

10-23-13

ORDINANCE NO. 29184

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 2218 Bryan (aka 2214 Bryan Street) and 538 Pearl 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.

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- (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 Voluntary Cleanup Program No. 2517 must receive a certificate of completion from the Texas Commission on Environmental Quality by no later than October 23, 2015.

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 October 23, 2015. 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 cleanup 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:

WARREN M.S. ERNST, City Attorney

By 

Assistant City Attorney

OCT 23 2013

Passed _____

Exhibit A

29184

Field Notes Describing a 419,178 Square Foot (9.623 Acre) Tract
To Acquire a Municipal Setting Designation
Situated in City Blocks 259, 264, 1/312 and 2/312
Being Adjacent to City Blocks 253, 254, 255, 258 and 260
And Adjacent to Lot 7A, Block 316, Americas Tower Addition
And Lot 3, Block 263, Burk's Subdivision
From 2218 Bryan Street, Ltd. and the City of Dallas, Texas
John Grigsby Survey, Abstract No. 495
City of Dallas, Dallas County, Texas

GIS Approved

DESCRIPTION, of a 9.623 acre tract of land situated in the John Grigsby Survey, Abstract No. 495, City of Dallas, Dallas County, Texas and being part of unplatted property in Blocks 259, 264, 1/312 and 2/312, Official Numbers of the City of Dallas, Texas; said tract being all of that certain tract of land described in Special Warranty Deed to 2218 Bryan Street, Ltd. recorded in Volume 98003, Page 3812 of the Deed Records of Dallas County, Texas; part of that certain tract of land described in Warranty Deed to the City of Dallas, Texas recorded in Volume 70206, Page 1648 of said Deed Records; part of that certain tract of land described in Warranty Deed to the City of Dallas, Texas recorded in Volume 70217, Page 143 of said Deed Records and part of those certain tracts of land described as "Tract 1" and "Tract 2" in Confirmation Warranty Deed to the City of Dallas, Texas recorded in Volume 72034, Page 12 of said Deed Records; said tract also being part of Live Oak Street (a variable width public right-of-way), part of Pearl Street (a variable width public right-of-way) and part of Bryan Street (a variable width public right-of-way); said 9.623 acre tract being more particularly described as follows (bearing system for this survey is based on a bearing of North 45 degrees, 08 minutes, 48 seconds East for a southeast right-of-way line of Bryan Street according to the said Special Warranty Deed to 2218 Bryan Street, Ltd. recorded in said Volume 98003, Page 3812 of the said Deed Records):

COMMENCING, at a PK nail found at the intersection of the said southeast line of Bryan Street (at this point a 70-foot wide right-of-way) and the northeast right-of-way line of Olive Street (a variable width right-of-way); said point being the westernmost corner of that certain tract of unplatted land situated in Block 254 and described as "Tract IV" in Special Warranty Deed to W2007 MVP Dallas, LLC recorded in Instrument No. 20080044377 of the Official Public Records of Dallas County, Texas;

THENCE, North 44 degrees, 51 minutes, 03 seconds East, along the said southeast line of Bryan Street and the northwest line of said "Tract IV", a distance of 212.17 feet to the POINT OF BEGINNING; said point being at the intersection of the said southeast line of Bryan Street and the southwest right-of-way line of said Pearl Street; said point also being the northernmost corner of said "Tract IV";

THENCE, North 45 degrees, 02 minutes, 02 seconds West, departing the said southeast line of Bryan Street and into and across the said Bryan Street right-of-way, along the projected southwest line of Pearl Street, a distance of 70.00 feet to an angle point at the intersection of the northwest right-of-way line of said Bryan Street and the said southwest line of Pearl Street; said point being the easternmost corner of that certain tract of unplatted land situated in Block 253 and described in Special Warranty Deed to the City of Dallas, Texas recorded in Volume 80100, Page 231 of said Deed Records;

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THENCE, North 45 degrees, 31 minutes, 57 seconds West, along the said southwest line of Pearl Street and a northeast line of the last said City of Dallas tract, a distance of 19.50 feet to a point for corner;

