

Ordinance Number 15-007

An ordinance prohibiting the use of and contact with designated groundwater from beneath certain property known as 1830 and 1840 East Division Street within the City of Arlington, Texas, to facilitate certification of a Municipal Setting Designation of the property by the Texas Commission on Environmental Quality pursuant to the Texas Health and Safety Code; providing for a fine of up to \$2,000 for each violation of the ordinance; providing this ordinance be cumulative; providing for severability, governmental immunity, injunctions, publication and an effective date.

WHEREAS, Texas Health and Safety Code Chapter 361, Subchapter W (the “MSD Legislation”) authorizes the Texas Commission on Environmental Quality (TCEQ) to certify Municipal Setting Designations for properties upon receipt and approval of a properly submitted application to TCEQ; 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 Municipal Setting Designation (MSD) advances a substantial and legitimate state interest where the quality of the groundwater subject to the designation is an actual or potential threat to human health; and

WHEREAS, as a part of the application process for an 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 an MSD, the applicant is required to provide documentation that the property for which designation is sought is supported by an ordinance adopted by this City Council; and

WHEREAS, StorageLand I, a General Partnership in Place East Division Street Partners, LLC (the “Applicant”) submitted an application for the City Council to adopt an Ordinance supporting the certification of an MSD for property at 1830 and 1840 East Division Street and the City staff have reviewed and evaluated the subject MSD application; and

WHEREAS, Applicant will submit an application to TCEQ for certification of an MSD for property within the city limits of the City, commonly known as 1830 and 1840 East Division Street, the legal description of which is set forth in Exhibit “A”, attached hereto and made a part hereof, the “MSD Property”, provided that the ordinance being considered herein is passed; and

WHEREAS, the Applicant has certified that:

- 1) the purpose of its application is to conduct environmental investigation, cleanup and restoration activities in a more efficient and cost-effective manner;
- 2) it will seek to obtain a determination from TCEQ that regulatory closure is attained at the MSD Property;
- 3) as part of such application, the Applicant has submitted a statement to TCEQ regarding the type of known contamination in the groundwater beneath the MSD Property; and
- 4) notice of the application for the certification of MSD Property has been provided to each owner of a registered private water well that is located not more than five miles from the boundary of the MSD Property; and

WHEREAS, a public drinking water supply system exists that satisfies the requirements of Texas Health and Safety Code Chapter 341 for the MSD Property and property within one-half mile of the MSD Property; and

WHEREAS, after public hearing, the City Council believes that it is in the best interest of the public and the City to facilitate the efforts to secure an MSD and TCEQ closure documentation from the TCEQ by passage of this Ordinance; Now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That all of the declarations and findings contained in the preambles of this Ordinance are made a part hereof and shall be fully effective as a part of the ordained subject matter of this Ordinance.

2.

That the City Council finds that it is in the best interest and welfare of the public to facilitate TCEQ's certification of an MSD for the MSD Property, as well as TCEQ closure documentation.

3.

That, 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.

4.

Within 60 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of the Community Development and Planning shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Tarrant County.

5.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

6.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

7.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

8.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

9.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

10.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

11.

This ordinance shall become effective immediately upon second publication.

PRESENTED AND GIVEN FIRST READING on the 10th day of February, 2015, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **24th** day of **February, 2015**, by a vote of **9 ayes** and **0 nays** at a regular meeting of the City Council of the City of Arlington, Texas.


ROBERT N. CLUCK, Mayor

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS,
City Attorney

BY 

MSD14-2

EXHIBIT "A"

**PROPERTY DESCRIPTION
LOT 9AR AND 9BR, PILANT ACRES ADDITION**

BEING A TRACT OF LAND SITUATED IN THE JOEL BLACKWELL SURVEY, ABSTRACT NO. 147, CITY OF ARLINGTON, TARRANT COUNTY, TEXAS AND BEING ALL OF LOTS 9AR AND 9BR, PILANT ACRES ADDITION, AN ADDITION TO THE CITY OF ARLINGTON, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 388-211, PAGE 84, PLAT RECORDS, TARRANT COUNTY, TEXAS, SAME BEING TWO TRACTS OF LAND (TRACT 1 AND TRACT 2) AS DESCRIBED IN DEED TO JOHN E. THILL, RECORDED IN COUNTY CLERK'S FILE NO. D208055978, DEED RECORDS, TARRANT COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FOR CORNER AT THE NORTHEAST CORNER OF SAID LOT 9BR, SAID POINT ALSO BEING IN THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 180 (DIVISION STREET, VARIABLE WIDTH RIGHT-OF-WAY) AND BEING SOUTH 10 DEG 51 MIN 06 SEC EAST A DISTANCE OF 5.65 FEET FROM THE NORTHWEST CORNER OF LOT 1 0-A, PILANT ACRES ADDITION, AN ADDITION TO THE CITY OF ARLINGTON, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 388-87, PAGE 2, PLAT RECORDS, TARRANT COUNTY, TEXAS;

