

RESOLUTION NO. 2004- 134 R

A resolution consenting to the use of a utility easement established by the subdivision plat of Kmart Subdivision (recorded in Volume 7, Page 145 C of the Plat Records of Victoria County, Texas) for private storm drainage easements granted from Lee Swearingen Properties, Inc. and Speedy Stop Food Stores, Ltd. to Pinnacle Pointe Associates Limited Partnership, insofar as that utility easement and the proposed private drainage easements overlap within defined 15-foot wide strips of property described in the resolution, to the extent any construction within the aforementioned utility easement is approved by the City Engineer, and consenting to the encroachment of fuel storage ventilation equipment owned by Speedy Stop Food Stores, Ltd. upon the City's utility easement in said 15-foot wide strips of property, with both the aforesaid subordination and consent subject to the right of any City-franchised utility company with its facilities currently in said utility easement to retain its facilities therein; and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

Subject to Section 3, the City – acting corporately and for and on behalf of the public – consents to the private storm drainage easements granted or to be granted by Lee Swearingen Properties, Inc. and by Speedy Stop Food Stores, Ltd. to Pinnacle Pointe Associates Limited Partnership, its successors and assigns, and to the exercise by the said grantee and its successors and assigns of rights granted them therein with respect to the 15 foot wide strips of land more fully described on **Exhibit "A"** attached hereto and incorporated herein (the "Easement Strips"), including the right to locate storm sewer improvements in the Easement Strips, notwithstanding that the Easement Strips overlap portions of a utility easement established by the subdivision plat of Kmart Subdivision (recorded in Volume 7, Page 145 C of the Plat Records of Victoria County, Texas).

2.

Subject to Section 3, the City consents to the encroachment of a presently existing fuel storage vent and attached piping owned by Speedy Stop Food Stores, Ltd. upon the City's utility easement in the Easement Strips, as such vent is shown on the attached **Exhibit "B"**.

3.

The City's consents described above are subject to (a) the approval by the City Engineer of the location of storm sewer improvements to be located in the Easement Strips pursuant to the above described private storm drainage easements, and (b) the right of any City-franchised utility company with its facilities currently in the Easement Strips to retain its facilities therein. To the extent the City has limited any of its property rights pursuant to said consent, this consent will only be valid insofar as no City-franchised utility has its facilities installed therein.

4.

The City Manager is authorized to execute all necessary documents to memorialize the aforementioned actions and referenced approvals. The rights with respect to locating storm drainage improvements within the Easement Strips afforded by this consent are intended to meet the requirements of Section 21-56(c) of the Victoria City Code.

5.

This resolution shall become effective immediately upon adoption.

PASSED, this the 17th day of August, 2004.

AYES: 5

NAYS: 0

ABSTENTIONS: 1

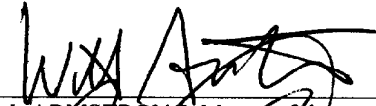
APPROVED AND ADOPTED, this the 17th day of August, 2004.

ATTEST:


SCARLET SWOBODA, City Secretary

Distribution: Legal Department
Planning Department
Dept. of Public Works
Dept. of Utilities




WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:


DAVID A. MAR SMITH, City Attorney
Copies Sent: **AUGUST 18, 2004**

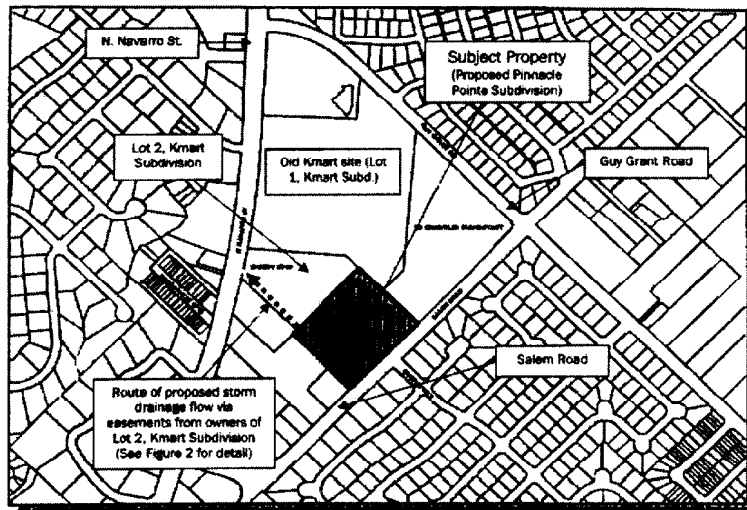
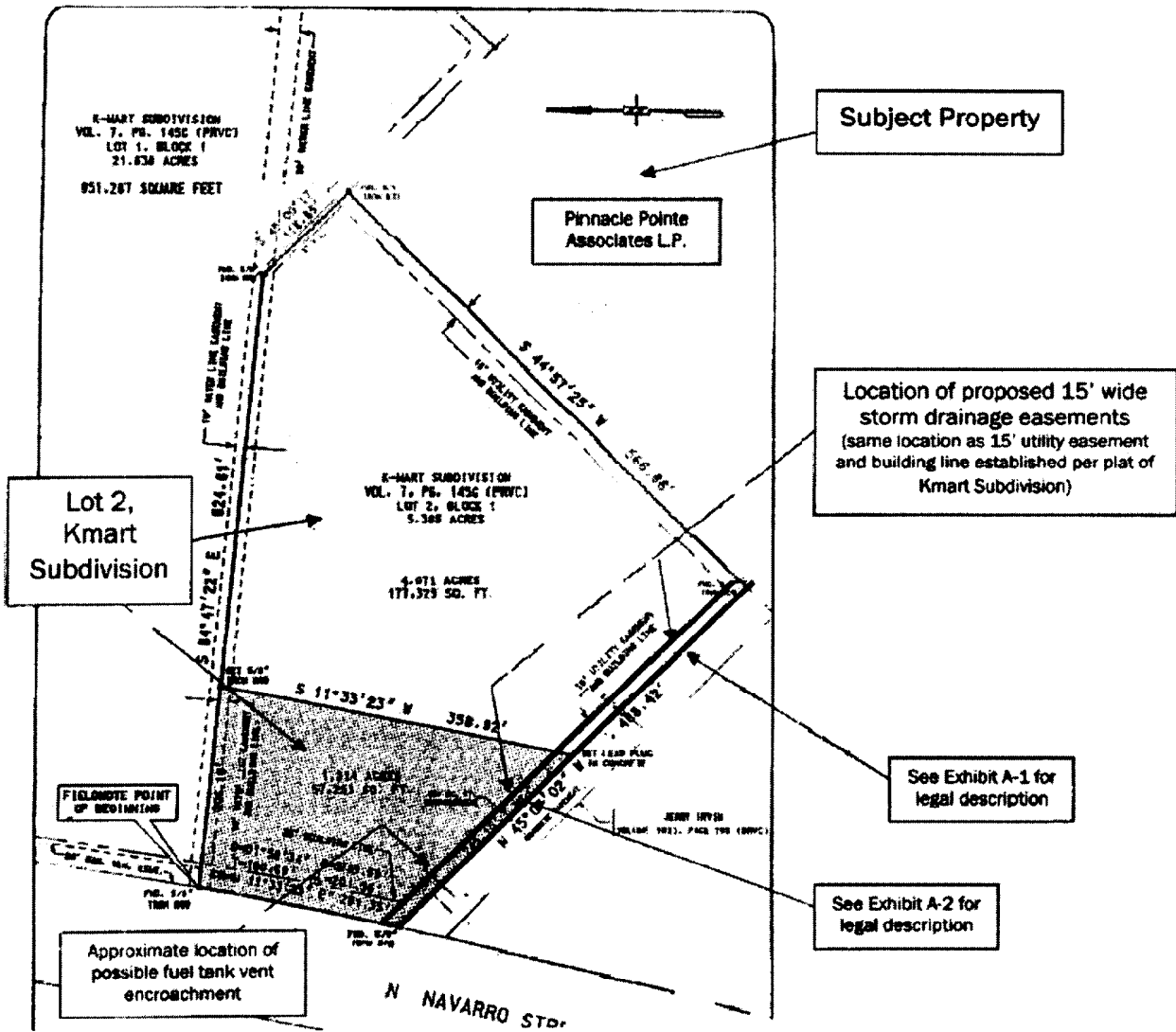