THENCE, North 45 degrees, 19 minutes, 40 seconds East, departing the said southwest line of Pearl Street and into and across the said Pearl Street right-of-way along the projected northwest right-of-way line of Bryan Street, at a distance of 106.14 feet passing a "+" cut in concrete found at the east end of a right-of-way corner clip at the intersection of the said northwest line of Bryan Street and the northeast right-of-way line of said Pearl Street and the southeast corner of that certain tract of unplatted land situated in Block 258 and described in Special Warranty Deed to Trizec Plaza of the Americas Limited Partnership recorded in Volume 2004099, Page 6675 of said Official Public Records; continuing along the said northwest line of Bryan Street and the southeast line of said Trizec Plaza tract, at a distance of 461.65 feet passing a "+" cut in concrete found at the south end of a right-of-way corner clip at the intersection of the said northwest line of Bryan Street and the southwest right-of-way line of Crockett Street (a variable width right-of-way) and the southernmost east corner of said Trizec Plaza tract; continuing into and across the said Crockett Street right-of-way and along the said projected northwest line of Bryan Street, at a distance of 514.94 feet passing a "+" cut in concrete found at the east end of a right-of-way corner clip at the intersection of the said northwest line of Bryan Street and the northeast right-of-way line of said Crockett Street and the southernmost east corner of Lot 7A, Block 316, Americas Tower Addition, an addition to the City of Dallas, Texas according to the plat recorded in Volume 83004, Page 891 of said Deed Records; continuing along the said northwest line of Bryan Street and the southeast line of said Lot 7A, at a distance of 652.78 feet passing a "+" cut in concrete found at the south end of a right-of-way corner clip at the intersection of the said northwest line of Bryan Street and the southwest right-of-way line of Leonard Street (a variable width right-of-way) and the southernmost east corner of said Lot 7A; then continuing into and across the said Leonard Street right-of-way and along the said projected northwest line of Bryan Street in all a total distance of 712.32 feet to a point for corner in the northeast right-of-way line of said Leonard Street and the southwest line of Lot 3, Block 263, Burk's Subdivision, an addition to the City of Dallas, Texas according to the plat recorded in Volume W, Page 800 of said Deed Records; said point being an angle point in the said northwest line of Bryan Street and South 44 degrees, 55 minutes, 32 seconds East, a distance of 21.20 feet from a "+" cut in concrete found at the southernmost corner of that certain tract of land described as DART Parcel No. CBD-4-XS1 in Special Warranty Deed to Spire Development Holdings, LLC recorded in Instrument No. 201100251898 of said Official Public Records;

THENCE, South 44 degrees, 55 minutes, 32 seconds East, along an offset in the said northwest line of Bryan Street and the southwest line of said Lot 3, a distance of 18.67 feet to a point for corner; said point being an angle point in the said northwest line of Bryan Street and the southernmost corner of said Lot 3;

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THENCE, North 45 degrees, 08 minutes, 48 seconds East, continuing along the said northwest line of Bryan Street and the southeast line of said Lot 3, a distance of 64.33 feet to a point for corner;

THENCE, South 44 degrees, 51 minutes, 12 seconds East, departing the said northwest line of Bryan Street and the said southeast line of Lot 3 and into and across the said Bryan Street right-of-way, a distance of 70.00 feet to a metal fence post found for corner in the southeast right-of-way line of said Bryan Street; said point being the northernmost corner of said 2218 Bryan Street, Ltd. tract and the westernmost corner of that certain tract of unplatted land in Block 264 described in Warranty Deed with Vendor's Lien to Eugene Quantan, Jr. and Peter W. Baldwin recorded in Volume 68189, Page 918 of said Deed Records;

THENCE, South 45 degrees, 18 minutes, 14 seconds East, departing the said southeast line of Bryan Street and along the northeast line of said 2218 Bryan Street, Ltd. tract and the southwest line of the said Quantan/Baldwin tract, a distance of 216.33 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap found for corner; said point being an east corner of said 2218 Bryan Street, Ltd. tract and a reentrant corner of the said Quantan/Baldwin tract;

THENCE, South 44 degrees, 51 minutes, 46 seconds West, along a southeast line of the said 2218 Bryan Street, Ltd. tract and a northwest line of the said Quantan/Baldwin tract, at a distance of 3.40 feet passing a west corner of said Quantan/Baldwin tract and a north corner of that certain tract of land described in Deed to the State of Texas dated February 15, 1967, then continuing along a northwest line of said State of Texas tract in all a total distance of 18.85 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap found for corner; said point being a reentrant corner of the said 2218 Bryan Street, Ltd. tract and a west corner of said State of Texas tract;

THENCE, South 45 degrees, 00 minutes, 14 seconds East, along a northeast line of said 2218 Bryan Street, Ltd. tract and a southwest line of said State of Texas tract, a distance of 65.51 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap found for corner; said point being the easternmost corner of the said 2218 Bryan Street, Ltd. tract, the northernmost corner of that certain tract of land described in Controlled Access Highway Facility Deed to the State of Texas recorded in Volume 69239, Page 1729 of said Deed Records and the beginning of a non-tangent curve to the right;

