

06-02-15

ORDINANCE NO. 29790

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 1601, 1615, and 1634 Market Center Boulevard (aka 1300 Oak Lawn Avenue and 1636 Market Center Boulevard), 1626, 1628, and 1630 Irving Boulevard, and 1212 Oak Lawn 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

MSD LogOEQ0042(LFT) – (Prescott Interests, Ltd and Prescott Interests 1300 Oak Lawn, Ltd. located at 1601, 1615, 1634 Market Center Boulevard (aka 1300 Oak Lawn Avenue and 1636 Market Center Boulevard), 1626, 1628, 1630 Irving Boulevard, 1212 Oak Lawn Avenue)

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 (“VCP”) No. 2725 must receive a certificate of completion from the Texas Commission on Environmental Quality by no later than June 17, 2017.

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 June 17, 2017. 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:

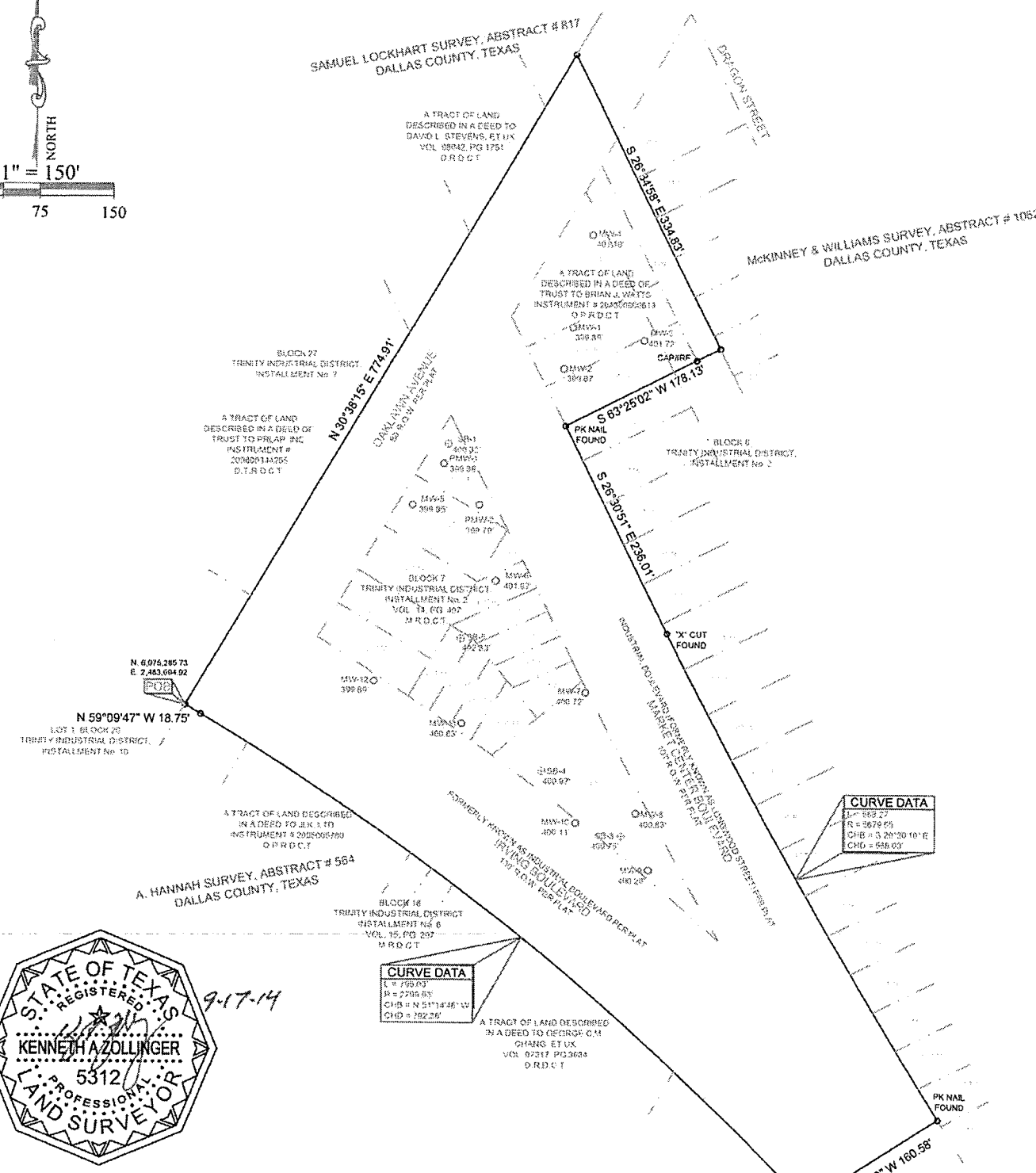
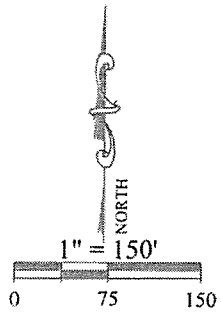
WARREN M.S. ERNST, City Attorney

