

April 25, 2024
Item No. 9.6.
Impact Fee Appeal - Asher Turkey Creek

Sponsor: Michael Ostrowski, Chief Development Officer

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on an appeal from Caldwell Companies of the Director of Planning and Development Services decision as it relates to impact fees for the Asher Turkey Creek development.

Relationship to Strategic Goals:

Recommendation(s): Staff recommends denial of the appeal.

Summary: This item relates to an appeal by Caldwell Companies of the Director of Planning and Development Services decision as it relates to the impact fees that are to be assessed for the Asher Turkey Creek development. The process for the appeal is set forth in Section 107-94 of the Code of Ordinances for the City of College Station, see attached.

Budget & Financial Summary:

Attachments:

1. Section 107-94 - Administrative Appeals
2. Impact Fee Appeal to City Council - 20240328
3. Impact Fee Appeal Response - 20240301
4. Impact Fee Appeal - 20240129

Sec. 107-94. - Administrative appeals.

- (a) The property owner or applicant for new development may appeal the following decisions to the Director of Planning and Development Services, or his or her designee:
- (1) The applicability of an impact fee to the development;
 - (2) The value of the impact fee due;
 - (3) The availability or the value of an offset or credit;
 - (4) The application of an offset or credit against an impact fee due; and/or
 - (5) The amount of the refund due, if any.
- (b) All appeals shall be taken within 30 days of notice of the action from which the appeal is taken.
- (c) The burden of proof shall be on the appellant to demonstrate that the value of the fee or the value of the offset or credit was not calculated according to the applicable impact fee schedule or the guidelines established for determining offsets and credits.
- (d) The appellant may appeal the decision of the Director of Planning and Development Services to the Council. A notice of appeal to the Council must be filed by the applicant with the City Secretary within 30 days following the Director's decision. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the Director's determination of the impact fee due, the development application, utility application, subdivision plat, building permit or other required City permit or authorization for development may be processed and issued while the appeal is pending.

(Ord. No. 2016-3814, exh. A(15-9), 9-22-2016)

State Law reference— Judicial appeals, Texas Local Government Code § 395.077.



First Class Letter and Email at tdsmith@cstx.gov

March 28, 2024

Tanya D. Smith
City Secretary
City of College Station
P.O. Box 9960,
College Station, TX 77842

Re: Appeal of the Decision of the Director of Planning and Development Services Regarding the Impact Fee Value Determination for the Asher Turkey Creek Multi-Family Development Project to be located at 10001 Turkey Creek, College Station, Texas (the "Project")

Dear Ms. Smith:

Caldwell Companies ("Caldwell") has been working on the Project since 2015, and by the end of 2023, Caldwell was ready to submit its building permits for review and approval. The building permit applications were submitted to the City on December 20, 2023, and Caldwell received a preliminary refusal to accept the permits on December 22nd. After multiple meetings and correspondence, on January 3, 2024, the Director of Planning and Development Services ("Director") issued a final determination of refusal to accept and review the building permits for the Project. The City's refusal to accept the building permit applications has resulted in a material increase (\$256,804.25) in the collection rate for impact fees applicable to Caldwell's Project. If the City had followed its own policies and procedures, the collection rate imposed would have been established on December 20, 2023.

On January 29, 2024, Caldwell submitted to the Director an appeal of the Director's January 3rd decision. A copy of Caldwell's appeal is attached to this letter as **Exhibit A**. The attached appeal contains a detailed description of the background that gives rise to this further appeal. Please refer to Exhibit A for further details.

On March 1, 2024, the Director denied Caldwell's appeal, and a copy of the Director's response letter is attached to this appeal as **Exhibit B**.

Caldwell is hereby submitting its appeal to the City Council of the Director's denial of Caldwell's appeal in accordance with City Ordinance Section 107-94.

This appeal is being pursued because the City departed from its historic practice of permitting concurrent review of a plat and building permits, and in doing so made a decision to add \$256,804.25 to the road and water impact fees that are payable on the Project. Without the additional impact fees, the Project will pay impact fees to the City in the amount of **\$213,655.03**, in which Caldwell reasonably relied on the City's common course of conduct.

In June of 2023 Caldwell had a choice to either construct the public improvements on the Project and then file the plat, or post a bond to allow the plat to be filed and then construct the public improvements.



In the end there is no difference, in both processes the end result is a filed plat and completed infrastructure improvements. Caldwell chose to construct the public improvements on the Project and then file the plat.

The Director admits that Caldwell's choice to construct the infrastructure prior to filing the plat has resulted in the Director's refusal to allow the plat and the building permits to be reviewed concurrently, and the timing of that decision has added \$256,804.25 to the cost of the Project. The Director acknowledges that concurrent reviews are allowed at least on occasion. Caldwell has provided evidence that concurrent review has been routinely provided without an advance request by the developer. Again, Caldwell reasonably relied on the City's previous course of conduct with no reason to believe the City would choose to deviate therefrom.

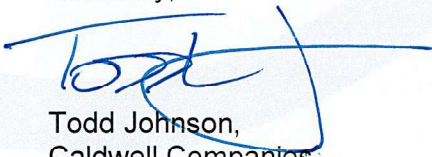
We have attached to this letter as **Exhibit C** a timeline of the development history of the Project. Caldwell has worked closely with the City on every step of this project in an effort to comply with all of the City's development ordinances. Caldwell has acted in good faith and made no effort to "beat the system". To the contrary, Caldwell has worked so closely with the City that we would have expected the City to advise Caldwell of the potential adverse consequences of choosing to construct the infrastructure rather than posting a bond, especially since concurrent review has been available to numerous developers without objection from the city.

