

ORDINANCE NO. 2007-06-063

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 2006-09-104 OF THE CITY OF MCKINNEY, TEXAS; FOR APPROVAL OF A SPECIFIC USE PERMIT TO ALLOW A BOAT IN THE HARBOR AT ADRIATICA (GALLEON DUBROVNIK), APPROXIMATELY 4.32 ACRES, LOCATED AT THE SOUTHEAST CORNER OF MEDITERRANEAN DRIVE AND ADRIATICA PARKWAY; PROVIDING REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INJUNCTIVE RELIEF, PROVIDING FOR NO VESTED INTEREST; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

WHEREAS, the City of McKinney has considered the specific use permit to allow a boat in the harbor at Adriatica (Galleon Dubrovnik), approximately 4.32 acres located at the southeast corner of Mediterranean Drive and Adriatica Parkway, and,

WHEREAS, after due notice of the requested rezoning as required by law, and the required public hearings held before the Planning and Zoning Commission and the City Council of the City of McKinney, Texas, the City Council is of the opinion that the change in zoning district should be made.

NOW THEREFORE BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS:

Section 1. Ordinance No. 2006-09-104 is hereby amended for a specific use permit to allow a boat in the harbor at Adriatica (Galleon Dubrovnik), approximately 4.32 acres located at the southeast corner of Mediterranean Drive and Adriatica Parkway, which is more fully depicted on Exhibit "A" attached hereto.

Section 2. Use and development of the subject property shall conform to the following regulations:

1. The subject property shall develop in accordance with "PD" – Planned Development District Ordinance No. 2006-09-104, with the following exceptions:
 - (a) Allow the use of a boat within the harbor at Adriatica.
 - (b) The use of the boat shall be maintained in accordance with the attached maintenance agreement (Exhibit "B").
 - (c) The subject property generally develop in accordance with the attached site plan (Exhibit "C").

Section 3. If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared to be severable.


Section 5. It shall be unlawful for any person, firm or corporation to develop this property, or any portion thereof, in any manner other than is authorized by this Ordinance, and upon conviction therefore, shall be fined any sum not exceeding \$2,000.00, and each day that such

violation shall continue shall be considered a separate offense. These penal provisions shall not prevent an action on behalf of the City of McKinney to enjoin any violation or threatened violation of the terms of this Ordinance, or an action for mandatory injunction to remove any previous violation hereof.

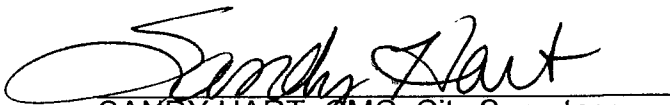
Section 6. That no developer or property owner shall acquire any vested interest in this Ordinance or specific regulations contained herein. The ordinance, and the subsequent site plans (if any) and regulations may be amended or repealed by the City Council of the City of McKinney, Texas, in the manner provided by law.

Section 7. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and shall become effective upon such publication.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS 19TH DAY OF JUNE, 2007.


BILL WHITFIELD, Mayor

CORRECTLY ENROLLED:

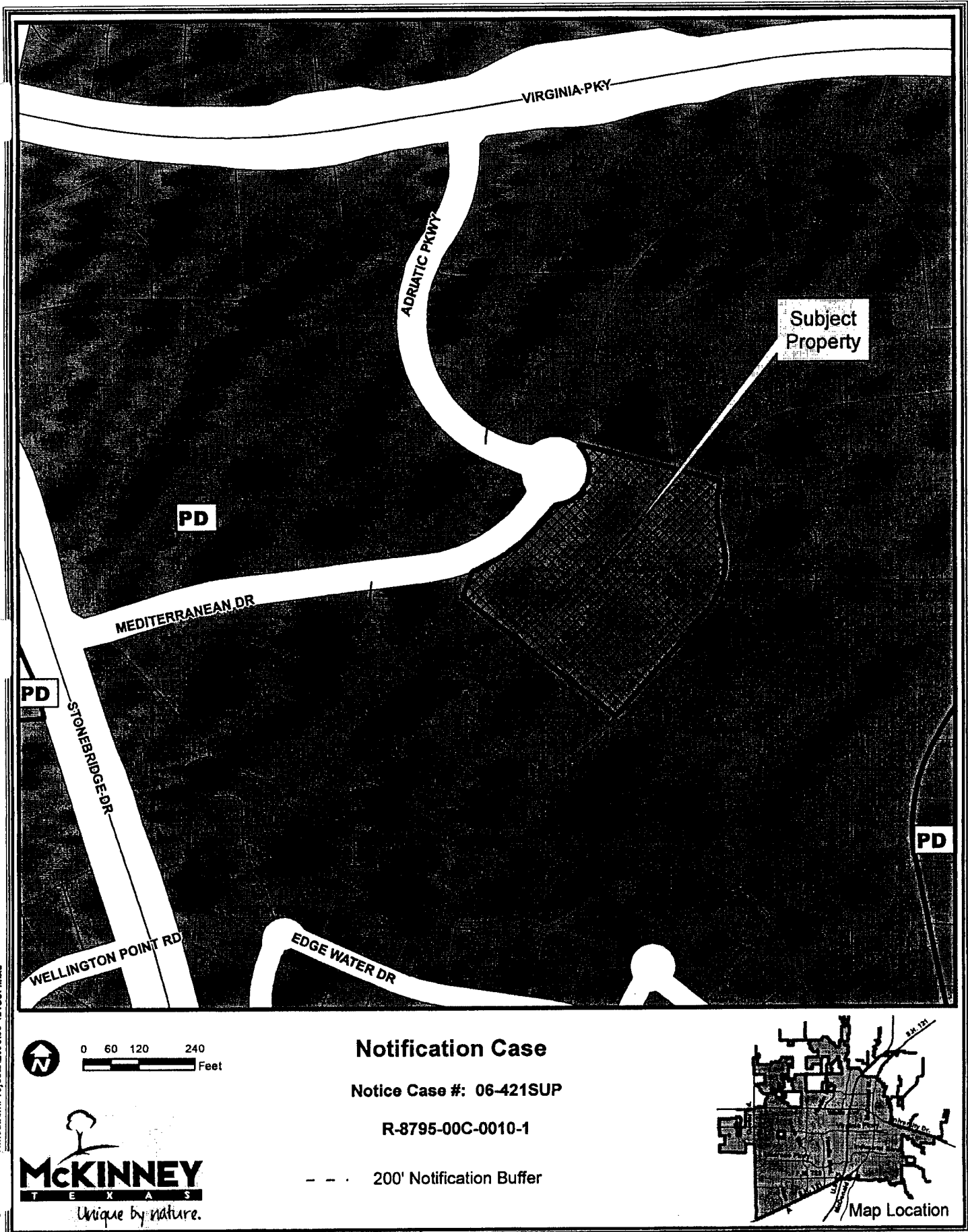

SANDY HART, CMC, City Secretary
BEVERLY COVINGTON, CMC, Deputy City Secretary

DATE:

June 20, 2007

APPROVED AS TO FORM:


MARK S. HOUSER, City Attorney

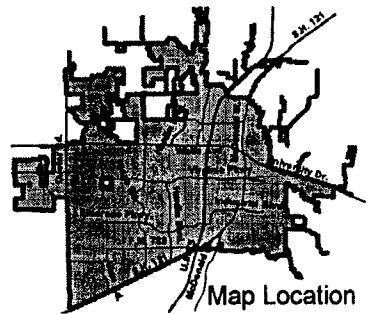


Notification Case

Notice Case #: 06-421SUP

R-8795-00C-0010-1

--- 200' Notification Buffer



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.

EXHIBIT "A"

EXHIBIT B

MAINTENANCE AGREEMENT FOR THE GALLEON SHIP IN THE HARBOR AT ADRIATICA IN STONEBRIDGE RANCH AND THE ADJOINING COMMON LAKE KNOWN AS STONEBRIDGE LAKE

The City of McKinney, Texas, a home-rule municipal corporation ("City") and The Blackard Group, Inc., a Texas Corporation ("Developer") enter into this Maintenance Agreement for the Galleon Ship in the Harbor at Adriatica in Stonebridge Ranch together with all appurtenances thereto together with the adjoining Stonebridge Lake on the terms and conditions set forth herein (the "Agreement").

