

AN ORDINANCE **94226**

AUTHORIZING ENFORCEMENT OF PRIOR ORDINANCES BY CLOSURE OF THE STREET/ACCESS BETWEEN FREILING DRIVE AND PARK TEN BOULEVARD, AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO TAKE SUCH LEGAL ACTION AS MAY BE NECESSARY TO ACCOMPLISH THAT CLOSURE; AND THE CLOSURE SHOULD INCLUDE PLACING SUCH CURBS AND BARRICADES AS ARE NECESSARY TO EFFECT SUCH CLOSURE; AS REQUESTED BY COUNCILMAN BOBBY PEREZ.

WHEREAS, prior to 1971, the area of land now known as the Park Ten Office Complex was owned by an estate and was, for the most part, unimproved land; and

WHEREAS, On February 18, 1971, the City of San Antonio enacted Ordinance No. 39266, approving a request by Max Kaplan ("Kaplan") for re-zoning of the area to allow commercial development, provided that there was to be no access to Freiling Drive from the Commercial Zones and that a non-access easement was to be furnished between the "R-2" Two Family Residential District and the "B-1" Business District established in the ordinance; and

WHEREAS, on November 11, 1971, the City Council of the City of San Antonio held a hearing on Kaplan's request for an amendment to Ordinance No. 39266, to delete the non-access provision; and

WHEREAS, at the November 11, 1971 hearing, Kaplan demonstrated to City Council how he proposed to build a road through the commercial tract and connect it to Freiling Drive near the westerly end of the commercial tract; and

WHEREAS, motions were made at the November 11, 1971 hearing, but failed to carry, and as a result, no amendment was made to said Ordinance; and

WHEREAS, on August 10, 1972, Kaplan requested that City Council re-zone the residential property along the south side of Freiling Drive from R-2 to B-1, and in the process Kaplan again agreed and promised there would be no public or private road accessing Freiling Drive; and

WHEREAS, the City Council approved Kaplan's application for re-zoning, pursuant to Ordinance No. 41053 on August 10, 1972, subject to the condition that no public or private street entering or exiting this property from or to Freiling Drive would be permitted; and further provided that a brick masonry wall at least six (6') feet in height would be constructed along the north property line of said property adjacent to the property as it was developed, said wall to be completed when all of the property was developed; and

WHEREAS, it was later learned that Kaplan purchased an additional small tract of land from an adjacent property owner, and then created an "ingress-egress easement" across that strip of land so that there would be access from and to his commercial development from and to Freiling Drive and the residential neighborhood; and

WHEREAS, in 1975, Kaplan returned to the San Antonio Planning and Zoning Commission with a request for a variance on the plat for the Park Ten Business Park, and represented that “the egress that has developed along Freiling Drive goes out through the City of Balcones Heights; and

WHEREAS, relying on this representation, the Planning and Zoning Commission erroneously concluded that it had no jurisdiction to control the egress/ingress that Kaplan had created; and

WHEREAS, in truth and in fact, only a part of the “egress” went through Balcones Heights, and the majority of the “egress” and also the “ingress” went through the City of San Antonio and the City of San Antonio’s right of way along Freiling Drive; and

WHEREAS, these actions resulted in Kaplan accomplishing what City Council had expressly prohibited by enactment of Ordinance No. 39266, that is, access from the commercial zones to Freiling Drive and the residential neighborhood; and

WHEREAS, the southernmost portion of the street/access constructed by Kaplan connects to a City-owned and maintained public street and what was designed to be a cul-de-sac; and

WHEREAS, all of the driveway approach for the street/access connecting Park Ten Boulevard and Freiling Drive crosses City of San Antonio owned right of way, and the street/access crosses the B-1 zoned property that Kaplan promised would not be used for a public or private road, and provides access to and from the commercial development to and from Freiling Drive and the residential neighborhood; and

WHEREAS, the street/access connecting Park Ten Boulevard and Freiling Drive violates the spirit, intent and letter of the 1971 and 1972 zoning ordinances because it directly provides access to and from the commercial zones to and from the adjacent residential neighborhood and Freiling Drive, which is a residential street servicing Arnold Elementary School; and