EXHIBIT "A"

EXHIBIT A-1

**A FIELDNOTE DESCRIPTION FOR
0.0855 ACRE OF LAND**

THE STATE OF TEXAS §

COUNTY OF VICTORIA §

BEING a 0.0855 acre (3,726 square feet) tract of land and being out of Lot 2, Block 1, K-Mart Subdivision as recorded in Volume 7, Page 145C of the Plat Records of Victoria County, Texas, also being out of a 4.071 acre portion of Lot 2, conveyed to Lee Swearingen Properties, Inc. by deed recorded in Instrument No. 199914600 of the Official Records of Victoria County, Texas, said 0.0855 acre tract of land being more fully described by metes and bounds as follows:

BEGINNING at an existing post in the Southeast line of said Lot 2, said post being the most Eastern corner of a tract of land conveyed to Jerry Irvin by deed recorded in Volume 1023, Page 795 of the Deed Records of Victoria County, Texas, said post and PLACE OF BEGINNING also being the most Southern corner of the herein described tract;

THENCE, N. 45° 07' 02" W., (base bearing per K-Mart Subdivision plat) a distance of 243.27 feet along the Southwest line of said Swearingen tract same being the Northeast line of the said Irvin tract to an existing tack in lead plug, said tack being the most Western corner of the herein described tract;

THENCE, N. 11° 33' 23" E., a distance of 17.95 feet along the common line between said Swearingen tract and 1.314 acre portion of Lot 2 as conveyed to Laurel Associates Limited Partnership by deed recorded in Volume 129, Page 813 of the Official Records of Victoria County, Texas to a point, said point being the most Northern corner of the herein described tract;

THENCE, S. 45° 07' 02" E., a distance of 253.19 feet to a point in the Southeast line of the said Swearingen tract, said point being the most Eastern corner of the herein described tract;

THENCE, S. 44° 57' 25" W., a distance of 15.00 feet along the Southeast line of the said Swearingen tract, same being the Northwest line of a 7.065 acre tract of land conveyed to Pinnacle Pointe Associates Limited Partnership by deed recorded in Instrument No. 200314409 of the Official Records of Victoria County, Texas, to the PLACE OF BEGINNING, containing within these metes and bounds 0.0855 acre (3.726 square feet) tract of land.

EXHIBIT A-2

**A FIELDNOTE DESCRIPTION FOR
0.0844 ACRE OF LAND**

THE STATE OF TEXAS §

COUNTY OF VICTORIA §

BEING a 0.0844 acre (3,675 square feet) tract of land and being out of Lot 2, Block 1, K-Mart Subdivision as recorded in Volume 7, Page 145C of the Plat Records of Victoria County, Texas, also being out of a 1.314 acre portion of Lot 2 conveyed to Laurel Associates Limited Partnership by deed recorded in Volume 129, Page 813 of the Official Records of Victoria County, Texas, said 0.0844 acre tract of land being more fully described by metes and bounds as follows:

BEGINNING at an existing 5/8 inch iron rod in a curve in the East right-of-way line of North Navarro Street (120 feet in width), said iron rod being the most Western corner of the said Laurel Tract, same being the most Northern corner of that tract of land conveyed to Jerry Irvin by deed recorded in Volume 1023, Page 795 of the Deed Records of Victoria County, Texas, said iron rod and PLACE OF BEGINNING also being the most Western corner of the herein described tract;

THENCE, with said East right-of-way line and said curve to the left having a radius of 5789.58 feet (chord bearing and distance: N. 12° 27' 53" E., 17.77 feet) an arc length of 17.77 feet to a point marking the most Northern corner of the herein described tract;

THENCE, S. 45° 07' 02" E., a distance of 244.81' feet to a point marking a corner of the herein described tract;

THENCE, S. 11° 33' 23" W., a distance of 17.95 feet along the common line between the said Laurel tract and a 4.071 acre portion of said Lot 2 as conveyed to Lee Swearingen Properties, Inc. by deed recorded in Instrument No. 199914600 of the Official Records of Victoria County, Texas. to an existing tack in lead plug, said tack being the most Southern corner of the herein described tract;

THENCE, N. 45° 07' 02" W., (base bearing per K-Mart Subdivision plat) a distance of 245.15 feet along the Southwest line of the said Laurel tract, same being the Northeast line of said Irvin tract to the PLACE OF BEGINNING, containing within these metes and bounds 0.0844 acre (3,675 square feet) tract of land.

