

07-29-15

ORDINANCE NO. 29840

A municipal setting designation ordinance prohibiting the use of designated groundwater from beneath property generally located at 4217 Swiss Avenue and 4262 Live Oak 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. 2718 must receive a certificate of completion from the Texas Commission on Environmental Quality by no later than August 26, 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 exceedence zone originating from sources on the designated property or migrating from the designated property no later than August 26, 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.

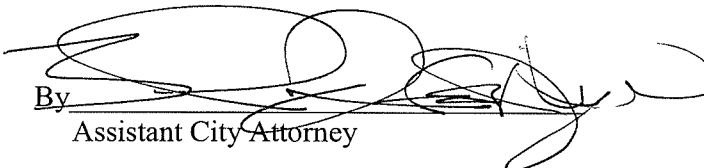
SECTION 20. That Chapter 51A of the Dallas City Code shall remain in full force and effect, save and except as amended by this municipal setting designation ordinance.

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 **AUG 26 2015**

"EXHIBIT A"
MUNICIPAL SETTING DESIGNATION SURVEY
LOT 1A, BLOCK 10/740
SWISS AVENUE BANK – LIVE OAK ADDITION
AND A PORTION OF LIVE OAK STREET, NORTH PEAK STREET,
SYCAMORE STREET & SWISS AVENUE
J. GRIGSBY SURVEY, ABSTRACT NO. 495
CITY OF DALLAS, DALLAS COUNTY, TEXAS

Being 4.974 acre tract of land situated in the J. Grigsby Survey, Abstract No. 495, City of Dallas, Dallas County, Texas, being all of Lot 1A, Block 10/740, Swiss Avenue Bank - Live Oak Addition, an addition to the City of Dallas according to the plat recorded in Volume 96068, Page 2790, Deed Records, Dallas County, Texas, and being a portion of Live Oak Street (an 81' right-of-way), North Peak Street (a variable width right-of-way), Sycamore Street (an 80' right-of-way), and Swiss Avenue (an 80' right-of-way), said 4.974 acre tract being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with yellow plastic cap stamped "DC&A" at the intersection of the southeast line of said Swiss Avenue and the northeast line of North Peak Street, said rod being the west corner of Lot 8, Block 8/768, Jefferson Peak Suburban Addition, an addition to the City of Dallas according to the plat recorded in Volume 45, Page 56, Deed Records, Dallas County, Texas;

THENCE South 45° 00' 00" West across said North Peak Street, passing at a distance of 60.00 feet the north corner of Block 7/767 of said Jefferson Peak Suburban Addition and the intersection of the southeast line of said Swiss Avenue and the southwest line of said North Peak Street, continuing along the southeast line of said Swiss Avenue, passing at a distance of 99.99 feet a 1/2 inch iron rod found for the north corner of Lot 3A, Block 7/767, Swiss Avenue Addition, an addition to the City of Dallas according to the plat recorded in Volume 2002067, Page 7, Deed Records, Dallas County, Texas and the west corner of a tract of land conveyed to Swiss Medical Building, LLC by Special Warranty Deed recorded in Instrument No. 201200225191, Official Public Records, Dallas County, Texas, and continuing a total distance of 290.00 feet to a point for corner in the southeast line of said Swiss Avenue and the northwest line of said Block 7/767, from which a found capped 1/2 inch iron rod bears North 51° 49' 01" East a distance of 2.47 feet;

THENCE North 44° 54' 00" West across said Swiss Avenue, passing at a distance of 80.00 feet a 1/2 inch iron rod found in the northwest line of said Swiss Avenue, said rod being the south corner of said Lot 1A, Block 10/740, Swiss Avenue Bank – Live Oak Addition and the east corner of a tract of land conveyed to Gary Poplawski by Special Warranty Deed recorded in Volume 93022, Page 2693, Deed Records, Dallas County, Texas, from which a found 1/2 inch iron rod with red plastic cap bears South 41° 35' 14" West a distance of 2.65 feet, and continuing along the common line between said Lot 1A, Block 10/740, Swiss Avenue Bank – Live Oak Addition and said Poplawski tract, passing at a distance of 380.00 feet the north corner of said Poplawski tract, same being the east corner of Lot 3, Block 10/740 in Haskoak, an addition to the City of Dallas according to the plat recorded in Instrument No. 200900020194, Official Public Records, Dallas County, Texas, and continuing a total distance of 457.00 feet to a 1/2 inch iron rod found for corner, from which a found 1/2 inch iron rod bears South 37° 02' 51" West a distance of 1.08 feet;