WHEREAS, over the years, the commercial traffic on the street/access from Freiling Drive to Park Ten Business Park and vice versa has dramatically increased, causing a potential hazard to children walking and riding bicycles to Arnold Elementary School at the east end of Freiling Drive and St. Gregory the Great Church and School on Dewhurst, and the traffic has become a severe nuisance to the residents along Freiling Drive and the neighborhood generally; and

WHEREAS in June 1999, Bobby Perez, Councilman for District 1 advised TPLP Office Properties of the City’s intention to close the roadway due to the adverse impact the traffic on the street/access was causing to the residential neighborhood; and

WHEREAS, in July 1999 the Public Works Department erected signs in the area, advising that the roadway would be closed; and

WHEREAS, in August 1999 TPLP Office Properties filed suit against the City of San Antonio, seeking an injunction to prevent the City from closing the street/access; and

WHEREAS, the San Antonio Fire Department has surveyed the area of First Park Ten and Park Ten to determine the need for access from Freiling St. on the north side of this office complex, and has determined that closing the street/access would not hamper response or firefighting operations to this complex; and

WHEREAS, the City Engineer has advised the City Council that from a traffic planning standpoint, it is generally desirable to separate commercial traffic from residential neighborhoods, and that in this case, there should be no mixing of commercial traffic into the residential neighborhood; and

WHEREAS, the City Engineer has also advised the City Council that in his professional opinion, the owners and lessees of property in the Park Ten Business Park will continue to have reasonable and suitable access after closing the street/access, and that closing the street/access to vehicular traffic will not result in material and substantial impairment of access to the Park Ten Business Park; and

WHEREAS, on November 4, 1999 pursuant to Ordinance No. 90799 passed and approved by the City Council, new traffic control devices were authorized and installed to restrict the flow of commercial traffic onto Freiling Drive and the residential neighborhood, but the devices have been ineffectual to accomplish such purposes; and

WHEREAS, the street/access connecting Park Ten Boulevard and Freiling Drive does not meet City standards for a street, and the driveways on said street/access did not meet City standards and codes for driveways as they existed in the 1971-1972 time frame, and do not meet City standards and codes today; and

WHEREAS, the street/access is not marked as a private street, and is generally held out as a public street; and

WHEREAS, in its present condition, the street/access is potentially unsafe for vehicular traffic; and

WHEREAS, pursuant to Vernon's Annotated Civil Statutes, Article 1175, sub. 18, the City of San Antonio has the power to control, regulate and remove all obstructions or other encroachments to encumbrances on any public street, alley or ground, to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards, and to vacate and abandon and close any such streets, alleys, avenues, or boulevards; and

WHEREAS, under the Texas Transportation Code §311.001, the City of San Antonio has control over and under public highways, streets and alleys of the municipality to open or change a public street or alley of the municipality; and

WHEREAS, pursuant to Texas Transportation Code § 311.007, the City of San Antonio has the authority to vacate, abandon and close streets and alleys; and

WHEREAS, the City Council has determined that closure of the street/access connecting Park Ten Boulevard to Freiling Drive would be for a public purpose and would promote the safety, comfort, health, convenience and general welfare of the public and the community; and

WHEREAS, the closure of the street/access connecting Park Ten Boulevard to Freiling Drive is consistent with the action of the City Council in 1971 and 1972, the development of Park Ten Business Park, and the goal of separating commercial traffic from residential neighborhoods in order to preserve the integrity of residential neighborhoods; and

WHEREAS, after the street/access connecting Park Ten Boulevard to Freiling Drive is closed, owners and lessees of property in the Park Ten Business Park will continue to have reasonable and adequate access to their property, and such closure will not substantially and materially impair access to their property; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Prior ordinances of the City of San Antonio as set forth above are hereby confirmed and ratified, and it is determined that enforcement of the prior ordinances and closure of the street/access connection between Park Ten Boulevard to Freiling Drive would be for a public purpose and would promote the safety, comfort, health, convenience and general welfare of the public and the community.

SECTION 2. The City Council finds that restricting traffic movement between the commercial properties south of Freiling Drive and the residential neighborhood along Freiling Drive and surrounding streets follows the policy of separating non-residential traffic from residential streets.

SECTION 3. The City Council has determined that as a general rule, residential streets should not be used to move traffic to a commercial area, and that as a matter of municipal planning and sound land use principles, closing of the street/access would protect the residential neighborhood from commercial traffic and such action is rationally related to legitimate governmental objectives.

