

10-23-13

ORDINANCE NO. 29185

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 1031 South Haskell Avenue, 4215 and 4220 Gurley Avenue, and 1100 South Pacific Avenue 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:

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- (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 Voluntary Cleanup Program No. 2492 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 exceedance 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:

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- (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.

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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.

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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

Passed

OCT 23 2013

## MUNICIPAL SETTING DESIGNATION SURVEY

## J.M. BROWDER'S PROVIDENCE ADDITION

GIS Approved

## CITY OF DALLAS BLOCK NO. 26/1268 &amp; 27/1269, DALLAS COUNTY, TEXAS

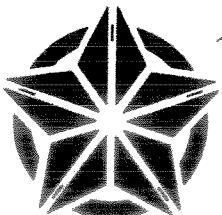
Being a 337,317 square feet (7.74 acre) tract of land situated in City of Dallas Block No. 27/1269 and 26/1268, being all of Lots 1 through 26, Block 27/1269 of the J.M. Browder's Providence Addition, an addition to the City of Dallas, Dallas County, Texas, according to the plat thereof recorded in Volume 150, Page 402 of the Map Records of Dallas County, Texas, being that same tract of land conveyed to Sutton Steele & Steele, Inc. a corporation by deed recorded in Volume 75159, Page 2342 of the Deed Records of Dallas County, Texas, together with all of Lot 7-A, Block 26/1268 of the Sullivan's Subdivision DR.J.M. Browder's Providence Addition, an addition to the City of Dallas, Dallas County, Texas, according to the plat thereof recorded in Volume 73245, Page 864 of the Map Records of Dallas County, Texas, together with Certificate of Correction recorded in Volume 73249, Page 737 of the Deed Records of Dallas County, Texas, being that same tract of land conveyed to Sutton Steele & Steele by deeds recorded in Volume 69195, Page 463 and conveyed to Triple/S Dynamic by deed recorded in Volume 73141, Page 1117 and to Sutton Steele & Steele by deed recorded in Volume 73182, Page 1330 of the Deed Records of Dallas County, Texas together with the adjoining portions of East Grand Avenue (50 foot public right-of-way), Fletcher Avenue (50 foot public right-of-way), Gurley Avenue (50 foot public right-of-way), S. Haskell Avenue (variable width public right-of-way) and Pacific Avenue (25 foot public right-of-way), and all together being more particularly described by metes and bounds as follows:

Beginning at a 1 inch iron pipe found for corner at the intersection of the Southeast right-of-way line of said East Grand Avenue and the Southwest right-of-way line of said Pacific Avenue, said point being in the Northeast line of a tract of land conveyed to Dallas Area Rapid Transit (D.A.R.T.) by deed recorded in Volume 88083, Page 4905 of the Deed Records of Dallas County, Texas, same being the South corner of herein described tract;

Thence North 73 Degrees 26 Minutes 29 Seconds West, along the Southwest right-of-way line of said Pacific Avenue and along the Northeast line of said D.A.R.T. tract, a distance of 756.00 feet to a point for corner at the intersection of the Southwest right-of-way line of said Pacific Avenue and the Northwest right-of-way line of said Gurley Avenue, said point being the most southerly West corner of herein described tract;

Thence North 16 Degrees 33 Minutes 31 Seconds East, departing the Southwest right-of-way line of said Pacific Avenue, along the Northwest right-of-way line or said Gurley Avenue, a distance of 25.00 feet to a 5/8 inch iron rod found for corner at the intersection of the Northeast right-of-way line of said Pacific Avenue and the Northwest right-of-way line of said Gurley Avenue, said point being the South corner of said Lot 7-A, Block 26/1268;

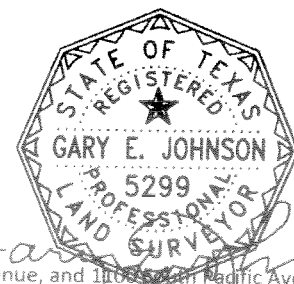
Thence North 73 Degrees 26 Minutes 29 Seconds West, continuing along the Northeast line of said D.A.R.T. tract and along the Southwest line of said Lot 7-A, a distance of 233.85 feet to a point for corner, said point being the West corner of a 20 foot alley, same being the South corner of a tract of land conveyed to State Fair of Texas by deed recorded in Volume 2001126, Page 910 of the Deed Records of Dallas County, Texas and being the most northerly West corner of herein described tract;



