

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: March 25, 2014		DATE SUBMITTED: March 4, 2014	
DEPARTMENT OF ORIGIN: Development Services		SUBMITTED BY: Randy Haynes	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of an ordinance declaring as public right of way a specified tract of land occupied by that portion of Virginia Street between the Union Pacific Railroad right of way and West 28 th Street.			
SUMMARY STATEMENT: A portion of Virginia Street extends north of W. 28 th Street between Palasota and Thompson Street for a distance of approximately 560 feet toward Union Pacific Railroad right of way. This street has never been formally dedicated as a public street right of way, which is impeding orderly development of land adjoining this street. Although a recorded plat or other legal instrument formally dedicating right of way for Virginia Street has not been found, evidence exists suggesting that the original developer of land in this vicinity, Mr. W.E. Pigford, intended to dedicate this tract of land for public use as a street. Supporting illustrations from the past 75 years are attached to this Council Action Form below.			
<p>Generally right of way for a public street is dedicated by either a subdivision plat or deed as the result of private development or a city-initiated road extension. Prior to the adoption of standards requiring formal right of way dedication, subdivision of land occasionally occurred resulting in short sections of roadway, typically unimproved, that were not formally dedicated as public rights of way. This portion of Virginia Street is one example of such a roadway.</p> <p>On January 30, 2003, the City Council adopted Resolution No. 2866 which declared 13 undedicated streets, including this portion of Virginia Street, as serving a public purpose which should be maintained by the City of Bryan as resources were available. The subject tract of land has been improved with a driving surface and has functioned as a right of way to access other public streets in the area since before 1940. Since that time, the subject tract has served a public purpose and has periodically been improved and maintained by the City of Bryan.</p> <p>The proposed ordinance, if approved, will formally declare the subject tract to be a public street right of way under public ownership.</p>			
STAFF ANALYSIS AND RECOMMENDATION: Staff contends that the subject tract has been in continuous use as a right of way and has served a public purpose for more than 70 years and recommends that the City Council declare the subject tract to be a public street right of way. Declaring this portion of Virginia Street a public street-right of way will facilitate the orderly development of adjacent land and therefore have a long-range public benefit.			
OPTIONS (In Suggested Order of Staff Preference):			
<ol style="list-style-type: none"> 1. declare the subject tract public property for use as a street right of way; or 2. not declare the subject tract to be a public street right of way. 			

ATTACHMENTS:

1. location map, supporting evidence; and
2. draft ordinance with exhibits.

FUNDING SOURCE: N/A

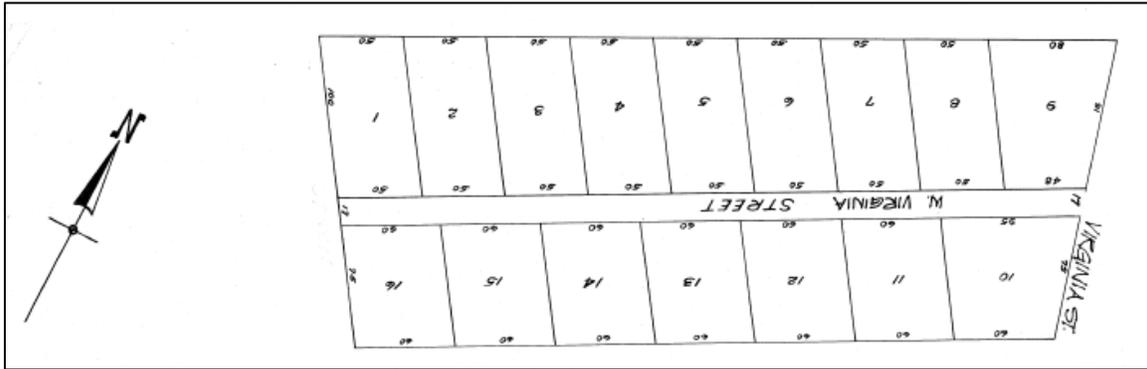
APPROVALS: Kevin Russell 3-4-14; Jayson Barfknecht 3-4-14; Joey Dunn, 3-5-14

