  
**Subject:** 5526 Buffalo Gap Rd  
**To:** "James, Jon" <Jon.James@abilenetx.com>  
**Cc:**

Dear Mr. James and Abilene City Council, I live and own a property in the HI-VU ACRES subdivision. Please forward my objection and concerns to the city council members in reference to the property in our subdivision at 5526 Buffalo Gap Rd being changed from residential class to planned subdivision or any other class. We value our subdivision as residential class and respectfully ask our council that we have elected to not allow this change. As you know Buffalo Gap Rd is one of the most heavily traveled streets in our city. On a daily basis we attempt to come out of our subdivision onto Buffalo Gap Rd and must wait extreme amounts of time to safely navigate onto this extremely busy thoroughfare. The increased traffic attempting to enter and exit 5526 Buffalo Gap Rd will only add to the safety risks that already exist on this road. 5526 Buffalo Gap Rd exit is too close to HI-Vu exit and we as a neighborhood do not want business travel down our Hi-Vu Drive and alley to access and park in the rear of 5526 Buffalo Gap Rd as this will encroach on our subdivision as it was intended to be. It appears that rear parking for this property is the only option for this property since parking is very limited in front. Per neighbor, The new owner has already tore out walls inside the property and filled in the existing swimming pool prior to even the original hearing to the zoning board as if this is already going to be approved. Please allow in future for sign to be posted more than one week before hearing as this will give residents more than 250 feet ample time to see sign before hearing and this is if the sign stays posted as this sign has been down as it is now more than it has been up. I have never seen the sign down on Joe Lopez property on Buffalo Gap Rd that is posted for rezoning. I would also express that I am 100% for small business, just not in residential subdivision where there is any reasonable objection to by its neighbors. Thank you very much for your consideration in this very important matter. Douglas May and Lisa May

## Bryner, Ben

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**From:** James, Jon  
**Sent:** Tuesday, October 28, 2014 4:23 PM  
**To:** Bryner, Ben  
**Subject:** Fwd: re: case # Z-2014-41

----- Forwarded message -----

From: "Raughton, Sharla W" <sharla.raughton@abileneisd.org>  
Date: Oct 28, 2014 1:15 PM  
Subject: re: case # Z-2014-41  
To: "James, Jon" <Jon.James@abilenetx.com>  
Cc:

In regards to the house at 5526 Buffalo Gap Rd. I oppose the rezoning of the property. There is no parking for a commercial business on Buffalo Gap Road for this house. The only way to access parking would be through the alley that is used for residential use. I do not want more traffic along our cul-de-sac than is necessary.

Thank you for your consideration in our neighborhoods' concerns,

Sharla Raughton  
3734 Hi Vu Drive  
325-665-3207

**From:** [Bryner, Ben](#)  
**To:** [Dunlap, Danette](#); [Hererra, Tiffni](#)  
**Subject:** FW: proposed commercial property  
**Date:** Thursday, October 30, 2014 11:01:31 AM

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Danette & Tiffni,

We received this additional letter for Z-2014-41.

Thanks,

**Ben Bryner, AICP**

Planning Services Manager

City of Abilene

(325) 676-6475

(325) 676-6242 Fax

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**From:** James, Jon  
**Sent:** Thursday, October 30, 2014 10:37 AM  
**To:** Bryner, Ben  
**Subject:** FW: proposed commercial property

Here is another citizen comment.

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**From:** Sam J Corn [mailto:[sam.j.corn.icjc@statefarm.com](mailto:sam.j.corn.icjc@statefarm.com)]  
**Sent:** Wednesday, October 29, 2014 4:01 PM  
**To:** James, Jon  
**Subject:** proposed commercial property

Jon, I am writing about the proposed commercial property on Buffalo Gap, right off of Hi-Vu Dr. which I live on. I believe they want a Firehouse Fitness to open in that residential property. We all do not want that to be made into a commercial property because of the danger of that area for vehicles. People drive down there going way over 45 most of the time and that intersection will be horribly dangerous if that were to go through. There will be many accidents there if this goes through as proposed.

What can I do to help prevent this? Please let me know, thanks.