THENCE, departing the said southwest line of the first referenced State of Texas tract and along the easterly and southeast line of the said 2218 Bryan Street, Ltd. tract and the westerly and northwest line of the second referenced State of Texas tract, the following three (3) calls:

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In a southerly direction, along said curve to the right, having a central angle of 14 degrees, 02 minutes, 07 seconds, a radius of 933.93 feet, a chord bearing and distance of South 15 degrees, 23 minutes, 45 seconds West, 228.20 feet, an arc distance of 228.78 feet to a Texas Department of Transportation aluminum disk found at the end of said curve;

South 23 degrees, 20 minutes, 04 seconds West, (non-tangent to the last said curve) a distance of 159.56 feet to a concrete monument found at the beginning of a non-tangent curve to the right;

In a southwesterly direction, along said curve to the right, having a central angle of 09 degrees, 40 minutes, 29 seconds, a radius of 944.93 feet, a chord bearing and distance of South 36 degrees, 58 minutes, 15 seconds West, 159.37 feet, an arc distance of 159.56 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap found for corner in the northwest right-of-way line of Live Oak Street (a variable width right-of-way); said point being the southernmost corner of the second referenced State of Texas tract;

THENCE, South 44 degrees, 52 minutes, 10 seconds East, departing the said southeast line of the 2218 Bryan Street, Ltd. tract and the said northwest line of Live Oak Street and into and across the said Live Oak Street right-of-way, a distance of 69.39 feet to a point for corner; said point being in the projected southeast right-of-way line of Live Oak Street and South 45 degrees, 07 minutes, 50 seconds West, a distance of 5.12 feet from a PK nail with washer stamped "CITY OF DALLAS" found at the intersection of the south right-of-way line of said Live Oak Street and the northeast right-of-way line of said Pearl Street;

THENCE, South 45 degrees, 07 minutes, 50 seconds West, along the said projected southeast line of Live Oak Street, at a distance of 132.82 feet passing a PK nail with washer stamped "CITY OF DALLAS" found at the intersection of the southeast right-of-way line of Live Oak Street and the southwest right-of-way line of said Pearl Street and the northernmost corner of that certain tract of unplatted land in Block 255 and Block 260 described as "Tract C" in Special Warranty Deed and Assignment to the Dallas Area Rapid Transit recorded in Volume 94214, Page 6583 of said Deed Records; continuing along the said southeast line of Live Oak Street and the northwest line of said Dallas Area Rapid Transit tract, at a distance of 157.57 feet passing a PK nail with washer stamped "CITY OF DALLAS" found; then continuing in all a total distance of 263.40 feet to a point for corner;

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GIS Approved

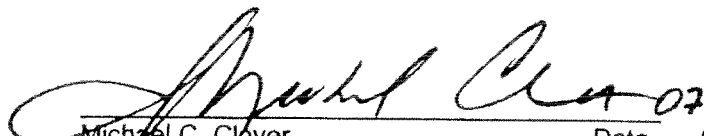
THENCE, North 44 degrees, 44 minutes, 57 seconds West, departing the said southeast line of Live Oak Street and the said northwest line of the Dallas Area Rapid Transit tract, and into and across the said Live Oak Street right-of-way, a distance of 70.04 feet to a metal "L" stamped "PROPERTY LINE" in concrete found at an angle point; said point being at the intersection of the said northwest line of Live Oak Street and the said southwest line of Pearl Street and the easternmost corner of the said W2007 MVP Dallas, LLC, "Tract IV";

THENCE, North 43 degrees, 53 minutes, 27 seconds West, along the said southwest line of Pearl Street and the northeast line of the said "Tract IV", a distance of 478.03 feet to the POINT OF BEGINNING;

CONTAINING, 419,178 square feet or 9.623 acres of land, more or less.

(A survey plat of even survey date herewith accompanies this description.)

The undersigned, Registered Professional Land Surveyor, hereby certifies that the foregoing description accurately sets out the metes and bounds of the tract of land described.