APPROVED FOR SUBMITTAL: CITY MANAGER **Kean Register, 03/04/2014**

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 03/10/2014

Revised 04/2013

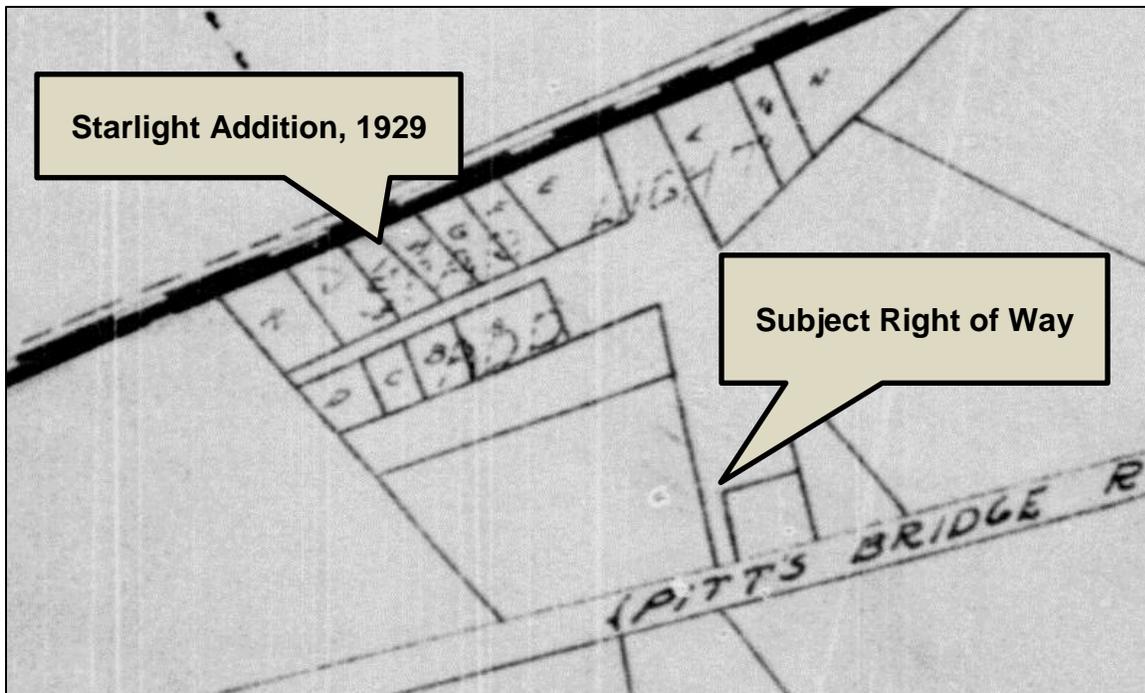
W.E. PIGFORD, STARLIGHT ADDITION, RECORDED VOL. 76, PG. 357; DECEMBER 1929:



According to his 1960 death certificate, Mr. W.E. Pigford was in the real estate business. He was also active in many causes intended to improve the standing of African Americans in Bryan, including The Colored Law and Order League (1902), The Peoples Undertaking Company (1912), The Bryan Colored Chamber of Commerce (1918) and was a charter member and board treasurer of the Bryan chapter of the NAACP (1919). Mr. Pigford's family had lived in Bryan since at least 1882.

According to a copy of the Starlight Addition plat in the City's records, Mr. Pigford platted this subdivision in 1929. The street dedicated on the subdivision plat labeled West Virginia, but the original record document did not have a street name. The street labels appear to have been added after the plat was recorded.

