

ORDINANCE NO. O-2009-44

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, PROVIDING FOR THE ANNEXATION OF CERTAIN SPARSELY OCCUPIED AND OWNER-REQUESTED TERRITORY LYING ADJACENT TO AND CONTIGUOUS TO THE PRESENT WESTERN BOUNDARY LIMITS OF THE CITY OF TYLER AND REFERRED TO AS THE ANNEXATION APPLICATION A04-09-001 (UNION PACIFIC RAILROAD); CONSTITUTING APPROXIMATELY .04 ACRES OF LAND AND COMMENCING FROM THE EASTERN BOUNDARY OF THE UNION PACIFIC RAILROAD AND CITY OF TYLER PROPERTY 133 FEET WEST TO THE WESTERN BOUNDARY OF THE UNION PACIFIC RAILROAD TO THE BILLY RAY ELLIS PROPERTY AS DESCRIBED BY A METES AND BOUNDS DESCRIPTION, LOCATED WEST OF BELLWOOD LAKE; AMENDING THE TYLER CITY LIMITS MAP; ADJUSTING THE CITY OF TYLER EXTRATERRITORIAL JURISDICTION; ESTABLISHING THE INITIAL LAND USE DESIGNATION; ESTABLISHING ORIGINAL ZONING; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, a public hearing was held before the City Council of the City of Tyler, Texas, on the 22ND day of April, 2009, in the Council Chambers, City Hall, 212 North Bonner, Tyler, Texas, wherein all interested persons were provided an opportunity to be heard on the proposed annexation of the territory hereinafter described, which date is not more than thirty (30) nor less than five (5) days after the filing of the complete Texas Local Government Code Section 43.028 petition, a copy of which is attached and made a part hereof as Exhibit "C"; and

WHEREAS, the area to be annexed is one-half mile or less in width; and

WHEREAS, the area to be annexed is contiguous to the City of Tyler; and

WHEREAS, the area to be annexed is vacant and without residents or has fewer than three (3) Qualified Voters; and

WHEREAS, the hereinafter described territory lies within the extraterritorial jurisdiction of the City of Tyler, Texas; and

WHEREAS, the hereinafter described territory contains approximately .04 acres of land;

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

PART 1: That pursuant to Tyler City Code Sections 10-800 through 10-802, the Texas Local Government Code Section 43.028 petition is hereby granted and the following described land and territories lying adjacent to and adjoining the City of Tyler, Texas, are hereby added to and annexed to the City of Tyler, Texas, and as shown on the map attached as Exhibit "A" and as described in Exhibit "B" shall be included within the boundary limits of said City, and the present boundary limits of such City, at the various points contiguous to the areas being annexed, are altered and amended so as to include said areas within the corporate limits of the City of Tyler, Texas. Accordingly, the official Tyler City limits map adopted by Ord.0-2007-53 and the City's ETJ are

hereby adjusted as described in Tyler City Code Section 10-802 and that section and map are amended to reflect this annexation.

PART 2: That the area so annexed shall be part of the City of Tyler, Texas, and the property so added hereby shall bear its pro rata part of the taxes levied by the City of Tyler, Texas, and the inhabitants thereof shall be entitled to all of the rights and privileges of all the citizens and shall be bound by the acts, ordinances, resolutions and regulations of the City of Tyler, Texas.

PART 3: That upon final passage, the annexed area shall be zoned as "AG", Agricultural District, as shown on Exhibit "D", hereinabove mentioned.

PART 4: That the initial Land Use Designation for the annexed area is hereby established as Agricultural and it is directed that the Land Use Guide be amended to reflect said uses.

PART 5: That the annexed area shall be added to the West District #2, Council single member district and the official Voting District Map amended accordingly.

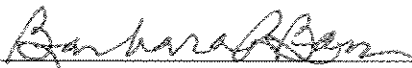
PART 6: That the Planning and Zoning Department shall send to the Texas Secretary of State a copy of the ordinance and statement that the annexation is not involved in any litigation.