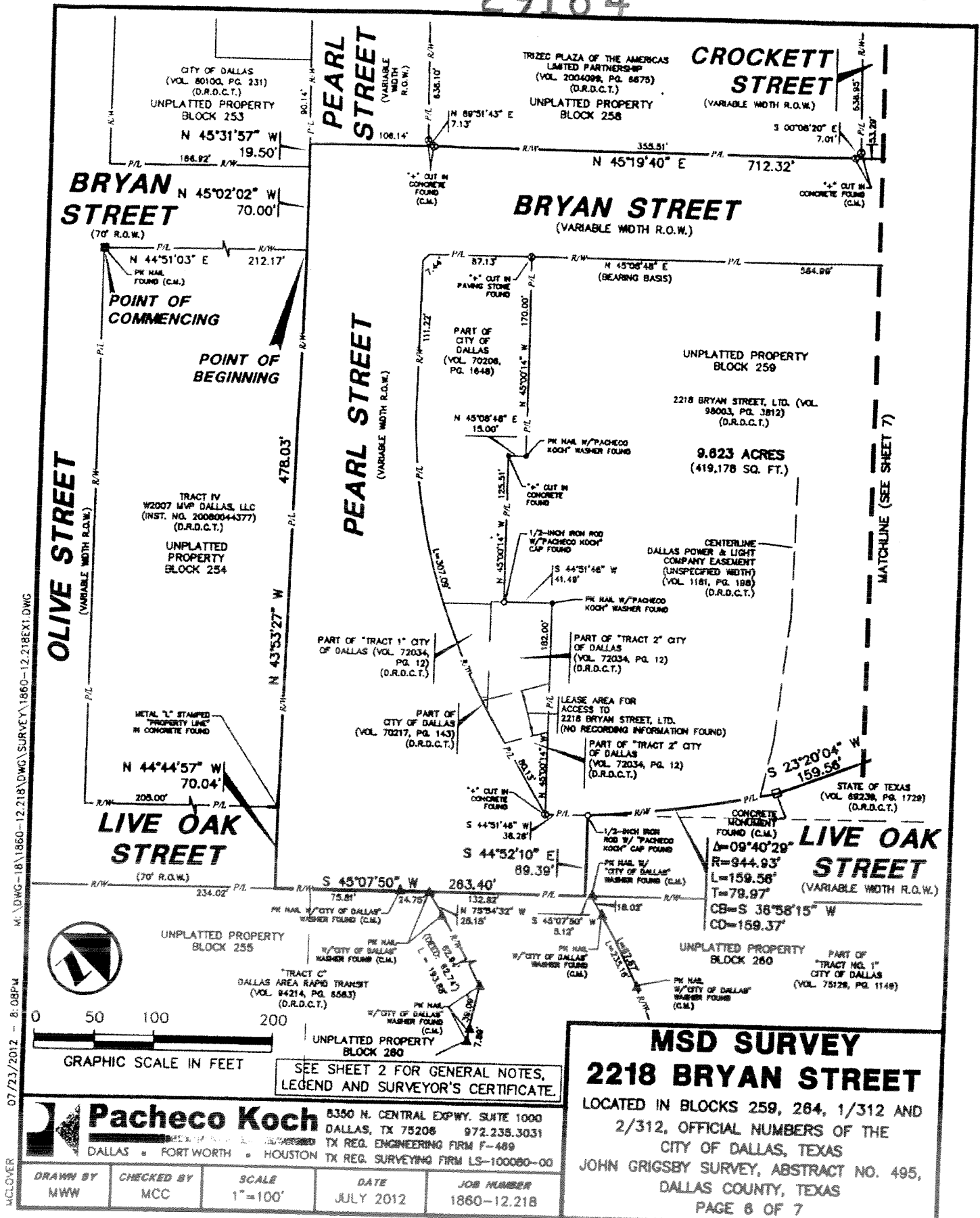

 Michael C. Clover Date
 Registered Professional Land Surveyor No. 5225
 Pacheco Koch Consulting Engineers, Inc.
 8350 N. Central Expwy, #1000, Dallas TX 75206
 (972) 235-3031
 TX Reg. Surveying Firm LS-100080-00