1940 U.S. CENSUS MAP DETAIL:



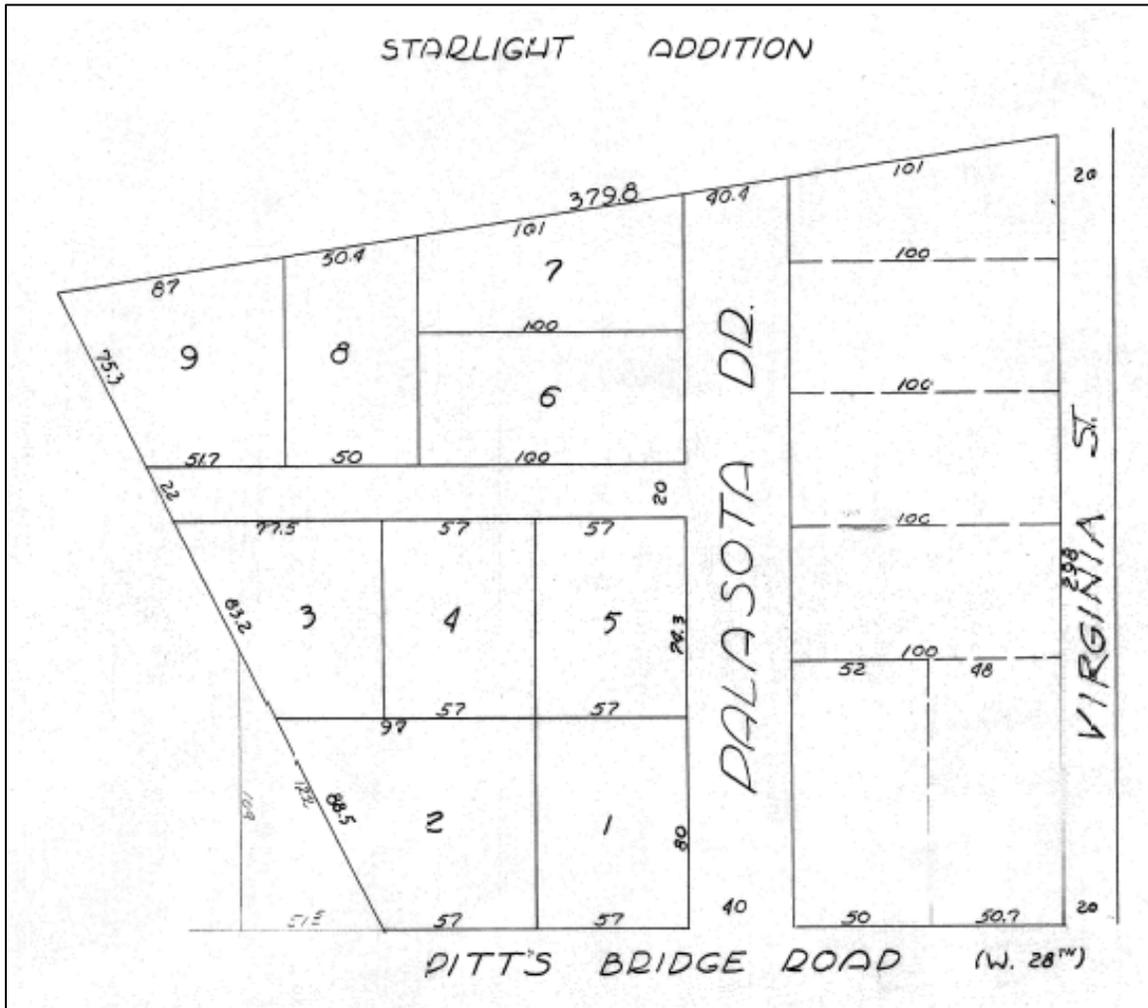
The Starlight Addition Subdivision and evidence of streets also show up on the map used for the 1940 U.S. Census. What is now known as West 28th Street was referred to at the time as Pitt's Bridge Road.

AERIAL PHOTOGRAPH DETAIL, 1940:



By 1940, this aerial photograph appears to provide evidence that what are now called West Virginia and Virginia Streets existed. This aerial photograph was taken in the spring of 1940.