TEXAS HERITAGE  
SURVEYING, LLC

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JOB NO: 1200138-1  
DATE: 02/28/2012  
SCALE: 1"=120'  
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## MUNICIPAL SETTING DESIGNATION SURVEY

## J.M. BROWDER'S PROVIDENCE ADDITION

GIS Approved

## CITY OF DALLAS BLOCK NO. 26/1268 &amp; 27/1269, DALLAS COUNTY, TEXAS

Thence North 16 Degrees 33 Minutes 31 Seconds East, along the Northwest right-of-way line of said alley, a distance of 306.29 feet to a point for corner in the Northeast right-of-way line of said S. Haskell Avenue and in the Southwest line of Block 23/1267 of said J.M. Browder's Providence Addition, said point being the North corner of herein described tract;

Thence South 73 Degrees 16 Minutes 48 Seconds East, along the Northeast right-of-way line of said S. Haskell Avenue, a distance of 5.40 feet to a point for corner;

Thence North 85 Degrees 24 Minutes 51 Seconds East, continuing along the North right-of-way line of said S. Haskell Avenue, a distance of 298.55 feet to a 1/2 inch iron rod found for corner at the intersection of the North right-of-way line of said S. Haskell Avenue and the Southeast right-of-way line of said Gurley Avenue;

Thence South 16 Degrees 33 Minutes 31 Seconds West, along the Southeast right-of-way line of said Gurley Avenue, a distance of 107.97 feet to a 1/2 inch iron rod found for corner at the intersection of the Southeast right-of-way line of said Gurley Avenue and the Northeast right-of-way line of said Fletcher Avenue, said point being the West corner of Block 24/1269 of said J.M. Browder's Providence Addition;

Thence South 73 Degrees 26 Minutes 29 Seconds East, along the Northeast right-of-way line of said Fletcher Avenue, a distance of 406.00 feet to a point for corner;

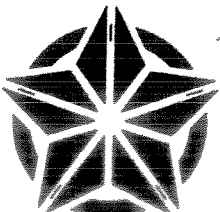
Thence North 16 Degrees 33 Minutes 31 Seconds East, a distance of 3.00 feet to a point for corner, said point being the West corner of Lot 22-A, Block 24/1270 of the D.E. Barton Addition, an addition to the City of Dallas, Dallas County, Texas, according to the plat thereof recorded in Volume 85084, Page 2639 of the Map Records of Dallas County, Texas;

Thence South 73 Degrees 26 Minutes 29 Seconds East, continuing along the Northeast right-of-way line of said Fletcher Avenue, a distance of 150.00 feet to a point for corner, said point being the South corner of said Lot 22-A;

Thence South 16 Degrees 33 Minutes 31 Seconds West, a distance of 3.00 feet to a point for corner;

Thence South 73 Degrees 26 Minutes 29 Seconds East, continuing along the Northeast right-of-way line of said Fletcher Avenue, a distance of 150.00 feet to a point for corner at the intersection of the Northeast right-of-way line of said Fletcher Avenue and the Southeast right-of-way line of said East Grand Avenue, said point being the East corner of herein described tract;

Thence South 16 Degrees 33 Minutes 31 Seconds West, along the Southeast right-of-way line of said East Grand Avenue, a distance of 331.00 feet to the POINT OF BEGINNING and containing 337,317 square feet or 7.74 acres of land.