WHEREAS, Developer owns certain real property situated in the City of McKinney, Collin County, Texas on the southeast corner of Virginia Parkway and Stonebridge Drive containing approximately thirty-five (35) acres of land commonly known as "Adriatica Croatian Village in Stonebridge Ranch" (the "Property"); and

WHEREAS, the common lake known as Stonebridge Lake abuts and adjoins part of the Property; and

WHEREAS, Developer desires to construct a harbor on that portion of the Property that is referred to as Tract F in City of McKinney Ordinance No. 2006-09-104 (the "Harbor") as reflected in the harbor site plan attached hereto as Exhibit A; and

WHEREAS, Developer desires to build and continuously operate a galleon ship (the "Galleon") in the Harbor to increase the aesthetic appeal of the Property; and

WHEREAS, Developer plans to operate an ice cream shop on the Galleon in compliance with all applicable food and beverage codes and regulations; and

WHEREAS, the City can not commit the use of public funds to maintain the Galleon or repair and replace such improvements; and

WHEREAS, the City has determined that the Developer shall be responsible for maintaining the Galleon as well as addressing any negative environmental impacts on and about Stonebridge Lake -- including the water, the lake's floor and sides, the lake's shores and shoreline area, and the land adjacent to, abutting and adjoining the shoreline (the "Stonebridge Lake Area") -- that may arise from, be created by or otherwise be attributed to the Galleon; and

WHEREAS, the City has determined that Developer shall provide a Maintenance Agreement regarding the maintenance of the Galleon as a condition of obtaining a Certificate of Occupancy for said Galleon and relieve the City from and of any and all liability should the Developer's maintenance program fail and/or should the Stonebridge Lake Area be negatively impacted by the Galleon in any way, manner, method or form.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Compliance with Applicable Laws, Statutes, Regulations and Ordinances

Nothing contained in this Agreement shall be construed to relieve Developer of its obligation to develop the Property and construct the facilities, amenities and improvements in accordance with all applicable City, State and Federal Laws, Statutes, Regulations, Rules and Ordinances specifically including, but not limited to all permitting requirements, rules and guidelines issued by the City, the Texas Commission on Environmental Quality ("TCEQ"), the Environmental Protection Agency ("EPA"), the Federal Emergency Management Agency ("FEMA"), the U.S. Army Corps of Engineers ("Corps"), and any other governmental entity, agency or regulatory body ordinances.

Section 2. Additional Requirements for a Certificate of Occupancy

- a. The City shall issue a Certificate of Occupancy for the Galleon on the Property only after Developer:
 - 1) Satisfies all requirements for issuance of a Certificate of Occupancy; and,
 - 2) Limits the uses on the Galleon to only those uses and establishments, including restaurants, that do not require a grease trap to be installed on the Galleon and complies with all other provisions of this Agreement including the provision of insurance coverage required herein below.
- b. The continued right to a Certificate of Occupancy for uses on the Galleon shall be subject to performance of this Agreement in addition to compliance with all other applicable City, State and Federal Laws, Statutes, Regulations, Rules and Ordinances.
- c. It is specifically understood and agreed that no business requiring a grease trap to be installed on the Galleon will be issued a Certificate of Occupancy to operate on the Galleon.

Section 3. Developer's Maintenance Responsibilities

- a. Developer shall properly maintain the Galleon; prevent the deterioration of the Galleon; and, maintain and clean-up the Stonebridge Lake Area, which common lake abuts or adjoins the Property, to the extent only that such clean-up is required by, arises from, is created by, or is otherwise attributable to Developer's construction, operation, maintenance and repair or replacement of the Galleon.
- b. Developer's maintenance is defined to include, but is not limited to, keeping the Stonebridge Lake Area free of debris, pollutants and contaminants to the extent that said debris, pollutants and contaminants arise from, are created by, or are otherwise attributable to Developer's construction, operation, maintenance and repair or replacement of the Galleon.
- c. Developer shall perform its obligations under this Agreement at Developer's sole cost and expense.
- d. Nothing contained herein shall require or be interpreted to require Developer to enter on property owned by another person or party to perform Developer's obligations under this Agreement.
- e. The refusal or failure of any person or party to give Developer permission to enter upon that person's or party's property to clean up and remove debris, pollutants and contaminants and remediate any negative environmental impacts shall relieve Developer from the obligation to perform such obligation under this Agreement concerning that particular parcel, lot or tract of land.

Section 4. Failure to Maintain

Should Developer fail to perform its obligations under Section 3 herein, City may issue a written notice to Developer specifying the deficiency and Developer shall have thirty (30) calendar days to correct the deficiency. If the deficiency cannot be corrected within the thirty (30) day period, then Developer shall not be in default under this Agreement as long as Developer begins corrective action within this time period, diligently pursues such corrective action, and completes the necessary corrective action within ninety (90) days after receipt of

written notice. This ninety (90) day time period may be extended for up to two (2) additional thirty (30) day time periods in the sole discretion of the City Engineer.

Section 5. Failure to Comply

In the event of default, the City may, but shall not be required to, enter on the Property and take such actions as it deems appropriate to satisfy the requirements of Section 3.