UNRECORDED DRAWING, PIGFORD SUBDIVISION, CIRCA 1941:



The drawing above depicting a right of way for Virginia Street is a copy from a blueprint dated July 23rd, 1941. The drawing is not of a recorded subdivision but is related to a deed record describing a larger tract of land recorded in Vol. 50, Pg. 599 of the Official Records of Brazos County.

RESOLUTION NO. 2866

A RESOLUTION AUTHORIZING THE CITY OF BRYAN, TEXAS TO MAINTAIN CERTAIN THIRTEEN (13) STREETS, WHICH WERE ASSUMED TO BE PRIVATE, AS SAID SPECIFIC STREETS HAVE BEEN DETERMINED TO SERVE A PUBLIC PURPOSE AND HAVE BEEN MAINTAINED IN SOME FORM FOR AN EXTENDED PERIOD BY THE CITY OF BRYAN

WHEREAS, on January 30, 2003 at the Bryan City Council Retreat the Council discussed private streets and how several specific streets have been identified as streets that possibly serve a public purpose; and,

WHEREAS, the Bryan City Council desires to provide adequate transportation alternatives to all citizens as equitably and equally as possible; and,

WHEREAS, the City of Bryan is improving many streets and roads throughout the community; and,

WHEREAS, a drivable service is an essential element of a good quality of life; and,

WHEREAS, the following thirteen (13) streets have been identified as streets that serve a public purpose, and the City will attempt to maintain such streets by grading and reviewing other improvement options:

- Berka Street (360 feet long) – in the area of Tatum to end
- Cunningham Lane (1,320 feet long) – in the area of 28th Street and Sunset Street
- Dansby Lane – in the area of FM 158 at its intersection with FM 60 (University Drive)
- Harvey Street (360 feet long)- in the area of Virginia to end
- Hunters Lane (264 feet long) – in the area of West MLK and Nevada Street
- Maple Drive (574 feet long) in the area of Hwy 21 to end
- Murphy Lane (749 feet long) – in the area of Hwy 21 to end
- Nevada Street (1,056 feet long) – in the area of Muckleroy Drive and Reno Street
- Palasota Drive (275 feet long) – in the area northeast of 28th Street from the existing Palasota Drive southwest of 28th Street
- Paris Lane (450 feet long) – in the area of Waco Street and Legion Court
- Thompson Street (528 feet long) – in the area of 28th Street to end
- Velma Street (200 feet long) – in the area of Tatum to end
- Virginia Street (792 feet long) – in the area of 28th Street and Graham Drive

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS THAT:

Section 1.

As resources are available, the City of Bryan, Texas will maintain to some degree, even if it is a very minor degree, the aforementioned thirteen (13) streets as they are deemed to serve a public purpose and have been, at some time and for a duration of time, maintained by the City of Bryan.

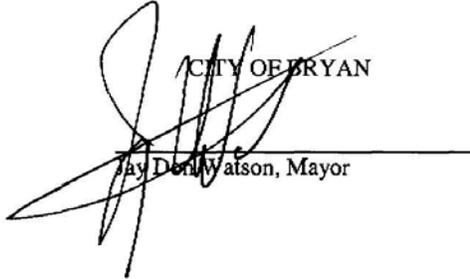
Section 2.

This Resolution shall become immediately effective upon adoption.

APPROVED AND ADOPTED at a regular meeting of the Bryan City Council on this 11 day of March, 2003.

ATTEST:


Mary Lynne Stratta, City Secretary


CITY OF BRYAN
Jay DeW. Watson, Mayor

APPROVED AS TO FORM:


Michael J. Cosentino, City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, ESTABLISHING VIRGINIA STREET AS A CITY RIGHT OF WAY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan (“City”) is a Texas home rule city in Brazos County, Texas; and

WHEREAS, pursuant to Section 1(a)(13) of the City of Bryan Charter, as well as section 311.001 of the Texas Transportation Code, the City is authorized to regulate and control the use of the streets, highways, and alleys; and

WHEREAS, in 1929, Mr. W. E. Pigford filed a plat of a portion of the Starlight Addition, which has since been labeled as Block C, which included a dedicated public street which has since been named West Virginia Street; and