Caldwell started this project long before the new impact fee schedule was put in place. Caldwell has relied on the historic practices of the City, and Caldwell's decision to construct the infrastructure prior to filing the plat has neither inconvenienced the City nor caused the City to incur any additional expenses. **This appeal is an isolated situation, based on our inquiries, the City has no other similar situations, and none will arise going forward.**

The pre-development process in the City of College Station is complicated and expensive. Caldwell has complied at every step with the ordinances of the City. The Director's decision is simply not fair, it is punitive to a developer that has tried to add value to the City. We are asking that the City Council grant this appeal, accept the building permit applications as of December 20, 2023, and reduce the impact fees payable on the project by \$256,804.25, with Caldwell still paying impact fees of \$213,655.03 to the City.

Thank you.

Sincerely,



Todd Johnson,
Caldwell Companies

Exhibit A: January 29, 2024, from Caldwell to the Director
Exhibit B: March 1, 2024, from the Director to Caldwell
Exhibit C: Project Timeline





CALDWELL
COMPANIES

January 29, 2024

Michael Ostrowski, CEcD, AICP
Director of Planning and Development Services
City of College Station
P.O. Box 9960,
College Station, TX 77842

Re: Appeal Regarding the Impact Fee Value Determination for the Asher Turkey Creek Multi-Family Development Project to be located at 10001 Turkey Creek, College Station, Texas (the "Project")

Mr. Ostrowski:

This letter is an appeal of the proposed value of the water and roadway impact fees that are associated with the Project. This appeal is submitted pursuant to *Section 107-94.-Administrative Appeals* of the City of College Station Unified Development Ordinance Item A.2. "The Value of the Impact Fee Due" and is submitted within thirty (30) days of notice of the action from which the appeal is taken, January 3, 2024. On that date your refusal to accept for review the building permits associated with this Project resulted in a significant increase (\$256,804.25) to the water and roadway impact fees associated with the Project.

Project Entitlement Timeline:

Caldwell Companies ("Caldwell") has been working on this Project since 2015. The preliminary plan was approved in March 2022, and the final plat was submitted in April 2022. A pre-application conference regarding the site plan and building plans was conducted on March 8, 2023. The civil/site plan package was submitted in September 2023, and it is currently under review, and that review has been undertaken prior to the recording of a final plat.

Building permit applications were submitted to the City on December 20, 2023, and we received a preliminary refusal to accept the permits on the 22nd. On January 3, 2024, your office issued the final determination of refusal to accept and review the building permits for the Project.

Background to this Appeal Request:

Following the initial submission of the building permits on December 20th, the Project architect received a call from a Building Department representative requesting that the architect stop submitting the applications. The Building Department representative explained that he was directed to not accept these applications because the Project did not have a plat approved by the Planning & Zoning Commission and/or filed of record. The refusal to accept these building permit applications was relayed to our civil engineer, Veronica Morgan, PE, CFM with Mitchell & Morgan, LLP, who in turn started conversing with staff and yourself regarding this refusal and its direct impact related to the value of impact fees that will be collected from this Project. After several discussions with staff, it was determined that the refusal to accept the building permits was based on the premise that the application was an incomplete submittal.





Previous Policy:

Based on the experience of both engineering firms that we use in College Station (Mitchell & Morgan and Schultz Engineering), for at least 6 years the City's procedural policies have allowed concurrent review of development applications. Based on those policies, building permit applications have been accepted and reviewed concurrently with other entitlement processes. In fact, in this Project the site plan has been reviewed concurrently with the final plat. Caldwell's submission of the building permit applications concurrent with the final plat was in good faith and consistent with the City's policies and procedures. Because of this, and the concurrent review of our site plan with the final plat, we were acting in good faith that this policy would still be in place in December 2023 when we submitted our building permit applications.

Our research has identified more than 20 examples of the City's review of building permits prior to the recording of a final plat. We have attached examples as an exhibit to this letter.

Impact of Policy Change:

In your email dated January 3, 2024, you mention that the City allows financial surety to be provided for plat infrastructure so that a plat can be filed prior to construction. A Pre-Construction meeting regarding the construction of the plat infrastructure was held with City Staff on Friday, October 13, 2023. Caldwell elected to construct the infrastructure in lieu of posting financial surety, and that decision was made, in part, in reliance of the long-standing City policy that the building permits would be accepted for review concurrent with the final plat review. At no point did the City staff inform Caldwell that the policies and procedures would change.

At this point, not only is Caldwell appealing the value of the impact fees, but we are also making the City aware of the fact that the change in policy has prevented the review of building permits, which in turn is causing material delays in the construction schedule at significant cost to Caldwell.

Based on your comments in a December 21st meeting with Caldwell's employee, Laurin Randall, we are concerned that the change in policy was implemented to prevent applicants from filing building permits prior to the impact fee increase scheduled to go into effect on 12-31-23. At Caldwell we believe that we have followed and complied with all of the City's policies and procedures, and that we were right in our expectation that the building permits would be accepted in 2023 and the impact fees established in accordance with the 2023 values.

Collection Rate:

UDO Sections 107.71 and 107.73 include tables that establish the collection rate imposed per service unit for water and roadway impact fees. *The tables indicate that the collection rates are established on the building permit application date.* The City's refusal to accept the building permit applications was contrary to the City's historical policies and procedures and has resulted in a material increase (\$256,804.25) in the collection rate for impact fees applicable to Caldwell's Project. If the City had followed its own policies and procedures, the collection rate imposed would have been established on December 20, 2023.