By 

Assistant City Attorney

Passed _____

JUN 17 2015

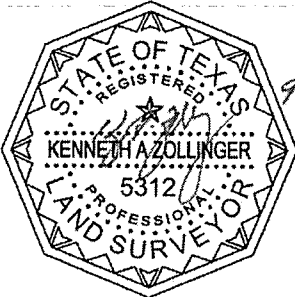


CURVE DATA

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R = 567.05
CHB = S 20°30'10" E
CHD = 556.03

CURVE DATA

L = 795.03
R = 2705.83
CHB = N 57°14'46" W
CHD = 152.26



9-17-14

PAGE 1 OF 2

JOB # 140103
DRAWN BY: H.C.I.
DATE: 3-24-2014
R.P.L.S.
KENNETH A. ZOLLINGER

NOTES:
9-17-2014: added state plane coordinates to POB; hc

KAZ SURVEYING
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<ul style="list-style-type: none"> ⊕ = BENCHMARK ⊕ = BURIED VERIZON BOX ⊕ = CABLE RISER ⊕ = ELECTRIC FIBER ⊕ = ELECTRIC TRANSFORMER ⊕ = FIRE HYDRANT ⊕ = GAS METER ⊕ = LIGHT PALE ⊕ = POWER POLE ⊕ = PROPANE TANK ⊕ = SEWER MANHOLE ⊕ = TELEPHONE RISER ⊕ = BURIED ELECTRIC BOX ⊕ = BURIED CABLE SIGN ⊕ = WATER METER ⊕ = WATER VALVE ⊕ = BUILDING LINE ⊕ = DRAINAGE EASEMENT D.U.E. = DRAINAGE UTILITY EASEMENT F.F. = FINISHED FLOOR P.U.E. = PUBLIC UTILITY EASEMENT U.E. = UTILITY EASEMENT M.F.P. = METAL FENCE CORNER POST W.C.P. = WOOD FENCE CORNER POST B.F.O.C. = BURIED FIBER OPTIC SIGN O.P.L.O. = GAS PIPELINE SIGN F. = FLAT OR DEED CALL C.M. = CONTROLLING MONUMENT I.F.F. = IRON ROD FOUND C.A.P.R.S. = CAPPED IRON ROD SET C.A.P.I.R.F. = CAPPED IRON ROD FOUND — = PIPE FENCE — = WIRE FENCE — = WOOD FENCE — = CHAIN LINK FENCE — = WROUGHT IRON OR VINYL FENCE — = OVER-HEAD UTILITY — = CONCRETE — = WOOD — = ROCK — = BRICK

Being all that certain tract of land situated in the McKinney & Williams Survey, Abstract Number 1052 and the A. Hannah Survey, Abstract Number 564, in the City of Dallas, Dallas County, Texas; the subject tract being more particularly described as follows:

BEGINNING at a point on Texas State Plane Coordinate System, North Central Zone, NAD '83 whose coordinates are Northing: 6,975,285.73, Easting: 2,483,694.92 and being in South line of Irving Boulevard and the West line of Oak Lawn Avenue;

Thence North 30 degrees 38 minutes 15 seconds East with the West line thereof a distance of 774.91 feet to a point;

Thence South 26 degrees 34 minutes 58 seconds East crossing said Avenue with the East line of Lot 63, Block 6, of Trinity Industrial District No. 2 a distance of 334.83 feet to a point;

Thence South 63 degrees 25 minutes 02 seconds West passing a capped iron rod found for the East corner of Lot 28 of said addition and continuing along said course a total distance of 178.13 feet to PK nail found for the South corner thereof in the East line of Market Center Boulevard;

Thence South 26 degrees 30 minutes 51 seconds East with the East line thereof a distance of 236.01 feet to an "X" cut found at the beginning of a curve to the left having a radius of 5679.65 feet and a chord bearing and distance of South 29 degrees 20 minutes 10 seconds East, 568.03 feet;

Thence along said curve and the East line of said Boulevard an arc distance of 568.27 feet to a PK nail found;