**Sam J. Corn, ChFC, CASL, Agent**

2302 S. 14 St.

Abilene, Texas 79605

Phone (325) 698-3146

Fax (325) 698-9377

[www.samjcorn.com](http://www.samjcorn.com)



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# ZONING CASE Z-2014-41

## STAFF REPORT



### APPLICANT INFORMATION:

Timothy Smith

### HEARING DATES:

P & Z Commission: October 6, 2014

City Council 1<sup>st</sup> Reading: October 23, 2014

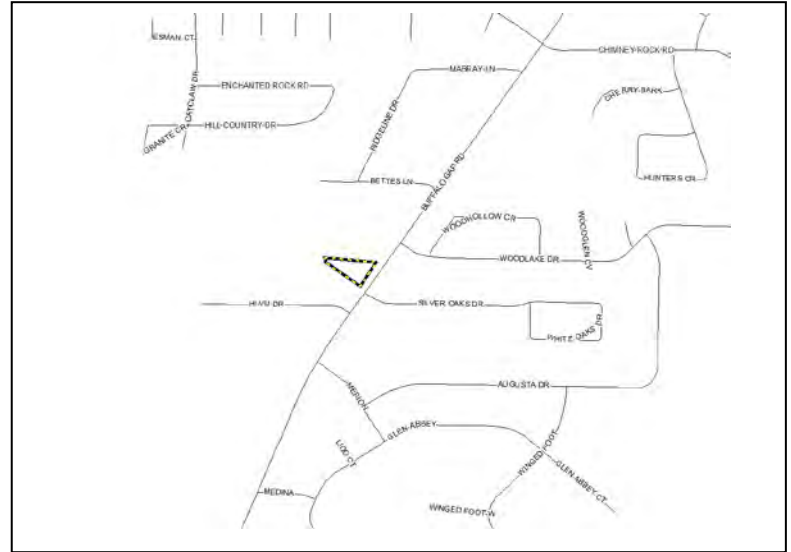
City Council 2<sup>nd</sup> Reading: November 6, 2014

### LOCATION:

5526 Buffalo Gap Rd

### REQUESTED ACTION:

Rezone property from RS-12/COR (Single-Family Residential/Corridor Overlay) to GR/COR (General Retail/Corridor Overlay) zoning



### SITE CHARACTERISTICS:

The subject parcel totals approximately 0.87 acres and is currently zoned RS-12/COR. The adjacent properties are zoned RS-12 to the north, south and west. The properties to the east are zoned RS-8/COR (Single-Family Residential/Corridor Overlay). These properties are all within the Buffalo Gap Corridor Overlay.

### ZONING HISTORY:

The property was annexed in 1963 and was zoned RS-12 sometime after.

### ANALYSIS:

- Current Planning Analysis

Currently the property is zoned RS-12 and is developed with a home. The surrounding area is developed generally residential uses. A church exists directly to the north. Another church exists close by across Buffalo Gap Rd and to the south. This property has frontage along Buffalo Gap Rd and gains access directly from Buffalo Gap Rd. The applicant is requesting the GR zoning for development of a fitness facility. This would be the 2<sup>nd</sup> fitness facility for the applicant.

- Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates the area as low-density residential. The property is not close to a major intersection. The Buffalo Gap Corridor study indicates that retail & commercial zoning is allowable in nodes at intersections of major thoroughfares. The requested zoning would allow for retail & commercial uses, including a fitness facility. The requested zoning would not be compatible with the adjacent uses or the Comprehensive Plan.

**PLANNING STAFF RECOMMENDATION:**

Staff recommends denial.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:**

The Planning and Zoning Commission recommends approval of a PD zoning with restrictions by a vote of 4 in favor (Bixby, Calk, Ellinger, & Famble) and 2 opposed (McClarty & Rosenbaum).

**NOTIFICATION:**

Property owners within a 200-foot radius were notified of the request.

<b>OWNER</b>	<b>ADDRESS</b>	<b>RESPONSE</b>
SMITH TIMOTHY R & PAMELA K	5526 BUFFALO GAP RD	
FIORENZA JOSEPH A REV	5410 BUFFALO GAP RD	
PFEIFER MICHAEL D MOST REV	5458 BUFFALO GAP RD	
5KLM PROPERTIES LP	3297 WOODLAKE DR	
WICKER HAROLD D	3602 HI-VU DR	Opposed
LETH KELLY & MICHELLE MC CARTHY	3542 SILVER OAKS DR	
CARTER WILMA N	3700 HI-VU DR	Opposed
ANTHONY RICHARD S & WANDA J	3642 HI-VU DR	Opposed
FIORENZA JOSEPH A REV	5410 BUFFALO GAP RD	
APOSTOLIC UNITED PENTECOSTAL CHURCH	5535 BUFFALO GAP RD	



0 in Favor- **Y**  
3 Opposed- **N** (+3 outside 200')