Conclusion:

Caldwell has been working on the Project for over seven (7) years. Our final plat was submitted in April 2022, was reviewed by staff and is waiting for infrastructure completion. The site plan was submitted in September 2023; it was accepted as complete prior to the increase in parkland dedication fees and is currently under review. At no time did we anticipate that the building permit applications would not be accepted based upon the natural progression of this Project, and the historical policies and procedures of the Planning & Development Services Department.

The City of College Station Planning and Development Services Department has historically accepted concurrent review of building permits and plats. Section 3.2.H. of the UDO 'Simultaneous Processing of Applications' states: "At the discretion of the Administrator, plat and other applications for development approvals may be processed simultaneously, so long as the approval procedures for each individual application can be completed pursuant to the requirements of this UDO."

For at least 6 years, the Administrator has allowed concurrent review of building permits and plats. The decision to refuse the building permits on this Project was contrary to the historical policies and procedures of the City and appears to be an arbitrary and capricious withholding of the Administrator's discretion to the detriment of this Project.

The acceptance of the building permits on this Project would not have in any manner had a negative impact on the City's regulation of this Project. Had the City informed Caldwell of its intended policy change it would have been a simple process to submit the financial surety so that the building permits could be accepted by the City. The City has had the plat for nearly 2 years, the site plan has been accepted for review, the Project infrastructure is under construction.

Caldwell filed its building permits, in part, to take advantage of the period of time allowed by the City Council for projects and developments to proceed in advance of increasing impact fees. There was no hidden agenda and the City has been reviewing this project for 2 years.

Caldwell requests that the City reverse its position, accept the building permits for review as of December 20, 2023, and establish the collection rate imposed per service unit for water and roadway impact fees as of that date.

Thank you.

Sincerely,



Todd Johnson,
Caldwell Companies



CALDWELL
COMPANIES

Exhibit

Table 1: Concurrent Review Examples

No.	Project Name	P&Z Approval Date	Plat Filing Date	Building Permit Submittal Date
1	IL Texas Aggieland High School	11/2/2023	Not Filed as of 1/9/2024	11/1/2022
2	DR Horton Office	9/15/2022	10/17/2022	8/15/2022
3	Gulf Coast Regional Blood Center	City Planner	2/10/2022	12/30/2021
4	McDonalds at Holleman and Wellborn Road	3/16/2023	3/29/2023	10/14/2021
5	First Financial Bank	City Planner	7/30/2021	7/2/2021
6	New Heights Church Expansion	City Planner	6/10/2021	5/11/2021
7	Ascend at Harvey Apartments	11/4/2021	11/30/2021	3/5/2021
8	Independence Ballpark Concession Stand	Un-Platted	Un-Platted	10/4/2019
9	Broadstone Traditions Phase II	9/5/2019	9/6/2019	7/8/2019
10	Huntington Senior Living Apartments	5/16/2019	6/14/2019	4/15/2019
11	Grace Bible Church Creekside Campus	City Planner	10/15/2018	8/17/2018
12	Chick-Fil-A at Jones Crossing	City Planner	3/20/2019	11/30/2018
13	College Station Police Department	Un-Platted	Un-Platted	11/12/2018
14	Sodalis College Station	3/15/2018	4/16/2018	12/20/2017
15	The Ranch at Arrington	6/21/2018	7/9/2018	11/30/2017
16	IL Texas K-8th Grade School	8/3/2017	8/11/2017	6/13/2017
17	Ariza Multi-Family (Now Oakwood Crossing)	7/20/2017	7/24/2017	5/4/2017
18	River Bend Elementary	City Planner	4/8/2019	2/7/2017
19	Wellborn Middle School	6/21/2018	7/2/2018	9/16/2016
20	Ed Froehling Office	9/20/2018	9/24/2018	5/5/2016
21	Costco		11/3/21	8/17/21
22	The Creek Place Development Building A	11/4/21	12/17/21	11/8/19



Todd Johnson
Caldwell Companies
9955 Barker Cypress Road
Suite 250
Cypress, TX 77433

Re: Response to January 29, 2024 Impact Fee Appeal for Asher Turkey Creek

March 1, 2024

Mr. Johnson:

This letter is in response to your January 29th appeal letter regarding the impact fee determination for the Asher Turkey Creek multi-family development. Your appeal is denied for the reasons stated in this response.

Your letter states it is the City's policy to accept concurrent reviews of building permits before the approval of a final plat. Your letter also states several examples when this has occurred previously. After reviewing your examples there have been times when this has occurred. However, as the Administrator I do not consider this the City's standard practice. Several of your examples are not similar to your project. For example, projects for the school district are not required to plat; several examples were before system-wide impact fees were implemented or collection rates were established; and other examples are for projects that were either not in the City limits, had an economic development agreement, or were partially platted.

You provide examples of projects when a building permit was submitted before the property was platted, however this is not consistent with my interpretation of the adopted City Ordinance. According to the City Ordinance, it is at the discretion of the Administrator to accept the simultaneous processing of applications. Since there are factors, such as code changes, and because of review and discretion, simultaneous review is not automatically granted. Please see the pertinent City Ordinance reference below:

Unified Development Ordinance (UDO) Section 3.2.H. Simultaneous Processing of Applications. *Two (2) or more forms of review and approval are typically required in the development process. Development proposals that require applications for Zoning Map Amendments (Rezoning) are required to be acted upon by the City Council before plat and other development applications will be accepted for review by the City. In addition, Preliminary Plans are to be acted upon by the Planning and Zoning Commission or the*

Administrator before a subsequent Final Plat will be accepted for review by the City. At the discretion of the Administrator, plat and other applications for development approvals may be processed simultaneously, so long as the approval procedures for each individual application can be completed pursuant to the requirements of this UDO. Such processing shall occur at the applicant's own risk.