PART 7: That the City Clerk shall send to the State Comptroller by certified mail a map showing new boundaries for sales tax and a certified copy of the ordinance showing the effective date of the boundary changes.

PART 8: That within thirty (30) days of notice of U. S. Justice Department approval of this annexation, the Planning and Zoning Department, on behalf of the Mayor, shall file a certified copy of this ordinance and a copy or duplicate of the petition with the County Clerk.

PART 9: That this ordinance shall be in full force and effect from and after the date of its passage and approval by the City Council.

PASSED AND APPROVED THIS the 22nd day of April A. D., 2009.


BARBARA BASS, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:


CITY CLERK



APPROVED:


CITY ATTORNEY

- Exhibit A = map
- Exhibit A-1 = legal description - sketch
- Exhibit B = legal description
- Exhibit C = owner petitions
- Exhibit D = zoning map

ORDINANCE NO. 0-2009-44

EXHIBIT "A"
MAP

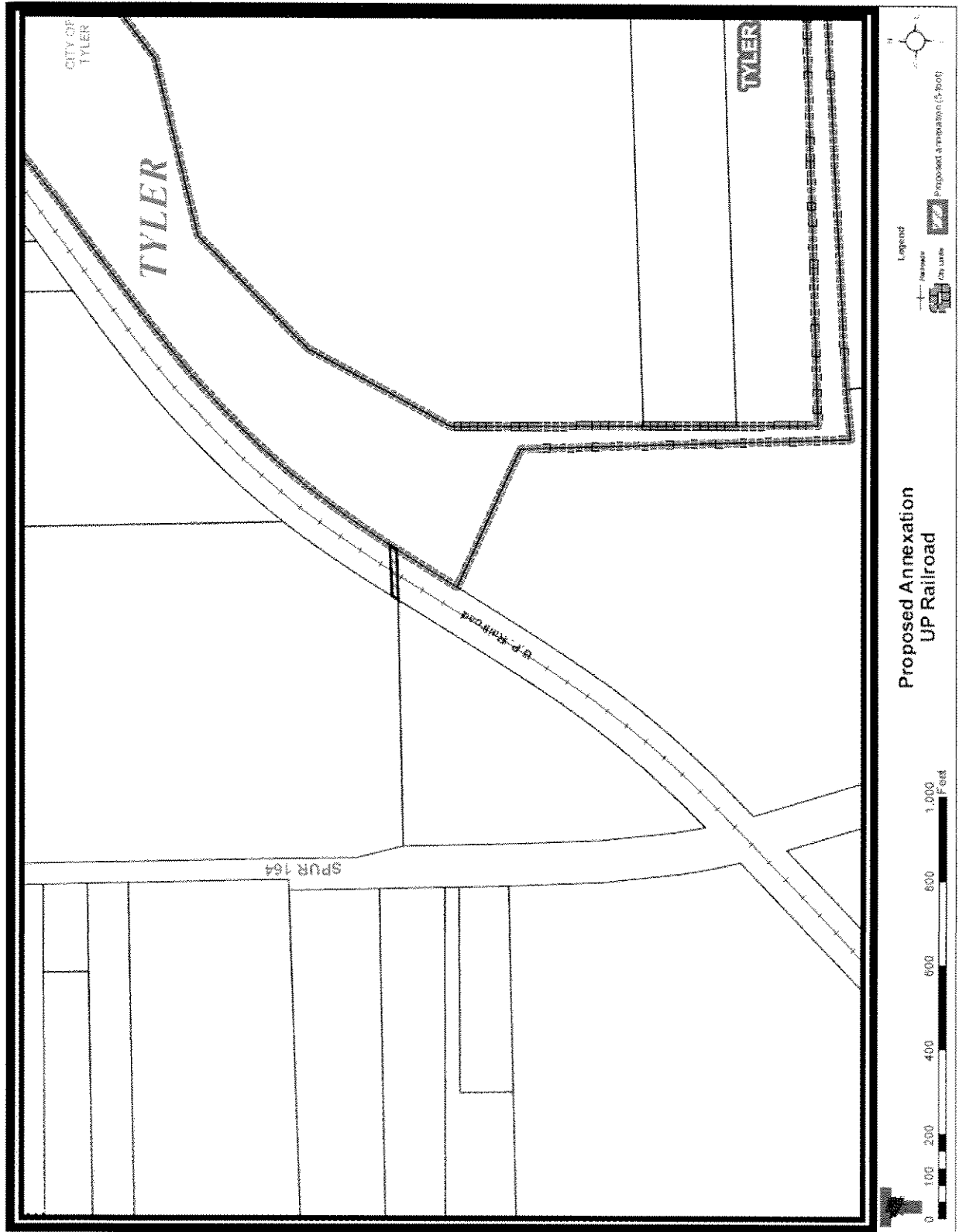
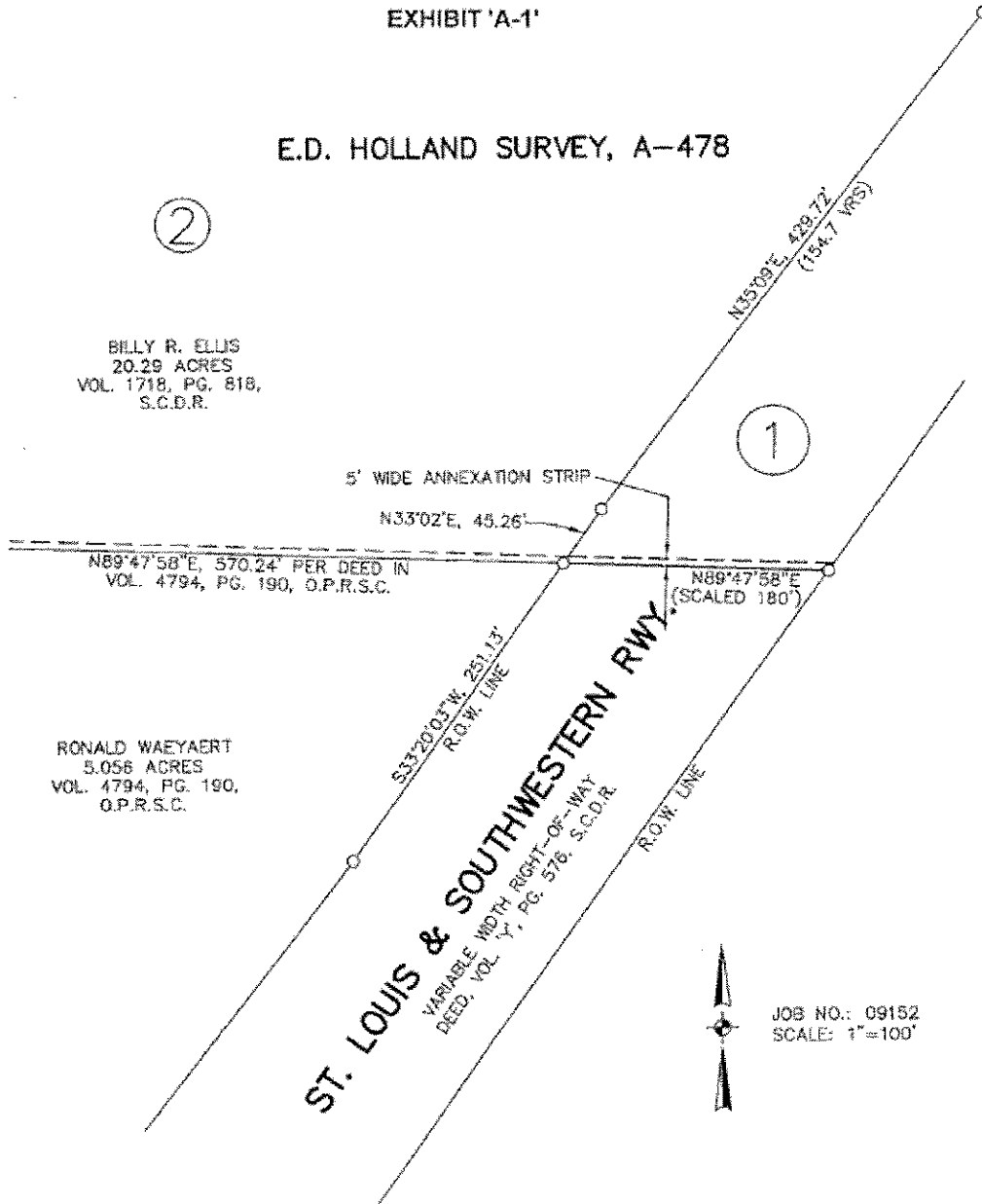