Section 6. Insurance Requirements

- a. Before granting a Certificate of Occupancy for the Galleon Ship at Adriatica, the Developer shall, to the extent that an existing policy does not provide such insurance coverage (as determined by the City) and at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state of Texas and acceptable to the City. The Developer shall furnish to the City of McKinney Planning Director certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the "Galleon Ship in the Harbor at Adriatica in Stonebridge Ranch" and be addressed as follows:

City of McKinney
c/o Periculum Services Group
Department 72
PO Box 257
Portland, MI 48875-0257.

1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
 2. Environmental Impairment Liability (Site Coverage), including, but not limited to first party coverage for on-site clean-up and coverage for third party claims for on-site and off-site clean-up resulting from pollution conditions as well as coverage for third party claims for on-site and off-site bodily injury and property damage with minimum limits of \$1,000,000 per occurrence.
- b. With reference to the foregoing required insurance, the Developer shall endorse applicable insurance policies as follows:
1. The City of McKinney, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy as well as the Environmental Impairment Liability (Site Coverage) policy, by using endorsement CG2026 or broader; and .
 2. All insurance policies shall be endorsed to the effect that the City of McKinney will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or material change of the required policies.
- c. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

Section 7. Notice

Notice to Developer required under this Agreement shall be delivered as follows:

Jeffory D. Blackard, President
The Blackard Group, Inc.
401 Adriatic Parkway
McKinney, Texas 75070

Section 8. Indemnity

Developer shall indemnify and hold harmless the City, the Stonebridge Ranch Homeowners' Association, and any other property owners whose property is contained within or otherwise adjoins or abuts the Stonebridge Lake Area and each of their respective officers and employees from all suits, actions, losses, damages, claims or liability of any character, type or description, including, but not limited to, all expenses of litigation, attorneys' fees, court costs, and penalties of any kind or nature arising directly or indirectly from the existence, operation and/or enforcement of this Agreement or arising from any actions or inactions of Developer and/or its agents, servants, employees, contractors, and suppliers in connection herewith including, but not limited to, any damages to the Property, or to any residence, property or person resulting from or arising out of Developer's maintenance or failure to maintain the Improvements and properly address any environmental impacts caused thereby in, on over, under and about the Stonebridge Lake Area. This indemnity includes claims or fines made by any state or federal agency including the TCEQ, EPA, FEMA and Corps regarding pollution or contamination of the Stonebridge Lake Area as a result of Developer's maintenance or inadequate, inappropriate, or unpermitted maintenance of the Stonebridge Lake Area or failure to adhere to the terms of this Agreement. Notwithstanding the foregoing and subject to the City's immunity from suit and liability, Developer shall not be required to indemnify or hold harmless any individual person or party intended to be indemnified by this Agreement from any suit, action, loss, damage, claim or liability of any type, character or description arising from the negligence or willful misconduct of that individual Indemnitee or its respective agents, servants, employees, contractors or suppliers.

Section 9. Miscellaneous Provisions

- a. By signing this Agreement, Developer grants the City permission to enter on the Property and perform Developer's obligations under Section 3(b).
- b. Developer agrees to reimburse the City within 60 days of receipt of invoice from the City, for any expenses the City incurs to perform Developer's maintenance obligations under this Agreement.
- c. The City may recover from Developer any expenses it incurs to enforce this Agreement. This right of recovery includes but is not limited to attorneys' fees and expenses.
- d. This Agreement shall be construed and enforced in accordance with Texas law. Venue in any litigation concerning this Agreement shall be proper in Collin County, Texas.
- e. This Agreement shall be a covenant running with the Property and shall be binding on the Developer and its successors, assigns or any other person or party claiming any right to possession, occupation or operation of the Property or any uses in, on or about the Property by or through the Developer.
- f. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for

and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- g. This Agreement is intended to inure to the benefit of third parties who are not signatories to this Agreement but who own property that is contained within or which otherwise adjoins or abuts the Stonebridge Lake Area. In addition to any other rights conferred by this paragraph, such third parties shall have the right to enforce their rights by seeking injunctive relief in a court of competent jurisdiction.

AGREED TO BY:

CITY OF MCKINNEY

LAWRENCE W. ROBINSON
City Manager
Date: _____

ATTEST:

SANDY HART, CMC
City Secretary
BEVERLY COVINGTON, CMC
Deputy City Secretary

THE BLACKARD GROUP, INC.,
a Texas Corporation

JEFFORY D. BLACKARD
President

Date: _____

THE STATE OF TEXAS
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared **LAWRENCE W. ROBINSON**, City Manager of the **CITY OF MCKINNEY**, a Texas municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2007.