SECTION 4. The City Attorney is directed and authorized to take any and all necessary action to file an application in Bexar County District Court to enforce the prior ordinances referenced above and to close the street/access connection in question to vehicular traffic, including, but not limited to, filing appropriate pleadings in Bexar County District Court to: a) seek declaratory judgment that the City of San Antonio has the power to close the street/access connection between Park Ten Boulevard to Freiling Drive, and that such closing will not result in a material and substantial impairment of access to owners and lessees of property in the Park Ten Business Park; b) enforce prior zoning decisions and ordinances affecting the street/access and the Park Ten Business Park; and c) to enjoin further violations of Ordinance No. 39266 and subsequent City Council actions and zoning decisions relative to the Park Ten Business Park and the prohibition on commercial traffic from having access to Freiling Drive.

SECTION 5. If the Court determines that the City is authorized to enforce the prior ordinances referenced above and that closure of the street/access connecting Park Ten Boulevard to Freiling Drive will not result in a material and substantial impairment of access to owners and lessees of property in the Park Ten Business Park, then City Staff is directed and authorized to take any and all necessary action to close the connection between Freiling Drive and the street/access in question to vehicular traffic.

SECTION 6. This ordinance shall be effective on and after the tenth (10th) day after passage hereof.

PASSED AND APPROVED this 28th day of June, 2001.

ATTEST: Armando S. Rodriguez
City Clerk

Ed Garza
M A Y O R
Ed Garza

APPROVED AS TO FORM: Veronica M. Zentucke
for City Attorney

01-27

MEETING OF THE CITY COUNCIL

PUBLIC HEARING & ORDINANCE

ALAMODOME
ASSET MANAGEMENT
AVIATION
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
COUNCIL OFFICES
CULTURAL AFFAIRS
CUSTOMER SERVICE/311 SYSTEM
DEVELOPMENT SERVICES
HOUSE NUMBERING
LAND DEVELOPMENT SERVICES
TRAFFIC & DRAINAGE PLAN REVIEW
ECONOMIC DEVELOPMENT
ENVIRONMENTAL SERVICES
SOLID WASTE
EXTERNAL RELATIONS
PUBLIC INFORMATION OFFICE
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - PUBLIC UTILITIES SUPERVISOR
FINANCE- TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
MANAGEMENT & BUDGET (OFFICE OF) OMB
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
NEIGHBORHOOD ACTION
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT - NEIGHBORHOOD PLNG; URBAN DESIGN/HISTORIC PRESERVATION DISABILITY ACCESS OFFICE
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING <i>W/attachment</i>
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA <i>Hester</i>

AGENDA ITEM NUMBER:

5 B

DATE:

JUN 28 2001

MOTION:

Perez

Amend

ORDINANCE NUMBER:

94226

RESOLUTION NUMBER:

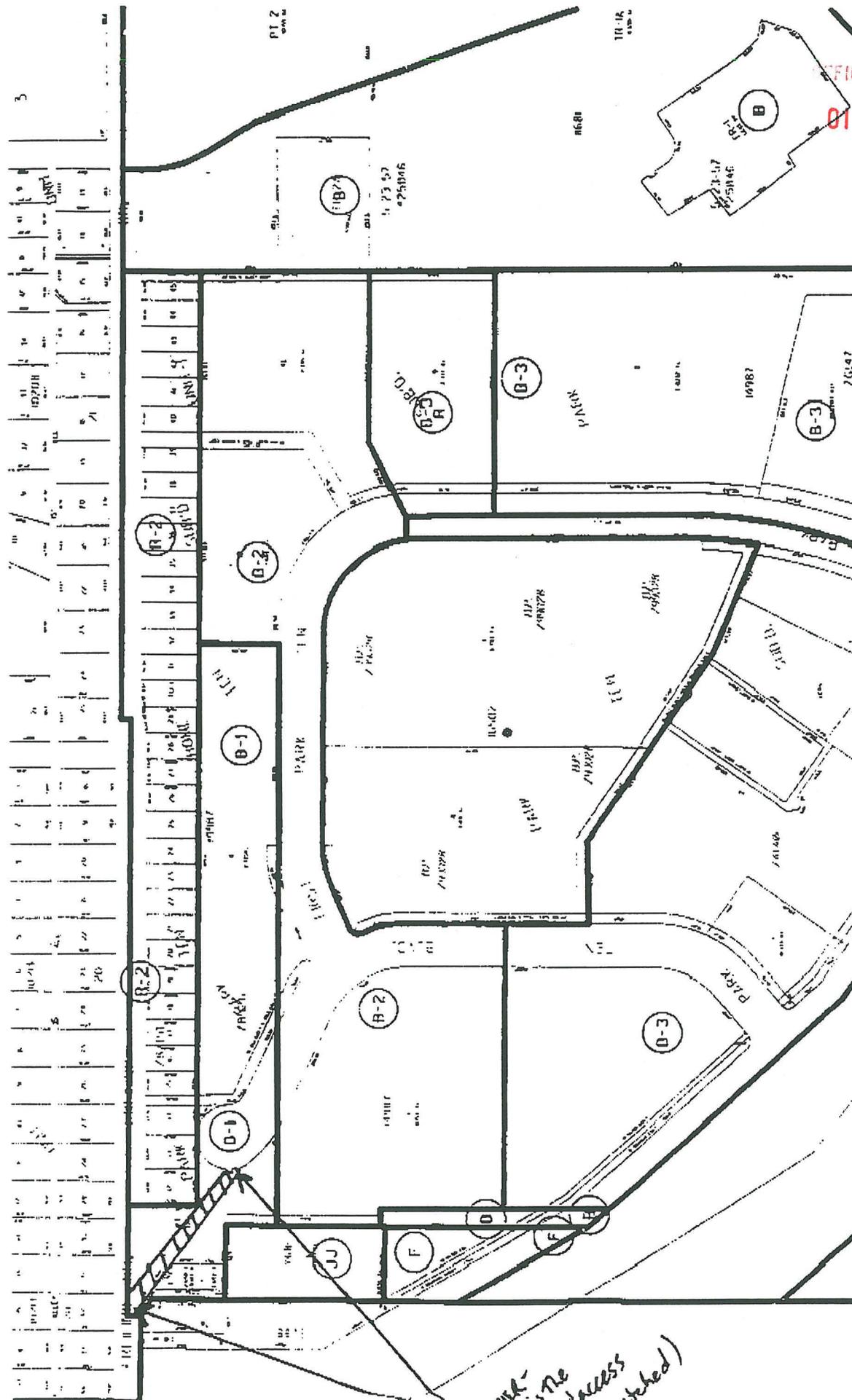
ZONING CASE NUMBER:

TRAVEL AUTHORIZATION:

NAME	ROLL	AYE	NAY
BOBBY PEREZ District 1		✓	
JOHN H. SANDERS District 2		✓	
TONI MOORHOUSE District 3		✓	
ENRIQUE "KIKE" MARTIN District 4		✓	
DAVID A. GARCIA District 5		✓	
ENRIQUE M. BARRERA District 6		✓	
JULIAN CASTRO District 7		✓	
BONNIE CONNER District 8		✓	
CARROLL SCHUBERT District 9		✓	
DAVID CARPENTER District 10		✓	
ED GARZA Mayor		✓	

Ord # 39266 2/18/71
Confirms 41053 8/10/72
+ Ratified 90799 11/4/99

01-27



OFFICE OF THE CITY COUNCIL
 01 JUN 11 PM 4:14

WARNER -
 This is the
 street access
 (cross-hatched)

CITY OF SAN ANTONIO
Interdepartmental Correspondence Sheet

PUBLIC HEARING
TIME CERTAIN
ITEM NO 56
3:00 PM

To: Mayor and City Council, through the City Manager

From: Thomas G. Wendorf, P.E., Director of Public Works

Copies: Melissa Byrne Vossmer, Rebecca Waldman

Subject: Authorizing enforcement of prior Ordinances and closure of the street/access between Freiling Drive and Park Ten Boulevard, and authorizing such curbs and barricades as are necessary to effect such closure

June 14, 2001

Summary and Recommendations:

This ordinance authorizes enforcement of prior Ordinances and the closure of the street/access between Freiling Drive and Park Ten Boulevard, and authorizing such curbs and barricades as are necessary to effect such closure.

Staff recommends approval of this Ordinance.