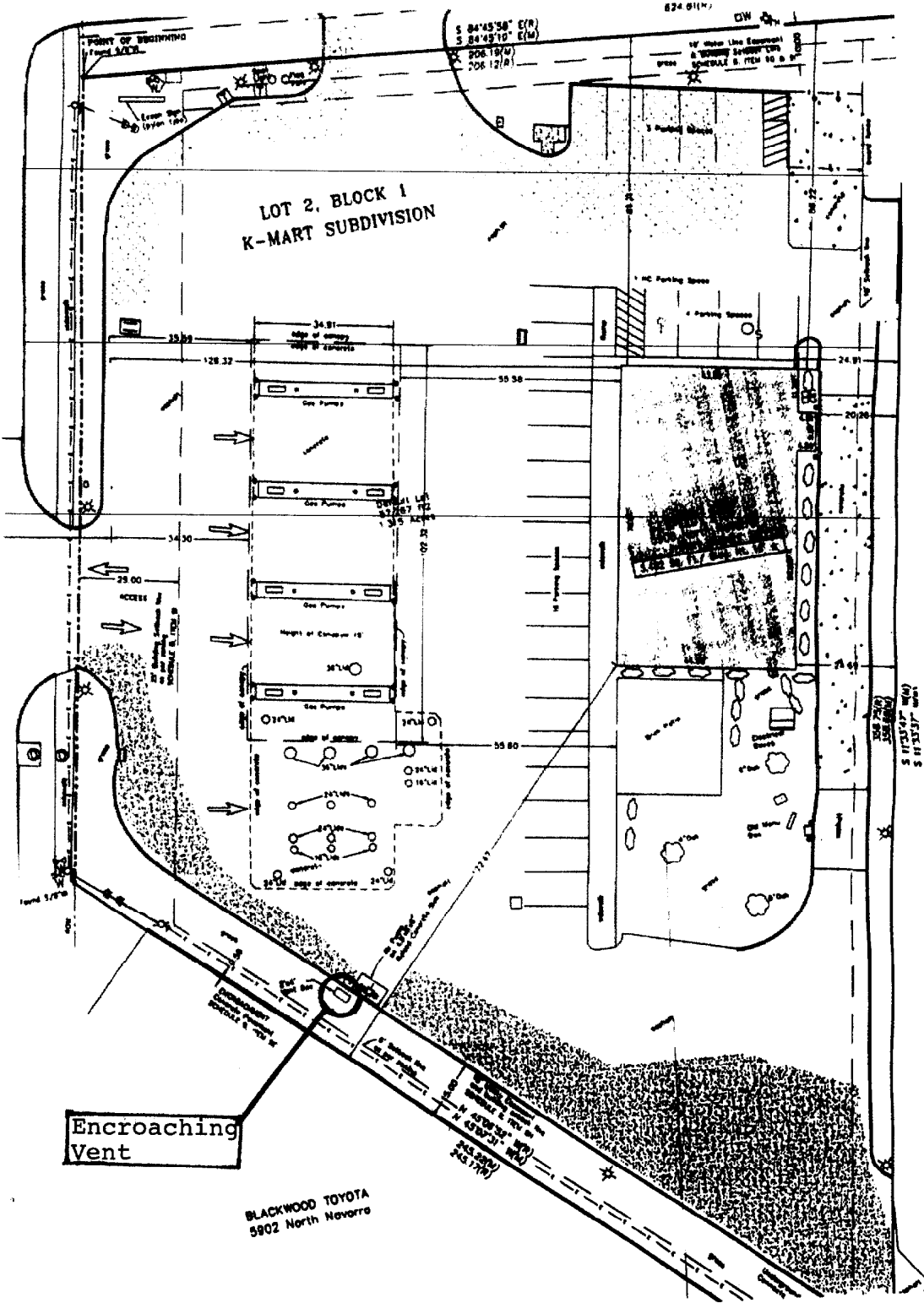


Exhibit "B"