**TEXAS HERITAGE**  
SURVEYING, LLC

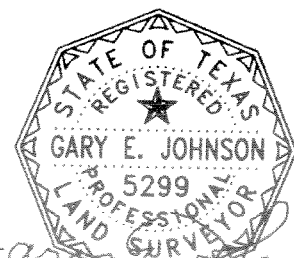
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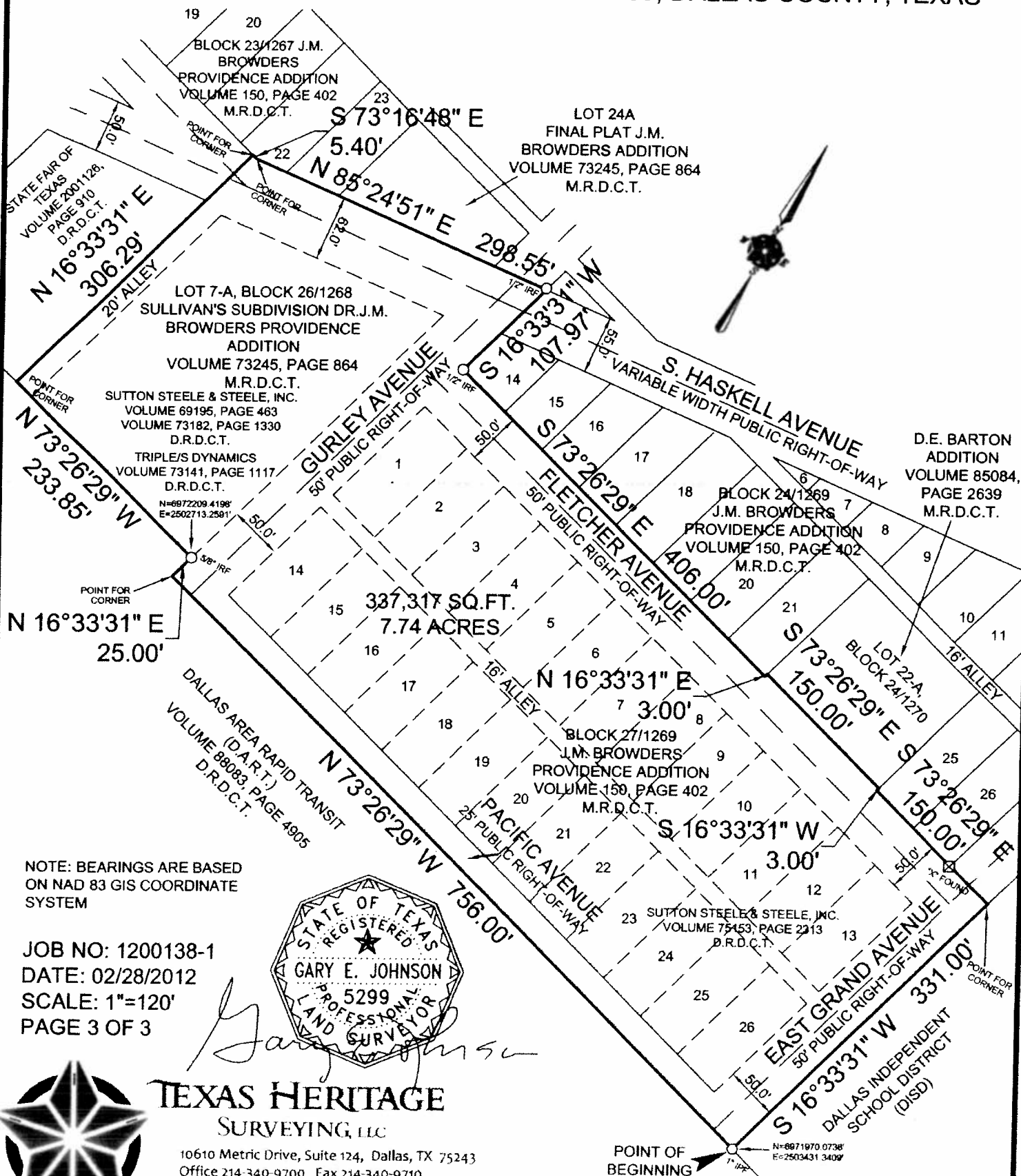
SCALE: 1"=120'

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GIS Approved



NOTE: BEARINGS ARE BASED  
ON NAD 83 GIS COORDINATE  
SYSTEM

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No. 060022 Sullivan Asset Management Inc. MSD - 1031 South Haskell Avenue, 4215 and 4220 Gurley Avenue, and 1100 South Pacific Avenue