EXHIBIT "A-1"
LEGAL DESCRIPTION - SKETCH



"THIS DOCUMENT WAS PREPARED UNDER 22 TAC 55663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED."

ALL BEARINGS AND DISTANCES ARE RECORD INFORMATION PER DEEDS OF CONVEYANCE.

ORDINANCE NO. 0-2009-44

EXHIBIT "B"
LEGAL DESCRIPTION – FIELD NOTES

EXHIBIT 'B' LEGAL DESCRIPTION

USA-CoE Annexation
St. Louis & Southwestern Railway Tract - 5.00-Ft. Wide Strip

All that certain tract or parcel of land situated in the E.D. Holland Survey, Abstract 478, Smith County, Texas, being out of and a part of the St. Louis & Southwestern Railway right-of-way, as described in a Deed from T.J. Adams to the Texas and St. Louis Railway Company, dated July 18, 1880, and recorded in Volume 'Y', Page 576 of the Deed Records of Smith County, Texas, and being more particularly described by bounds as follows:

Being a 5.00 foot wide strip of land adjoining the easterly projection of the south boundary line of that certain called 20.29 acre residue tract described in a Warranty Deed with Vendor's Lien from Marshall E. Brown wt ux Virginia V. Brown to Billy R. Ellis et ux Brenda Ellis, dated January 5, 1979, and recorded in Volume 1718, Page 818 of the Deed Records of Smith County, Texas, same being the north line (record: North 89°47'58" East, 570.24 feet) of that certain called 5.056 acre tract described in a Deed to Ronald G. Waeyaert, and recorded in Volume 4794, Page 190 of the Official Public Records of Smith County, Texas, said 5.00 foot wide strip extending in a northerly direction from said easterly projection of said south boundary line, from the southeast corner of said 20.29 acres, same being in the west right-of-way line of said St. Louis & Southwestern Railway, to the point of intersection (a scaled distance of 180 feet, more or less) and point of terminus of said easterly projection with the east right-of-way line of said Railway.

(This document was prepared under 22 TAC Section 663.21, does not reflect the results of an on-the-ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared. All bearings and distances recited are record information per deeds of conveyance.)

ORDINANCE NO. 0-2009-44

EXHIBIT "C"
PAGE 1 OF 7
OWNERS PETITION



FORM A

REQUEST FOR ANNEXATION OF SPARSELY OCCUPIED AREA
BY THE OWNER(S) OF AREA

TO THE HONORABLE MAYOR AND GOVERNING BODY
OF THE CITY OF TYLER, TEXAS

The undersigned owners of the hereinafter described tract of land hereby request your Honorable Body to extend the present City limits so as to include as a part of the City of Tyler, Texas, the following described territory (complete and accurate field notes must be attached; a metes and bounds description is required), to-wit:

A five foot strip of land located across Union Pacific Railroad property. As shown on Form-F.

