

3-12-12

ORDINANCE NO. 28602

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 1500 Dragon Street and supporting issuance of a municipal setting designation certificate by the Texas Commission on Environmental Quality; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality to create municipal setting designations; and

WHEREAS, Section 51A-6.108, "Municipal Setting Designation Ordinance," of Article VI, "Environmental Performance Standards," of Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code authorizes municipal setting designation ordinances prohibiting the use of designated groundwater as potable water and thereby enable the Texas Commission on Environmental Quality to certify a municipal setting designation for designated property; and

WHEREAS, the city council finds that:

(1) the eligibility criteria of Section 361.803 of the Texas Health and Safety Code have been met;

(2) this municipal setting designation ordinance will not have an adverse effect on the current or future water resource needs or obligations of the city of Dallas;

(3) there is a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half mile of the designated property; and

(4) this municipal setting designation ordinance is necessary because the concentration of contaminants of concern exceed ingestion protective concentration levels for human ingestion; and

WHEREAS, the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the city of Dallas, have given the required notices and have held the required public hearings regarding this municipal setting designation ordinance; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That for purposes of this municipal setting designation ordinance, the “designated property” means the property described in Exhibit A, attached to the ordinance.

SECTION 2. That for purposes of this municipal setting designation ordinance, “designated groundwater” means water below the surface of the designated property to a depth of 200 feet.

SECTION 3. That use of the designated groundwater from beneath the designated property as potable water is prohibited.

SECTION 4. That the use of the designated groundwater from beneath public rights-of-way included in the designated property as potable water is prohibited.

SECTION 5. That the following uses of or contacts with the designated groundwater are prohibited:

- (1) Human consumption or drinking.
- (2) Showering or bathing.
- (3) Cooking.
- (4) Irrigation of crops for human consumption.

SECTION 6. That the following conditions are imposed on the designated property and designated groundwater:

- (1) The potable use of the designated groundwater from beneath the designated property is prohibited.

- (2) The potable use of the designated groundwater from beneath public rights-of-way included in the designated property is prohibited.
- (3) The portion of the designated property assigned VCP No. 2401 must receive a certificate of completion from the Texas Commission on Environmental Quality Voluntary Cleanup Program by no later than March 28, 2014.

SECTION 7. That the city council supports the application to the Texas Commission on Environmental Quality for a municipal setting designation on the designated property, with the following comments:

- (1) The Texas Commission on Environmental Quality, as the state agency chartered to protect human health and the environment, is requested to thoroughly review the conditions of the designated property and issue a certificate of completion only when all contaminants of concern, through the applicable routes of exposure, have been addressed.

SECTION 8. That the public rights-of-way immediately adjacent to the designated property must be included, at no additional cost to the city of Dallas, in the application to the Texas Commission on Environmental Quality.

SECTION 9. That a state or federal program must address the entire non-ingestion protective concentration level exceedence zone originating from sources on the designated property or migrating from the designated property no later than March 28, 2014. That within this time period, the applicant shall provide the managing director of the office of environmental quality documentation, including a certificate of completion from the Texas Commission on Environmental Quality, that it has been addressed to the satisfaction of the agency administering the program. If it has not been addressed, the managing director of the office of environmental quality may, for good cause, take any of the following actions:

- (1) allow additional time to address the non-ingestion protective concentration level exceedence zone;

- (2) request a review by the Texas Commission on Environmental Quality or the agency administering the program;
- (3) recommend to the city council that this municipal setting designation ordinance be repealed;
- (4) request additional information or documentation from the applicant; or
- (5) pursue other actions that the managing director of the office of environmental quality believes may be warranted.

SECTION 10. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations; all ordinances, rules, and regulations of the city of Dallas; and all environmental regulations, and that this municipal setting designation ordinance in itself does not change any environmental assessment or clean-up requirements applicable to the designated property.

SECTION 11. That any person owning, operating, or controlling any portion of the designated property is responsible for ensuring compliance with this ordinance with respect to their portion of the designated property. Allowing use of designated ground water for potable purposes or failure to provide the managing director of the office of environmental quality with required documentation is a violation of this ordinance and may result in the ordinance being repealed for that portion of the designated property.

SECTION 12. That approval of this municipal setting designation ordinance shall not be construed to subject the city of Dallas to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

SECTION 13. That within 30 days after adoption of this municipal setting designation ordinance, the applicant shall provide the managing director of the office of environmental quality with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with the city of Dallas' geographic information system.