Background:

On February 18, 1971, the City of San Antonio enacted Ordinance No. 39266, approving a request by Max Kaplan ("Kaplan") for re-zoning of the area to allow commercial development, provided that there was to be no access to Freiling Drive as shown on Exhibit "A" from the Commercial Zones and that a non-access easement was to be furnished between the "R-2" Two Family Residential District and the "B-1" Business District established in the ordinance. In 1975, Kaplan returned to the San Antonio Planning and Zoning Commission with a request for a variance on the plat for the Park Ten Business Park, and represented that "the egress that had developed along Freiling Drive went through the City of Balcones Heights. The Planning and Zoning Commission erroneously concluded that it had no jurisdiction to control the egress/ingress that Kaplan had created; and in truth and in fact, only a part of the "egress" went through Balcones Heights, and the majority of the "egress" and also the "ingress" went through the City of San Antonio and the City of San Antonio's right of way along Freiling Drive.

These actions resulted in Kaplan accomplishing what City Council had expressly prohibited by enactment of Ordinance 39266, that is, access from the commercial zones to Freiling Drive and the residential neighborhood. The Southernmost portion of the street/access constructed by Kaplan connects to a City-owned and maintained

public street and what was designed to be a cul-de-sac. All of the driveway approach for the street/access connecting Park Ten Boulevard and Freiling Drive crosses City of San Antonio owned right of way. The street/access crosses the B-1 zoned property that Kaplan promised would not be used for a public or private road, and provides access to and from the commercial development to and from Freiling Drive and the residential neighborhood.

On November 4, 1999 by Ordinance 90799 passed and approved by the City Council, new traffic control devices were authorized and installed to restrict the flow of commercial traffic onto Freiling Drive and the residential neighborhood, but the devices have been ineffectual to accomplish such purposes. The street/access connecting Park Ten Boulevard and Freiling Drive does not meet City standards for a street, and the driveways on said street/access did not meet City standards and codes for driveways as they existed in the 1971-1972 time frame, and do not meet City standards and codes today. The street/access is not marked as a private street, and is generally held out as a public street; and in its present condition, the street/access is potentially unsafe for vehicular traffic.

Pursuant to Vernon's Annotated Civil Statutes, article 1175, sub. 18, the City of San Antonio has the power to control, regulate and remove all obstructions or other encroachments to encumbrances on any public street, alley or ground, and to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards, and to vacate and abandon and close any such streets, alleys, avenues, or boulevards. Under the Texas Transportation Code §311.001, the City of San Antonio has control over and under public highways, streets and alleys of the municipality to open or change a public street or alley of the municipality. City Staff has determined that closure of the street/access connecting Park Ten Boulevard to Freiling Drive would be for a public purpose and would promote the safety, comfort, health, convenience and general welfare of the public and the community.

The closure of the street/access connecting Park Ten Boulevard to Freiling Drive is consistent with the action of the City Council in 1971 and 1972, the development of Park Ten Business Park, and the goal of separating commercial traffic from residential neighborhoods and preserving the integrity of residential neighborhoods. After the street/access connecting Park Ten Boulevard to Freiling Drive is closed, owners and lessees of property in the Park Ten Business Park will continue to have reasonable and adequate access to their property, and such closure will not substantially and materially impair access to their property.

Policy Analysis:

The action being taken is consistent with the Texas Transportation Code §311.001, which the City of San Antonio has control over and under public highways, streets and alleys of the municipality to open or change a public street or alley of the municipality.

Coordination:

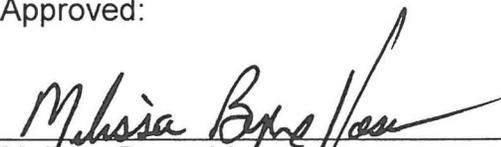
In compliance with City procedures, Applicant's request has been canvassed through the below-listed City departments.