Regarding your appeal and project, the approval procedures for a building permit application cannot be completed because the subject property is not platted. The assessment of impact fees occurs when the plat is recorded. See the pertinent City Ordinance below on System Wide Impact Fees:

107-71.(h) and 107-72.(h) Assessment and collection. *Assessment and collection of the impact fees established under this section shall be as set forth herein and in accordance with applicable State law, and with assessment to occur at the time the final plat is recorded when platting is required. If platting is not required, assessment shall occur at the earliest time allowed by law or by agreement as allowed by law.*

107-73.(h) Assessment and collection. *Assessment and collection of the impact fees established under this section shall be as set forth herein and in accordance with applicable State law. Assessment shall occur at the time the final plat is recorded when platting is required. If platting is not required, assessment shall occur at the earliest time allowed by law or by agreement as allowed by law.*

Also, you claim City Ordinance Sections 107-71 and 107-73 establish collection rates based on the building permit application. While this is true, your building permit application has not been accepted as you have not met the prerequisite platting requirements. You can only establish the appropriate collection rate once the property is platted and the building permit application has been accepted. Even if the City were to accept the building permit application, the assessment of the impact fees occurs at plat, and it would be the impact fees and collection rates in effect at the time of plat approval that would be charged to the project.

Your letter states you were aware the impact fee collection rates were increasing after December 31, 2023. With the adoption of the new ordinance modifying the collection rates, the City Council provided ample time for developers to take the necessary steps with their projects to preserve the ability to be subject to the previous impact fee collection rates. Your engineering firm notified us in July of 2023 that you were choosing to construct the infrastructure, rather than choosing to post a surety bond, which would have allowed you to move forward with filing your plat, assuming it met all the standards. While you state in your letter you were working under the assumption you could just apply for the building permits before platting, and that would preserve the prior collection rate, however, that is not the case here. Also, you or your engineering firm did not request simultaneous processing of applications before late last year.

Your appeal is denied based on these facts and the City Ordinances in place. If you should decide to appeal my determination, City Ordinance Section 107-94 establishes the appeal process to the City Council.

Sincerely,



Michael Ostrowski
Director of Planning and Development Services
City of College Station

Planning & Development Services

P.O. BOX 9960 • 1101 TEXAS AVENUE • COLLEGE STATION • TEXAS • 77842
TEL. 979.764.3570 • FAX. 979.764.3496

cstx.gov/devservices

Exhibit C: Project Timeline

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March 1, 2024	Caldwell Companies receives rejection from Michael Ostrowski to Impact Fee Appeal letter from CSTAT.
January 29, 2024	Caldwell Companies mails Impact Fee Appeal letter to CSTAT stating specific examples of concurrent reviews.
January 22, 2025	Laurin Randell spoke with CSTAT official, Anthony Armstrong, to discuss CSTAT's ability to review drawings prior to appealing. It was encouraged to bond the remaining cost of the offsite work in order for the building permit to be accepted.
December 22, 2023	Caldwell Companies and M&M met with CSTAT (Michael Ostrowski) to discuss why the increased fees would be charged. CSTAT stated: <ul style="list-style-type: none">• Building Permit would not be complete due to lack of completeness because plat was not recorded• Building Permit plans would not be reviewed until plat is recorded• We should have bonded the offsite work• Impact Fees will be assessed as of the date of final plat recording and a complete application• He would investigate the matter in the Development Code
December 21, 2023	Caldwell Companies was informed by phone call from CSTAT plan review to stop submitting because it would not be accepted (Ben McCarty): <ul style="list-style-type: none">• Building Permit would not be accepted by CSTAT as complete• Caldwell will incur the 1/1/2024 increased Impact Fees due to timing of Building Permit submittal. Increase of ~\$250,000.
December 19, 2023	Caldwell <u>received</u> Notice to Proceed of Alternative Parking Plan
December 5, 2023	CSTAT <u>approved</u> Alternative Parking Plan
November 20, 2023	Caldwell Companies <u>breaks ground</u> on Final Plat, Easements, and Construction Documents
November 9, 2023	Received <u>approved</u> and stamped plans for Final Plat, Easements, and Construction Documents from COB and CSTAT
November 6, 2023	Caldwell <u>submitted</u> to City for Final Plat, Easements, and Construction Documents
November 15, 2023	CSTAT confirms receipt of Alternative Parking Plan
November 3, 2023	Caldwell <u>resubmitted</u> response to Alternative Parking Plan :

Exhibit C: Project Timeline

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- Agrees to build shared use path instead of paying fee in lieu of sidewalk for **Final Plat, Easements, and Construction Documents**
 - Agrees to provide additional outdoor bike parking storage at each building
- October 27, 2023 Caldwell and M&M meet with CSTAT Planners to discuss requests made in latest **Alternative Parking Plan** comments
- October 25, 2023 **Alternative Parking Plan** comments provided by CSTAT:
- Requested Caldwell to build shared use path instead of paying fee in lieu of sidewalk for **Final Plat, Easements, and Construction Documents**
 - Requested Caldwell change building design by moving bike storage facilities to CSTAT's desired location
 - Requested additional outdoor bike parking facilities located around buildings
- October 16, 2023 **Civil Site Plan** comments provided by CSTAT
- October 11, 2023 **Alternative Parking Plan** resubmitted
- October 1, 2023 **CSTAT increased Parkland Fees** to 80% of total proposed fee:
- \$1,504.80 per unit on Multifamily (~2.2x increase, \$228,166.20 lump sum increase from June 23, 2022)
 - Caldwell to pay \$419,839.20 to CSTAT
- September 27, 2023 **Civil Site Plan** submitted to CSTAT
- September 19, 2023 **Alternative Parking Plan** comments provided by CSTAT:
- Rejected our submittal stating that parking ordinance changed on 8/10.
 - Required Caldwell to demonstrate the proposed plan results in a better situation for the overall area
 - CSTAT requested bicycle access to site and connections to existing bicycle facilities
 - M&M called CSTAT for clarification the same day
- August 28, 2023 **Alternative Parking Plan** submitted to CSTAT
- August 10, 2023 **Alternative Parking Plan** code language is changed by CSTAT. Caldwell was not made aware of CSTAT's intent to change language in August 7th meeting.
- August 7, 2023 Caldwell meets with CSTAT to discuss plans for **Alternative Parking Plan**