SECTION 14. That within 60 days after adoption of this municipal setting designation ordinance, the managing director of the office of environmental quality shall file a certified copy of this municipal setting designation ordinance in the deed records of the county where the designated property is located.

SECTION 15. That within 60 days after adoption of this municipal setting designation ordinance, the managing director of the office of environmental quality shall send a certified copy of this municipal setting designation ordinance to the applicant and the Texas Commission on Environmental Quality, and that the managing director of the office of environmental quality shall notify the Texas Commission on Environmental Quality 60 days prior to any amendment or repeal of this municipal setting designation ordinance.

SECTION 16. That the applicant shall provide the managing director of the office of environmental quality with a copy of the municipal setting designation certificate issued by the Texas Commission on Environmental Quality pursuant to Section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

SECTION 17. That the applicant shall provide the managing director of the office of environmental quality with a copy of the certificate of completion or other documentation issued by the Texas Commission on Environmental Quality showing that any site investigations and response actions required pursuant to Section 361.808 of the Texas Health and Safety Code have been completed to the satisfaction of the Texas Commission on Environmental Quality within the time period required. The managing director of the office of environmental quality may, for good cause, extend the time for submitting the documentation.

SECTION 18. That the applicant shall notify the managing director of the office of environmental quality in writing if the applicant determines that notice is required to be sent to an owner of other property beyond the boundaries of the designated property under Title 30 Texas Administrative Code, Chapter 30, Section 350.55(b), and provide the name of the property owner, the property address, and a copy of the notice sent to the property owner.

SECTION 19. That a person violating a provision of this municipal setting designation ordinance, upon conviction, is punishable by a fine not to exceed \$2,000, and that the Texas Commission on Environmental Quality shall be notified of any violations.

SECTION 20. That Chapter 51A of the Dallas City Code shall remain in full force and effect, save and except as amended by this municipal setting designation ordinance.

SECTION 21. That the terms and provisions of this municipal setting designation ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 22. That this municipal setting designation ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By


Assistant City Attorney

MAR 28 2012

Passed _____

28602

120987

MUNICIPAL SETTING DESIGNATION SURVEY
MCKINNEY AND WILLIAM SURVEY, ABSTRACT NO. 1052
CITY OF DALLAS BLOCK 6851, DALLAS COUNTY, TEXAS

OAK LAWN DESIGN PARTNERS, L.P.
A TEXAS LIMITED PARTNERSHIP
VOL. 96102, PG. 2717
D.R.D.C.T.



DAVID AND SHELLEY STEVENS
INST. NO. 20070068070
O.P.R.D.C.T.

O.B. ENGLISH
VOL. 69058, PG. 1785
D.R.D.C.T.

GERALD TOMLIN, JR.
VOL. 97034, PG. 4466
D.R.D.C.T.

1/2" IRON ROD FOUND
BEARS N67°52'27"E 0.42'

DRAGON PROPERTY FUND, LTD.,
A TEXAS LIMITED PARTNERSHIP
VOL. 2000064, PG. 04493
D.R.D.C.T.

STATE PLANE
COORDINATES
N = 6,975,003.56
E = 2,484,849.30

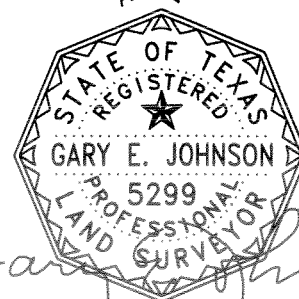
1500 DRAGON STREET ASSOCIATES, LTD.
A TEXAS LIMITED PARTNERSHIP
VOL. 2000060, PG. 04283
D.R.D.C.T.

STATE PLANE
COORDINATES
N = 6,975,605.48
E = 2,484,491.33

BLOCK 6851

281,077 SQ.FT.
6.45 ACRES

POINT OF
BEGINNING



JOB # 1101353-1
DATE: 06/22/2011
SCALE 1" = 100'
PAGE 2 OF 2

TEXAS HERITAGE LLC.
10610 Metric Drive, Suite 124
Dallas, TX 75243
Office 214-340-9700
Fax 214-340-9710
txheritage.com

EXHIBIT A

28602

120987

MUNICIPAL SETTING DESIGNATION SURVEY
MCKINNEY AND WILLIAM SURVEY, ABSTRACT NO. 1052
CITY OF DALLAS BLOCK 6851, DALLAS COUNTY, TEXAS