1. City Attorney's Office
2. Public Works Department
3. Fire Department



Thomas G. Wendorf, P.E.
DIRECTOR OF PUBLIC WORKS

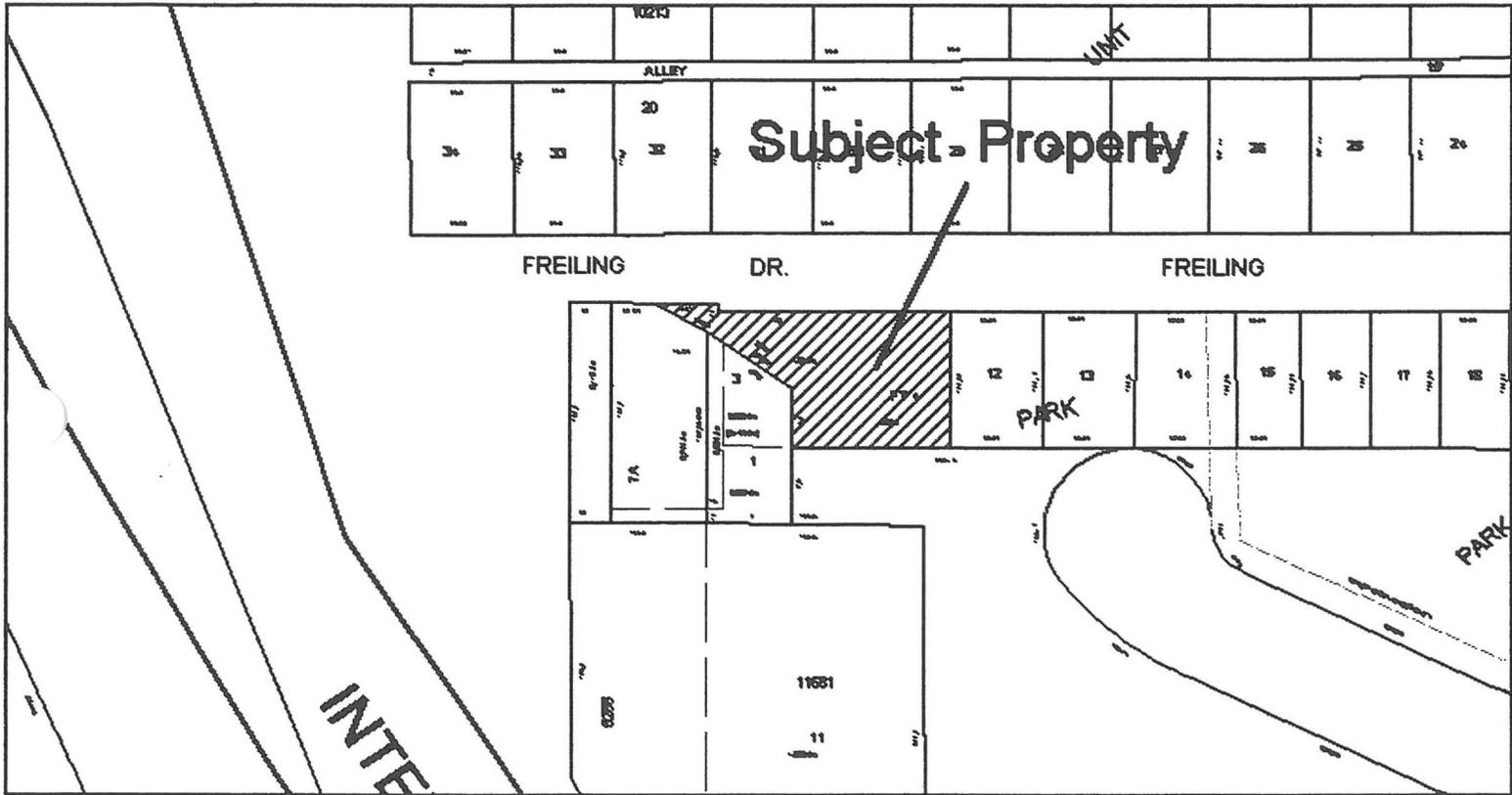
Approved:



Melissa Byrne Vossmer
ASSISTANT CITY MANAGER



Terry M. Brechtel
CITY MANAGER



CITY OF SAN ANTONIO

PUBLIC WORKS DEPARTMENT

**City Council
Agenda Item No. 5B**

June 28, 2001

Closure of Street/Access between Freiling Drive and Park Ten Boulevard

June 28, 2001

1

Issue

- A private street/access located within a commercial development along IH 10 generates traffic that results in higher traffic volumes on a residential street, Freiling Drive.
- Freiling Drive is the connection between the private street/access within the development and the IH 10 access road.

