

6-12-13

ORDINANCE NO. 29035

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 3131 Irving Boulevard (AKA 3140 and 3160 Commonwealth Drive; 3137 and 3141 Irving Boulevard; and 5021 Lakawana 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;

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(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.

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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 Volunteer Clean-up Program No. 2138 must receive a certificate of completion from the Texas Commission on Environmental Quality by no later than June 12, 2016.

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 June 12, 2016. 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.

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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

Passed

JUN 12 2013

29035

EXHIBIT "A"
LEGAL DESCRIPTION

GIS Approved

BEING 18.801 acres of land located in the JAMES MCLAUGHLIN SURVEY, ABSTRACT NO. 845, and the THOMAS E. MANNIN SURVEY, ABSTRACT NO. 958, City of Dallas, Dallas County, Texas, and said 18.801 acres of land also being the combined total of the tract of land known as Commonwealth Center, conveyed to Commonwealth Industrial, LLC, by the deed recorded in County Clerk's File No. 201000123137 of the Deed Records of Dallas County, Texas, consisting of all of Lots 3, 4, 5, 6, 7, 8, 9, 12, 13, and 14, and a portion of Lots 2 and 11, of Block 2/6368 of the EXPRESSWAY INDUSTRIAL DISTRICT, an addition to the City of Dallas, Dallas County, Texas, according to the plat recorded in Volume 117, Page 2150 of the Plat Records of Dallas County, Texas, and portions of the public right-of-ways of Irving Boulevard (174-foot-wide public right-of-way), Commonwealth Drive (a 224-foot-wide public right-of-way), and Lakawana Street (a 60-foot-wide public right-of-way). Said 18.801 acres of land being more particularly described by metes and bounds as follows:

COMMENCING at a point at the intersection of the Southeast right-of-way line of Commonwealth Drive and the Southwest right-of-way line of Iron Bridge Street;

THENCE S 48° 02' 58" W 138.50 feet, along the Southeast right-of-way line of aforesaid Commonwealth Drive to the North corner of aforesaid Commonwealth Industrial, LLC Tract, and the POINT OF BEGINNING;

THENCE along the Northeast boundary line of aforesaid Commonwealth Industrial, LLC Tract, as follows:

1. S 41° 57' 02" E 250.00 feet, to a point;
2. S 48° 02' 58" W 9.83 feet, to a point;
3. S 41° 57' 02" E at 200.03 feet, passing the most Easterly Northeast corner of said Commonwealth Industrial, LLC Tract, and in all 260.03 feet, to a point in the East right-of-way line of aforesaid Lakawana Street;

THENCE along the East right-of-way line of Lakawana Street, as follows:

1. S 48° 02' 48" W 67.39 feet, to a point at the beginning of a curve to the left;
2. SOUTHWESTERLY 81.93 feet, along said curve to the left having a radius of 98.77 feet, a central angle of 47°31'35", and a chord bearing S 24° 17' 34" W 79.60 feet, to a point at the end of said curve;

GIS Approved

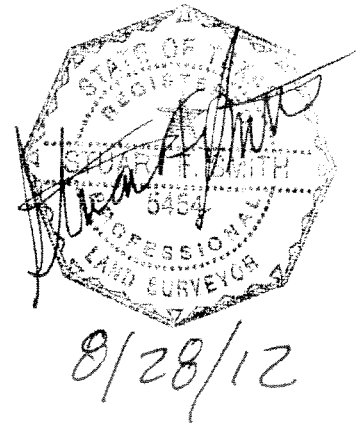
3. S 00° 26' 08" W 296.56 feet, to a point lying in the South right-of-way line of aforesaid Irving Boulevard;

THENCE along the South right-of-way line of Irving Boulevard, as follows:

1. SOUTHWESTERLY 137.23 feet, along a curve to the right having a radius of 2973.79 feet, a central angle of 02°38'38", and a chord bearing S 89° 08' 45" W 137.21 feet, to a point at the end of said curve;
2. N 89° 32' 02" W 1326.81 feet, to a point being the intersection of the South right-of-way line of Irving Boulevard and the projected Northwest right-of-way line of Commonwealth Drive;

THENCE N 48° 02' 58" E 1432.93 feet, along the Northwest right-of-way line of said Commonwealth Drive, to a point;

THENCE S 41° 57' 02" E 224.00 feet, crossing said Commonwealth Drive, to the POINT OF BEGINNING containing 18.801 acres of land.



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EXHIBIT "A"

JAMES McLAUGHLIN SURVEY,
ABSTRACT No. 845

BLOCK 5/7697
THIRD INSTALLMENT
INWOOD INDUSTRIAL DISTRICT
VOLUME 43, PAGE 121
P.R.D.C.T.

WOODALL STREET
60' WIDE RIGHT-OF-WAY

LOT 1A, BLOCK 5/7697
BROOKHOLLOW WAREHOUSE ADDITION
VOLUME 84166, PAGE 4027
P.R.D.C.T.

LOT 2, BLOCK 5/7697
THIRD INSTALLMENT
INWOOD INDUSTRIAL DISTRICT
VOLUME 43, PAGE 121
P.R.D.C.T.

POINT OF
BEGINNING

POINT OF
COMMENCING

COMMONWEALTH DRIVE
224' WIDE RIGHT-OF-WAY

818,975 SQUARE FEET,
18.801 ACRES

EXPRESSWAY INDUSTRIAL DISTRICT
VOLUME 117, PAGE 2150
P.R.D.C.T.

7.512 ACRES
OWNER:
COMMONWEALTH INDUSTRIAL, LLC.
INSTRUMENT# 201000123137
D.R.D.C.T.

IRVING BOULEVARD
174' WIDE RIGHT-OF-WAY

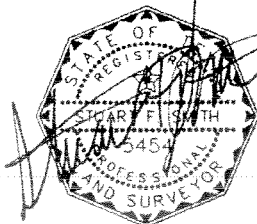
LOT 10A, BLOCK 5/7695
GIDEON ADDITION
VOLUME 98156, PAGE 59
P.R.D.C.T.

$\Delta = 02^{\circ}38'38''$
 $R = 2973.79'$
 $L = 137.23'$
 $CH = S 89^{\circ}08'45''W$
137.21'

FIFTH INSTALLMENT OF
WEST TRINITY
INDUSTRIAL DISTRICT
VOLUME 49, PAGE 61
P.R.D.C.T.

LAKAWANA STREET
60' WIDE RIGHT-OF-WAY

THOMAS E. MANNIN SURVEY,
ABSTRACT No. 958



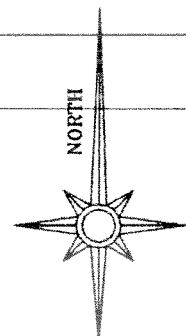
AUGUST 28, 2012

EXHIBIT MAP OF COMMONWEALTH CENTRE

BRITTAIN & CRAWFORD
LAND SURVEYING &
TOPOGRAPHIC MAPPING

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EXHIBIT MAP
OF
18.801 ACRES OF LAND
LOCATED IN THE
JAMES McLAUGHLIN SURVEY,
ABSTRACT No. 845 AND THOMAS E.
MANNIN SURVEY, ABSTRACT No. 958
DALLAS, DALLAS COUNTY, TEXAS



SCALE 1"=250'
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