

ORDINANCE NO. 0-2009-38

AN ORDINANCE OF THE CITY OF TYLER, TEXAS, PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH THE PROPERTY WHOSE ADDRESS INCLUDES 1604 SOUTH VINE STREET, 1610 SOUTH VINE STREET, AND 914 WEST GLENWOOD BOULEVARD AND WHICH IS LOCATED AT THE SOUTHEAST CORNER OF VINE STREET AND GLENWOOD BOULEVARD CONTAINING APPROXIMATELY ONE ACRE OF LAND IN TYLER, TEXAS, TO FACILITATE THE CERTIFICATION OF SAID PROPERTY WITH A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY PURSUANT TO THE TEXAS SOLID WASTE DISPOSAL ACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of a certain parcel of property whose addresses include 1604 South Vine Street, 1610 South Vine Street, and 914 West Glenwood Boulevard and which is located at the southeast corner of Vine Street and Glenwood Boulevard containing approximately one acre of land in Tyler, Texas, (the "Property" or "MSD Site") desires to obtain a municipal setting designation ("MSD") from the Texas Commission on Environmental Quality ("TCEQ") to address concerns regarding certain pollutants or contaminants that have been identified on the Property; and

WHEREAS, Texas Local Government Code Section 401.005 authorizes the governing body of a municipality to regulate the pumping, extraction, or use of groundwater by persons other than retail public utilities, as defined by Section 13.002 of the Texas Water Code, to prevent the use of or contact with groundwater that presents an actual or potential threat to human health for the purpose of establishing and enforcing a MSD; and

WHEREAS, the Texas legislature has provided legislation in the Texas Health & Safety Code, Chapter 361, Subchapter W of the Texas Solid Waste Disposal Act that authorizes the Executive Director of the TCEQ to certify a MSD for certain qualifying properties upon receipt and approval of a properly submitted application to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant (the "MSD legislation"); and

WHEREAS, the Texas legislature, in enacting the MSD legislation, found that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a MSD advances a substantial and legitimate state interest; and

WHEREAS, as a part of the application process for a MSD, the applicant is required to provide documentation that the property for which said designation is sought is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; and

WHEREAS, as a part of the application process for a MSD, the applicant is required to provide documentation that the property for which designation is sought is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; and

WHEREAS, as a part of the application process for a MSD, the applicant is required to provide documentation that the property for which the designation is sought is supported by a resolution adopted by statutorily designated interested parties; and

WHEREAS, the applicant may have continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the MSD Site; and

WHEREAS, in order for the TCEQ to certify a MSD for the Property, the City of Tyler must prohibit the use of groundwater from beneath the MSD Site as potable water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes; and

WHEREAS, a public drinking water supply system exists that supplies or is capable of supplying water to the MSD Site and to all surrounding properties within one-half mile of the MSD Site; and

WHEREAS, the City Council of the City of Tyler is of the opinion that it is in the best interest of the public and the City to facilitate the applicant's efforts to secure a MSD from the TCEQ;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: All of the declarations and findings contained in the preamble of this ordinance are made a part hereof and incorporated herein by reference, and shall be fully effective as a part of the ordained subject matter of this ordinance.

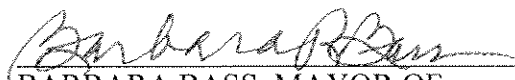
PART 2: The City Council finds that it is in the best interest and welfare of the public to facilitate the Texas Commission on Environmental Quality's certification of a municipal setting designation for the Property, the legal description of which is set forth in Exhibit "A" and as shown on Exhibit "B" attached hereto and incorporated herein by reference for all purposes allowed by law.

PART 3: Upon and after the effective date of this Ordinance, the drilling of wells and the use of designated groundwater for any purpose, including but not limited to any potable purpose, excepting only: (i) wells used as monitoring, wells for the collection of groundwater samples for chemical or biological laboratory analysis; and (ii) wells used for the purpose of remediation of soil or groundwater contamination, is hereby prohibited on or from any portion of the MSD property.