THENCE along the common line between said Lot 1A, Block 10/740, Swiss Avenue Bank – Live Oak Addition and said Lot 3, Block 10/740, Haskoak the following courses and distances:

(For SPRG use only)
Reviewed By: _____
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29840

151602

GIS Approved

"EXHIBIT A"

MUNICIPAL SETTING DESIGNATION SURVEY
LOT 1A, BLOCK 10/740
SWISS AVENUE BANK – LIVE OAK ADDITION
AND A PORTION OF LIVE OAK STREET, NORTH PEAK STREET,
SYCAMORE STREET & SWISS AVENUE
J. GRIGSBY SURVEY, ABSTRACT NO. 495
CITY OF DALLAS, DALLAS COUNTY, TEXAS

South 45° 00' 00" West a distance of 4.00 feet to a point for corner, from which a found 1/2 inch iron rod bears South 23° 17' 04" West a distance of 0.39 feet;

North 44° 54' 00" West a distance of 80.00 feet to a 1/2 inch iron rod found for corner in the northeast line of said Lot 3, Block 10/740, Haskoak, said rod being the most southerly west corner of said Lot 1A, Block 10/740, Swiss Avenue Bank – Live Oak Addition and the south corner of a tract of land conveyed to L.B. Billingsly Investment Co. by Special Warranty Deed recorded in Volume 93014, Page 1850, Deed Records, Dallas County, Texas;

THENCE along the common line between said Lot 1A, Block 10/740, Swiss Avenue Bank – Live Oak Addition and said L.B. Billingsly Investment Co. tract the following courses and distances:

North 45° 00' 00" East a distance of 74.00 feet to a point for corner, from which a found 1/2 inch iron rod bears North 44° 54' 00" West a distance of 0.29 feet;

North 44° 54' 00" West, passing at a distance of 193.00 feet the most northerly northwest corner of said Lot 1A, Block 10/740, Swiss Avenue Bank – Live Oak Addition, the north corner of said L.B. Billingsly Investment Co. tract, and the southeast line of said Live Oak Street, and continuing across said Live Oak Street a total distance of 274.00 feet to a 1/2 inch iron rod with yellow plastic cap stamped "RLG INC" set for corner in the northwest line of said Live Oak Street and the southeast line of Lot 2, Block 11/723, Live Oak Technology Center, an addition to the City of Dallas according to the plat recorded in Volume 2000156, Page 1868, Deed Records, Dallas, County, Texas;

THENCE North 45° 00' 00" East along the northwest line of said Live Oak Street, passing at a distance of 150.00 feet the intersection of the northwest line of Live Oak Street and the cut-off line between the northwest line of said Live Oak Street and the southwest line of said North Peak Street, and continuing across said North Peak Street a total distance of 220.00 feet to a point for corner in the northeast line of said North Peak Street and the southwest line of Lot 8, Block 8/768 in said Jefferson Peak Suburban Addition, from which a chiseled "X" in concrete bears South 12° 52' 24" East a distance of 0.76 feet;

THENCE South 44° 54' 00" East along the northeast line of said North Peak Street, passing at a distance of 1.00 foot the intersection of the northwest line of said Live Oak Street and the northeast line of said North Peak Street, same being the south corner of said Lot 8, Block 8/768 in said Jefferson Peak Suburban Addition, and continuing across said Live Oak Street, passing at a distance of 80.00 feet the intersection of the southeast line of said Live Oak Street and the northeast line of said North Peak Street, same being the west corner of Lot 13, Block 9/738, McKell's Subdivision, an addition to the City of Dallas according to the plat recorded in Volume 241, Page 96, Deed Records, Dallas County, Texas, and

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AND A PORTION OF LIVE OAK STREET, NORTH PEAK STREET,
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continuing along the northeast line of said North Peak Street, passing at a distance of 135.00 feet a PK nail found for the south corner of said Lot 13, Block 9/738, McKell's Subdivision at the intersection of the northeast line of said North Peak Street and the northwest line of a 15-foot alley, and continuing a total distance of 366.00 feet to a point for corner at the intersection of the northeast line of said North Peak Street and the northwest line of said Sycamore Street, said point being the south corner of Lot 26, Block 9/738 of said McKell's Subdivision, from which a found 3/4 inch iron pipe bears South 58° 14' 22" West a distance of 0.33 feet;