2

History - 1971

- In February, 1971 City Council approved an applicant's re-zoning of land to allow for commercial development, provided that there was **no access** to Freiling Drive, and that a non-access easement be located between the commercial site and the adjacent residential district.
- In November, 1971, applicant requested reconsideration, to allow access. Council stood by its prior decision.

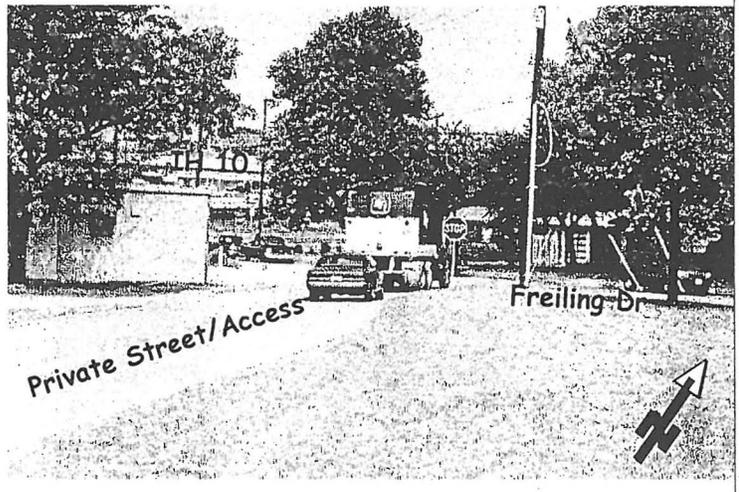
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History - 1972

- In 1972, developer requested B-1 zoning on property on south side of Freiling. Council approved this request, *“provided that no public or private street entering this property from or to Freiling Drive shall be permitted.”*

4

Looking North toward Freiling



5

History - 1975

- The same applicant represented to the San Antonio Planning Commission that *“the egress that had developed along Freiling Drive went through the City of Balcones Heights.”*

6

History - 1975 (cont'd)

- San Antonio's Planning Commission erroneously concluded that it had no jurisdiction to control the egress/ingress provided by the private street/access, when, in fact, only a portion of the access went through Balcones Heights and the majority of the access went through the City of San Antonio.

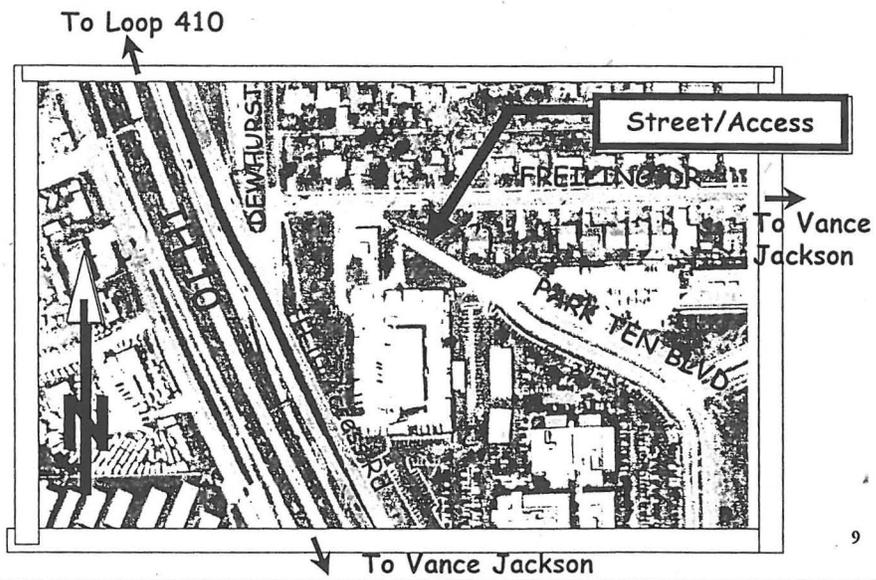
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History - 1975 (cont'd)

- The driveway approach on the north end of the private street/access is within the City of San Antonio. No driveway construction permit for this driveway approach was issued by the City of San Antonio.