PART 4: The owner shall submit, upon receipt of the MSD certificate from TCEQ respecting the MSD Site, a true and correct copy of same to the Director of Engineering Services.

PART 5: This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Tyler, which date is expected to be April 10, 2009.

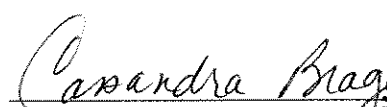
PASSED AND APPROVED this 8th day of April, A. D., 2009.



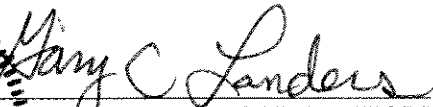
BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:


APPROVED:



CASSANDRA BRAGER, CITY CLERK



GARY C. LANDERS, CITY ATTORNEY



JOHN COWAN & ASSOCIATES, INC.
Registered Professional Land Surveyors

A. W. Osborn, RPLS, PLS
Terry D. Cowan, RPLS, PLS
Mark C. Ellis, RPLS, PLS
Philip W. Cornett, RPLS
C. H. McLaughley, Jr., RPLS

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John Cowan (1914-1985)
Frank Cowan (1944-1984)

FIELD NOTE DESCRIPTION FOR VINE STREET, LLC
Glenwood Heights Addition and Jim Negem's Subdivision No. 4
New City Block 660-J, City of Tyler, Smith County, Texas

All that certain lot, tract or parcel of land, a part of Lots 21 and 26 and all of Lots 22, 23, 24 and 25 of Glenwood Heights Addition as shown by plat recorded in Volume 281, Page 481 of the Deed Records and being part of Lots 28 and 29 of Jim Negem's Subdivision, Unit No. 4 as shown by plat recorded in Cabinet A, Slide 160-B of the Plat records, and part of New City Block 660-J to the City of Tyler, also being described in a deed conveyed to Vine Street, LLC from Steven C. Roosth, Trustee on the 6th day of February, 2002 with an effective date of January 1st, 2002 and recorded in Volume 6238, Page 21 and a tract conveyed to Vine Street, LLC from M. M. Mitchell Family Partnership, LP on the 16th day of November, 2001 and recorded in Volume 6103, Page 295 of the Official Public Records of Smith County, Texas, and being more completely described as follows, to-wit:

BEGINNING at a ½" iron rod found for corner in the South line of Lot 29 at the Southwest corner of a called 0.285 acre tract conveyed to Tyler Alarms, Inc., from Bessie L. Watson et al on the 15th day of November, 2000 and recorded in Volume 5562, Page 244, and being in the North right of way line of West Fifth Street (50.0' right of way width) and being South 88 deg. 17 min. 42 sec. West - 77.76 ft., from a ½" iron rod found at the Southeast corner of said 0.285 acre tract and Lot 30 and being at the intersection of the North right of way line of West Fifth Street with the West right of way line of Talley Avenue;

THENCE South 88 deg. 31 min. 28 sec. West, with the South lines of said Lots 29 and 28 and the North right of way line of West Fifth Street for a distance of 48.55 ft., to a ½" iron rod found for the Southeast corner of a called 0.4210 acre tract conveyed to Glass Oil Co., Inc., from Tenneco Oil Company on the 2nd day of May, 1966 and recorded in Volume 1195, Page 77 and being North 88 deg. 21 min. 50 sec. East - 128.12 ft., from a P. K. Nail found in an "X" cut in concrete at the East corner of a called 0.005 acre tract conveyed to the State of Texas from Glass Oil Company, Inc., on the 11th day of August, 2000 and recorded in Volume 5434, Page 13;

THENCE North 01 deg. 40 min. 06 sec. West, with the East line of said 0.4210 acre tract for a distance of 142.13 ft., to a 3/8" iron rod found for the Northeast corner of same;