THENCE North 45° 00' 00" East along the northwest line of said Sycamore Street a distance of 2.00 feet to a 1/2 inch iron rod with yellow plastic cap stamped "RLG INC" set for corner;

THENCE South 44° 54' 00" East across said Sycamore Street, along the northeast line of said North Peak Street a distance of 162.98 feet to a point for corner under a fence, said point being the south corner of Lot 1-A, Block 9/739, Revision of Part of Lots 1, 2 and 3, Jefferson Peak Suburban Addition, an addition to the City of Dallas according to the plat recorded in Volume 83091, Page 2254, Deed Records, Dallas County, Texas and being in the north line of Lot 1, Block 9/739;

THENCE South 45° 00' 00" West a distance of 2.00 feet to a 1/2 inch iron rod with yellow plastic cap stamped "RLG INC" set for corner in the northeast line of said North Peak Street;

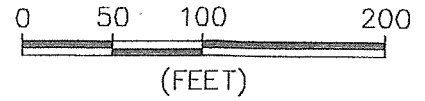
THENCE South 44° 54' 00" East continuing along the northeast line of said North Peak Street, passing at a distance of 200.00 feet the intersection of the northeast line of said North Peak Street and the northwest line of said Swiss Avenue, and continuing across said Swiss Avenue a total distance of 282.02 feet to the **POINT OF BEGINNING** and containing 216,656 square feet or 4.974 acres, more or less.

Basis of Bearings: The southwest line of N. Peak Street (South 44° 54' 00" East) per the Swiss Avenue Bank - Live Oak Addition recorded in Volume 96068, Page 02790, Deed Records, Dallas, County, Texas.

 12/8/14
 Brian R. Wade R.P.L.S. No. 6098



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 Reviewed By: _____
 Date: _____
 SPRG NO.: _____



(FEET)
1 inch = 100 ft.
BASIS OF BEARINGS: THE SOUTHWEST LINE OF N. PEAK STREET (S44°54'00"E) PER THE SWISS AVENUE BANK - LIVE OAK ADDITION RECORDED IN VOLUME 96068, PAGE 02790, DEED RECORDS, DALLAS, COUNTY, TEXAS.