WHEREAS, none of the other planned blocks of the Starlight Addition were ever filed, and so the street which has since been named Virginia Street, which connected the platted Starlight Block C to W. 28th Street, was never officially dedicated to the City; and

WHEREAS, the other properties that were part of the same tract of land have been sold off in pieces, described by metes and bounds, and each description leaves a twenty-foot (20’) gap where Virginia Street is located; and

WHEREAS, historical records indicate that the public has been using Virginia Street from as far back as 1940 because it provides the only means of access from West Virginia Street to West 28th Street, and through it the rest of the City; and

WHEREAS, the City Council finds that because the general public has been using Virginia Street since at least the 1940s and because it provides the only means of public street access for a number of properties, the public has therefore obtained a prescriptive easement over the property that constitutes the road; and

WHEREAS, Virginia Street is a public road in fact and the City Council has determined a need to declare it to be a City street in name as well, because there are properties adjacent to Virginia Street that wish to develop but are prevented from doing so due to the street’s lack of formal status as a public right of way; and

WHEREAS, it is in the best interests of the adjacent property owners, the property owners who rely on the road for public access, and also the City’s emergency services that Virginia Street should be declared to be a City street in fact as well as in name; and

WHEREAS, since the street is a public right of way by virtue of the prescriptive easement and since the City’s charter and state law give the City authority to regulate and control public rights of way in the City limits, the City Council determines that Virginia Street can be declared a City street; and

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

1.

That all of the above recitals are found to be true and correct and are hereby incorporated into the body of this ordinance as if fully set forth herein.

2.

The road commonly known as Virginia Street, which is described more particularly by metes and bounds in attached Exhibit "A" and depicted on attached Exhibit "B", is hereby declared to be a City owned street right of way.

3.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

4.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

5.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, *et seq.*, of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given, pursuant to all applicable law.

6.

This ordinance shall take effect from and after its final passage.

PRESENTED AND GIVEN first reading the 25th day of March, 2014, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 8th day of April, 2014, by a vote of ____ ayes and ____ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT "A" METES AND BOUNDS DESCRIPTION

VIRGINIA STREET RIGHT OF WAY

0.3305-ACRE TRACT
STEPHEN F. AUSTIN LEAGUE NO. 9, A-62
BRYAN, BRAZOS COUNTY, TEXAS

Being a **0.3305-acre** tract or parcel of land lying and being situated in the Stephen F. Austin League No. 9, A-62, and being a portion of an 8.0-acre tract of land conveyed to W.E. Pigford by deed recorded in Volume 50, Page 599, Deed Records, Brazos County, Texas, and said **0.3305-acre** tract being more particularly described as follows:

BEGINNING at a ½" iron rod found marking the easternmost corner of Lot 10, Block 2, Starlight Addition, an addition to the City of Bryan platted and recorded in Volume 76, Page 357, Deed Records, Brazos County, Texas, said rod also marking the northernmost corner of the Graciela Hernandez tract of land, with Brazos County Appraisal District # 44395;

THENCE N 17°35'36" W, along the northeastern boundary line of said Lot 10, Block 2, for a distance of 71.86' to a ½" iron rod set, marking the northernmost corner of said Lot 10, Block 2;

THENCE S 62°42'21" W, along the northwestern boundary line of said Lot 10, Block 2, for a distance of 12.21' to a ½" iron rod set;

THENCE N 27°49'58" W, along the northeastern boundary line of Lot 9, Block 1, Starlight Addition, an addition to the City of Bryan platted and recorded in Volume 76, Page 357, Deed Records, Brazos County, Texas, for a distance of 111.44' to a ½" iron rod set, on the southeastern right way line of the 100.00'-wide Union Pacific Railroad right of way;

THENCE N 62°42'21" E, along the said railroad right of way line, for a distance of 55.60' to a ½" iron rod found, marking the westernmost corner of the E D Jones tract of land, with Brazos County Appraisal District # 44368;