Being the above described area is one-half (1/2) mile or less in width and is sparsely populated, the owner(s) request that the City of Tyler, Texas, annex this area on petition of the area landowner(s), pursuant to Texas Local Government Code Section 43.028, which provides for the annexation of sparsely occupied areas without the hearings and rigid time schedule required for general annexations or those annexations undertaken unilaterally by the City.

That I (we), the undersigned, hereby certify that the tract described on FORM A and attached field notes, which is the subject of this annexation petition, is located adjacent to and adjoins the existing corporate limits of the City of Tyler, Texas, that this area is one-half (1/2) mile or less in width, that this area is sparsely populated as evidenced by the list on FORM D of the qualified voters residing in the area to be annexed, and that this petition is signed and duly acknowledged by each and every individual or corporation having a proprietary interest in said land.

IN WITNESS WHEREOF, I (We), as owner(s) of real property in the area to be annexed, request annexation of this area, pursuant to Texas Local Government Code Section 43.028, by signing this petition on the date shown below.

[Signature]
SIGNATURE
4/15/09
DATE

Mark B. Stevenson
PRINT NAME

(ACKNOWLEDGMENT)

THE STATE OF Nebraska
COUNTY OF DeWitt

This petition was acknowledged before me on the 15th day of April 2009 by Mark B. Stevenson

[Signature]
Notary Public
State of Nebraska

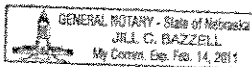


EXHIBIT "C"
PAGE 2 OF 7
OWNERS PETITION



FORM A1

That I (we), the undersigned, hereby certify that the tract described on FORM A, which is the subject of this annexation petition, is located adjacent to and adjoins the existing corporate limits of the City of Tyler, Texas, that this area is one-half (1/2) mile or less in width, that this area is sparsely occupied as evidenced by the list on FORM D of the qualified voters residing in the area to be annexed, and that this petition is signed and duly acknowledged by each and every individual or corporation having a proprietary interest in said land.

IN WITNESS WHEREOF, I (We), as owner(s) of real property in the area to be annexed, request annexation of this area, pursuant to Texas Local Government Code Section 43.028, by signing this petition on the date shown below.

[Signature]
SIGNATURE
9/15/09
DATE

Mark B. Stevenson
PRINT NAME

SIGNATURE

DATE

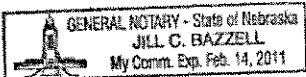
PRINT NAME

(ACKNOWLEDGMENT)

THE STATE OF Nebraska
COUNTY OF Douglas

This petition was acknowledged before me on the 15th day of April, 2009 by Mark B. Stevenson.

[Signature]
Notary Public
State of Nebraska



(ACKNOWLEDGMENT)

THE STATE OF _____
COUNTY OF _____

This petition was acknowledged before me on the _____ day of _____, _____ by _____.

Notary Public
State of _____

EXHIBIT "C"
PAGE 3 OF 7
OWNERS PETITION



FORM B

APPLICANT'S SUPPORT INFORMATION FOR REQUEST FOR ANNEXATION OF SPARSELY OCCUPIED AREA

Applicants shall submit the following information in support of their petition for annexation. This information will be utilized by the staff in preparing comments for the Planning and Zoning Commission and City Council, and in responding to citizens' inquiries.

1. I (We) propose to use this property for the following purpose(s):
To continue the existing use of railroad transportation.

2. I (We) am/are requesting this annexation for the following reason(s):
To enable the City of Tyler to annex a tract of land to the north of our property, for the use as an Army National Guard Facility

3. State present use and condition of property and/or structures:
Current use is railroad transportation corridor. Condition of the property includes railroad tracks and related improvements.

4. What is the location of the nearest water and sewer lines? Please indicate location on area map. (This information is available at the City Water Utilities Department, 511 West Locust Street)
Does not apply

5. Any additional information that you wish to provide concerning your annexation request:
Applicant does not waive its federal preemption defense to local regulation of applicant's railroad use by making this application.