LEGAL DESCRIPTION

BEING a 281,077 square feet (6.45 acre) tract of land situated in the McKinney and William Survey, Abstract No. 1052 in the City of Dallas Block 6851, Dallas County, Texas, and being all of a tract of land conveyed to 1500 Dragon Street Associates, Ltd., a Texas limited partnership by special warranty deed recorded in Volume 2000060, Page 04283, Deed Records, Dallas County, Texas, and being the adjoining portion of Dragon Street (a 80 foot right-of-way), and being more particularly described by metes and bounds as follows:

Beginning at a point for corner in the Southwest line of said Dragon Street, and being in the Northeast line of Lot 55, Block 6/6836, Trinity Industrial District, 2nd Installment, an addition to the City of Dallas, Dallas County, Texas according to the plat thereof recorded in Volume 10, Page 95, Map Records, Dallas County, Texas, said point being South 58 degrees 18 minutes 40 seconds West, a distance of 80.00 feet from the South corner of said 1500 Dragon Street Associates, Ltd. tract;

Thence North 31 degrees 41 minutes 20 seconds West, along the Northeast line of said Trinity Industrial District, 2nd Installment, Block 6/6836, a distance of 358.87 feet to a point for corner, said point being in a tangent curve to the right having a radius of 2,618.06 feet, a delta of 05 degrees 58 minutes 40 seconds, and a chord that bears North 28 degrees 42 minutes 00 seconds West, a distance of 273.02 feet;

Thence continuing along the Northeast line of said Trinity Industrial District, 2nd Installment, Block 6/6836 and along said curve to the right, an arc length of 273.15 feet to a point for corner;

Thence North 25 degrees 42 minutes 40 seconds West, continuing along the Northeast line of said Trinity Industrial District, 2nd Installment, Block 6/6836, a distance of 68.85 feet to a point for corner;

Thence North 58 degrees 18 minutes 40 seconds East, traversing said Dragon Street, passing an "X" found at a distance of 80.44 feet marking the most Western South corner of a tract of land conveyed to Oak Lawn Design Partners, L.P., a Texas limited partnership by deed recorded in Volume 96102, Page 2717, Deed Records, Dallas County, Texas, and continuing along the most Western Southeast line of said Oak Lawn Design Partners, L.P. tract for a total distance of 350.60 feet to a 1/2 inch iron rod found at an interior ell corner of said Oak Lawn Design Partners, L.P. tract;

Thence South 31 degrees 41 minutes 20 seconds East, along the most Eastern Southwest line of said Oak Lawn Design Partners, L.P. tract, a distance of 242.78 feet to a 5/8 inch iron rod found at an exterior ell corner of said Oak Lawn Design Partners, L.P. tract;

Thence North 58 degrees 18 minutes 40 seconds East, along the most Eastern Southeast line of said Oak Lawn Design Partners, L.P. tract, a distance of 84.44 feet to a 1/2 inch iron rod found in the Southwest line of a tract of land conveyed to David and Shelley Stevens by deed recorded in Instrument No. 20070068070, Official Public Records, Dallas County, Texas;

Thence South 23 degrees 17 minutes 50 seconds East, along the Southwest line of said Stevens tract, and along the Southwest line of a tract of land conveyed to O.B. English by deed recorded in Volume 69058, Page 1785, Deed Records, Dallas County, Texas, and along the Southwest line of a tract of land conveyed to Gerald Tomlin, Jr. by deed recorded in Volume 97034, Page 4466, Deed Records, Dallas County, Texas, and along the most Northern Southwest line of a tract of land conveyed to Dragon Property Fund, Ltd., a Texas limited partnership by deed recorded in Volume 2000064, Page 04493, Deed Records, Dallas County, Texas, a distance of 462.17 feet to a point for corner making an interior ell corner of said Dragon Property Fund, Ltd. tract, from which a 1/2 inch iron rod found as witness bears North 67 degrees 52 minutes 27 seconds East, a distance of 0.42 feet;

Thence South 58 degrees 18 minutes 40 seconds West, along the Northwest line of said Dragon Property Fund, Ltd. tract, passing the West corner of said Dragon Property Fund, Ltd. tract at a distance of 308.99 feet, and continuing across said Dragon Street for a total distance of 388.99 feet to the Point of Beginning and containing 281,077 square feet or 6.45 acres of land.

TEXAS HERITAGE LLC.
 10610 Metric Drive, Suite 124
 Dallas, TX 75243
 Office 214-340-9700
 Fax 214-340-9710
 txheritage.com

JOB # 1101353-1
 DATE: 06/22/2011
 SCALE 1" = 100'
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EXHIBIT A