Notary Public, Collin County, Texas
My commission expires _____

THE STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared **JEFFORY D. BLACKARD**, President of **THE BLACKARD GROUP, INC.**, known to me to be the person whose name is subscribed to the foregoing instrument.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2007.

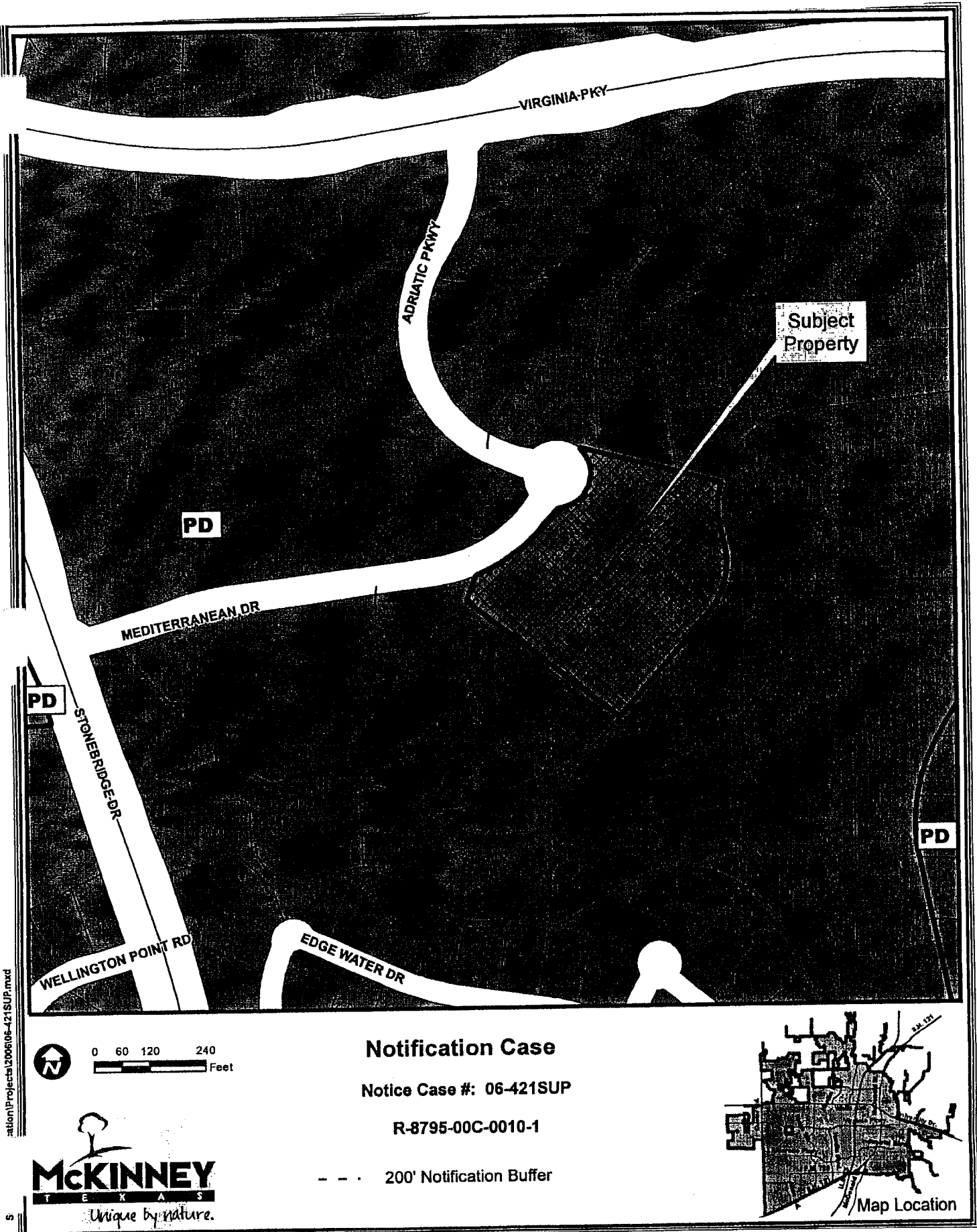
Notary Public, Collin County, Texas
My commission expires _____

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

EXHIBIT A

Site Plan



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees for any discrepancies, errors, or variances which may exist.