Owner's Telephone Number

SIGNED:

OWNER (of property to be annexed)

OR

Agent's Telephone Number

AGENT (When applicable - See Form E)

EXHIBIT "C"
PAGE 4 OF 7
OWNERS PETITION



FORM C

LIST OWNER(S) OF ALL PROPERTY TO BE ANNEXED

List the names and addresses of all owners of property included within the area requested by the petition to be annexed. (Please print)

NAME	MAILING ADDRESS
1. Union Pacific Railroad	1400 Douglas St., Omaha, NE 68179
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	

ORDINANCE NO. 0-2009-44

EXHIBIT "C"
PAGE 5 OF 7
OWNERS PETITION



FORM D

LIST OF NAMES OF ALL QUALIFIED VOTERS RESIDING IN THE AREA

In order for an area to qualify for annexation under Texas Local Government Code Section 43.028, the area must be vacant or without residents, or on which fewer than three (3) qualified voters reside.


List the names, age and address of all qualified voters residing within the area requested to be annexed by this petition. For purposes of this annexation request, a qualified voter is an individual of legal age in the State of Texas, 18 years or older, which meets the residency requirements and is therefor qualified to register to vote.

NAME AND AGE

MAILING ADDRESS

- 1. NONE
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____

SIGNED:


Owner et al (of property to be annexed)

Agent (when applicable - See Form E)

EXHIBIT "C"
PAGE 6 OF 7
OWNERS PETITION



FORM E

AUTHORIZATION OF AGENT

I (We), the undersigned, being owners of real property to be annexed according to this Application, do hereby authorize (print name and address of Agent) N/A to act as our Agent in the matter of this annexation. The term "Agent" shall mean any lessee, developer, option holder, or other individual who is authorized to act in behalf of the owner(s) of said property to be annexed.

(Form to be signed below by all owners of property to be annexed.)

SIGNATURE	MAILING ADDRESS
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____
15. _____	_____

(This form is necessary only when the person representing this request does not own any of the property to be annexed. Person must also sign Forms B & G as "Agent".)

EXHIBIT "C"
PAGE 7 OF 7
OWNERS PETITION



FORM G

PETITION FOR ORIGINAL ZONING OF SPARSELY OCCUPIED AREA TO BE ANNEXED

Before the City Planning and Zoning Commission and the City Council
of the City of Tyler, Texas

The undersigned, as owner(s) or agent for the owner(s) of the area to be annexed, hereby makes application for the original zoning of the area to be annexed (insert zoning classification desired) "AG", Agricultural District or other zoning district as long as such district permits applicant's railroad use as of right, without need for applicant to obtain any special or conditional use permits. If more than one zoning classification is requested for the area, please indicate on the area map what zoning classification is requested for each portion. Complete and accurate field notes are required delineating the different zones requested. A metes and bounds description is required.

For the property owner which does not request original zoning, the Planning and Zoning Commission as part of its recommendation for approval of this annexation will recommend a zoning classification(s) for the area to be annexed.

Wherefore, the owner(s) request that the Planning and Zoning Commission consider the original zoning requested, and that the Planning and Zoning Commission recommend this zoning to the City Council of the City of Tyler, Texas for adoption.*

PROPERTY OWNERS' SIGNATURES


Agent (When Applicable - See Form E)

* The Planning and Zoning Commission in recommending any annexation, and the City Council in approving any annexation, are not obligated to also approve the original zoning requested by the property owner(s). All land contained within the corporate limits of the City of Tyler must be zoned, and the Planning and Zoning Commission and the City Council will endeavor to approve original zoning for the area to be annexed as requested by the property owner(s) if such zoning is appropriate for the existing or likely use of the property to be annexed, and is compatible with current zoning and existing development in that section of the City for which the annexed area will become a part.