Exhibit C: Project Timeline

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May 5, 2023	FAA <u>approved</u> building heights claiming a determination of no hazard to air navigation
February 7, 2023	FAA survey <u>submitted</u> by Caldwell Companies
December 5, 2022	Resubmitted application for Final Plat, Easements, and Construction Documents (Sewer lines) to COB
November 29, 2022	COB releases hold on comments and/or approvals. Provides comments.
October 1, 2022	CSTAT increased Parkland Fees to 60% of total <u>proposed</u> fee: <ul style="list-style-type: none">• \$1,128.60 per unit on Multifamily (~1.6x increase, \$123,206.40 lump sum increase from June 23, 2022)• Caldwell missed this deadline
September 7, 2022	Review put on hold by COB due: <ul style="list-style-type: none">• Effects both comments or approval of plans being released by COB• Related to lack of resolution with CSTAT on an issue on the east side for sewer they are supposed to provide but wont
August 30, 2022	Resubmitted application for Final Plat, Easements, and Construction Documents (Water and Sewer lines) to CSTAT and COB
July 18, 2022	Received comments on Application for Final Plat, Easements, and Construction Documents (Water and Sewer lines) from CSTAT and COB
June 29, 2022	Resubmitted application for Final Plat, Easements, and Construction Documents (Water and Sewer liens) to CSTAT and COB
June 23, 2022	CSTAT adopted new Parkland Dedication Fee that will increase over next three years: <u>The current Fees:</u> Single Family - \$1,261 per platted lot (assessed during platting) Multi-Family - \$687 per bedroom (assessed with the building permit) <u>The proposed fees were adopted:</u> Single Family - \$5,256 per platted lot (assessed during platting) Multi-Family - \$1,881 per bedroom (assessed with the building permit) <u>Implementation:</u> Between now and October 1, 2022 - the <u>current</u> fees apply October 1, 2022 - 60% of the total <u>proposed</u> fee will be applied

Exhibit C: Project Timeline

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October 1, 2023 - 80% of the total proposed fee will be applied
October 1, 2024 - 100% of the total proposed fee will be applied

May 16, 2022	Received comments on Application for Final Plat, Easements and Construction Documents (Water and Sewer lines) from CSTAT and COB
April 11, 2022	<u>Submitted</u> application for Final Plat, Easements, and Construction Documents (Water and Sewer lines) to CSTAT and COB
March 28, 2022	CSTAT Preliminary Plan Application is <u>approved</u>
March 8, 2022	M&M responds to CSTAT Preliminary Plan comments on behalf of Caldwell Companies
March 1, 2022	Received CSTAT comments after reviewing Preliminary Plan Application
February 11, 2022	Preliminary Plan Application <u>submitted</u> to CSTAT
July 28, 2020	TX Public Utility Commission <u>approved</u> through Interlocal Agreement
April 17, 2020	TX Public Utility Commission petition for approval of service area <u>submitted</u> through Interlocal Agreement
February 20, 2020	Global economic market crash due to Covid-19
January 1, 2020	Covid-19 Pandemic begins in U.S.
July 17, 2017	City of College officially <u>issues</u> updated Rezoning property
February 18, 2016	Met with Steven Maldonado and David Coleman (CS Wastewater) <ul style="list-style-type: none">• Discussed plan to upgrade lift• Maldonado and Coleman amenable to plan<ul style="list-style-type: none">○ Only unknown is the capacity of the line that runs from the Pornada lift across 2818 (relatively small/manageable unknown)○ Wastewater confirms support for rezoning Planning and Zoning Commission <ul style="list-style-type: none">• 5 voting members present• Unanimous support for comp plan change and rezoning• Concerns:<ul style="list-style-type: none">○ Easterwood height restrictions○ (1) member voiced concern about MF fitting into the bio-corridor theme• Council to review March 10, 2016

Exhibit C: Project Timeline

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- February 17, 2016 Met with David Schmitz (Director of CS Parks and Rec.)
- Make David aware of our intent to run sewer behind the TAMU cemetery
 - David was amenable to our plan but warned there was a gas line that ran through the cemetery that we would need to avoid.
- February 15, 2016 Engineering meeting with Mitchell and Morgan to review remaining action items to prepare for P&Z
- \$100K to improve Pornada lift to support TC sewer
 - Does not include line to lift
 - Only need to upgrade pump (not wet well)
- February 12, 2016 City staff reports confirm staff support of proposed rezoning and comp plan amendment
- January 28, 2016 Made contact with the city regarding 2nd round of comments via Mitchell and Morgan. City officials did not review last submittal until the 20th and consequently did not start advertising for the 2/4 P&Z date in time. We are confirmed to be on the agenda for the 2/18 P&Z meeting.
- January 12, 2016 Responded to city comments and requested advertisement for 2/4 P&Z meeting.
- January 7, 2016 Received lift station CDs from Maldonado.
- November 19, 2015 Met with College Station Utilities (Steven Maldonado and David Coleman)
- Current lift does not have extra capacity to take TC sewer
 - All remaining capacity reserved for ultimate build out of Pornada tract (adjacent to TC)
 - Options
 - Tie into Bryan utilities
 - Execute agreement with Pornada tract to grant remaining capacity to TC
 - Increase lift capacity
 - Two parts: (1) wet well capacity, (2) pump rate
 - Sewer from this lift will go through COCS and A&M lines to TAMU
- November 13, 2015 Engineering meeting to discuss city comments:
- ILA guarantees capacity of TAMU treatment plant (not lift or lines to treatment plant)
 - Nearest lift may not support added load from TC
 - Need:
 - Current lift design
 - New development agreement that reserves line and lift capacity for Caldwell development
 - Veronica to use TxDOT correspondence to address city comments on drives