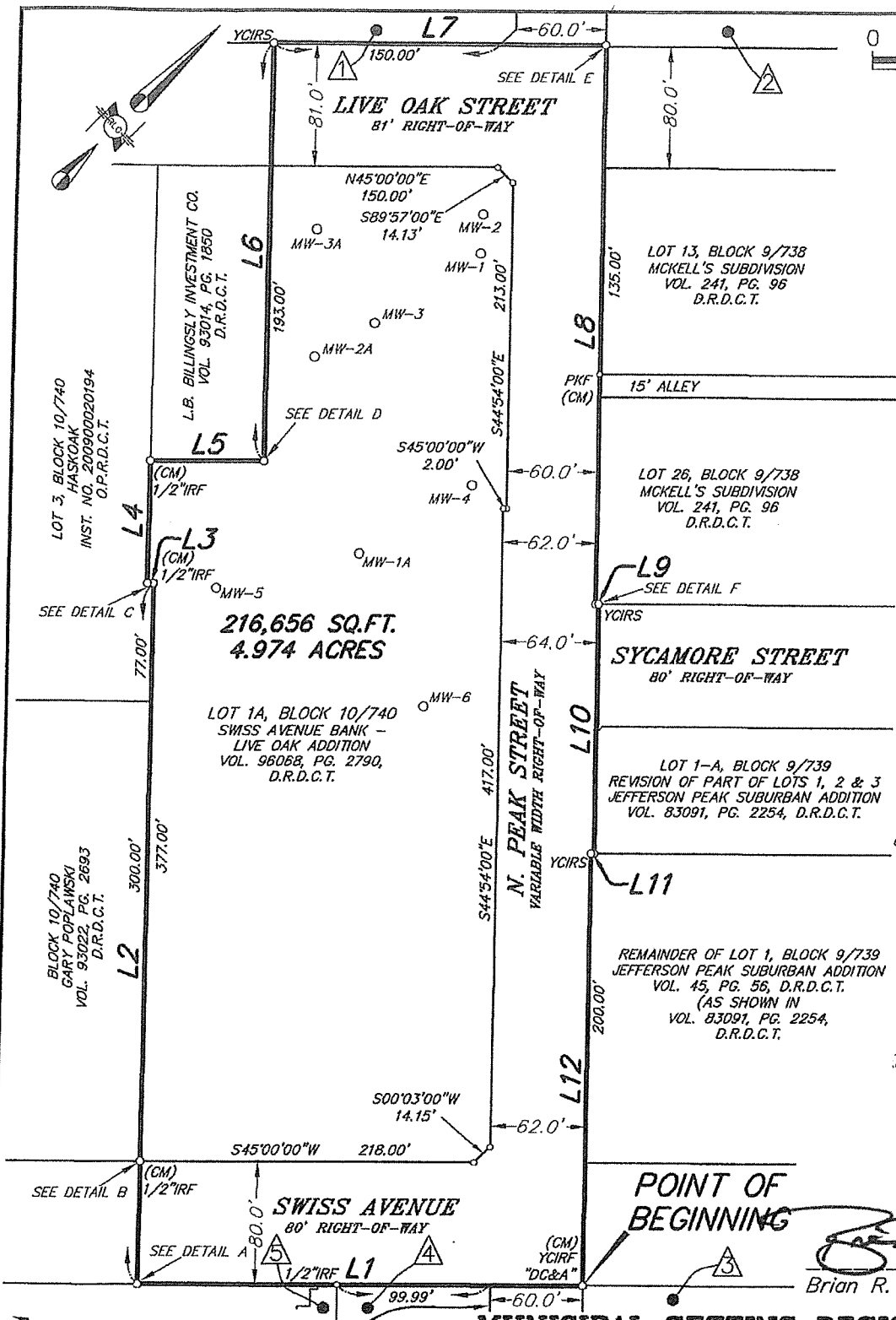
CONTROLLING MONUMENTS: AS SHOWN.
SEE SHEET 5 OF 5 FOR DETAILS A THROUGH E, THE LINE TABLE, MONITORING WELL DATA, AND ADJOINER INFORMATION.

LEGEND

- PROPERTY LINE
- IRF IRON ROD FOUND
- CMF CHISELED "X" FOUND
- YCIRS 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "RLG INC" SET
- YCIRF 1/2" IRON ROD WITH YELLOW PLASTIC CAP FOUND
- RCIRF 1/2" IRON ROD WITH RED PLASTIC CAP FOUND
- CIRF 1/2" IRON ROD WITH PLASTIC CAP FOUND
- IPF 3/4" IRON PIPE FOUND
- PKF PK NAIL FOUND
- CM CONTROLLING MONUMENT
- D.R.D.C.T. DEED RECORDS, DALLAS COUNTY, TX
- O.P.R.D.C.T. OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TX
- INST. NO. INSTRUMENT NUMBER
- VOL. VOLUME
- PG. PAGE
- MW MONITORING WELL



Brian R. Wade 12/8/14
Brian R. Wade R.P.L.S. No. 6098

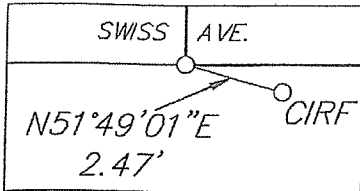


MUNICIPAL SETTING DESIGNATION SURVEY
LOT 1A, BLOCK 10/740
SWISS AVENUE BANK - LIVE OAK ADDITION
AND A PORTION OF
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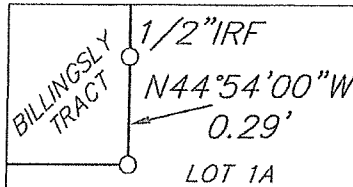
RAYMOND L. GOODSON JR., INC.
5445 LA SIERRA, STE 300, LB 17
DALLAS, TX. 75231-4138
214-739-8100
rlg@rlginc.com
TEXAS PE REG #F-498
TBPLS REG #100341-00