THENCE S 17°35'36" E, along the southwestern boundary line of the following tracts and corresponding distances:

- 175.73' along said E D Jones tract to a ½" iron rod found.
- 131.17' along the Eugene & Bessie Nelms tract described in deed recorded in Volume 3882, Page 295, Official Records, Brazos County, Texas, to a ½" iron rod found.
- 47.26' along the B/CS Habitat for Humanity tract described in deed recorded in Volume 10490, Page 209, Official Records, Brazos County, Texas, to a ½" iron rod found.
- 50.36' along the B/CS Habitat for Humanity tract described in deed recorded in Volume 10490, Page 209, Official Records, Brazos County, Texas, to a ½" iron rod found.

for a total distance of 404.52';

THENCE S 17°35'36" E, along southwestern boundary line of the John Ward Estate tract with Brazos County Appraisal District #44381, for a distance of 154.44' to a ½" iron rod set, marking the southernmost corner of said Ward tract and the northwestern right of way line of 28th street, a 50'-wide City of Bryan public right of way.

THENCE S 71°14'01" W, along the northwestern right of way line of said 28th street, for a distance 30.00' to a ½" iron rod found, marking the easternmost corner of the Maria L. Alvarez tract described in Volume 6629, Page 51, Official Records, Brazos County, Texas;

THENCE N 17°35'36" W, along the northeastern boundary line of the following tracts:

- 100.00' along the said Alvarez tract to a ½" iron rod found.
- 50.00' along the B/CS Habitat for Humanity tract described in deed recorded in Volume 9441, Page 179, Official Records, Brazos County, Texas, to a ½" iron rod found.
- 50.00' along the B/CS Habitat for Humanity tract described in deed recorded in Volume 9525, Page 104, Official Records, Brazos County, Texas, to a ½" iron rod found.
- 100.00' along the Ricardo & Maria Alvarez tract described in deed recorded in Volume 10219, Page 46, Official Records, Brazos County, Texas.
- 70.92' along the Graciela Hernandez tract described in deed recorded in Volume 10095, Page 210, Official Records, Brazos County, Texas, for a total distance of 370.92' to the **POINT OF BEGINNING**, containing a **0.3305 acre** of land more or less.

Note: Bearing source is the Plat of Graham Drive Addition an addition to the City of Bryan platted and recorded in Volume 4893, Page 161.

EXHIBIT "B" - SURVEY

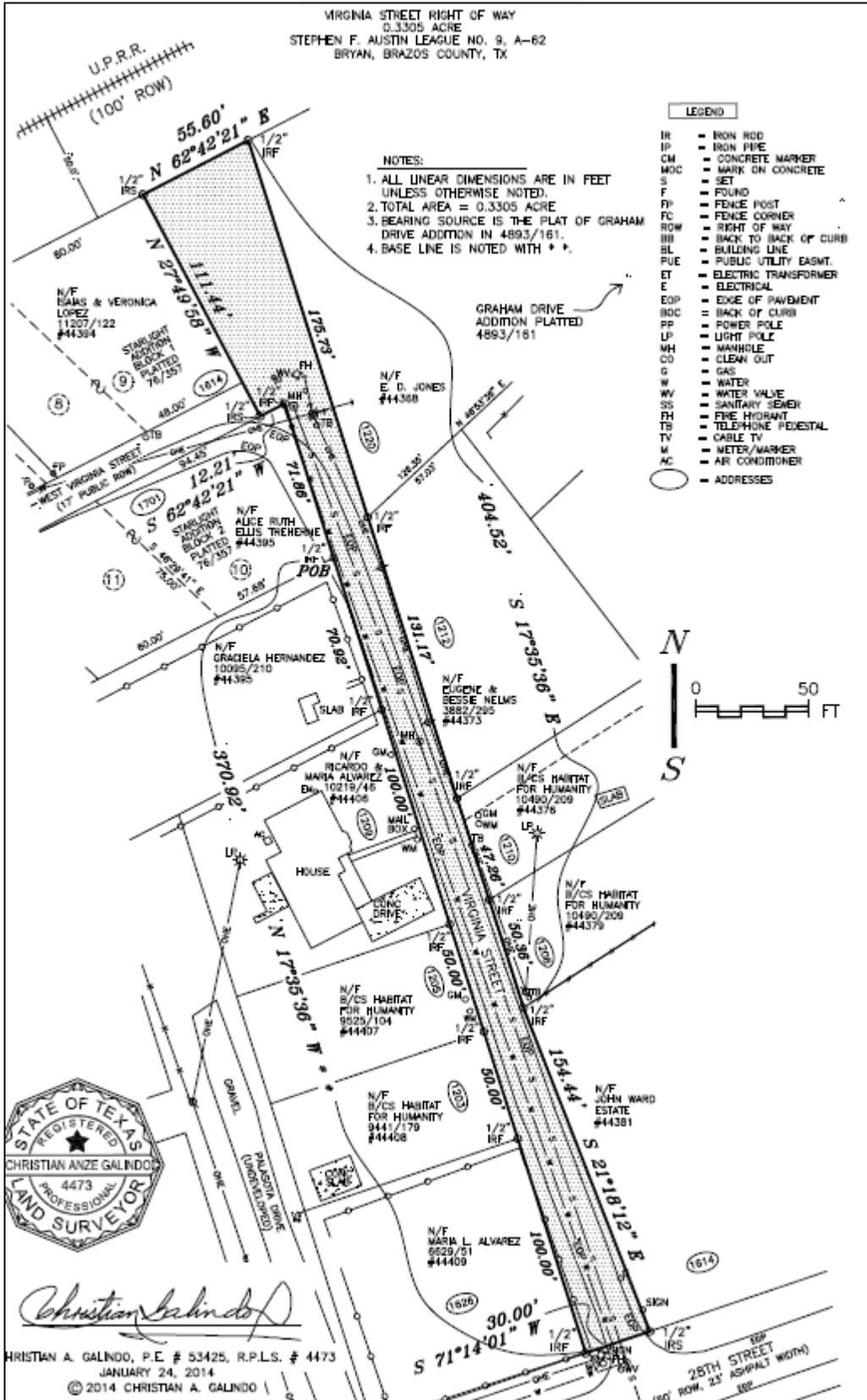
VIRGINIA STREET RIGHT OF WAY
 0.3305 ACRE
 STEPHEN F. AUSTIN LEAGUE NO. 9, A-62
 BRYAN, BRAZOS COUNTY, TX

NOTES:

1. ALL LINEAR DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
2. TOTAL AREA = 0.3305 ACRE
3. BEARING SOURCE IS THE PLAT OF GRAHAM DRIVE ADDITION PLATTED 4893/161.
4. BASE LINE IS NOTED WITH * * *

LEGEND

- IR - IRON ROD
- IP - IRON PIPE
- CM - CONCRETE MARKER
- MOC - MARK ON CONCRETE
- S - SET
- F - FOUND
- FP - FENCE POST
- FC - FENCE CORNER
- ROW - RIGHT OF WAY
- BB - BACK TO BACK OF CURB
- BL - BUILDING LINE
- PUE - PUBLIC UTILITY EASMT.
- ET - ELECTRIC TRANSFORMER
- E - ELECTRICAL
- EOP - EDGE OF PAVEMENT
- BOC - BACK OF CURB
- PP - POWER POLE
- LP - LIGHT POLE
- MH - MANHOLE
- CO - CLEAN OUT
- G - GAS
- W - WATER
- WV - WATER VALVE
- SS - SANITARY SEWER
- FF - FIRE HYDRANT
- TP - TELEPHONE PEDESTAL
- TV - CABLE TV
- M - METER/MARKER
- AC - AIR CONDITIONER
- - ADDRESSES



Christian Galindo
 CHRISTIAN A. GALINDO, P.E. # 53425, R.P.L.S. # 4473
 JANUARY 24, 2014
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