Exhibit C: Project Timeline

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October 15, 2015	City comments: <ul style="list-style-type: none">• planning comments: none• engineering comments:<ul style="list-style-type: none">○ prelim sanitary sewer layout requested (offsite easement required?)○ water service layout requested○ white creek drainage easement required (address during plat phase)• traffic comments:<ul style="list-style-type: none">○ move drive 4 out of FM 60 exit ramp area○ drive 5 needs to be centrally located on exit ramps
September 18, 2015	Submit comp plan designation amendment and rezoning requests to city.
September 11, 2015	Call with Mitchell and Morgan: <ul style="list-style-type: none">• Staff and key council members understand our intent with the TC parcel• Confirmation that we are comfortable moving forward with the comp plan and zoning change requests• Anticipate P&Z before November• Anticipate Council before December Engaged Veronica (Mitchell and Morgan) to pursue entitlements with city.
June 30, 2015	Met with Lance Simms and Molly Hitchcock (Assistant Planning Director). Discussion outcomes: <ul style="list-style-type: none">• Lance reinforced Molly's and Natalie's initial assertion that a MF use on the TC tract would not be supported by staff• A land use plan amendment is needed to pursue MF use on the tract.<ul style="list-style-type: none">○ The zoning and land use change request can be processed concurrently• The best approach to pursue MR use is to split the parcels.<ul style="list-style-type: none">○ Southern parcel:<ul style="list-style-type: none">▪ Comp plan designation: General Commercial▪ Zoning: General Commercial○ Northern parcel:<ul style="list-style-type: none">▪ Comp plan designation: Urban▪ Zoning: MF
June 1, 2015	Met with Natalie Ruiz (Economic Development Director). Discussion outcomes: <ul style="list-style-type: none">• Natalie reinforced Molly's initial assertion that MF use on the TC tract will not be supported by staff• Natalie warned that an urban land use designation may not be correct. She encouraged us to speak with Lance Sims (Planning Director) before pursuing either a zoning or comp plan change.

Exhibit C: Project Timeline

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May 27, 2015	Received comment from TxDOT requiring the right-out only lane on FM 60 to be eliminated. This contradicts previous verbal and written approval of that lane.
May 14, 2015	Received a memo from city stating the rezoning request was not in compliance with the current land use plan. A comp plan amendment request must be submitted to continue review of the rezoning request.
May 13, 2015	On Caldwell's behalf, Kimley Horn sends a draft of the requested TIA to city for review.
May 4, 2015	McClure Browne submits rezoning request on Caldwell's behalf that splits the TC parcel into two components (MF and commercial).
March 11, 2015	Attended Pre-application conference with various planning officials in attendance to discuss development plan for the Turkey Creek parcel. <ul style="list-style-type: none">• Land Use Plan:<ul style="list-style-type: none">○ Hotel, office, and retail uses are acceptable○ MF would not be supported by staff• PDD of P-MUD would be the preferred zoning vehicle for any mixed uses on this parcel
February 25, 2015	Received direction from Danielle Singh (Transportation Planning Coordinator) stating any rezoning application will require a Traffic Impact Analysis including two intersections near the Turkey Creek parcel.
March 25, 2014	Received approval from Doug Marino (TxDOT Bryan District Planning Engineer) via email for two access points along FM 60
September 27, 2013	Caldwell purchases Gilmore tract (TC).
August 8, 2013	ILA revision between City of College Station and TAMU – allows City to direct sanitary sewer from Gilmore tract (TC) to TAMU sanitation facility. <ul style="list-style-type: none">• Average wastewater flow – 90,000 gallons• Daily peak wastewater flow – 360,000 gallons



Todd Johnson
Caldwell Companies
9955 Barker Cypress Road
Suite 250
Cypress, TX 77433

Re: Response to January 29, 2024 Impact Fee Appeal for Asher Turkey Creek

March 1, 2024

Mr. Johnson:

This letter is in response to your January 29th appeal letter regarding the impact fee determination for the Asher Turkey Creek multi-family development. Your appeal is denied for the reasons stated in this response.

Your letter states it is the City's policy to accept concurrent reviews of building permits before the approval of a final plat. Your letter also states several examples when this has occurred previously. After reviewing your examples there have been times when this has occurred. However, as the Administrator I do not consider this the City's standard practice. Several of your examples are not similar to your project. For example, projects for the school district are not required to plat; several examples were before system-wide impact fees were implemented or collection rates were established; and other examples are for projects that were either not in the City limits, had an economic development agreement, or were partially platted.