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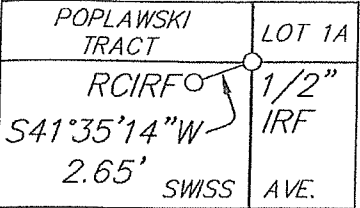
SCALE	1" = 100'	DATE	10-10-2014	SHEET	4 OF 5
JOB NO.	14097	E-FILE	14097.dwg	DWG NO.	26,051 X



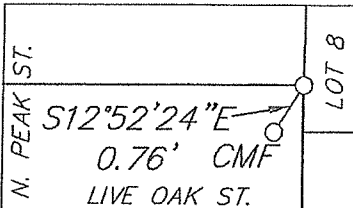
DETAIL A
(NTS)



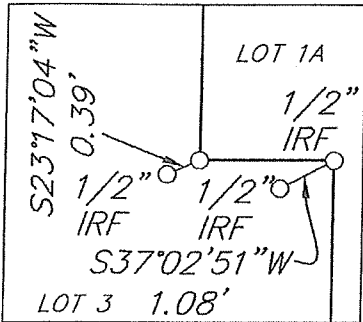
DETAIL D
(NTS)



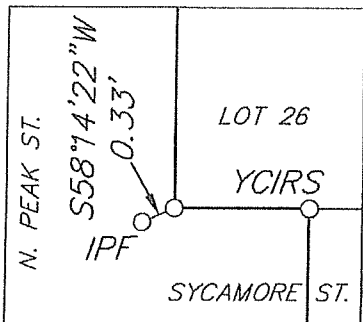
DETAIL B
(NTS)



DETAIL E
(NTS)



DETAIL C
(NTS)



DETAIL F
(NTS)

LINE TABLE		
LINE	BEARING	LENGTH
L1	S45°00'00"W	290.00'
L2	N44°54'00"W	457.00'
L3	S45°00'00"W	4.00'
L4	N44°54'00"W	80.00'
L5	N45°00'00"E	74.00'
L6	N44°54'00"W	274.00'
L7	N45°00'00"E	220.00'
L8	S44°54'00"E	366.00'
L9	N45°00'00"E	2.00'
L10	S44°54'00"E	162.98'
L11	S45°00'00"W	2.00'
L12	S44°54'00"E	282.02'

MONITORING WELL DATA		
MONITORING WELL NO.	GRADE ELEV. (IN FEET)	CASING ELEV. (IN FEET)
MW-1	103.51	103.00
MW-2	103.68	103.16
MW-3	103.30	103.10
MW-4	103.00	102.71
MW-1A	103.18	103.08
MW-2A	103.31	102.88
MW-3A	102.51	102.08
MW-5	103.73	103.40
MW-6	103.02	102.74

DATE OF OBSERVATIONS: 10-10-2014
(MW-5 & MW-6 WERE OBSERVED ON 12-03-2014)
NOTE: GRADE ELEVATIONS WERE OBSERVED AT THE NORTH SIDE OF THE MONITORING WELL CASING.

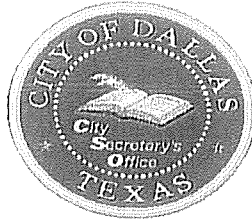
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JOB NO.	14097	E-FILE	14097.dwg	DWG NO.	26,051 X

- ① LOT 2, BLOCK 11/723
LIVE OAK TECHNOLOGY
CENTER, VOL. 2000156, PG.
1868, D.R.D.C.T.
- ② LOT 8, BLOCK 12/724
MCKELL'S SUBDIVISION
VOL. 241, PG. 96, D.R.D.C.T.
- ③ LOT 8, BLOCK 8/768
JEFFERSON PEAK
SUBURBAN ADDITION
VOL. 45, PG. 56, D.R.D.C.T.
- ④ SWISS MEDICAL BUILDING, LLC
INST. NO. 201200225191
O.P.R..D.C.T.
- ⑤ LOT 3A, BLOCK 7/767
SWISS AVENUE ADDITION
VOL. 2002067, PG. 7, D.R.D.C.T.

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J. CRIGSBY SURVEY, ABSTRACT NO. 495
CITY OF DALLAS, DALLAS COUNTY, TEXAS



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 AUG 26 2015

ORDINANCE NUMBER 29840

DATE PUBLISHED AUG 29 2015

ATTESTED BY: