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TITLE: Consider/Discuss/Act on a Resolution Requesting the Board of Adjustment of the City of McKinney Consider the Amortization of a Nonconforming Concrete Batch Plant Use (Cowtown Redi-Mix), Located at 2015 South McDonald Street and the Establishment of a Compliance Date in Conformance with Section 146-40 of the Zoning Ordinance (Nonconforming Uses and Nonconforming Structures)

COUNCIL GOAL: Direction for Strategic and Economic Growth
(1C: Provide a strong city economy by facilitating a balance between industrial, commercial, residential and open space)

MEETING DATE: December 3, 2019

DEPARTMENT: Development Services - Planning Department

CONTACT: Jennifer Arnold, AICP, Director of Planning
Michael Quint, Executive Director of Development Services

RECOMMENDED CITY COUNCIL ACTION:
- Approval of the Resolution.

ITEM SUMMARY:
- The proposed Resolution formally requests that the Board of Adjustment for the City of McKinney consider the amortization of a nonconforming concrete batch plant use (Cowtown Redi-Mix), Located at 2015 South McDonald Street ("Subject Property"), and the establishment of a compliance date.

- With the adoption of the ONE McKinney 2040 Comprehensive Plan, the completion of the SH 121 corridor, and the reconfiguration of the interchange of US 75 and Spur 399/SH5 in the mid-2000's, the area in and around the subject property has become a principal gateway and "front door" to the City and specifically, McKinney's Historic Downtown.

- Much of the growth and development that has occurred in this area over the last 15 years has been of a suburban nature, which is in contrast to the heavy

industrial nature of the concrete batch plant use on the subject property.

- On April 16, 2019, the City Council approved a city-initiated rezoning of the subject property to the RO - Regional Office District which primarily allows the development office uses. This rezoning action better aligns the subject property with the vision set forth by the adopted ONE McKinney 2040 Comprehensive Plan.

- As a result, the subject property is now considered a nonconforming use subject to Section 146-40 (Nonconforming Uses and Nonconforming Structures) of the City of McKinney Zoning Ordinance.

- In addition to the incompatibility of the nonconforming use with the surrounding area, continued operation of the concrete batch plant use on the Subject Property may have an adverse effect on nearby properties or the community welfare for the following reasons:

    o A number of noise-related complaints have been received since 2017. Between April and July 2018, City Staff conducted a comprehensive noise study and was unable to verify any violation of city ordinances due to the presence of road noise. However, since that time, the batch plant operator has been issued at least one violation letter for violating the provisions within Chapter 70 of the City of McKinney Code of Ordinances. Although the operator received a noise variance from the City in August 2018, this variance expired on March 31, 2019. (see attached Comprehensive Noise Analysis Report, Police Reports, Notice of Violation, Noise Variance Letter)

    o Compliance Investigations with recommended corrective actions by the Texas Commission on Environmental Quality (TCEQ) for air quality -related occurrences, including but not necessarily limited to investigations and violations in April 2018 and February 2019. (see attached TCEQ Reports)

- Over the last 12-18 months, City staff has been coordinating with representatives of Cowtown Redi-Mix to discuss an alternative solution; however, has been unable to reach agreement.

BACKGROUND INFORMATION:
- Per Section 146-40 (Nonconforming Uses and Nonconforming Structures) of the City of McKinney Zoning Ordinance, the City Council, by a simple majority vote, may request that the Board of Adjustment consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the Board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties or the

community welfare.

- If the Board of Adjustment determines that continued operation of the nonconforming use will have an adverse impact on nearby properties, it shall call for a second public hearing to establish a compliance date for the nonconforming use; otherwise, it shall not.

- The Board of Adjustment shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties or the community welfare:
    - The Comprehensive Plan;
    - The character of the surrounding or nearby properties;
    - The degree of incompatibility of the use with the zoning district in which it is located;
    - The manner in which the nonconforming use is being conducted;
    - The hours of operation of the use;
    - The extent to which continued operation of the use may threaten public health or safety;
    - The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor;
    - The extent to which public disturbances and nuisances may be created or perpetuated by continued operation of the use;
    - The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use; and
    - Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

- If the Board of Adjustment determines that continued operation of the nonconforming use has an adverse effect on nearby properties or the community welfare, it shall hold a second public hearing, in accordance with the law, to set a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

SUPPORTING MATERIALS:

Proposed Resolution
Location Map
Comprehensive Noise Analysis Report
Police Reports (Noise)