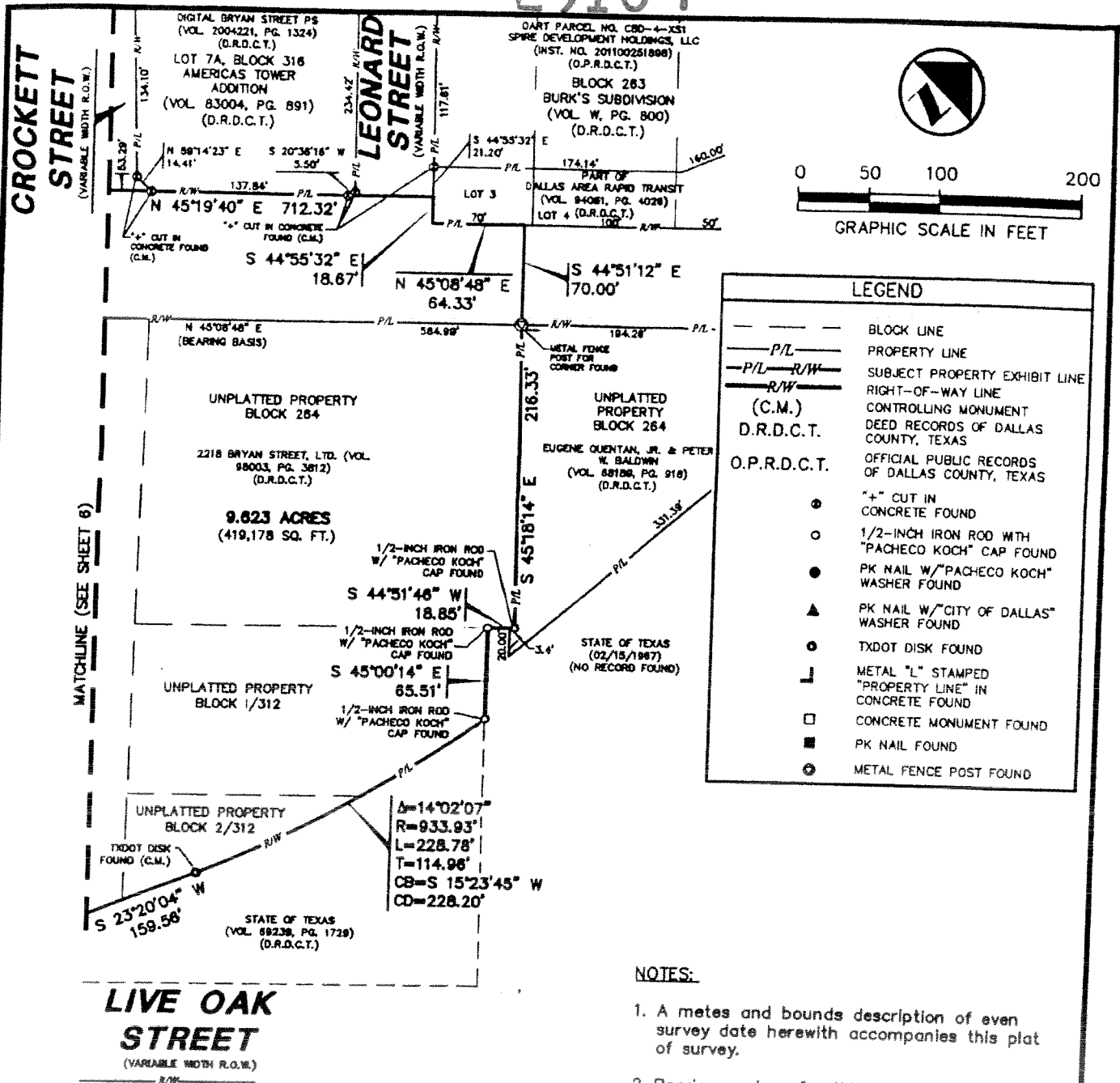
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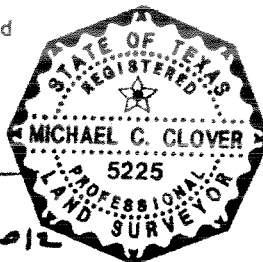


The undersigned, Registered Professional Land Surveyor, hereby certifies that this plat of survey accurately sets out the metes and bounds of the tract of land described.

Michael C. Clover
Registered Professional
Land Surveyor No. 5525

Date

07/23/2012



Pacheco Koch

DALLAS • FORT WORTH • HOUSTON

8350 N. CENTRAL EXPWY. SUITE 1000
DALLAS, TX 75208 972.235.3031
TX REG. ENGINEERING FIRM F-489
TX REG. SURVEYING FIRM LS-100080-00

DRAWN BY

MWW

CHECKED BY

MCC

SCALE

1"=100'

DATE

JULY 2012

JOB NUMBER

1860-12.218

MSD SURVEY 2218 BRYAN STREET

LOCATED IN BLOCKS 259, 264, 1/312 AND
2/312, OFFICIAL NUMBERS OF THE
CITY OF DALLAS, TEXAS
JOHN GRIGSBY SURVEY, ABSTRACT NO. 495,
DALLAS COUNTY, TEXAS

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