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THENCE South 88 deg. 19 min. 54 sec. West, with the North line of said 0.4210 acre tract for a distance of 106.17 ft., to a ½" iron rod set for the Northwest corner of same and being in the West line of Lot 21 and the East right of way line of Vine Avenue (100.0' right of way width), from which a P. K. Nail found in an "X" cut in concrete at the North corner of a said 0.005 acre tract bears South 15 deg. 25 min. 44 sec. West – 127.70 ft.;

THENCE North 15 deg. 25 min. 44 sec. East, with the West line of Lot 21 and the East right of way line of Vine Avenue for a distance of 5.10 ft., to a ½" iron rod set for the P. C. of a curve to the right;

THENCE in a northeasterly direction with the West lines of Lots 21, 22 and 26 and continuing with the East right of way line of Vine Avenue and said curve to the right with an Angle of 06 deg. 31 min. 38 sec., and a Radius of 2814.79 ft., for an Arc Length of 320.67 ft., Chord is North 18 deg. 41 min. 33 sec. East – 320.49 ft., to a P. K. Nail set for the South corner of a called 0.011 acre tract conveyed to the State of Texas from M. M. Mitchell Family Partnership, L.P. on the 28th day of February, 2000 and recorded in Volume 5219, Page 297,

THENCE North 65 deg. 03 min. 06 sec. East, with the East line of the above mentioned 0.011 acre tract for a distance of 38.88 ft., to a P. K. Nail set for the East corner of same in the North line of Lot 26 and the South right of way line of Glenwood Boulevard (110.0' right of way width);

THENCE South 53 deg. 43 min. 57 sec. East, with the North lines of Lots 26 and 25 and the South right of way line of Glenwood Boulevard for a distance of 79.81 ft., to a P. K. Nail set for the P. C. of a curve to the left;

THENCE in a southeasterly direction with the North lines of Lots 25, 24 and 23 and continuing with the South right of way line of Glenwood Boulevard and said curve to the left with an Angle of 07 deg. 55 min. 36 sec., and a Radius of 697.00 ft., for an Arc Length of 96.43 ft., Chord is South 58 deg. 02 min. 33 sec. East – 96.35 ft., to a ½" iron pipe found for a P.R.C.;

THENCE in a southeasterly direction with the North line of Lot 23 and continuing with the South right of way line of Glenwood Boulevard and said curve to the right with an Angle of 101 deg. 37 min. 51 sec., and a Radius of 25.00 ft., for an Arc Length of 44.34 ft., Chord is South 17 deg. 55 min. 49 sec. East – 38.76 ft., to a ½" iron pipe found for the P.T. of said curve and being in the East line of Lot 23 and the West right of way line of Talley Avenue (50.0 ft., right of way width);

THENCE South 18 deg. 07 min. 36 sec. West, with the East lines of Lots 23, 22 and 21 and the West right of way line of Talley Avenue for a distance of 191.61 ft., to a ½" iron rod found for the Northeast corner of said 0.285 acre tract;

THENCE North 72 deg. 13 min. 56 sec. West, with the North line of said 0.285 acre tract for a distance of 88.39 ft., to a ½" iron rod found for the Northwest corner of same;

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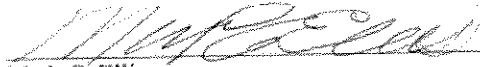
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THENCE South 01 deg. 44 min. 29 sec. East, with the West line of said 0.285 acre tract for a distance of 172.50 ft., to the place of beginning and containing **1.601 acres of land**.

Bearings are oriented to the Texas State Plane Coordinate System, North Central Zone, NAD 1983.

I, Mark C. Ellis, Registered Professional Land Surveyor No. 4254, do hereby certify that the above field noted description was prepared from an actual survey made on the ground under my direction and supervision during March, 2009.

GIVEN UNDER MY HAND & SEAL, this the 12th day of March, 2009.



Mark C. Ellis

Registered Professional Land Surveyor No. 4254

09-070

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