You provide examples of projects when a building permit was submitted before the property was platted, however this is not consistent with my interpretation of the adopted City Ordinance. According to the City Ordinance, it is at the discretion of the Administrator to accept the simultaneous processing of applications. Since there are factors, such as code changes, and because of review and discretion, simultaneous review is not automatically granted. Please see the pertinent City Ordinance reference below:

Unified Development Ordinance (UDO) Section 3.2.H. *Simultaneous Processing of Applications.* *Two (2) or more forms of review and approval are typically required in the development process. Development proposals that require applications for Zoning Map Amendments (Rezoning) are required to be acted upon by the City Council before plat and other development applications will be accepted for review by the City. In addition, Preliminary Plans are to be acted upon by the Planning and Zoning Commission or the*

Administrator before a subsequent Final Plat will be accepted for review by the City. At the discretion of the Administrator, plat and other applications for development approvals may be processed simultaneously, so long as the approval procedures for each individual application can be completed pursuant to the requirements of this UDO. Such processing shall occur at the applicant's own risk.

Regarding your appeal and project, the approval procedures for a building permit application cannot be completed because the subject property is not platted. The assessment of impact fees occurs when the plat is recorded. See the pertinent City Ordinance below on System Wide Impact Fees:

107-71.(h) and 107-72.(h) Assessment and collection. *Assessment and collection of the impact fees established under this section shall be as set forth herein and in accordance with applicable State law, and with assessment to occur at the time the final plat is recorded when platting is required. If platting is not required, assessment shall occur at the earliest time allowed by law or by agreement as allowed by law.*

107-73.(h) Assessment and collection. *Assessment and collection of the impact fees established under this section shall be as set forth herein and in accordance with applicable State law. Assessment shall occur at the time the final plat is recorded when platting is required. If platting is not required, assessment shall occur at the earliest time allowed by law or by agreement as allowed by law.*

Also, you claim City Ordinance Sections 107-71 and 107-73 establish collection rates based on the building permit application. While this is true, your building permit application has not been accepted as you have not met the prerequisite platting requirements. You can only establish the appropriate collection rate once the property is platted and the building permit application has been accepted. Even if the City were to accept the building permit application, the assessment of the impact fees occurs at plat, and it would be the impact fees and collection rates in effect at the time of plat approval that would be charged to the project.

Your letter states you were aware the impact fee collection rates were increasing after December 31, 2023. With the adoption of the new ordinance modifying the collection rates, the City Council provided ample time for developers to take the necessary steps with their projects to preserve the ability to be subject to the previous impact fee collection rates. Your engineering firm notified us in July of 2023 that you were choosing to construct the infrastructure, rather than choosing to post a surety bond, which would have allowed you to move forward with filing your plat, assuming it met all the standards. While you state in your letter you were working under the assumption you could just apply for the building permits before platting, and that would preserve the prior collection rate, however, that is not the case here. Also, you or your engineering firm did not request simultaneous processing of applications before late last year.

Your appeal is denied based on these facts and the City Ordinances in place. If you should decide to appeal my determination, City Ordinance Section 107-94 establishes the appeal process to the City Council.

Sincerely,



Michael Ostrowski
Director of Planning and Development Services
City of College Station

January 29, 2024

Michael Ostrowski, CEcD, AICP
Director of Planning and Development Services
City of College Station
P.O. Box 9960,
College Station, TX 77842

Re: *Appeal Regarding the Impact Fee Value Determination for the Asher Turkey Creek Multi-Family Development Project to be located at 10001 Turkey Creek, College Station, Texas (the "Project")*

Mr. Ostrowski:

This letter is an appeal of the proposed value of the water and roadway impact fees that are associated with the Project. This appeal is submitted pursuant to *Section 107-94.-Administrative Appeals* of the City of College Station Unified Development Ordinance Item A.2. "The Value of the Impact Fee Due" and is submitted within thirty (30) days of notice of the action from which the appeal is taken, January 3, 2024. On that date your refusal to accept for review the building permits associated with this Project resulted in a significant increase (\$256,804.25) to the water and roadway impact fees associated with the Project.

Project Entitlement Timeline:

Caldwell Companies ("Caldwell") has been working on this Project since 2015. The preliminary plan was approved in March 2022, and the final plat was submitted in April 2022. A pre-application conference regarding the site plan and building plans was conducted on March 8, 2023. The civil/site plan package was submitted in September 2023, and it is currently under review, and that review has been undertaken prior to the recording of a final plat.

Building permit applications were submitted to the City on December 20, 2023, and we received a preliminary refusal to accept the permits on the 22nd. On January 3, 2024, your office issued the final determination of refusal to accept and review the building permits for the Project.

Background to this Appeal Request:

Following the initial submission of the building permits on December 20th, the Project architect received a call from a Building Department representative requesting that the architect stop submitting the applications. The Building Department representative explained that he was directed to not accept these applications because the Project did not have a plat approved by the Planning & Zoning Commission and/or filed of record. The refusal to accept these building permit applications was relayed to our civil engineer, Veronica Morgan, PE, CFM with Mitchell & Morgan, LLP, who in turn started conversing with staff and yourself regarding this refusal and its direct impact related to the value of impact fees that will be collected from this Project. After several discussions with staff, it was determined that the refusal to accept the building permits was based on the premise that the application was an incomplete submittal.



Previous Policy:

Based on the experience of both engineering firms that we use in College Station (Mitchell & Morgan and Schultz Engineering), for at least 6 years the City's procedural policies have allowed concurrent review of development applications. Based on those policies, building permit applications have been accepted and reviewed concurrently with other entitlement processes. In fact, in this Project the site plan has been reviewed concurrently with the final plat. Caldwell's submission of the building permit applications concurrent with the final plat was in good faith and consistent with the City's policies and procedures. Because of this, and the concurrent review of our site plan with the final plat, we were acting in good faith that this policy would still be in place in December 2023 when we submitted our building permit applications.

Our research has identified more than 20 examples of the City's review of building permits prior to the recording of a final plat. We have attached examples as an exhibit to this letter.

Impact of Policy Change:

In your email dated January 3, 2024, you mention that the City allows financial surety to be provided for plat infrastructure so that a plat can be filed prior to construction. A Pre-Construction meeting regarding the construction of the plat infrastructure was held with City Staff on Friday, October 13, 2023. Caldwell elected to construct the infrastructure in lieu of posting financial surety, and that decision was made, in part, in reliance of the long-standing City policy that the building permits would be accepted for review concurrent with the final plat review. At no point did the City staff inform Caldwell that the policies and procedures would change.

At this point, not only is Caldwell appealing the value of the impact fees, but we are also making the City aware of the fact that the change in policy has prevented the review of building permits, which in turn is causing material delays in the construction schedule at significant cost to Caldwell.

Based on your comments in a December 21st meeting with Caldwell's employee, Larn Randall, we are concerned that the change in policy was implemented to prevent applicants from filing building permits prior to the impact fee increase scheduled to go into effect on 12-31-23. At Caldwell we believe that we have followed and complied with all of the City's policies and procedures, and that we were right in our expectation that the building permits would be accepted in 2023 and the impact fees established in accordance with the 2023 values.

Collection Rate:

UDO Sections 107.71 and 107.73 include tables that establish the collection rate imposed per service unit for water and roadway impact fees. *The tables indicate that the collection rates are established on the building permit application date.* The City's refusal to accept the building permit applications was contrary to the City's historical policies and procedures and has resulted in a material increase (\$256,804.25) in the collection rate for impact fees applicable to Caldwell's Project. If the City had followed its own policies and procedures, the collection rate imposed would have been established on December 20, 2023.





Conclusion:

Caldwell has been working on the Project for over seven (7) years. Our final plat was submitted in April 2022, was reviewed by staff and is waiting for infrastructure completion. The site plan was submitted in September 2023; it was accepted as complete prior to the increase in parkland dedication fees and is currently under review. At no time did we anticipate that the building permit applications would not be accepted based upon the natural progression of this Project, and the historical policies and procedures of the Planning & Development Services Department.

The City of College Station Planning and Development Services Department has historically accepted concurrent review of building permits and plats. Section 3.2.H. of the UDO 'Simultaneous Processing of Applications' states: "At the discretion of the Administrator, plat and other applications for development approvals may be processed simultaneously, so long as the approval procedures for each individual application can be completed pursuant to the requirements of this UDO."

For at least 6 years, the Administrator has allowed concurrent review of building permits and plats. The decision to refuse the building permits on this Project was contrary to the historical policies and procedures of the City and appears to be an arbitrary and capricious withholding of the Administrator's discretion to the detriment of this Project.

The acceptance of the building permits on this Project would not have in any manner had a negative impact on the City's regulation of this Project. Had the City informed Caldwell of its intended policy change it would have been a simple process to submit the financial surety so that the building permits could be accepted by the City. The City has had the plat for nearly 2 years, the site plan has been accepted for review, the Project infrastructure is under construction.

Caldwell filed its building permits, in part, to take advantage of the period of time allowed by the City Council for projects and developments to proceed in advance of increasing impact fees. There was no hidden agenda and the City has been reviewing this project for 2 years.

Caldwell requests that the City reverse its position, accept the building permits for review as of December 20, 2023, and establish the collection rate imposed per service unit for water and roadway impact fees as of that date.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Todd Johnson', is written over a blue circular stamp or seal.

Todd Johnson,
Caldwell Companies



Exhibit

Table 1: Concurrent Review Examples

No.	Project Name	P&Z Approval Date	Plat Filing Date	Building Permit Submittal Date
1	IL Texas Aggieland High School	11/2/2023	Not Filed as of 1/9/2024	11/1/2022
2	DR Horton Office	9/15/2022	10/17/2022	8/15/2022
3	Gulf Coast Regional Blood Center	City Planner	2/10/2022	12/30/2021
4	McDonalds at Holleman and Wellborn Road	3/16/2023	3/29/2023	10/14/2021
5	First Financial Bank	City Planner	7/30/2021	7/2/2021
6	New Heights Church Expansion	City Planner	6/10/2021	5/11/2021
7	Ascend at Harvey Apartments	11/4/2021	11/30/2021	3/5/2021
8	Independence Ballpark Concession Stand	Un-Platted	Un-Platted	10/4/2019
9	Broadstone Traditions Phase II	9/5/2019	9/6/2019	7/8/2019
10	Huntington Senior Living Apartments	5/16/2019	6/14/2019	4/15/2019
11	Grace Bible Church Creekside Campus	City Planner	10/15/2018	8/17/2018
12	Chick-Fil-A at Jones Crossing	City Planner	3/20/2019	11/30/2018
13	College Station Police Department	Un-Platted	Un-Platted	11/12/2018
14	Sodalis College Station	3/15/2018	4/16/2018	12/20/2017
15	The Ranch at Arrington	6/21/2018	7/9/2018	11/30/2017
16	IL Texas K-8th Grade School	8/3/2017	8/11/2017	6/13/2017
17	Ariza Multi-Family (Now Oakwood Crossing)	7/20/2017	7/24/2017	5/4/2017
18	River Bend Elementary	City Planner	4/8/2019	2/7/2017
19	Wellborn Middle School	6/21/2018	7/2/2018	9/16/2016
20	Ed Froehling Office	9/20/2018	9/24/2018	5/5/2016
21	Costco		11/3/21	8/17/21
22	The Creek Place Development Building A	11/4/21	12/17/21	11/8/19