THENCE SOUTH 10 DEG 51 MIN 06 SEC EAST, ALONG THE WEST LINE OF SAID LOT 1 0-A, AT A DISTANCE OF 289.85 FEET PASSING A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "YANDELL" FOUND FOR THE SOUTHEAST CORNER OF SAID LOT 9BR AND A NORTHEAST CORNER OF LOT 9AR, IN ALL A TOTAL DISTANCE OF 343.35 FEET TO A POINT FOR CORNER, SAID POINT BEING A SOUTHWEST CORNER OF SAID LOT 1 0-A;

THENCE NORTH 84 DEG 14 MIN 54 SEC EAST, ALONG A SOUTH LINE OF SAID LOT 1 0-A, A DISTANCE OF 109.70 FEET TO A POINT FOR CORNER FROM WHICH A 1/2 INCH IRON ROD FOUND BEARS SOUTH 50 DEG 10 MIN 27 SEC WEST, A DISTANCE OF 0.29 FEET, SAID POINT BEING SITUATED IN THE NORTHERLY RIGHT-OF-WAY LINE OF TEXAS AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY (200' RIGHT-OF-WAY);

THENCE SOUTH 61 DEG 39 MIN 54 SEC WEST, DEPARTING THE SOUTH LINE OF SAID LOT 1 0-A AND ALONG THE NORTHERLY LINE OF SAID TEXAS AND PACIFIC RAILROAD COMPANY RIGHT-OF-WAY, A DISTANCE OF 630.75 FEET TO A POINT FOR CORNER, SAID POINT BEING THE SOUTHEAST CORNER OF A TEXAS AND PACIFIC RAILROAD EASEMENT AS RECORDED IN VOLUME 3100, PAGE 561, DEED RECORDS, TARRANT COUNTY, TEXAS, SAME BEING THE SOUTHEAST CORNER OF A TRACT OF LAND (TRACT 3) AS DESCRIBED

IN DEED TO JOHN E. THILL RECORDED IN COUNTY CLERK'S FILE NO. D208055978, DEED RECORDS, TARRANT COUNTY, TEXAS AND ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 508.15 FEET, A CENTRAL ANGLE OF 25 DEG 02 MIN 01 SEC, A CHORD BEARING OF NORTH 08 DEG 26 MIN 56 SEC EAST AND A CHORD LENGTH OF 220.26 FEET;

THENCE IN A NORTHERLY DIRECTION, ALONG THE EAST LINE OF SAID TEXAS AND PACIFIC RAILROAD EASEMENT, SAID JOHN E. THILL TRACT AND ALONG SAID NON-TANGENT CURVE TO THE LEFT, AN ARC DISTANCE OF 222.02 FEET TO A POINT FOR CORNER;

THENCE NORTH 04 DEG 04 MIN 04 SEC WEST, CONTINUING ALONG THE EAST LINE OF SAID EASEMENT AND SAID JOHN E. THILL TRACT, A DISTANCE OF 194.40 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "YANDELL" FOUND FOR CORNER AND THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 1,196.30 FEET, A CENTRAL ANGLE OF 06 DEG 44 MIN 02 SEC, A CHORD BEARING OF NORTH 07 DEG 26 MIN 05 SEC WEST AND A CHORD LENGTH OF 140.52 FEET;

THENCE IN A NORTHWESTERLY DIRECTION, CONTINUING ALONG SAID EAST LINE, AN ARC DISTANCE OF 140.60 FEET TO AN "X" CUT IN CONCRETE FOUND FOR CORNER;

THENCE NORTH 10 DEG 48 MIN 06 SEC WEST, A DISTANCE OF 1.75 FEET TO AN "X" CUT IN CONCRETE FOUND FOR THE NORTHWEST CORNER OF SAID LOT 9AR, SAID POINT BEING SITUATED IN THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 180 AND BEING THE NORTHEAST CORNER OF SAID TEXAS AND PACIFIC RAILROAD COMPANY EASEMENT AND SAID JOHN E. THILL TRACT;

THENCE NORTH 79 DEG 11 MIN 54 SEC EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY NO. 180, AT A DISTANCE OF 76.41 FEET PASSING A 5/8 IRON ROD WITH PLASTIC CAP STAMPED "YANDELL" FOUND FOR THE NORTHWEST CORNER OF SAID LOT 9BR, IN ALL A TOTAL DISTANCE OF 388.21 FEET TO THE POINT OF BEGINNING.

CONTAINING WITHIN THESE METES AND BOUNDS 4.396 ACRES OR 191,473 SQUARE FEET OF LAND, MORE OR LESS.

BEARINGS SHOWN HEREON ARE BASED UPON AN ON-THE-GROUND SURVEY PERFORMED IN THE FIELD ON THE 13TH DAY OF JANUARY, 2015, UTILIZING A G.P.S. MEASUREMENT (NAD83, GRID) OF NORTH 79 DEG 11 MIN 54 SEC EAST (PLAT-NORTH 77 DEG 18 MIN 00 SEC EAST), ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 180 (DIVISION STREET), AS RECORDED IN VOLUME 388-211, PAGE 84, P.R.T.C.T.