Thence South 57 degrees 15 minutes 52 seconds West crossing said Market Center Boulevard and said Irving Boulevard a distance of 160.58 feet to a 5/8" iron rod found in the South line of said Irving Boulevard at the beginning of a curve to the left having a radius of 2799.93 feet and a chord bearing and distance of North 51 degrees 14 minutes 46 seconds West, 792.36 feet;

Thence along said curve and said South line of Irving Boulevard an arc distance of 795.03 feet to a point;

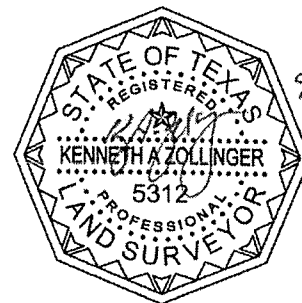
Thence North 59 degrees 09 minutes 47 seconds West a distance of 18.76 feet to the PLACE OF BEGINNING and enclosing 7.64 acres of land more or less.

NOTE: Bearings based on G.P.S. observations and the Texas State Plane Coordinate System, North Central Zone, NAD '83.

NOTE: Not all improvements are shown

NOTE: This survey was performed without the benefit of a title commitment.

This survey correctly represents the results of an on-the-ground survey made under my direction and supervision on 2-19-2014.



MUNICIPAL SETTING DESIGNATION EXHIBIT

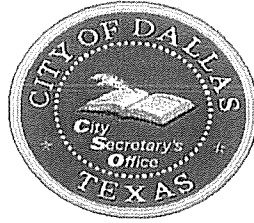
BEING 7.64 ACRES INCLUDING ALL OF BLOCK 7, TRINITY INDUSTRIAL DISTRICT, INSTALLMENT No. 2, AS RECORDED IN VOLUME 14, PAGE 407 MAP RECORDS, DALLAS COUNTY, TEXAS, ALL OF A TRACT OF LAND DESCRIBED IN A DEED TO BRIAN J. WATTS, TRUSTEE, AS RECORDED IN INSTRUMENT # 201300000613 OF THE OFFICIAL PROPERTY RECORDS, DALLAS COUNTY, TEXAS, THE FULL WIDTH OF THE ADJACENT IRVING BOULEVARD, R.O.W., THE FULL WIDTH OF THE ADJACENT MARKET CENTER BOULEVARD R.O.W. AND THE FULL WIDTH OF THE ADJACENT OAKLAWN AVENUE.

PAGE 2 OF 2

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JOB # 140103
DRAWN BY: H.C.I.
DATE: 3-24-2014
R.P.L.S. KENNETH A. ZOLLINGER
NOTES: 9-17-2014: added state plane coordinates to POB; hci

<ul style="list-style-type: none"> ⊕ = BENCHMARK ⊠ = BURIED VERIZON BOX ⊠ = CABLE RISER ⊠ = ELECTRIC RISER ⊠ = ELECTRIC TRANSFORMER ⊠ = FIRE HYDRANT ⊠ = GAS METER ⊠ = LIGHT POLE ⊠ = POWER POLE ⊠ = PROPANE TANK ⊠ = SEWER MANHOLE ⊠ = TELEPHONE RISER ⊠ = BURIED ELECTRIC BOX ⊠ = BURIED CABLE SIGN ⊠ = WATER METER ⊠ = WATER VALVE ⊠ = BUILDING LINE ⊠ = DRAINAGE EASEMENT ⊠ = DRAINAGE UTILITY EASEMENT ⊠ = FINISHED FLOOR ⊠ = PUBLIC UTILITY EASEMENT ⊠ = UTILITY EASEMENT ⊠ = METAL FENCE CORNER POST ⊠ = WOOD FENCE CORNER POST ⊠ = BURIED IRON OPTIC SIGN ⊠ = GAS PIPELINE SIGN ⊠ = PLAT OR DEED CALL ⊠ = CONTROLLING MONUMENT ⊠ = IRON ROD FOUND ⊠ = GALVANIZED IRON ROD SET ⊠ = CAP/IRP = CAPPED IRON ROD FOUND ⊠ = PIPE FENCE ⊠ = WIRE FENCE ⊠ = WOOD FENCE ⊠ = CHAIN LINK FENCE ⊠ = WROUGHT IRON OR VINYL FENCE ⊠ = OVERHEAD UTILITY ⊠ = CONCRETE ⊠ = WOOD ⊠ = ROCK ⊠ = BRICK
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PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL JUN 17 2015

ORDINANCE NUMBER 29790

DATE PUBLISHED JUN 20 2015

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Rose C. Liss".