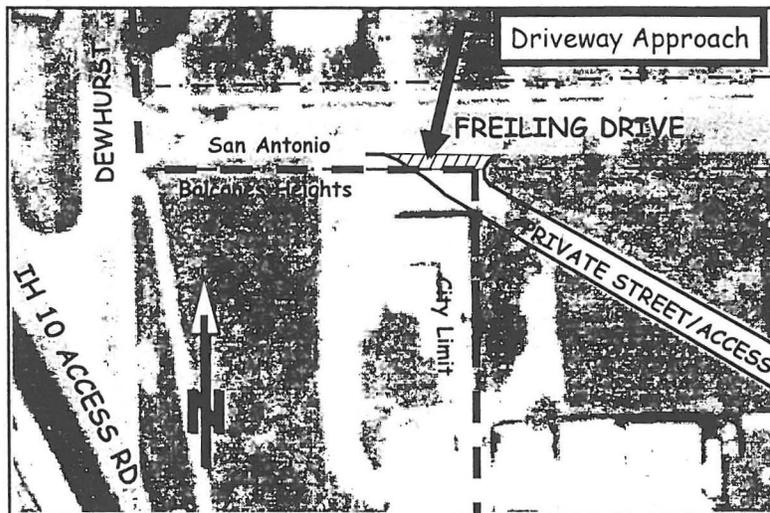
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Aerial Photo



9

City Limit Line



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History - Area Traffic Controls

- Traffic problems on Freiling Drive have prompted the City to install all-way stop signs at two intersections and speed humps at three points east of the private street/access.
- These supplement the 20 mph school zone at Arnold Elementary School and the traffic signal at the Vance Jackson intersection.

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History - 1999

- In June, 1999, Councilman Perez advised the adjacent property owner that due to increased traffic flows from the Business Park which adversely impacted the neighborhood, the City intended to close the street/access between the commercial development and Freiling Drive.
- A lawsuit was filed to stop the City from closing the street. Three mediations failed to produce a settlement.

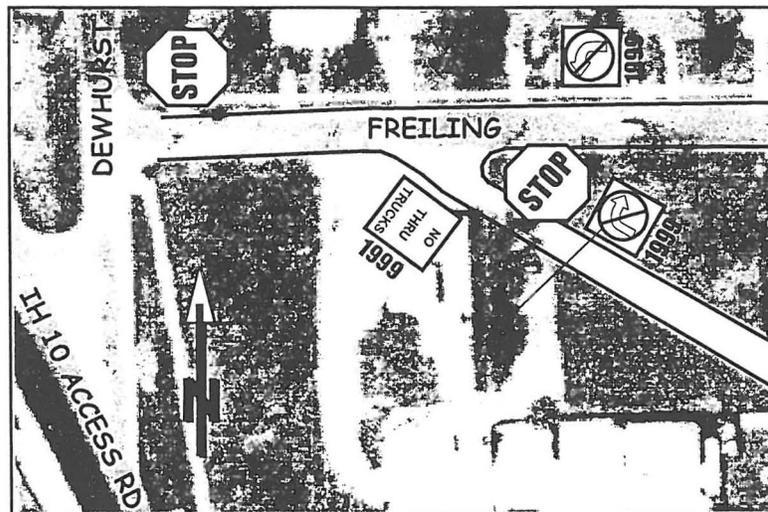
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History - 1999

- In an effort to improve residential quality of life for the portion of Freiling Drive east of the street/access, the City of San Antonio installed additional traffic control devices to restrict turning traffic between the private street/access and Freiling Drive.
- Without an inordinate commitment of enforcement resources, these controls will continue to be ineffective.

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Traffic Controls



14

Effects of Closure

Staff has determined that the closure of the connection between the private street/access and Freiling Drive would

- benefit the quality of life for the Freiling Drive residents,
- redistribute the commercial traffic to the appropriate IH 10 access driveways,

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Effects of Closure (cont'd)

Staff has also determined that this closure would

- result in no material and substantial impairment of access to the Business Park, and
- allow the Business Park to continue to have multiple access points to the IH 10 frontage road, as originally contemplated.

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Recommendation

Staff requests City Council to

- affirm its prior ordinances on this topic,
- direct staff to seek Bexar County District Court judgment declaring the City's right to close the connection between Freiling Drive and the private street/access, and
- direct staff to implement the closure upon receipt of the Court's favorable judgment.

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STAFF RECOMMENDS APPROVAL

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Closure of Street/Access at Freiling Drive

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