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No.            FÍ ÈÈÈÈÈ

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IN THE SUPREME COURT OF TEXAS  
AUSTIN, TEXAS

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**IN RE HIGHWAY 205 FARMS, LTD. and MAURICE E. MOORE,  
JR.**

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***PETITION FOR WRIT OF MANDAMUS***

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VASSALLO & SALAZAR, P.C.  
Eddie Vassallo  
SBN: 20503000  
Charles A. Salazar  
SBN: 17526750  
Hayley D. Ashlie  
SBN: 24069280  
3710 Rawlins Street, Suite 1200  
Dallas, Texas 75219

KELLER STOLARCZYK, PLLC  
Kimberly S. Keller  
SBN: 24014182  
Email: kim@kellsto.com  
234 W. Bandera Rd. #120  
Boerne, TX 78006  
Tele: 830.981.5000  
Facs: 888.293.8580

***Counsel for Relators***

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## **IDENTITY OF PARTIES & COUNSEL**

Relators certify this as a complete list of the parties and their counsel:

### **RELATORS/APPELLEES/DEFENDANTS:**

HIGHWAY 205 FARMS, LTD. and MAURICE E. MOORE, JR.

### **COUNSEL FOR RELATORS/APPELLEES/DEFENDENTS:**

*Trial:*

*Appellate:*

Eddie Vassallo  
Charles A. Salazar  
Hayley D. Ailshie  
VASSALLO & SALAZAR, P.C.  
3710 Rawlins Street,  
Suite 1200  
Dallas, Texas 75219

Kimberly S. Keller  
KELLER STOLARCZYK PLLC  
234 W. Bandera Rd. #120  
Boerne, Texas 78006

### **REAL PARTY IN INTEREST/APPELLANT/PLAINTIFF:**

CITY OF DALLAS

### **COUNSEL FOR REAL PARTY IN INTEREST / APPELLANT / PLAINTIFF:**

Barbara Rosenberg  
Christopher D. Bowers  
James B. Pinson  
Brandi M. Youngkin  
DALLAS CITY ATTORNEY'S OFFICE  
1500 MARILLA STREET,  
ROOM 7BN  
DALLAS, TEXAS 75201

**OTHER REAL PARTIES IN INTEREST NOT PARTICIPATING IN  
THE APPEAL BELOW:**

DOW CHEMICAL COMPANY  
C/O CT CORPORATION SYSTEM  
350 N. ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201

KAUFMAN COUNTY  
C/O COUNTY JUDGE BRUCE WOOD  
100 W. MULBERRY STREET  
KAUFMAN, TEXAS 75142

TERRELL INDEPENDENT SCHOOL DISTRICT  
C/O MICHAEL FRENCH, SUPERINTENDENT  
700 N. CATHERINE STREET  
TERRELL, TEXAS 75160

TRINITY VALLEY COMMUNITY COLLEGE DISTRICT  
C/O DR. GLENDON FORGEY, PRESIDENT  
100 CARDINAL DRIVE  
ATHENS, TEXAS 75751

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## **EXPLANATION OF RECORD CITATIONS**

The Mandamus Record/Appendix in this case is an official appellate record, filed in the direct appeal. *City of Dallas v. Highway 205 Farms, et al.*, No. 05-13-00951-CV. Relators have attached the official appellate record in the aforementioned case to this Petition for Writ of Mandamus.

Relators will use the following citation forms to refer to the varying volumes of the Mandamus Record/Appendix in this case:

- **CR [Page]**: used when citing to the Clerk's Record, filed on July 16, 2013. The page numbers used correspond to the Clerk's pagination, as well as the Adobe PDF page numbers. *This has been attached to this Petition as Appendix E.*
- **SCR [Page]**: used when citing to the Supplemental Clerk's Record, filed on July 29, 2013. The page numbers used correspond to the Clerk's pagination, as well as the Adobe PDF page numbers. *This has been attached to this Petition as Appendix F.*
- **[Volume] RR [Page]**: used when citing to the two-volume Reporter's Record of the proceedings. *Volume One, which transcribes the hearing on April 17, 2013 has been attached to this Petition as Appendix G. Volume Two, which transcribes the hearing on June 21, 2013, has been attached to this Petition as Appendix H.*

## **STATEMENT OF THE CASE**

*Nature of the Case:* This is an eminent domain proceeding that was dismissed by the trial court for want of prosecution. (CR 80). After the case languished on the docket for over 18 months, Relators sought a dismissal, (CR 34), which was granted, without prejudice, by the court below. (CR 80). Respondent filed a motion to reinstate the case, (CR 81), which was denied. (CR 100).

*Trial Court:* County Court at Law, Kaufman County, Texas. The case was dismissed without prejudice by the Honorable Erleigh Wiley.<sup>1</sup>

*Disposition:* Dismissal without prejudice.

*Appeal filed by  
Respondent to the  
Fifth Court of  
Appeals:*

Respondent filed duplicate appeals (both a petition for writ of mandamus and a direct appeal). The original proceeding was assigned Cause No. 05-13-01185-CV; the direct appeal was assigned Cause No. 05-13-00951-CV. The Fifth Court of Appeals consolidated both actions and assigned the consolidated appeal Cause No. 05-13-00951-CV. (Order of Fifth Court of Appeals, dated September 10, 2013). The Court further ordered that the case would proceed under the appellate timetables.

*Panel:* Justice Fillmore  
Justice Evans  
Justice Evans

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<sup>1</sup>The Honorable Dennis P. Jones presided over and denied Appellant's Motion to Reinstate.

*Disposition by  
Appellate Court:*

The appellate court issued a Memorandum Opinion, holding that the trial court lacked jurisdiction to dismiss the eminent domain proceeding. *AppA*. As a result, the appellate court dismissed the direct appeal. *App.A*. The appellate court also conditionally granted the requested mandamus relief and ordered the trial court to reinstate the proceeding. *App.I*.

## **STATEMENT OF JURISDICTION**

This Court has jurisdiction over this original proceeding under Texas Government Code Section 22.002. The Fifth Court of Appeals consolidated the direct appeal and mandamus proceeding filed by Real Party in Interest City of Dallas. Both the direct appeal and the mandamus petition challenged the same ruling by the trial court: the dismissal of an eminent domain proceeding for failure to prosecute. The Fifth Circuit Court of Appeals disposed of the consolidated proceeding by issuing a Memorandum Opinion holding the trial court lacked jurisdiction to dismiss the eminent domain proceeding and, thus, the appellate court lacked jurisdiction to consider the direct appeal. *App.A*. The appellate court also conditionally granted mandamus relief. *App.I*.

## **ISSUE PRESENTED**

The appellate court held that a trial court has no authority to dismiss an eminent domain proceeding for want of prosecution, regardless of how long the proceeding has remained pending on the docket. Is it correct that a governmental entity can file an eminent domain proceeding and then leave it pending for years, decades, or centuries, without the landowner or trial court having any power to dismiss it?<sup>2</sup>

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<sup>2</sup>Relators ask this Court to note that, with this Petition for Writ of Mandamus, they have simultaneously filed a Petition for Review (No. 14-0917). At the appellate court level, Real Party in Interest filed duplicate appeals (both a petition for writ of mandamus and a direct appeal). The original proceeding was assigned Cause No. 05-13-01185-CV; the direct appeal was assigned Cause No. 05-13-00951-CV. The Fifth Court of Appeals consolidated both actions and assigned the consolidated appeal Cause No. 05-13-00951-CV. (Order of Fifth Court of Appeals, dated September 10, 2013). The appellate court further ordered that the case would proceed under the appellate timetables. The appellate court disposed of the consolidated proceeding by holding that the trial court lacked jurisdiction to dismiss the case for want of prosecution and, thus, the appellate court lacked jurisdiction over the appeal. *App.A*. The appellate court also granted mandamus relief to Real Party in Interest. *App.I*. In an abundance of caution, Relators have filed both a Petition for Review with this Court (No. 04-0917) and this Petition for Writ of Mandamus, with both appeals raising the same issue presented.

## **STATEMENT OF THE FACTS**

This original proceeding arises from the trial court's dismissal for want of prosecution of an eminent domain proceeding. Relators Highway 205 Farms, Ltd. and Maurice E. Moore ("Highway 205 Farms") own an 1,800 acre tract of land in Kaufman County, Texas.<sup>3</sup> Respondent City of Dallas ("the City") sought to condemn a portion of the land to use in a water line project.<sup>4</sup> The City simultaneously filed a lis pendens on the property in the Kaufman County Deed Records. (CR 96). With this filing, the City asserted the existence of the pending claim against Highway 205 Farms' property. *Id.* This lis pendens remains pending and continues to cloud Highway 205 Farms' title. *Id.*

Throughout the condemnation proceeding, the head of the City's legal department, Dallas City Attorney Thomas Perkins, remained unchanged. (*E.g.*, CR 6-9, 39-43, 55-58, 81-89, 101). The underlying chronology of events is undisputed:

- August 2011: the City filed both a Statement in Condemnation in the County Court at Law in Kaufman County and a lis

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<sup>3</sup>Highway 205 Farms, Ltd. is the record owner and Maurice E. Moore owns a mineral interest in the property. (CR 6, 10-28).

<sup>4</sup>(1 RR 8). The City sought fee simple title of six parcels of property for the Lake Tawakoni 144-inch Raw Water Transmission Pipeline Project. (CR 6-9).

pendens on Highway 205 Farm's property, (CR 6, 96; 2 RR 16-17);

- September 2011: Special Commissioners were appointed, (SCR 4), and, two months later, took their oaths, (CR 29-31);
- September 2012: the City filed Notice of Appearance and Designation of Lead Counsel, (CR 32);
- April 2013: upon motion by Appellees, (CR 34), the City's case was dismissed for want of prosecution, (CR 80).

The City then moved to reinstate the case. (CR 81). The motion was denied by the court below, which stated: "In response to the Motion for Reinstatement, I do not believe that a reasonable explanation has been made." (2 RR 25; CR 100).

The City then filed a direct appeal and a petition for writ of mandamus, both raising the same issue: whether the trial court could dismiss with prejudice an eminent domain proceeding, regardless of how long it remained pending on the docket. The City's original proceeding was assigned Cause No. 05-13-01185-CV; the City's direct appeal was assigned Cause No. 05-13-00951-CV. The Fifth Court of Appeals consolidated both actions and assigned the consolidated appeal Cause No. 05-13-00951-CV. (Order of Fifth

Court of Appeals, dated September 10, 2013). The appellate court further ordered that the case would proceed under the appellate timetables. *Id.*

The appellate court disposed of the consolidated proceeding by issuing a Memorandum Opinion, holding that the trial court lacked jurisdiction to dismiss the case for want of prosecution and, thus, the appellate court lacked jurisdiction over the appeal. *App.A.* The appellate court also granted mandamus relief to Real Party in Interest. *App.I.* In an abundance of caution, Relators have filed both a Petition for Review with this Court (No. 14-0907) and this Petition for Writ of Mandamus, with both appeals raising the same issue presented.

## **INTRODUCTION**

This Petition for Writ of Mandamus asks this Court to take action now to prevent the irrevocable harm to landowners that will occur if the appellate court's Memorandum Opinion remains standing. This Memorandum Opinion is attached as *Appendix A*.<sup>5</sup> The Memorandum Opinion resulted in two fundamental errors of law that will have statewide ramifications by divesting both landowners and trial judges of well-established rights: (1) the Opinion empowers governmental entities to hold hostage Texas landowners by permitting takings proceedings to last in perpetuity; (2) the Opinion strips trial judges of their inherent authority to manage their own dockets.

The legislative grant of eminent domain authority gives certain entities the power to force private parties to give up their property. TEX. CONST. art. I, § 17. "[I]n instances of doubt as to the scope of the power, the statute granting such power is 'strictly construed in favor of the landowner and against those corporations and arms of the State vested therewith.'" *Tex. Rice Land Partners, Ltd. v. Denbury*

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<sup>5</sup>On the same date, the appellate court granted mandamus relief to the City. This mandamus ruling is in Appendix I.

*Green Pipeline*, 363 S.W.3d 192, 198 (Tex. 2012). The Texas Legislature, recognizing the harm that comes from taking private land, established a system to complete the process of eminent domain in an expeditious and fair manner. *PR Invs. & Specialty Retailers, Inc. v. State*, 251 S.W.3d 472, 478 (Tex. 2008). However, there has been nothing expeditious or fair about the City's prosecution of its condemnation case against Highway 205 Farms.

The trial court below, recognizing this, took action and dismissed the City's case – without prejudice. Texas law authorizes trial courts to take such action to "to aid in the exercise of its jurisdiction, in the administration of justice, and in preservation of its independence and integrity." *Pub. Util. Comm'n of Tex. v. Cofer*, 754 S.W.2d 121, 124 (Tex. 1988); *Villareal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999). Here, the trial court's dismissal, based on its finding that the City failed to diligently prosecute its case, furthers the intent and purpose underlying the two-phase eminent domain proceeding established by the Texas Legislature. TEX. PROP. CODE ANN. § 21.001-.045.

The City has admitted that it will suffer little to no harm by having to re-file this case after it was dismissed without prejudice.<sup>6</sup> The same, however, cannot be said for Highway 205 Farms, who has waited in limbo, now for over three years, with a lis pendens clouding the property, while the City delays prosecution of its case. The City cannot demonstrate the court abused its discretion in dismissing the case for want of prosecution. According to the Memorandum Opinion, the City need not give *any* reason for the delay because no one – not the landowner or the trial court – can do anything about it. *App.A*. According to the Fifth Court of Appeals, the landowner and trial court are powerless. *App.A, I*.

### **ARGUMENT IN SUPPORT OF GRANTING MANDAMUS RELIEF**

The Memorandum Opinion below allows governmental entities to wait as long as they wish to complete the takings process. The Memorandum Opinion ended its legal analysis before ever considering whether the City's excuse for the delay was reasonable. *App.A*. In essence, the appellate court told all Texas landowners (and trial judges with takings cases on their docket) that

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<sup>6</sup>(1 RR 20) (stating that not "much if anything has changed, the Petition is the same. Quite honestly, the main reason we filed them is because we would of had to gone back to City Counsel for reauthorization, and a new vote").

governmental entities can delay the takings process as long as they wish and then offer no reason for the delay – because the reason does not matter. *App.A, I*. This analysis flies in the face of the intent and purposes behind the Texas Legislature’s eminent domain framework. *App.A, I*. For these reasons, this Court should grant mandamus relief and reinstate the trial court’s dismissal without prejudice.

# **I.** **MANDAMUS STANDARD**

Mandamus will issue only to correct a clear abuse of discretion for which the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex.1992) (orig. proceeding). A clear failure to analyze or apply the law correctly will constitute an abuse of discretion. *Walker*, 827 S.W.2d at 840. In this case, the appellate court conditionally granted mandamus relief and ordered the trial court to reinstate this case. With this Petition for Writ of Mandamus, Relators ask this Court to grant mandamus relief and ordering the appellate court to: (1) vacate its order granting mandamus relief; (2) vacate its order to

the trial court to reinstate the case; and (3) order the appellate court to affirm the trial court's judgment.

## **II.**

### **THE TWO-PHASE FRAMEWORK: A LEGISLATIVE MANDATE TO ENSURE SPEEDY RESOLUTION OF EMINENT DOMAIN CASES**

“The eminent domain statute is designed to provide a speedy and fair assessment of damages.” *In re State*, 325 S.W.3d 848, 850-51 (Tex. App.—Austin 2010, orig. proceeding) (quoting *Gulf Energy Pipeline Co. v. Garcia*, 884 S.W.2d 821, 823 (Tex. App.—San Antonio 1994, orig. proceeding)). To effectuate this goal, the eminent domain process occurs in two phases. *Blasingame v. Krueger*, 800 S.W.2d 391, 392 (Tex. App.—Houston [14th Dist.] 1990, orig. proceeding). The first phase is administrative in nature. After an eminent domain proceeding is filed in a trial court, TEX. PROP. CODE ANN. § 21.012, the trial court appoints three special commissioners who “assess the damages of the owner of the property being condemned,” *id.* § 21.014; *see id.* § 21.042), and “file an award which, in their opinion, reflects the value of the sought-after land.” *Amason v. Natural Gas Pipeline Co.*, 682 S.W.2d 240, 242 (Tex. 1984).

If the property owner or the condemning authority is dissatisfied with the commissioners' award, either may file objections to the commissioners' findings in the trial court. TEX. PROP. CODE ANN. § 21.018. Once those objections are filed, the second phase goes into effect. *Blasingame*, 800 S.W.2d at 393. In this phase, the commissioners' award is vacated, *id.*, and the administrative phase converts into a normal cause to be tried “in the same manner as other civil causes” in the trial court. TEX. PROP. CODE ANN. § 21.018(b); *In re State*, 85 S.W.3d at 877 (stating that objections to commissioners' findings entirely wipe out commissioners' award and prohibit any judgment based on that award).

On many occasions, courts have emphasized that the administrative phase is designed to provide “a means to quickly award damages . . . without the delays that occur in court proceedings.” *In re State*, 325 S.W.3d at 851 (quoting *In re State*, 85 S.W.3d 871, 876 (Tex. App.—Tyler 2002, orig. proceeding)); *see also PR Investments & Specialty Retailers, Inc. v. State*, 251 S.W.3d 472, 478 (Tex. 2008) (explaining that administrative phase provides parties with opportunity to present their case in “streamlined

fashion and to resolve their differences” without “the burdens of a trial”).

In other words, the “purpose of the administrative phase is to provide the parties an opportunity for a prompt resolution of the case with a minimum of expense.” *City of McKinney v. Eldorado Park, Ltd.*, 206 S.W.3d 185, 196 (Tex. App.—Eastland 2006, pet. denied); *see In re State*, 325 S.W.3d at 855 (“the administrative phase was originally designed to provide a quick, inexpensive, and unencumbered mechanism by which the damages to a landowner may be determined”); *In re State*, 85 S.W.3d at 876; *Gulf Energy Pipeline Co.*, 884 S.W.2d at 824; *Peak Pipeline Corp. v. Norton*, 629 S.W.2d 185, 187 (Tex. App.—Tyler 1982, no writ) (stating that eminent domain “statutory authority and the legislative intent from which it emanates, contemplates the utilization of special commissioners to accomplish the goal of a speedy and fair assessment of damages”); *City of Houston v. Plantation Land Co.*, 440 S.W.2d 691, 695 (Tex. Civ. App.—Houston [14th Dist.] 1969, writ ref’d n.r.e.) (explaining that legislature intended to establish “expeditious procedure”).

Here, the appellate court's Memorandum Opinion allows the City's delayed takings process to thwart the intent behind the Texas Legislature's legal framework. *App.A, I.* According to the appellate court, the City could say, "I'm sorry, landowner, I was too busy reading the phone book to move forward with your takings process. You'll just have to wait until I'm good and ready to move forward." *See App.A.* That certainly cannot be what the Texas Legislature envisioned when it enacted the legislative framework.

### **III.**

#### **THERE IS NO CONFLICT BETWEEN CHAPTER 21 AND A COURT'S POWER TO DISMISS A CASE FOR WANT OF PROSECUTION**

The City does not dispute that it filed an eminent domain proceeding in county court (and a lis pendens on the subject property) and then failed to prosecute its case for 18 months. The Memorandum Opinion told governmental entities that they can take as long as they wish to complete the takings process – a month, a year, a decade, a century, forever – and that the landowner, the trial court, or no one else can do anything about it. Throughout all of this time, any lis pendens filed on the property will remain in place and continue to cloud the landowner's title.

In essence, the appellate court told governmental entities that an eminent domain proceeding can languish on a trial court's docket in perpetuity during the administrative phase. *App.A, I*. And, the governmental entity can use a lis pendens to cloud the title (and prevent sale of the property). This lis pendens will, for all practical purposes, prevent the landowner from entering any business dealings related to the property and thwart any opportunity to sell the property. In fact, the governmental entity will likely use the lis pendens and delayed eminent domain proceeding to artificially deflate the value of the property so as to allow for a decreased sales price of the property. Forcing the involuntary sale of a landowner's property (even with compensation) is painful enough for most Texas landowners. However, allowing governmental entities to use the judicial system to unfairly depress the property's value with a lengthy, drawn out eminent domain proceeding is just plain wrong.

**A. *Justice delayed is justice denied.***

More than thirty years ago, this Court recognized that the "power of courts to move their dockets existed at common law and independently of statutes and rules of procedure." *Rick v. Mayad*,

603 S.W.2d 773, 776 (Tex. 1980). In that Opinion, Justice Pope explained:

Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. But even these are not the worst of what delay does. The most erratic gear in the justice machinery is at the place of fact finding, and possibilities for error multiply rapidly as time elapses between the original fact and its judicial determination.

*Id.*

**B. *The City's position that this case is not yet a "lawsuit" is belied by its lis pendens filing.***

The City's position that this case is not yet a "lawsuit" until an objection to the special commissioners' award is filed is belied by statutory law and the City's invocation of the lis pendens statute. The Property Code allows a party to a lawsuit to file a lis pendens, stating the style and number of the case, the court where the case is proceeding, the names of the parties, the kind of proceeding, and a description of the property. TEX. PROP. CODE ANN. § 12.007. This

Court has expressly held that this provision applies to eminent domain actions. *In re State*, 355 S.W.3d 611, 612 (Tex. 2011) (noting the State of Texas simultaneously filed its condemnation proceeding and lis pendens). The purpose of lis pendens notice is two-fold: (1) to protect the alleged rights of the party filing it to the property that is in dispute in the lawsuit, and (2) to put those interested in the property on notice of the lawsuit. *World Sav. Bank, F.S.B. v. Gantt*, 246 S.W.3d 299, 303 (Tex. App. -- Houston [14th Dist.] 2008, no pet.); *In re Collins*, 172 S.W.3d 287, 292-93 (Tex. App. -- Fort Worth 2005, orig. proceeding).

The appellate court held that the trial court lacked jurisdiction over this case at the time of the dismissal. *App.A.* Yet, this same appellate court has guided, in another case, that the policy underlying Texas's lis pendens doctrine is that a court that has acquired jurisdiction of a cause of action is entitled to proceed to the final exercise of that jurisdiction without the interference of anyone with the subject matter or res before the court *Group Purchases, Inc. v. Lance Invs., Inc.*, 685 S.W.2d 729, 731 (Tex. App. - - Dallas 1985, writ ref'd n.r.e.).

A copy of the lis pendens in this case is absent from the record; however, during the hearing on the City's reinstatement motion, the City read a portion of the lis pendens into the record:

I have a copy of the lis pendens, and it was filed, and it says a **lawsuit** in an eminent domain proceeding is eminent. The **lawsuit** is -- well, the **lawsuit** -- let's see -- it does say that there is a **lawsuit**, but we have to file it.

(2 RR 25) (emphasis added).

**C. *There is no conflict between a trial court's inherent authority to manage its docket, Rule 165a, and Chapter 21.***

This appellate court's Memorandum Opinion failed to harmonize the multiple provisions governing this proceeding. *App.A*. The cardinal principles of statutory construction are, first, when presented with an issue of statutory construction, the chief concern "is to ascertain and give effect to the Legislature's intent," *Klein v. Hernandez*, 315 S.W.3d 1, 3–4 (Tex. 2010), and, second, if a conflict exists between a statute and a rule of procedure, courts must harmonize the statute and the rule if possible. *La Sara Grain Co. v. F. Nat'l Bank of Mercedes*, 673 S.W.2d 558, 565 (Tex. 1984) (holding that courts are to construe statutes so as to harmonize with other relevant laws, if possible").

If no conflict exists, both sources of authority remain applicable and controlling over the case at issue. *See, e.g., Carpintheyro v. Gomez*, 403 S.W.3d 508, 511-512 (Tex. App.—San Antonio 2013, pet. denied) (holding no conflict between statute requiring service of an expert report on the 120th day and Texas Rule of Civil Procedure 4 allowing for extension of deadlines if they fall on a weekend or holiday); *In re Anderson Constr. Co.*, 338 S.W.3d 190, 196 (Tex. App.—Beaumont 2011, orig. proceeding) (concluding there was no conflict between the rule of civil procedure permitting parties to amend their pleadings to add new claims and section 27.004 of the Texas Property Code when the statute was silent with respect to the amendment of pleadings to add new claims); *M.R.R. v. State*, 903 S.W.2d 49, 52 (Tex. App.—San Antonio 1995, no pet.).

## **1. Chapter 21 of the Property Code**

Chapter 21 of the Property Code provides that the "[e]xercise of the eminent domain authority in all cases is governed by Sections 21.012 to 21.016 of this code." TEX. PROP. CODE ANN. § 21.011. Section 21.012 then goes on to describe how an entity with eminent domain authority "may begin a condemnation proceeding by filing a

petition in a proper court." *Id.* § 21.012(a). This filing invokes the jurisdiction of the court. Importantly, at no point does Chapter 21 state that the Rules of Civil Procedure do not apply to condemnation proceedings. *Id.* § 21.001-.045. Also, nowhere does it state courts presiding over condemnation proceedings are stripped of their inherent authority to manage their dockets. *Id.*

Chapter 21 requires the "judge of a court in which a condemnation petition is filed [to] appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned." *Id.* § 21.014(a). Chapter 21 also gives certain powers to Special Commissioners, none of which relate to the dismissal of condemnation petitions. "Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge." *Id.* § 21.014(c).

Chapter 21 contemplates the dismissal of condemnation proceedings both before and after the special commissioners' award of damages. *Id.* § 21.019(a). It also contemplates that dismissal motions may be filed by both the condemning authority, *id.* §

21.019(a)-(b), and the property owner. *Id.* § 21.019(c) ("A court that hears and grants a motion to dismiss a condemnation proceeding made by a property owner seeking a judicial denial of the right to condemn or otherwise renders a judgment denying the right to condemn may make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for other expenses incurred by the property owner to the date of the hearing or judgment"). One appellate court, interpreting this provision, has rejected the condemning entity's attempt to exclude this provision's application during the administrative phase. *See City of Laredo v. Montano*, 2012 WL 131407, \*2 (Tex. App.—San Antonio 2012) (mem. op.) (holding attorney's fees incurred from the time of the petition's filing [during the administrative phase] were recoverable).

After the special commissioners award damages, a "party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding." *Id.* § 21.018(a). If this occurs, "the court shall cite

the adverse party and try the case in the same manner as other civil causes." *Id.* § 21.018(b).

## **2. Inherent authority of trial courts**

Chapter 21's provisions do not conflict with the long-recognized inherent authority afforded courts "to aid in the exercise of its jurisdiction, in the administration of justice, and in preservation of its independence and integrity." *Pub. Util. Comm'n of Tex. v. Cofer*, 754 S.W.2d 121, 124 (Tex. 1988); Bruff, *Separation of Powers Under the Texas Constitution*, 68 TEXAS L. REV. 1337, 1348-49 (1990). These inherent powers are not derived from legislative grant or any specific constitutional provisions, but from the very fact that the court has been created and charged with certain duties and responsibilities. *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex.1979). There is nothing in Chapter 21 stating courts in which condemnation proceedings are filed are stripped of their long-established inherent authority. Moreover, there is nothing within Chapter 21's provisions that conflict with the inherent authorities recognized by this Court.

Case law has long recognized that a court's inherent authority allows it to intervene to prevent what it considers a waste of time,

maintain control of its docket and courtroom, and to expedite proceedings. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001) (per curiam) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). Among these inherent powers<sup>7</sup> is the authority to dismiss a case for want of prosecution. *Villareal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999). In this case, the trial court utilized its inherent authority to control and maintain its docket, to prevent delay, and to effectuate the purposes and intents of the administrative phase of the condemnation process, *i.e.*, a speedy award of damages. The trial court's use of its inherent authority does not conflict with Chapter 21's provisions; instead, it is consistent with and furthers Chapter 21's purposes.

*If the Memorandum Opinion stands, i.e., that a court has no inherent authority* over a case until an objection to the special commissioners' award is made, a condemning entity could file a condemnation petition that languished on the docket for over 100

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<sup>7</sup>Other examples of long-recognized inherent powers include the ability to (1) change, set aside or otherwise control judgments; (2) summon and compel the attendance of witnesses; (3) punish by sanctions or contempt; (4) regulate the admission and practice of law; (5) and provide personnel to aid the court in the exercise of its judicial function. *Eichelberger*, 582 S.W.2d at 398 n. 1 (citations omitted); see *In re Bennett*, 960 S.W.2d 35, 40 (Tex.1997) (“A court has the inherent power to impose sanctions on its own motion in an appropriate case.”).

years, but the court could do nothing about it because it lacks the inherent authority to manage its own docket. *App.A*. This argument makes little sense. It directly conflicts with years of case law acknowledging courts' inherent authority. *Villareal*, 994 S.W.2d at 630; *Eichelberger*, 582 S.W.2d at 398.

Also, the City's argument contravenes the purposes of the statutory two-phase process, which is to quickly resolve eminent domain disputes. See *In re State*, 325 S.W.3d at 855; *City of McKinney*, 206 S.W.3d at 196; *In re State*, 85 S.W.3d at 876; *Gulf Energy Pipeline Co.*, 884 S.W.2d at 824; *Peak Pipeline Corp.*, 629 S.W.2d at 187; *City of Houston*, 440 S.W.2d at 695. The appellate court's Memorandum Opinion allows a condemning entity to file a condemnation suit and lis pendens against any and all properties it believes may be necessary for a public use and then "sit on" those suits indefinitely during the administrative phase to the detriment of the landowner. *App.A, I*.

### **CONCLUSION**

Relators respectfully request this Court grant the Petition for Writ of Mandamus and order the appellate court to vacate its order

granting mandamus relief and requiring the trial court to reinstate the case.

At a minimum, this Court should order full briefing on the merits of this case. The position taken by the appellate court and city divest both Texas landowners and trial courts of well-established rights. *App.A, I*. Such an extreme ruling would allow an eminent domain proceeding to sit on a trial court's docket for infinity, leaving the landowner and trial court with no power to remedy the situation. *Id.*

Moreover, a full review of the record will demonstrate that the trial court reasonably and properly determined that the City failed to prosecute the case with due diligence. *Villarreal*, 995 S.W.2d at 630; *Point Lookout West, Inc. v. Whorton*, 742 S.W.2d 277, 278 (Tex. 1987). The judgment below should have been affirmed, and the appellate court committed error by dismissing the appeal for lack of jurisdiction and by granting the City mandamus relief. *App.A, I*. Mandamus should issue to correct these errors.

Respectfully submitted,

KELLER STOLARCZYK PLLC  
234 West Bandera Road #120  
Boerne, Texas 78006  
Tele: 830.981.8100  
Facs: 888.293.8580

/s/Kimberly S. Keller  
Kimberly S. Keller  
SBN: 24014182  
kim@kellsto.com

VASSALLO & SALAZAR, P.C.  
Eddie Vassallo  
SBN: 20503000  
Charles A. Salazar  
SBN: 17526750  
Hayley D. Ashlie  
SBN: 24069280  
3710 Rawlins Street  
Suite 1200  
Dallas, Texas 75219

*Counsel for Relators*

## **CERTIFICATES**

*On Rule 52.3(j):* I certify that I have reviewed this Petition for Writ of Mandamus and concluded that every factual statement in the Petition is supported by competent evidence included in the Mandamus Appendix/Record.

*On Rule 52.7:* I certify that the Mandamus Appendix/Record contains the official record filed by the County Clerk and Official Court Report in the direct appeal in the Fifth Court of Appeal, No. 05-13-00951-CV.

*Of Compliance:* I certify this Petition for Writ of Mandamus contains 4,092 words.

*Of Service:* I certify this Petition for Writ of Mandamus and Mandamus Appendix/Record were, on January 12, 2015, served on the following via e-filing or facsimile or email:

Barbara Rosenberg  
Christopher D. Bowers  
James B. Pinson  
Brandi M. Youngkin  
Assistant City Attorneys  
Dallas City Attorney's Office  
1500 Marilla Street,  
Room 7BN  
Dallas, Texas 75201  
Facs: 214.670.0622

Dow Chemical Company  
c/o CT Corporation System  
350 N. St. Paul Street, Suite 2900  
Dallas, Texas 75201

Kaufman County  
c/o County Judge Bruce Wood  
100 W. Mulberry Street  
Kaufman, Texas 75142

Terrell Independent School District  
c/o Michael French, Superintendent  
700 N. Catherine Street  
Terrell, Texas 75160

Trinity Valley Community College District  
c/o Dr. Glendon Forgey, President  
100 Cardinal Drive  
Athens, Texas 75751

/s/Kimberly S. Keller  
Kimberly S. Keller

**Appeal Dismissed; Writ of Mandamus is Conditionally Granted; Opinion Filed July 22, 2014.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-13-00951-CV**

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**CITY OF DALLAS, Appellant  
V.  
HIGHWAY 205 FARMS, LTD., AND  
MAURICE E. MOORE, JR., Appellees  
and  
IN RE CITY OF DALLAS, RELATOR**

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**On Appeal from the County Court at Law  
Kaufman County, Texas  
Trial Court Cause No. 84262CC**

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**MEMORANDUM OPINION**

**Before Justices Fillmore, Evans, and Lewis  
Opinion by Justice Evans**

This condemnation case involves an appeal and a petition for writ of mandamus that have been consolidated for our review. In both proceedings, the City of Dallas challenges the trial court's dismissal for want of prosecution of its eminent domain proceeding against Highway 205 Farms, Ltd. and Maurice E. Moore, Jr. as well as the denial of its motion to reinstate the matter. For the reasons that follow, we conclude the trial court erred in dismissing the case for want of prosecution because it lacked the subject matter jurisdiction to do so while the case was in the administrative stage and before the case became a judicial proceeding. We further conclude that mandamus relief is appropriate because the trial court clearly abused its discretion by issuing the

void orders. We therefore conditionally grant the mandamus and direct the trial court to vacate its dismissal order and reinstate the case. We dismiss the appeal for want of jurisdiction.

### **BACKGROUND**

In August 2011, the City filed a statement in the county court at law seeking to condemn a portion of appellees' property in Kaufman County for a raw water pipeline project.<sup>1</sup> At the same time, the City filed a lis pendens on the property in the deed records of Kaufman County. Shortly thereafter, the county court appointed three special commissioners to hear the condemnation proceeding. In October 2011, the county court signed an order removing one of the commissioners and appointing a replacement commissioner.

By early 2013, however, a special commissioners' hearing had still not been scheduled. On March 7, 2013, appellees filed a motion in the county court to dismiss the case for want of prosecution pursuant to rule 165(a) of the Texas Rules of Civil Procedure and the trial court's inherent authority. They argued they were entitled to dismissal because the matter had been pending for eighteen months with no activity and the City had failed to prosecute the case with due diligence. The City responded that because the case was still in the administrative stage of a condemnation proceeding, the trial court lacked subject matter jurisdiction to dismiss the case.

Four days after appellees' motion to dismiss was filed, the special commissioners issued an order scheduling a hearing for May 8, 2013. The county court held a hearing on appellees' motion to dismiss on April 17, 2013 at which time the judge signed an order granting appellees' motion and dismissing without prejudice the eminent domain proceeding for want of

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<sup>1</sup> Highway 205 Farm, Ltd. is the owner of record of the property and Maurice E. Moore, Jr. has a mineral interest.

prosecution. The City filed a verified motion to reinstate<sup>2</sup> that the county judge denied after a hearing. This appeal and original mandamus proceeding ensued.

### ANALYSIS

In both the appeal and mandamus, the City generally argues that the county court did not have subject matter jurisdiction to dismiss the City's eminent domain proceeding because it was in the administrative phase of the case. The issue of whether a court has subject matter jurisdiction is a question of law. *See Collin Cnty. v. Hixon Family P'ship, Ltd.*, 365 S.W.3d 860, 865 (Tex. App.—Dallas 2012, pet. denied). After reviewing the record and the relevant case law, we agree with the City.

We begin with the basic principle that an eminent domain action is not within the general jurisdiction of the county court and that any power to act in such a proceeding is derived from the eminent domain statute. *See Pearson v. State*, 315 S.W.2d 935, 937 (Tex. 1958). The Texas Legislature has devised a two-part procedure for an eminent domain action involving first an administrative proceeding, and then, if necessary, a judicial proceeding. *See TEX. PROP. CODE ANN.* §§ 21.001–.103 (West 2004, 2000 and Supp. 2013); *Amason v. Natural Gas Pipeline Co.*, 682 S.W.2d 240, 241 (Tex. 1984); *Hixon Family P'ship*, 365 S.W.3d at 865–86. Only after a party files an objection to the commissioners' award with the trial court does the judicial phase begin and the trial court obtain jurisdiction to hear and determine the issues in the exercise of its judicial powers. *See Pearson*, 315 S.W.2d 937; *Hixon Family P'ship*, 365 S.W.3d at 866. At that point, the commissioners' award is vacated, the trial court obtains full jurisdiction over the case, and it is tried as any other civil cause. *In re State*, 325 S.W.3d 848, 851 (Tex. App.—Austin 2010, orig. proceeding). But without a timely filed objection to the Commissioners'

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<sup>2</sup> In its motion to reinstate, the City explained the causes of delay which we omit because they are not germane to the dispositive jurisdictional issues we must decide.

award, an eminent domain proceeding never becomes a civil case and the trial court does not gain jurisdiction. *See Dickey v. City of Houston*, 501 S.W.2d 293, 294 (Tex. 1973)(per curiam); *see also In re State*, 325 S.W.3d at 852.

The administrative phase provides a method to quickly award damages without the delays that occur in court proceedings. *In re State*, 325 S.W.3d at 850. During the administrative phase, the statute expressly limits the trial court's authority to appointing the commissioners, receiving their opinion as to value, and rendering judgment based on the commissioners' award. *See Gulf Energy Pipeline Co. v. Garcia*, 884 S.W.2d 821, 822 (Tex. App.—San Antonio 1994, orig. proceeding). The administrative phase is completely separate from any judicial proceeding that may later take place, and the property code does not provide the trial court with authority to oversee an ongoing administrative proceeding. *In re State*, 85 S.W.3d 871, 874 (Tex. App.—Tyler 2002, orig. proceeding). Specifically, the trial court has no authority to control the timing of the special commissioners' hearing as the power to set the time and place of the hearing is expressly delegated to the commissioners. *See Gulf Energy Pipeline Co.*, 884 S.W.2d at 823. Appellate courts have consistently held that trial courts have no authority to grant continuances, abate, enjoin, set, or otherwise interfere with the commissioners' hearings. *See id.*; *see also City of Carrollton v. OHBA Corp.*, 809 S.W.2d 587, 588–89 (Tex. App.—Dallas 1991, no writ); *Peak Pipeline Corp. v. Norton*, 629 S.W.2d 185, 187 (Tex. App.—Tyler 1982, no writ). Thus, any such trial court orders purporting to hinder or delay the special commissioners from proceeding with the condemnation hearing are necessarily void and an abuse of discretion. *See Gulf Energy Pipeline Co.*, 884 S.W.2d at 823.

In the case before us, it is undisputed that the eminent domain proceeding was in the administrative phase at the time appellees filed their motion to dismiss. Appellees' motion to dismiss was based, among other things, on the City's inactivity in the case and the failure to

schedule the special commissioners' hearing. At the time the trial court heard the motion to dismiss, however, the special commissioners' scheduled hearing date was only three weeks away. The trial court's dismissal was not authorized by the condemnation statute and interfered with the commissioners' ability to set the time and place of their hearing. Because the trial court does not have jurisdiction in the administrative phase of a condemnation proceeding except for what is provided in the eminent domain statute, any judgment or order made outside of the statutory authority is void. *In re Energy Transfer Fuel, LP*, 250 S.W.3d 178, 181 (Tex. App.—Tyler 2008, orig. proceeding). Accordingly, the trial court abused its discretion when it dismissed this condemnation proceeding when there was no judicial case before it. *See Dickey*, 501 S.W.2d at 294.

In reaching our conclusion, we necessarily reject appellees' contention the trial court had authority to dismiss the case pursuant to rule 165a of the Texas Rules of Civil Procedure and under its inherent authority over the case. As noted above, at the time the trial court dismissed the action, there was no judicial case before the court as the matter was still in the administrative phase. *See Dickey*, 501 S.W.2d at 294. Accordingly, neither rule 165a nor the trial court's inherent authority can justify the trial court's dismissal of a matter over which it did not have subject matter jurisdiction in the first place.

Generally, mandamus relief is appropriate only when the trial court clearly abuses its discretion and there is no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004)(orig. proceeding). But mandamus relief is also appropriate when the trial court abuses its discretion by entering void orders regardless of whether there is an adequate remedy on appeal. *See In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 603 (Tex. 2000) (orig. proceeding); *Gulf Energy Pipeline Co.*, 884 S.W.2d at 824. In fact, appellate courts have granted mandamus relief in condemnation cases where the trial court has acted without subject matter

jurisdiction. *See In re Energy Transfer Fuel, LP*, 250 S.W.3d at 181–82 (mandamus granted where trial court was without jurisdiction to enter final judgment containing provisions not in commissioners’ award); *In re State*, 85 S.W.3d at 874 (mandamus appropriate where trial court lacked jurisdiction to order the State to pay the commissioners’ expenses); *Gulf Energy Pipeline Co.*, 884 S.W.2d at 824 (mandamus appropriate because trial abused its discretion by entering void orders granting continuance of commissioners’ hearing and resetting hearing to later date).

### CONCLUSION

We conclude the trial court lacked jurisdiction to dismiss for want of prosecution the eminent domain proceeding while the administrative phase of the case was pending. We further conclude the trial court’s dismissal order was a clear abuse of discretion and void. We therefore conditionally grant the mandamus and direct the trial court to vacate its dismissal order and reinstate the case. We are confident that the trial court will promptly comply and our writ will issue only if the trial court fails to do so. Having conditionally granted the mandamus, we dismiss the appeal for want of jurisdiction.

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/David Evans/  
\_\_\_\_\_  
DAVID EVANS  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

CITY OF DALLAS, Appellant

No. 05-13-00951-CV      V.

HIGHWAY 205 FARMS, LTD., AND  
MAURICE E. MOORE, JR.,  
Appellees

On Appeal from the County Court, Kaufman  
County, Texas

Trial Court Cause No. 84262CC

Opinion delivered by Justice Evans,  
Justices Fillmore and Lewis participating.

and

IN RE CITY OF DALLAS, Relator

In accordance with this Court's opinion of this date, the appeal portion of this consolidated appeal and petition for writ of mandamus is **DISMISSED** for want of jurisdiction.

It is **ORDERED** that appellant City of Dallas recover its costs of this appeal from appellees Highway 205 Farms, Ltd. and Maurice E. Moore, Jr.

Judgment entered this 22nd day of July, 2014.

Order entered September 16, 2014



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-13-00951-CV**

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**CITY OF DALLAS, Appellant**

**V.**

**HIGHWAY 205 FARMS, LTD ET AL, Appellee**

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**On Appeal from the County Court  
Kaufman County, Texas  
Trial Court Cause No. 84262CC**

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**ORDER**

The appellee's motion for rehearing is hereby DENIED.

/s/      DAVID EVANS  
         JUSTICE

Order entered October 28, 2014



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-13-00951-CV**

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**CITY OF DALLAS, Appellant**

**V.**

**HIGHWAY 205 FARMS, LTD., ET AL., Appellees**

**and**

**IN RE CITY OF DALLAS, RELATOR**

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**On Appeal from the County Court  
Kaufman County, Texas  
Trial Court Cause No. 84262CC**

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**ORDER  
Before the Court En Banc**

Before the Court is appellees' October 1, 2014 motion for en banc reconsideration.  
Appellees' motion is **DENIED**.

/s/ CAROLYN WRIGHT  
CHIEF JUSTICE

**CLERK'S RECORD**Volume 1 of 1Trial Court Cause No. 84262CC

In the \_\_\_\_\_ County Court at Law

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS

7/16/2013 3:49:03 PM

Of \_\_\_\_\_ Kaufman

LISA MATZ, Texas.  
Clerk

Honorable \_\_\_\_\_ Dennis P. Jones

, Judge Presiding

\_\_\_\_\_, City of Dallas, Plaintiff(s)

Vs.

\_\_\_\_\_, Highway 205 Farms, LTD, et al, Defendant(s)

Appealed to the  
5<sup>th</sup> District Court of Appeals

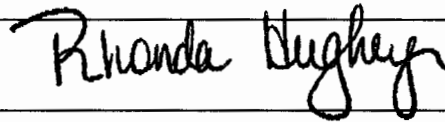
Attorney for appellant(s):

Name Barbara RosenbergAddress Dallas City Hall, 1500 Marilla Street, 7BN, Dallas, TX 75201Telephone No. 214-670-3519Fax No. 214-670-0622SBOT No. 08327050

Attorney for \_\_\_\_\_ City of Dallas, Appellant(s)

Delivered in electronic form to the 5<sup>th</sup> District Court of Appeals  
the 16th day of July, 2013.

Signature of Clerk

Name of Clerk Rhonda HugheyTitle District ClerkAppellate Court Cause No. 05-13-00951-CVFiled in the Court of Appeals Fifth District of Texas at Dallas

this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_, Clerk

By \_\_\_\_\_, Deputy

CITY OF DALLAS

IN THE COUNTY COURT

VS

AT LAW OF

HIGHWAY 205 FARMS, LTD, ET AL

KAUFMAN COUNTY, TEXAS

**INDEX**

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**STATE OF TEXAS**

**COUNTY OF KAUFMAN**

At a regular term of the County Court at Law begun and holden within and for the County of Kaufman, convened on the 7<sup>th</sup> day of January, 2013 and will adjourn on the 8<sup>th</sup> day of July, 2013, with the Honorable Dennis Jones the presiding Judge of the County Court at Law Court, the following cause came on for trial to-wit:

**Cause Number:** 84262CC

City Of Dallas Vs. Highway 205 Farms, LTD,

### Case Type: Condemnation

**Maurice E Moore, Jr., et al**  
**Plaintiff Attorney: Christopher C. Gunter**  
**Defense Attorney:**

**File Date : 08/30/2011**

| Month | Day | Year | Orders of the Court                          |
|-------|-----|------|--|
| 8     | 31  | 11   | Special Commissioners Appointed              |
|       |     |      | <del>Chief Justice</del>                     |
|       |     |      | Notice of Hearing set for 4/7/13 @ 9:00 a.m. |
| MAR   | 20  | 2013 |  |
| 5     | 9   | 13   | Order set for Hearing on Motion to Revoke    |
|       |     |      | 5/29/13 @ 9:00 a.m.                          |
| 5     | 13  | 13   | Order setting Hearing to 6/12/13 @ 9:00 a.m. |
| 6     | 10  | 13   | The Court-set hearing to 6/21/13 @ 9:00 a.m. |
| 6     | 21  | 13   | HRC on Mot. to Dismiss = Re. H. Dismiss      |

No. 84262CC

|                              |   |                       |
|------------------------------|---|-----------------------|
| CITY OF DALLAS,              | § | IN COUNTY COURT       |
| Plaintiff,                   | § |                       |
| VS.                          | § |                       |
|                              | § |                       |
| HIGHWAY 205 FARMS, LTD.,     | § |                       |
| MAURICE E. MOORE, JR., THE   | § |                       |
| DOW CHEMICAL COMPANY         | § | AT LAW                |
| KAUFMAN COUNTY, TERRELL      | § |                       |
| INDEPENDENT SCHOOL DISTRICT, | § |                       |
| and TRINITY VALLEY COMMUNITY | § |                       |
| COLLEGE DISTRICT             | § |                       |
| Defendants                   | § | KAUFMAN COUNTY, TEXAS |

### STATEMENT IN CONDEMNATION

NOW COMES THE CITY OF DALLAS (hereafter, "City"), a municipal corporation, incorporated under and by virtue of a Special Act of the Legislature of the State of Texas, exercising the functions of a municipal corporation under said Special Act of the Legislature of the State of Texas, approved April 13, 1907, which said Act and its amendments constitute the Charter of the City of Dallas, and would show the Court as follows:

#### I.

The City complains of the following parties:

|  |                  |
|--|------------------|
| HWY 205 FARM, LTD.<br>M E Moore Jr., Registered Agent<br>3890 W. Northwest Hwy, Ste 100<br>Dallas, TX 75220      | Owner of Record  |
| MAURICE E. MOORE, JR.<br>4214 McFarlin Blvd.<br>Dallas, TX 75205-1627  | Mineral Interest |
| THE DOW CHEMICAL COMPANY<br>c/o C.T. Corporation, Registered Agent<br>350 N. St. Paul St.<br>Dallas, Texas 75201 | Mineral Interest |

KAUFMAN COUNTY,  
in its own behalf and on behalf of  
Kaufman County Emergency Service District # 6 (Forney),  
Kaufman County Road and Bridge, and Terrell Independent  
School District, Trinity Valley Community College District

Statutory tax lienholder

Agents for service:

Dick Murphy

Tax Assessor/Collector

Kaufman County Annex

100 N. Washington

Kaufman, Texas 75142

and

Linebarger, Goggan, Blair & Sampson, LLP

Jeffrey Brown

P.O. Box 17428

Austin, Texas 78760

II.

Under and by virtue of the provisions of the Charter of the City of Dallas and the statutes of the State of Texas, the City is authorized to acquire title to property and to exercise its power of eminent domain to extend, improve or enlarge its water supply system, including the laying, building, maintenance and construction of water mains and any necessary appurtenances. To that end, the governing body of the City on April 23, 2008 approved resolution no. 081245 (hereafter, "Resolution") which authorized and required, for the Lake Tawakoni 144-inch Raw Water Transmission Pipeline Project, the condemnation of the property described in Exhibit A which is attached hereto and incorporated by reference (hereafter, "Property").

III.

The Resolution authorized the City Attorney to file condemnation proceedings to appropriate the Property and vest fee simple title in the City of Dallas. By this condemnation proceeding, the City seeks fee simple title to the Property, for the purposes described above for the Lake Tawakoni 144-inch Raw Water Transmission Pipeline Project in Kaufman County, Texas, save and except all the oil, gas and other minerals beneath said land, with no right

remaining in the owner or owners of said oil, gas and other minerals of ingress or egress to or from the surface of said land for the purpose of exploring, developing, drilling, or mining of same.

IV.

By diligent search, the City found that the parties listed in paragraph I (hereafter, "Owner") own or claim some interest in the Property. Should it be disclosed that other persons own or claim some interest in the Property, then the City reserves the right to amend this Statement in Condemnation and include such persons in this condemnation suit.

V.

The City could not and cannot agree with the Owner upon the amount of damages legally allowable and payable to the Owner by reason of the appropriation of the Property by the City. In that connection, the City designated one of its agents and representatives, by resolution duly adopted, and authorized said agent and representative to make an offer on behalf of the City of a sum of money stated in said resolution. That offer has been made but the parties have been unable to agree upon the terms of a voluntary conveyance, and further offers would be futile.

VI.

The City provided the Owner with the landowner's bill of rights statement in accordance with Section 21.0112 of the Texas Property Code.

WHEREFORE, PREMISES CONSIDERED, the City prays of the Court:

1. The appointment of necessary commissioners as provided by law for the purpose of assessing the damages occasioned by the condemnation of the Property,

2. A final judgment or a decree of condemnation vesting fee simple title to the Property in the City of Dallas for the purposes aforesaid, save and except all the oil, gas and other minerals beneath said land, with no right remaining in the owner or owners of said oil, gas and other minerals of ingress or egress to or from the surface of said land for the purpose of exploring, developing, drilling, or mining of same.


3. Costs of suit, and

4. Such other and further relief to which the City may be entitled.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DALLAS, TEXAS  
THOMAS P. PERKINS, JR.  
City Attorney

By

  
Christopher C. Gunter  
Assistant City Attorney  
State Bar of Texas No. 24025750  
Dallas City Hall  
1500 Marilla Street, 7BN  
Dallas, Texas 75201  
(214) 670-4288  
Telecopier - (214) 670-0622  
christopher.gunter@dallascityhall.com

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

2011 AUG 30 AM 10:47

CLERK OF DISTRICT COURT

BY  DEPUTY

EXHIBIT A  
081245

**FIELD NOTES  
DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN  
KAUFMAN COUNTY, TEXAS**

**Parcel: 7**

BEING a 6.054 acre tract of land in the Elizabeth Graves Survey, Abstract No. 168, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "96 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at the east corner of said "96 Acres" tract and the south corner of a tract of land described in Warranty Deed to M. Logan Swords and wife, Ruth Riley Swords, dated November 16, 1990, as recorded in Volume 578, Page 277, D.R.K.C.T., said corner also being in Kaufman County Road No. 243, an unrecorded right-of-way;

THENCE North 45 degrees 58 minutes 13 seconds West, along the common line between the northeast line of said "96 Acres" tract and the southwest line of said Swords tract, passing at a distance of 31.00 feet a fence corner post, and continuing along said common line for a total distance of 278.72 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 80 degrees 34 minutes 33 seconds West, departing said common line and crossing said "96 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of a City of Dallas Water Line Right-of-Way (variable width) as recorded in Volume 436, Page 258, D.R.K.C.T., a distance of 1,229.74 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 80 degrees 49 minutes 43 seconds West, continuing across said "96 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 702.19 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 82 degrees 30 minutes 27 seconds West, continuing across said "96 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 95.08 feet to a 1/2-inch set iron rod with cap on the common line between the southwest line of said "96 Acres" tract and the northeast line of a tract of land described in Warranty Deed with Vendor's Lien to Darrel R. Stephens and Wife, Dimple M. Stephens, dated February 11, 1981, as recorded in Volume 692, Page 335, D.R.K.C.T., said point being in Kaufman County Road No. 245 (Kuban Road), an unrecorded right-of-way;

THENCE North 46 degrees 04 minutes 40 seconds West, along said common line and said Kuban Road, a distance of 166.31 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of said City of Dallas Water Line Right-of-Way;

THENCE North 82 degrees 30 minutes 27 seconds East, departing said common line and Kuban Road and along the southeast line of said City of Dallas Water Line Right-of-Way, passing at a distance of 10.37 feet a found concrete monument with a brass disk stamped "City of Dallas", and continuing along the southeast line of said City of Dallas Water Line Right-of-Way for a total distance of 196.89 feet to a found broken concrete monument for an angle point; **T.D.K.**

REVIEWED BY  
D. N. C. G. S.  
11-13-82

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
 WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 7**

THENCE North 80 degrees 49 minutes 43 seconds East, continuing along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 700.00 feet to a found concrete monument with a brass disk stamped "City of Dallas" for an angle point;

THENCE North 80 degrees 34 minutes 33 seconds East, continuing along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,133.10 feet to a 1/2-inch set iron rod with cap for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the northeast line of said "96 Acres" tract and the southwest line of said Swords tract;

THENCE South 45 degrees 58 minutes 13 seconds East, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 161.82 feet to the POINT OF BEGINNING AND CONTAINING 263,705 square feet or 6.054 acres of land, more or less. **T.O.K.**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore

Date: 9/27/06

Surveyor's Name:

Alan Moore  
 Registered Professional Land Surveyor  
 Texas No. 5537



REVIEWED BY Don Cooper 11-19-06

TE  
IRASS  
AS"

PARCEL 7  
263,705 S.F.  
6.054 AC. —

OWNER:  
M. LOGAN SWORDS AND  
WIFE, RUTH RILEY SWORDS  
VOL. 578, PG. 277  
D.R.K.C.T.

CITY OF DALLAS WATER  
LINE RIGHT-OF-WAY  
VOL. 436, PG. 258  
D.R.K.C.T.

W/CAP      OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"96 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

OWNER:  
DARREL R. STEPHENS  
AND WIFE, DIMPLE M. STEPHENS  
VOL. 692, PG. 335  
D.R.K.C.T.

DRK.C.T.  
JUAN CASILLAS SURVEY  
ABSTRACT NO. 86

POINT OF COMMENCEMENT

POINT OF  
BEGINNING

ALL BEARINGS FOR THIS TRACT REFER TO THE MAD-83 TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NGS CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIER CORPS ARP, DALLAS CORPS ARP, KAUFMAN CORPS ARP, TYLER CORPS ARP, AND PARIS CORPS ARP. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

| LEGEND: | S.F.                                      | SQUARE FEET |
|---------|---|-------------|
| C.M.    | CONTROL MONUMENT                          |             |
| O.F.    | FOUND IRON ROD                            |             |
| O.F.P   | FOUND IRON PIPE                           |             |
| O'2'SIR | 1/2" SET IRON ROD                         |             |
| W/CAP   | WITH A RED PLASTIC CAP STAMPED "DAL-TECH" |             |
| SX      | SET "X" CUT IN CONCRETE                   |             |
| FPK     | FOUND PK. NAIL                            |             |
| SPK     | SET PK. NAIL                              |             |

EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE  
ELIZABETH GRAVES SURVEY, ABSTRACT NO. 188  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY

DAL-TECH ENGINEERING, INC., 173TH DALLAS PKWY., SUITE 300  
DALLAS, TEXAS 75248, TEL. (972) 250-2727, FAX (972) 250-1774

~~081245~~

EXHIBIT A  
081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 10**

BEING a 4.110 acre tract of land in the Juan Casillas Survey, Abstract No. 86, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "First Tract 40.25 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a found 4-inch steel fence post for the north corner of said "First Tract 40.25 Acres" and the west corner of a tract of land described as "First Tract" in Warranty Deed with Vendor's Lien to W.R. Kuban, dated December 5, 1956, as recorded in Volume 407, Page 32, D.R.K.C.T., said corner being on the southeast line of a tract of land described as "Second Tract" in said Warranty Deed with Vendor's Lien to W.R. Kuban, dated December 5, 1956, as recorded in Volume 407, Page 32, D.R.K.C.T.;

THENCE South 46 degrees 31 minutes 59 seconds East, along the common line between the northeast line of said Hwy. 205 Farm, Ltd. tract and the southwest line of said Kuban "First Tract", passing at a distance of 583.12 feet the intersection of said common line with the northwest line of a City of Dallas Water Line Right-of-Way (130 feet wide) described as "Second Tract" as recorded in Volume 435, Page 330, D.R.K.C.T., and continuing along said common line, crossing said City of Dallas Water Line Right-of-Way, for a total distance of 746.61 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING, said point being the intersection of said common line with the southeast line of said City of Dallas Water Line Right-of-Way;

THENCE South 46 degrees 31 minutes 59 seconds East, continuing along said common line, a distance of 163.49 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 80 degrees 47 minutes 44 seconds West, departing said common line and crossing said Hwy. 205 Farm, Ltd. tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,513.06 feet to a 1/2-inch set iron rod with cap on the common line between the northwest line of said Hwy. 205 Farm, Ltd. tract and the southeast line said Kuban "Second Tract";

THENCE North 43 degrees 49 minutes 11 seconds East, along said common line, a distance of 216.13 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of said City of Dallas Water Line Right-of-Way, said point being North 80 degrees 47 minutes 44 seconds East, a distance of 449.96 feet from a found concrete monument with a brass disk stamped "City of Dallas" on the southeast line of said City of Dallas Water Line Right-of-Way, said point also being North 80 degrees 47 minutes 44 seconds East, a distance of 1.00 feet from a found concrete monument with a brass disk stamped "City of Dallas" on the southeast line of said City of Dallas Water Line Right-of-Way;

THENCE North 80 degrees 47 minutes 44 seconds East, departing said common line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,241.26 feet to the POINT OF BEGINNING AND CONTAINING 179,031 square feet or 4.110 acres of land, more or less. **T.D.K.**

REVIEWED BY *Dr. N. Conell*  
11-15-06

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 10**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project. **T.D.K.**

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

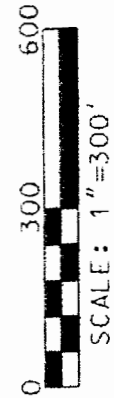
By: Alan Moore Date: 9/27/06

Surveyor's Name: Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



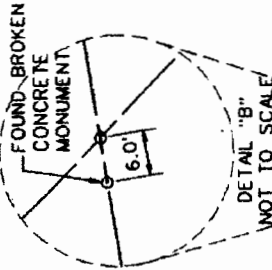
REVIEWED BY *Don Guidel*  
11-19-06

081245



OWNER:  
W.R. KUBAN  
"FIRST TRACT"  
VOL. 407, PG. 32  
D.R.K.C.T.

POINT OF  
BEGINNING

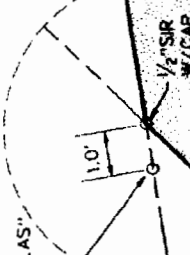


POINT OF  
COMMENCEMENT

OWNER:  
W.R. KUBAN  
"SECOND TRACT"  
VOL. 407, PG. 32  
D.R.K.C.T.

FOUND CONCRETE  
MONUMENT W/BRASS  
DISK STAMPED  
"CITY OF DALLAS"

FOUND CONCRETE  
MONUMENT W/BRASS  
DISK STAMPED  
"CITY OF DALLAS"  
(C.M.)



CITY OF DALLAS WATER  
LINE RIGHT-OF-WAY  
"SECOND TRACT"  
VOL. 435, PG. 330  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"FIRST TRACT 40.25 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

PARCEL 10  
179,031 S.F.  
4.110 AC.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"216.1 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE  
JUAN CASILLAS SURVEY, ABSTRACT NO. 86  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY  
DAL-TECH ENGINEERING, INC. 17311 DALLAS PKWY. SUITE 300  
DALLAS, TEXAS 75248 TEL. (972) 280-2772 FAX (972) 280-4774

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83  
TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL  
ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NOS  
CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN  
CORS ARP, DALLAS CORP. ARP, KAUFMAN CORP. ARP, TYLER  
CORS ARP, AND PARIS CORP. ARP. THE KAUFMAN COUNTY  
SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE  
TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS  
DISTRICT WAS USED FOR THIS PROJECT.

LEGEND:

|          |   |
|----------|---|
| S.F.     | SQUARE FEET                             |
| C.M.     | CONTROL MONUMENT                        |
| O.F.R.   | FOUND IRON ROD                          |
| O.F.P.   | FOUND IRON PIPE                         |
| O/2" SIR | 1/2" SET IRON ROD                       |
| W/CAP    | W/ A RED PLASTIC CAP STAMPED "DAL-TECH" |
| SX       | SET "X" CUT IN CONCRETE                 |
| FPK      | FOUND PK. NAIL                          |
| SPK      | SET PK. NAIL                            |

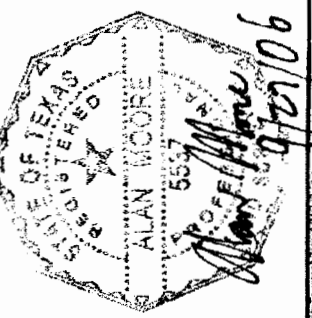


EXHIBIT A  
081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 12**

BEING a 5.780 acre tract of land in the Juan Casillas Survey, Abstract No. 86, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "216.1 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod for the west corner of a tract of land described as "Tract No. 1 85.02 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 44 degrees 13 minutes 37 seconds East, along the common line between the northwest line of said "Tract No. 1 85.02 Acres" and the southeast line of a tract of land described as "First Tract 353 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T., a distance of 1,666.88 feet to the north corner of said "Tract No. 1 85.02 Acres" and the west corner of said "216.1 Acres" tract;

THENCE North 43 degrees 45 minutes 04 seconds East, along the common line between the northwest line of said "216.1 Acres" tract and the southeast line of said "First Tract 353 Acres", a distance of 340.61 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE North 43 degrees 45 minutes 04 seconds East, continuing along said common line, a distance of 223.78 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of a City of Dallas Water Line Right-of-Way (130 feet wide) as recorded in Volume 435, Page 330, D.R.K.C.T., said point being South 43 degrees 45 minutes 04 seconds West, a distance of 1,463.38 feet from a found 4-inch steel fence corner post for the north corner of said "216.1 Acres" tract;

THENCE North 79 degrees 15 minutes 58 seconds East, departing said common line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,766.22 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE North 80 degrees 47 minutes 44 seconds East, continuing along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 32.25 feet to a found concrete monument with a brass disk stamped "City of Dallas" for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the northeast line of said "216.1 Acres" tract and the southwest line of a tract of land described as "Second Tract" in Warranty Deed with Vendor's Lien to W.R. Kuban, dated December 5, 1956, as recorded in Volume 407, Page 32, D.R.K.C.T.;

THENCE South 46 degrees 14 minutes 56 seconds East, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 162.87 feet to a 1/2-inch set iron rod with cap for corner; **T.D.K.**

REVIEWED BY *Don N. G. Bell*  
11.13.02

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-**  
**WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**  
**Parcel: 12**

THENCE South 80 degrees 47 minutes 44 seconds West, departing said common line and crossing said "216.1 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 128.64 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 79 degrees 15 minutes 58 seconds West, continuing across said "216.1 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,946.64 feet to the POINT OF BEGINNING AND CONTAINING 251,794 square feet or 5.780 acres of land, more or less. **T.D.K.**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

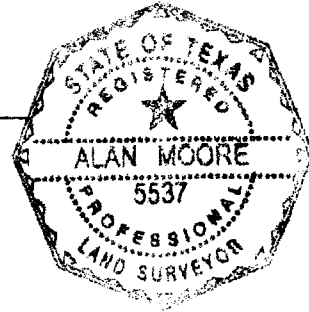
Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore

Date: 9/27/06

Surveyor's Name:

Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



REVIEWED BY Don D. Gabel  
11-19-06

081245



REVIEWED BY *Dr. K. G. G. G.*  
11-13-84

E.L. BOYD SURVEY  
ABSTRACT NO. 48

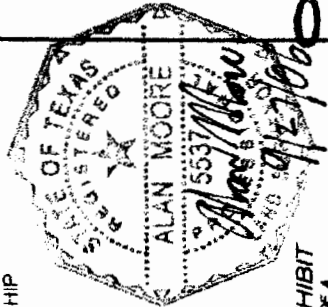
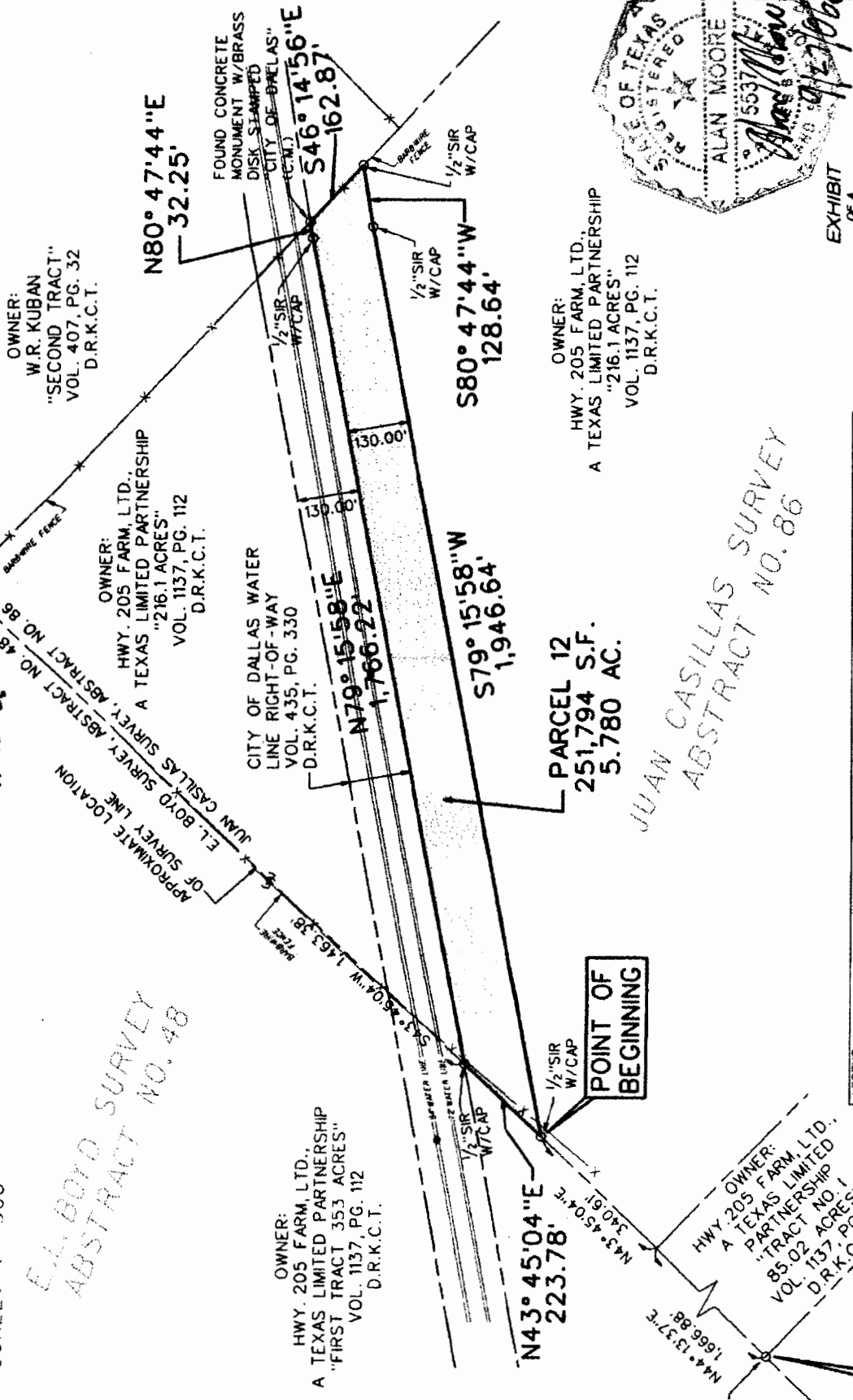


EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION

SITUATED IN THE  
JUAN CASILLAS SURVEY, ABSTRACT NO. 86  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY  
DAL-TECH ENGINEERING, INC., 17301 DALLAS HWY., SUITE 300  
DALLAS, TEXAS 75248, TEL. (972) 260-3721, FAX (972) 260-4774  
DATE: SEPT. 08, 1995  
SCALE: 1" = 300' FILE: 005 SHEET: 3 OF 3

JUAN CASILLAS SURVEY  
ABSTRACT NO. 86

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83 TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NGS CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN CORRS ARP, DALLAS CORRS ARP, KAUFMAN CORRS ARP, TYLER CORRS ARP, AND PARIS CORRS ARP. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

LEGEND:

|               |   |
|---------------|---|
| S.F.          | SQUARE FEET                               |
| C.M.          | CONTROL MONUMENT                          |
| O.F.I.R.      | FOUND IRON ROD                            |
| O.F.I.P.      | FOUND IRON PIPE                           |
| O'2" SIR 1/2" | SET IRON ROD                              |
| W/CAP         | WITH A RED PLASTIC CAP STAMPED "DAL-TECH" |
| SX            | SET "X" CUT IN CONCRETE                   |
| FPK           | FOUND PK. NAIL                            |
| SPK           | SET PK. NAIL                              |

POINT OF  
COMMENCEMENT

POINT OF  
BEGINNING

EXHIBIT A  
081245

FIELD NOTES  
DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN  
KAUFMAN COUNTY, TEXAS  
Parcel: 13

BEING a 9.595 acre tract of land in the E.L. Boyd Survey, Abstract No. 48, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "First Tract 353 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod for the west corner of a tract of land described as "Tract No. I 85.02 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T., said corner being on the southeast line of said "First Tract 353 Acres";

THENCE North 44 degrees 13 minutes 37 seconds East, along the common line between the southeast line of said "First Tract 353 Acres" and the northwest line of said "Tract No. I 85.02 Acres", a distance of 1,666.88 feet to the north corner of said "Tract No. I 85.02 Acres" and the west corner of a tract of land described as "216.1 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 43 degrees 45 minutes 04 seconds East, along the common line between the northwest line of said "216.1 Acres" tract and the southeast line of said "First Tract 353 Acres", a distance of 340.61 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 79 degrees 15 minutes 58 seconds West, departing said common line and crossing said "First Tract 353 Acres" along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of a City of Dallas Water Line Right-of-Way (130 feet wide) as recorded in Volume 435, Page 330, D.R.K.C.T., a distance of 3,077.46 feet to a 1/2-inch set iron rod with cap on the common line between the southwest line of said "First Tract 353 Acres" and the northeast line of a tract of land described as "Second Tract 128 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 46 degrees 18 minutes 10 seconds West, along said common line, a distance of 159.82 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of said City of Dallas Water Line Right-of-Way, said point being North 79 degrees 15 minutes 58 seconds East, a distance of 1054.02 feet from a found broken concrete monument for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the northwest line of said "Second Tract 128 Acres" and the southeast line of a tract of land described as "159 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 79 degrees 15 minutes 58 seconds East, departing said common line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 3,352.57 feet to a 1/2-inch set iron rod with cap for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the southeast line of said "First Tract 353 Acres" and the northwest line of said "216.1 Acres" tract, said point being South 43 degrees 45 minutes 04 **T.O.K.**

REVIEWED BY *Don N. Guel*  
11-19-06

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
 WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**  
**Parcel: 13**

seconds West, a distance of 1,463.38 feet from a found 4-inch steel fence corner post for the north corner of said "216.1 Acres tract;  
 THENCE South 43 degrees 45 minutes 04 seconds West, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 223.78 feet to the POINT OF BEGINNING AND CONTAINING 417,952 square feet or 9.595 acres of land, more or less. **T.D.K.**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore

Date: 9/27/06

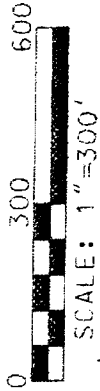
Surveyor's Name: Alan Moore  
 Registered Professional Land Surveyor  
 Texas No. 5537



REVIEWED BY W. S. Agnew  
 11-13-06

REVIEWED BY *W. H. G. G. G.*

11-19-06



60" PIPELINE EASEMENT  
VOL. 1194, PG. 741  
VOL. 205, PG. 231  
D.R.K.C.T.

PARCEL 13  
417,952 S.F.  
9.595 AC.

MATCH LINE SEE SHEET 4

E.L. BOYD SURVEY  
ABSTRACT NO. 48

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"FIRST TRACT 353 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

CITY OF DALLAS WATER  
LINE RIGHT-OF-WAY  
VOL. 435, PG. 330  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"FIRST TRACT 353 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"TRACT NO. 1"  
85.02 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"216.1 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

JUAN CASILLAS SURVEY  
ABSTRACT NO. 86

POINT OF BEGINNING

POINT OF COMMENCEMENT

LEGEND:

- S.F. SQUARE FEET
- C.M. CONTROL MONUMENT
- O.F.P. FOUND IRON ROD
- O.F.P. FOUND IRON PIPE
- O.F.P. SET IRON ROD
- O.F.P. SET IRON PIPE
- W/CAP WITH A RED PLASTIC
- CAP STAMPED "DAL-TECH"
- SX SET "X" CUT IN CONCRETE
- FPK FOUND PK. NAIL
- SPK SET PK. NAIL

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83 TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NGS CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN CO. AR. DALLAS CO. AR. KAUFMAN CO. AR. TYLER CO. AR. AND PARIS CO. AR. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE  
EL BOYD SURVEY, ABSTRACT NO. 48  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY  
DAL-TECH ENGINEERING, INC. 17011 DALLAS PARKWAY, SUITE 300  
DALLAS, TEXAS 75248 TEL. (972) 250-3727 FAX (972) 250-4774



DESIGNED BY *D. H. Gail*  
11-19-66

E.L. BOYD SURVEY  
ABSTRACT NO. 48

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"159 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

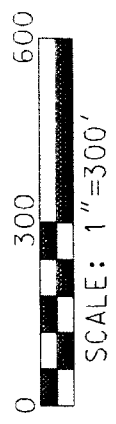
OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"FIRST TRACT 353 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

CITY OF DALLAS WATER  
LINE RIGHT-OF-WAY  
VOL. 435, PG. 330  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"FIRST TRACT 353 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"SECOND TRACT 128 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

MATCH LINE SEE SHEET 3



PARCEL 13  
417,952 S.F.  
9.595 AC.

N79°15'58"E  
3,352.57'  
S79°15'58"W  
3,077.46'

130.00' 130.00'

1/2" SIR W/CAP  
1/2" SIR W/CAP

N79°15'58"E 1,054.02'  
N46°18'10"W  
159.82'

FOUND BROKEN  
CONCRETE  
MONUMENT  
(C.M.)

EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION

SITUATED IN THE  
E.L. BOYD SURVEY, ABSTRACT NO. 48  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY  
DAL-TECH ENGINEERING, INC., 1737 DALLAS PKWY., SUITE 300  
DALLAS, TEXAS 75248, TEL (972) 250-3727, FAX (972) 250-1774

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83 TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NGS CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN CORP. ARP, DALLAS CORP. ARP, KAUFMAN CORP. ARP, TYLER CORP. ARP, AND PARIS CORP. ARP. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

| S.F.   | SQUARE FEET              |
|--------|--------------------------|
| C.M.   | CONTROL MONUMENT         |
| O.F.P. | FOUND IRON ROD           |
| O.F.P. | FOUND IRON PIPE          |
| O.F.P. | 1/2" SIR SET IRON ROD    |
| O.F.P. | W/CAP WITH A RED PLASTIC |
| O.F.P. | CAP STAMPED "DAL-TECH"   |
| SX     | SET "X" CUT IN CONCRETE  |
| FPK    | FOUND PK. NAIL           |
| SPK    | SET PK. NAIL             |

*Mark Mone*  
9/27/66

EXHIBIT A  
081245

FIELD NOTES  
DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN  
KAUFMAN COUNTY, TEXAS

Parcel: 14

BEING a 3.555 acre tract of land in the E.L. Boyd Survey, Abstract No. 48, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "Second Tract 128 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a found broken concrete monument on the northeast right-of-way line of State Highway No. 205 (100 feet wide at this point);

THENCE North 45 degrees 33 minutes 19 seconds West, along said northeast right-of-way line, a distance of 535.90 feet to a found broken concrete monument for the southwest end of a 10-foot offset in said northeast right-of-way line;

THENCE North 44 degrees 26 minutes 41 seconds East, along said 10-foot offset, a distance of 10.00 feet to a found broken concrete monument for the northeast end of said offset;

THENCE North 45 degrees 33 minutes 19 seconds West, along said northeast right-of-way line (120 feet wide at this point), a distance of 1,186.12 feet to the intersection of said northeast right-of-way line with the common line between the northwest line of said "Second Tract 128 Acres" tract and the southeast line of a tract of land described as "159 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 43 degrees 41 minutes 50 seconds East, departing said northeast right-of-way line and along said common line, a distance of 1,106.47 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE North 43 degrees 41 minutes 50 seconds East, continuing along said common line, a distance of 223.34 feet to a found broken concrete monument for the intersection of said common line with the southeast line of a City of Dallas Water Line Right-of-Way (130 feet wide) as recorded in Volume 435, Page 330, D.R.K.C.T.;

THENCE North 79 degrees 15 minutes 58 seconds East, departing said common line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,054.02 feet to a 1/2-inch set iron rod with cap for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the northeast line of said "Second Tract 128 Acres" and the southwest line of a tract of land described as "First Tract 353 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE South 46 degrees 18 minutes 10 seconds East, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 159.82 feet to a 1/2-inch set iron rod with cap for corner; T.D.K.

REVIEWED BY  
D. D. Gould  
11-19-94

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

Parcel: 14

THENCE South 79 degrees 15 minutes 58 seconds West, departing said common line and crossing said "Second Tract 128 Acres" along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,146.17 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 79 degrees 17 minutes 39 seconds West, continuing across said "Second Tract 128 Acres" along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 182.48 feet to the POINT OF BEGINNING AND CONTAINING 154,874 square feet or 3.555 acres of land, more or less. **T.D.K.**

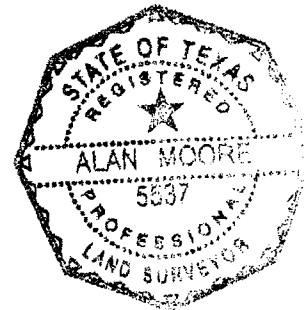
All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore Date: 9/27/06

Surveyor's Name: Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



REVIEWED BY Dr. H. G. G. G.  
11-19-06

John Lynch  
11-13-08

E. J. BOYD SURVEY  
ABSTRACT NO. 48

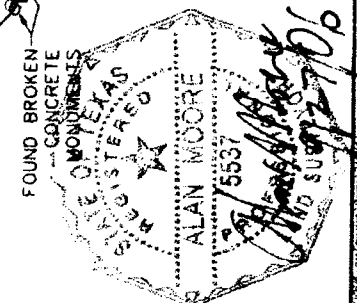


EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION

SITUATED IN THE  
E.L. BOYD SURVEY, ABSTRACT NO. 48  
KAUFMAN COUNTY, TEXAS  
FOR THE

**CITY OF DALLAS**

BY  
DAL-TECH ENGINEERING, INC., 17371 DALLAS PKWY., SUITE 300  
DALLAS, TEXAS 75248, TEL. (972)250-9727, FAX (972)250-4774

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83 TEXAS STATE PLANE COORDINATE SYSTEM. NORTH CENTRAL ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NGS CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN COUNTY, TEXAS. COLLIN COUNTY CORP. DALLAS CORP. ARP. KAUFMAN CORP. ARP. TYLER CORP. ARP. AND PARIS CORP. ARP. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

|          |  |
|----------|--|
| S.F.     | SQUARE FEET                                  |
| C.M.     | CONTROL MONUMENT                             |
| OF IR    | FOUND IRON ROD                               |
| OF IP    | FOUND IRON PIPE                              |
| 1/2" SIR | 1/2" SET IRON ROD                            |
| W/CAP    | WITH A RED PLASTIC<br>CAP STAMPED "DAL-TECH" |
| SX       | SET "X" CUT IN CONCRETE                      |
| FPK      | FOUND PK. NAIL                               |
| SPK      | SET PK. NAIL                                 |

FOUND BROKEN-  
CONCRETE  
MONUMENTS

FOUND BROKEN  
CONCRETE  
MONUMENTS  
REGISTERED  
TEXAS  
DEPT. OF  
TRANSPORTATION

ALAN MOORE

5537  
WIND SUPPLY

EXHIBIT A  
081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**  
**Parcel: 15**

BEING a 4.430 acre tract of land in the E.L. Boyd Survey, Abstract No. 48, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "159 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a found broken concrete monument on the northeast right-of-way line of State Highway No. 205 (100 feet wide at this point);

THENCE North 45 degrees 33 minutes 19 seconds West, along said northeast right-of-way line, a distance of 535.90 feet to a found broken concrete monument for the southwest end of a 10-foot offset in said northeast right-of-way line;

THENCE North 44 degrees 26 minutes 41 seconds East, along said 10-foot offset, a distance of 10.00 feet to a found broken concrete monument for the northeast end of said offset;

THENCE North 45 degrees 33 minutes 19 seconds West, along said northeast right-of-way line (120 feet wide at this point), passing at a distance of 1,186.12 feet the intersection of said northeast right-of-way line with the common line between the southeast line of said "159 Acres" tract and the northwest line of a tract of land described as "Second Tract 128 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T., and continuing along said northeast right-of-way line for a total distance of 1,970.92 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE North 45 degrees 33 minutes 19 seconds West, continuing along said northeast right-of-way line, a distance of 158.41 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of a City of Dallas Water Line Right-of-Way (130 feet wide) as recorded in Volume 437, Page 85, D.R.K.C.T.;

THENCE North 79 degrees 17 minutes 39 seconds East, departing said northeast line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,620.28 feet to a found broken concrete monument for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the southeast line of said "159 Acres" tract and the northwest line of said "Second Tract 128 Acres";

THENCE South 43 degrees 41 minutes 50 seconds West, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 223.34 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 79 degrees 17 minutes 39 seconds West, departing said common line and crossing said "159 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,348.16 feet to the POINT OF BEGINNING AND CONTAINING 192,948 square feet or 4.430 acres of land, more or less. **T.O.K.**

REVIEWED BY *Dr. P. C. C. 11-19-02*

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**  
**Parcel: 15**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project. **T.D.K.**

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore

Date: 9/27/06

Surveyor's Name:

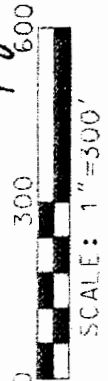
Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



REVIEWED BY Dr. S. G. Gabel  
11-19-06

081245

APR 11 1996



CITY OF DALLAS WATER  
LINE RIGHT-OF-WAY  
VOL. 437, PG. 85  
D.R.K.C.T.

E.L. BOYD SURVEY  
ABSTRACT NO. 48

70' T.P. & L. EASEMENT  
VOL. 490, PG. 06  
D.R.K.C.T.

PARCEL 15  
CONCRETE  
MONUMENT  
192,948 S.F.  
4.430 AC.

S44° 26' 41" W  
10.00'

N45° 33' 19" W  
198.05'

FOUND  
CONCRETE  
MONUMENTS

1/2" SIR  
W/CAP

1/2" SIR  
W/CAP

N45° 33' 19" W  
158.41'

POINT OF  
BEGINNING

OWNER:  
NANCY CLEMENTS SEAY  
(A MARRIED WOMAN)  
VOL. 1061, PG. 556  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"159 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

S79° 17' 39" W  
1,348.16'

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"SECOND TRACT 128 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

S43° 41' 50" W  
223.34'

FOUND BROKEN  
CONCRETE  
MONUMENT  
(C.M.)

1/2" SIR  
W/CAP

POINT OF  
COMMENCEMENT

N45° 33' 19" W  
1,186.12'

FOUND BROKEN  
CONCRETE  
MONUMENTS

N44° 26' 41" E  
10.00'

N45° 33' 19" W  
535.90'

FOUND BROKEN  
CONCRETE  
MONUMENTS

FOUND BROKEN  
CONCRETE  
MONUMENT  
(C.M.)

LEGEND:

|            |  |
|------------|--|
| S.F.       | SQUARE FEET                                  |
| C.M.       | CONTROL MONUMENT                             |
| O.F.I.R.   | FOUND IRON ROD                               |
| O.F.I.P.   | FOUND IRON PIPE                              |
| O'Z'S.I.R. | 1/2" SET IRON ROD                            |
| W/CAP      | WITH A RED PLASTIC<br>CAP STAMPED "DAL-TECH" |
| SX         | SET "X" CUT IN CONCRETE                      |
| FPK        | FOUND PK. NAIL                               |
| SPK        | SET PK. NAIL                                 |

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83  
TEXAS STATE PLANE COORDINATE SYSTEM. NORTH CENTRAL  
ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NOS  
CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN  
CORS ARP, DALLAS CDS ARP, KAUFMAN CDS ARP, TYLER  
CORS ARP, AND PARIS CDS ARP. THE KAUFMAN COUNTY  
SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE  
TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS  
DISTRICT WAS USED FOR THIS PROJECT.

EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE  
EL BOYD SURVEY, ABSTRACT NO. 48  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY  
DAL-TECH ENGINEERING, INC. 17311 DALLAS PKWY. SUITE 300  
DALLAS, TEXAS 75248. TEL. (972) 580-2727 FAX (972) 580-4774



NO. 84262CC

CITY OF DALLAS,

*Plaintiff,*

VS.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

*Defendants*

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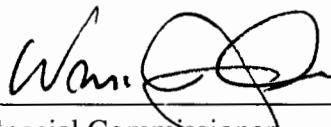
IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

**OATH OF SPECIAL COMMISSIONER**

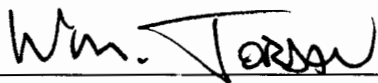
As a Special Commissioner, I do solemnly swear to assess the damages of the owners of the property to be condemned in the above-numbered and entitled eminent domain proceeding fairly, impartially, and in accordance with law.



Special Commissioner

SWORN to and SUBSCRIBED before me this

16 day of September, 2011.



Print Name

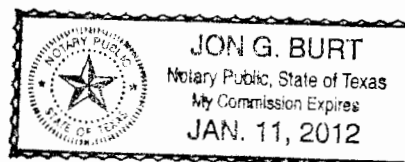
LAURA HUGHES, County Clerk  
Kaufman County, Texas

BY: \_\_\_\_\_  
Deputy

{OR}

BY: Jon G. Burt  
Notary Public,  
In and For the State of Texas

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS  
2011 NOV 18 PM 1:21  
RHONDA HUGHEY  
DISTRICT CLERK  
[Seal of Office]  
BY: \_\_\_\_\_  
DEPUTY



**OATH OF SPECIAL COMMISSIONER - 2**

NO. 84262CC

CITY OF DALLAS,

*Plaintiff,*

VS.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

*Defendants*

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IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

**OATH OF SPECIAL COMMISSIONER**

As a Special Commissioner, I do solemnly swear to assess the damages of the owners of the property to be condemned in the above-numbered and entitled eminent domain proceeding fairly, impartially, and in accordance with law.

*Don Burt*

Don Burt, Special Commissioner

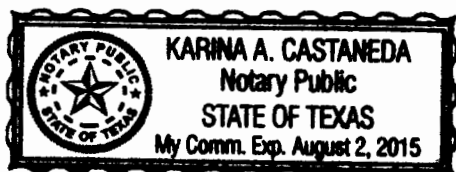
BY *[Signature]* DEPUTY

RHONDA HUGHEY  
DISTRICT CLERK

2011 NOV 18 PM 1:22

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

SWORN to and SUBSCRIBED before me this 3rd day of November, 2011.



BY: *Karina A. Castaneda*

Notary Public,  
In and For the State of Texas

[Seal or Stamp]

NO. 84262CC

CITY OF DALLAS,

*Plaintiff,*

VS.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

*Defendants*

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IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

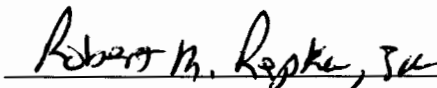
**OATH OF SPECIAL COMMISSIONER**

As a Special Commissioner, I do solemnly swear to assess the damages of the owners of the property to be condemned in the above-numbered and entitled eminent domain proceeding fairly, impartially, and in accordance with law.

  
\_\_\_\_\_  
Special Commissioner

SWORN to and SUBSCRIBED before me this

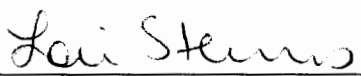
16 day of September, 2011.

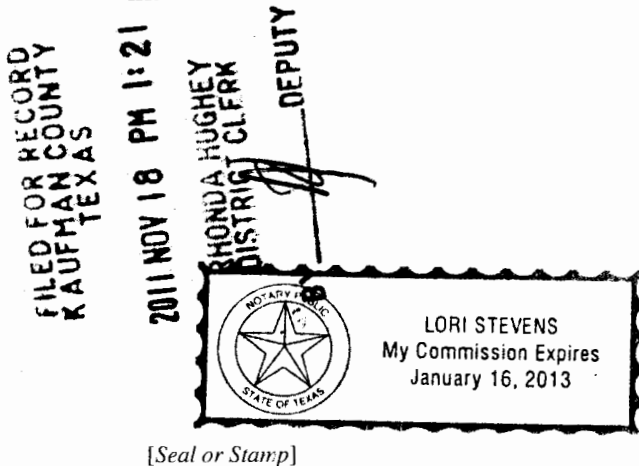
  
\_\_\_\_\_  
Print Name

LAURA HUGHES, County Clerk  
Kaufman County, Texas

BY: \_\_\_\_\_  
Deputy

{OR}

BY:   
\_\_\_\_\_  
Notary Public,  
In and For the State of Texas



NO. 84262CC


CITY OF DALLAS,  
*Plaintiff,*  
VS.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT  
*Defendants*

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IN COUNTY COURT

2012 SEP 26 AM 10:20

RECEIVED  
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BY  DEPUTY

AT LAW

KAUFMAN COUNTY, TEXAS

**NOTICE OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, BRANDI YOUNGKIN, filing this notice of appearance of lead counsel of record for Plaintiff, City of Dallas, and advising the Court that Christopher Gunter is no longer counsel of record for said Plaintiff.

All correspondence and communication regarding this case should be directed to Brandi Youngkin through the address and numbers listed below.

Respectfully submitted,

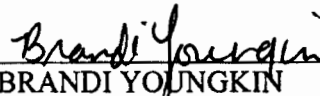
OFFICE OF THE CITY ATTORNEY  
CITY OF DALLAS, TEXAS  
Thomas P. Perkins  
City Attorney

  
BRANDI YOUNGKIN  
Assistant City Attorney  
State Bar of Texas No. 24053740  
7BN Dallas City Hall  
1500 Marilla Street  
Dallas, Texas 75201  
Telephone - (214) 671-8085  
Telecopier - (214) 670-0622

ATTORNEY FOR PLAINTIFF  
CITY OF DALLAS

**CERTIFICATE OF SERVICE**

On this the 25<sup>th</sup> day of September 2012, a true and correct copy of the foregoing Notice of Appearance of Lead Counsel was served upon Defendant's counsel, via certified mail, return receipt requested, or facsimile in accordance with Rule 21a of the Texas Rules of Civil Procedure.

  
\_\_\_\_\_  
BRANDI YOUNGKIN

VIA FACSIMILE: 214-559-7209  
Mr. Eddie Vassallo  
Vassallo & Salazer, PC  
3710 Rawlins, Suite 1200  
Dallas, TX 75219

NO. 84262CC

CITY OF DALLAS

V.


HIGHWAY 205 FARMS, LTD., MAURICE  
E. MOORE, JR., THE DOW CHEMICAL  
COMPANY, KAUFMAN COUNTY,  
TERRELL INDEPENDENT SCHOOL  
DISTRICT and TRINITY VALLEY  
COMMUNITY COLLEGE  
DISTRICT

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IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

BY  RHONDA HUSLEY  
DISTRICT CLERK  
DEPUTY

2013 MAR -7 AM 10:26

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

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**MOTION TO DISMISS FOR WANT OF PROSECUTION**

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TO THE HONORABLE JUDGE OF SAID COURT:

Highway 205 Farms, Ltd. and Maurice E. Moore, Jr. (collectively “Defendants”) file this motion for an order dismissing the above action with prejudice for failure to prosecute pursuant to Texas Rule of Civil Procedure 165a and the Court’s inherent authority to control its docket. In support of this motion, Defendants show the Court the following:

**A. BACKGROUND**

1. Defendants bring this Motion under Texas Rule of Civil Procedure 165a(2) as Plaintiff, City of Dallas (“the City”), failed to dispose of this case within the time standards promulgated by the Supreme Court under its Administrative Rules. Defendants further bring this Motion under the Court’s inherent authority to control its docket because the City failed to prosecute the above action with diligence.

2. This case was originally filed on August 30, 2011. Plaintiff failed to diligently pursue its claims from the August 30, 2011 filing to the present. The City is solely responsible for the failure to diligently prosecute this proceeding to conclusion.

3. Texas Rule of Judicial Administration 6 provides that civil jury cases should be disposed of within eighteen (18) months of the appearance date.<sup>1</sup> Plaintiff failed to dispose of this action within the time limits set forth in Texas Rule of Judicial Administration 6.

### **B. ARGUMENTS AND AUTHORITIES**

4. A party that files a claim for affirmative relief, whether in a petition, answer, intervention, or other pleading, must prosecute the claim to judgment with reasonable diligence.<sup>2</sup> If the party fails to do so, the court has inherent power to dismiss the claim for want of prosecution.<sup>3</sup> A trial court's power to dismiss a suit for want of prosecution originates from two sources: (1) Texas Rule of Civil Procedure 165a; and (2) the court's inherent authority.<sup>4</sup> A trial court may dismiss under Rule 165a on "failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice," or when a case is "not disposed of within time standards promulgated by the Supreme Court."<sup>5</sup> In addition, the common law vests the trial court with the inherent power to dismiss independently of the rules of procedure when a plaintiff fails to prosecute his or her case with due diligence.<sup>6</sup>

5. The test for determining whether a case should be dismissed for want of prosecution is whether the plaintiff exercised due diligence in prosecuting the case.<sup>7</sup> Whether to

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<sup>1</sup>*Maida v. Fire Ins. Exchange*, 990 S.W.2d 836, 841 (Tex. App. – Fort Worth 1999, no pet.) citing, Tex. R. Jud. Admin. 6 reprinted in Tex. Gov't Code Ann. tit. 2, subtit. F app. (West 2013) (other than family law cases, time standard governing civil jury cases encourages trial or final disposition within 18 months, 12 months for nonjury civil cases, from appearance date).

<sup>2</sup>*State v. Beever Farms, Inc.*, 549 S.W.2d 223 (Tex. Civ. App. – San Antonio 1977, writ ref'd n.r.e.); *Pollok v. McMullen Oil & Royalty Co.*, 383 S.W.2d 837 (Tex. Civ. App. – San Antonio 1964, writ ref'd).

<sup>3</sup>*Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999); *Veterans' Land Bd. v. Williams*, 543 S.W.2d 89 (Tex. 1976); *Bevil v. Johnson*, 307 S.W.2d 85 (1957); *F.D.I.C. v. Kendrick*, 897 S.W.2d 476 (Tex. App. – Amarillo 1995, no writ); *King v. Holland*, 884 S.W.2d 231 (Tex. App. – Corpus Christi 1994, writ denied); *City of Houston v. Thomas*, 838 S.W.2d 296, 297 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1992, no writ); *Hicks v. First Nat'l Bank in Dalhart*, 778 S.W.2d 98, 101 (Tex. App. – Amarillo 1989, writ denied); *Moore v. Armour & Co., Inc.*, 748 S.W.2d 327 (Tex. App. – Amarillo 1988, no writ); *McCormick v. Shannon West Texas Memorial Hosp.*, 665 S.W.2d 573 (Tex. App. – Austin 1984, writ ref'd n.r.e.); *State v. Beever Farms, Inc.*, 549 S.W.2d 223 (Tex. Civ. App. – San Antonio 1977, writ ref'd n.r.e.); *Fulmer v. Barfield*, 480 S.W.2d 413 (Tex. Civ. App. – Tyler 1972, writ ref'd n.r.e.).

<sup>4</sup>Tex. R. Civ. P. 165a; *Villarreal*, 994 S.W.2d at 630).

<sup>5</sup>Tex. R. Civ. P. 165a.

<sup>6</sup>*Villarreal*, 994 S.W.2d at 630.

<sup>7</sup>*Guest v. Dixon*, 223 S.W.3d 531 (Tex. App. – Amarillo 2006, no pet.).

dismiss a case for want of prosecution lies within the judicial discretion of the trial court, which will be reviewed only for a clear showing of abuse.<sup>8</sup>

6. Several factors have been recognized as guidelines for a trial court's decision to dismiss a case for want of prosecution; however, no single factor is dispositive.<sup>9</sup> These factors include the length of time the case has been on file, the amount of activity in the case, the request for a trial setting, and the existence of reasonable excuses for delay.<sup>10</sup> Considering these factors, the City's cause of action against Defendants should be dismissed for want of prosecution because the case, filed August 30, 2011, has been pending for eighteen (18) months, with no activity, no request for commissioner's hearing, no request for discovery, no request for a trial setting and with no reasonable excuse.

7. The trial court may consider the entire history of the case.<sup>11</sup> If the delay is so excessive that it cannot be justified, the court may act without hearing evidence.<sup>12</sup> The Supreme Court addressed the problems caused by a delay in eloquent words in *Southern Pacific Transportation Co. v. Stoot*:

Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. But even these are not the worst of what delay does. The most erratic gear in the justice machinery is at the place of fact finding, and

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<sup>8</sup>*Veterans' Land Bd. v. Williams*, 543 S.W.2d 89, 90 (Tex. 1976); *Bevil v. Johnson*, 307 S.W.2d 85, 87 (Tex. 1957); *Paul Stanley Leasing Corp. v. Hoffman*, 651 S.W.2d 440 (Tex. App. – Dallas 1983, no writ); *Howeth v. Davenport*, 311 S.W.2d 480 (Tex. Civ. App. – San Antonio 1958, writ ref'd n.r.e.) (dismissal refused) (a motion to dismiss for lack of prosecution is addressed to the discretion of the court, and the court's action on the motion is not disturbed absent a clear showing of abuse of discretion); *City of Houston v. Thomas*, 838 S.W.2d 296, 297 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1992, no writ).

<sup>9</sup>*Elite Door & Trim Inc. v. Tapia*, 335 S.W.3d 757 (Tex. App. – Dallas, 2011 \_\_\_\_\_); *WMC Mortgage Corp. v. Starkey*, 200 S.W.3d 749, 752 (Tex. App. – Dallas 2006, pet. denied).

<sup>10</sup>*Id.*

<sup>11</sup>*Fedco Oil Co. v. Pride Refining Co., Inc.*, 787 S.W.2d 572 (Tex. App. – Houston [14<sup>th</sup> Dist] 1990, no writ); *Moore v. Armour & Co., Inc.*, 748 S.W.2d 327 (Tex. App. – Amarillo 1988, no writ).

<sup>12</sup>*Felder v. Swan*, 175 S.W.2d 279 (Tex. Civ. App. – Beaumont 1943, writ ref'd); *Leverman v. Cartall*, 715 S.W.2d 728 (Tex. App. – Texarkana 1986, writ ref'd n.r.e.).

possibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If we do not get the facts right, there is little chance for the judgment to be right.<sup>13</sup>

The City simultaneously with the filing of its Petition filed a Notice of Lis Pendens. The Notice has effectively frozen Defendants' ability to use and enjoy its property. The City's obligation to advance the litigation ensures prompt resolution of the dispute. In this instance, the City has failed to complete even the first step, completion of a Special Commissioner's hearing, in a process established to protect the interests of the property. Instead, the City has relied upon the filing of its Lis Pendens to frustrate the Defendants' use and enjoyment of its property. The City's failure to proceed with the litigation at the expense of the property owner is an abuse of the eminent domain process. This Court must not permit the City to profit by its delay to the detriment of the property owner. The City was either unprepared and failed to fully investigate its claims prior to filing eighteen (18) months ago or the City has intentionally delayed prosecution. Either circumstance warrants dismissal of the instant cause.

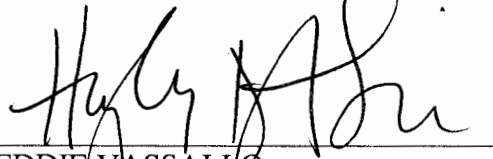
WHEREFORE, Defendants, Highway 205 Farms, Ltd and Maurice E. Moore, Jr., respectfully request the Court notify Plaintiff, City of Dallas, of the Court's intention to dismiss this case for want of prosecution with prejudice; set a hearing to dismiss this case unless Plaintiff appears and shows good cause why the case should not be dismissed; grant Defendants their fees and expenses in accordance with the Texas Property Code; and grant Defendants all other relief to which they are entitled.

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<sup>13</sup>See *Southern Pacific Transp. Co. v. Stoot*, 530 S.W.2d 930, 931 (Tex. 1975); and *see Levermannl*, 715 S.W.2d at 729-730.

Respectfully submitted,

VASSALLO & SALAZAR, P.C.



EDDIE VASSALLO

State Bar No. 20503000

CHARLES A. SALAZAR

State Bar No. 17526750

HAYLEY D. AILSHIE

State Bar No. 24069280

3710 Rawlins, Suite 1200

Dallas, Texas 75219-6410

(214) 559-7200 telephone

(214) 559-7209 telecopy

ATTORNEYS FOR DEFENDANTS

HIGHWAY 205 FARMS, LTD. and

MAURICE E. MOORE, JR.

**CERTIFICATE OF SERVICE**

This is to certify a copy of the foregoing Motion to Dismiss for Want of Prosecution was served on the following by certified mail, return receipt requested on March 6, 2013:

Brandi Youngkin  
Office of the City Attorney  
City of Dallas, Texas  
7BN Dallas City Hall  
1500 Marilla Street  
Dallas, Texas 75201

*Via CMRRR - 7010 1670 0000 3584 4033*



HAYLEY D. AILSHIE

CITY OF DALLAS,

VS.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

NO. 84262CC

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IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

2013 APR -5 AM 9:23

RHONDA HUGHES  
DISTRICT CLERK  
BY  DEPUTY

**PLAINTIFF'S RESPONSE TO DEFENDANT'S  
MOTION TO DISMISS FOR WANT OF PROSECUTION**

NOW COMES, Plaintiff, The City of Dallas ("Plaintiff" or "Dallas"), and files this Response to Defendant's Motion to Dismiss for Want of Prosecution in the above-styled and numbered cause of action and would show the Court the following:

**I.**

An eminent domain proceeding consists of two (2) distinct parts; the first is of a generally administrative nature, which is governed by chapter 21 of the Texas Property Code. The second is judicial in nature and is tried "in the same manner as other civil causes". See TEX. PROP. CODE ANN. § 21.018(b) (2012).

**II.**

The following are the facts which may be considered relevant for purposes of determining that the Court does not have jurisdiction to dismiss the administrative proceeding until after a hearing by the special commissioners, namely:

1. **August 30, 2011:** The City filed its Statement in Condemnation against Highway 205 Farms, LTD. and Maurice E. Moore, Jr., (hereafter "Defendants") and others.
2. **September 7, 2011:** Judge Erleigh Norville Wiley, Judge of County Court at

Law, Kaufman County, Texas, pursuant to TEX. PROP. CODE ANN. § 21.014 (2012), appointed the Special Commissioners.

3. **October 26, 2011:** The Court replaced Lee Schaffer with Don Burt as special commissioner.
4. **March 6, 2013:** Defendant filed a Motion to Dismiss.
5. **March 15, 2013:** The Special Commissioners issued written orders for the the special commissioners' hearing to take place on May 8, 2013 at 10:00am in Kaufman County.
6. **March 21, 2013:** The Court set a hearing on Defendant's Motion to Dismiss for April 17, 2011.
7. **March 27, 2013:** The City served Defendant Hwy 205 Farms, Ltd. Notice of Hearing ordered by Special Commissioners.

### III.

The proceeding before the Court was filed by the City in the exercise of its power of Eminent Domain under the procedures required by Chapter 21 of the Texas Property Code. These procedures must be followed not only by the condemning authority and the Condemnee, but also by the Court. An eminent domain proceeding begins as an administrative hearing. Of fundamental importance is the well established rule that once the Condemnor files its petition and the court has appointed the Special Commissioners, the court is absolutely without jurisdiction to do anything else unless otherwise prescribed by statute and until the Special Commissioners have conducted the Special Commissioners' Hearing and entered their Award. *See* TEX. PROP. CODE ANN. § 21.019(c) (2012).

### IV.

The Court is without jurisdiction to dismiss for want of prosecution. The San Antonio Court of Appeals noted in *Lo-Vaca Gathering Co. v. Gardner*, 566 S.W.2d 366 (Tex. Civ. App.—San Antonio 1978), that “[i]t is well established that up to and including the award of the special commissioners, the condemnation proceeding is an administrative and not a judicial proceeding.” *Id.* at 367. See also *Pearson v. State*, 159 Tex. 66, 315 S.W.2d 935 (1958); *Lower Nueces River Water Supply Dist. v. Cartwright*, 160 Tex. 239, 328 S.W.2d 752 (1959); *McInnis v. Brown County Water Improvement District No. 1*, 41 S.W.2d 741 (Tex. Civ. App.—Austin 1931, writ ref’d). At this time the Special Commissioners have been appointed and a hearing date has been set by the Special Commissioners.

During the administrative proceeding time period, the court’s power is significantly curtailed. As the Houston Court of Appeals for the 14<sup>th</sup> District explains:

The power of the county court as a judicial tribunal in eminent domain proceedings is limited to that which is conferred upon it by statute. *Pearson v. State*, 159 Tex. 66, 315 S.W.2d 935, 937-38 (1958). Accordingly, in the absence of timely filed objections, the county court *has no jurisdiction to do anything more* than accept and adopt the award of the special commissioners as its judgment. This follows by operation of law and the ministerial act of the county judge. As distinguished from the county judge in his administrative capacity, there is nothing which the county court can hear and determine by the exercise of its judicial powers in a special commissioners proceeding. *Pearson*, 315 S.W.2d at 938.

*Blasingame v. Krueger*, 800 S.W.2d 391, 394 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1990, orig. proceeding [writ denied]) (emphasis added).

Neither does the Court have jurisdiction to set deadlines within which a special commissioners’ hearing must be held. In *Gulf Energy Pipeline Co. v. Garcia*, 884 S.W.2d 821 (Tex. App.—San Antonio 1994, writ granted), the San Antonio Court of Appeals considered the propriety of the district court resetting the special commissioners’ hearing to a later date and

granting a sixty-day continuance to the landowners of the special commissioners' hearing. The Fourth Court of Appeals concluded that such orders were void and mandamus was proper. *Id.* at 821. In arriving at this conclusion, the court explained:

An eminent domain proceeding is not within the general jurisdiction of the court; any power to act is special and depends upon the eminent domain statute. . . . The statute expressly gives the court administrative jurisdiction to appoint the commissioners, receive their opinion of value, and render judgment based upon the commissioners' award. . . . The parties may invoke the trial court's jurisdiction by timely objecting to the commissioners' findings. . . . The proceeding then becomes a civil case, and the district court has jurisdiction to determine all issues in the suit. . . . Without a timely filed objection, however, an eminent domain proceeding never becomes a civil case.

*Id.* at 822-23.

Regarding the orders resetting the commissioners' hearing and granting continuances, the *Garcia* court held that these orders were "outside the scope of the trial court's jurisdiction during the administrative proceeding. The trial court had no authority to grant the continuance or set the hearing dates, and entering these orders was a clear abuse of discretion." *Id.* at 823.

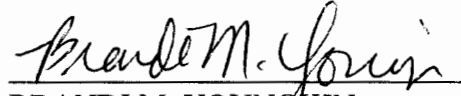
This is not a situation where the court has jurisdiction to make a decision. If the Court wanted to take action in this case it would be to press the Special Commissioners to set a hearing date, which has been done. For this reason, this Court should DENY Defendant's Motion to Dismiss for Want of Prosecution.

#### **PRAYER**

WHEREFORE PREMISES CONSIDERED, The City of Dallas respectfully requests the Court deny Defendant's Motion to Dismiss for Want of Prosecution and retain this case on the Court's docket.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DALLAS, TEXAS  
Thomas P. Perkins  
City Attorney



BRANDI M. YOUNGKIN  
Assistant City Attorney  
State Bar of Texas No. 24053740  
7BN Dallas City Hall  
1500 Marilla Street  
Dallas, Texas 75201  
Telephone - (214) 671-8085  
Telecopier - (214) 670-0622

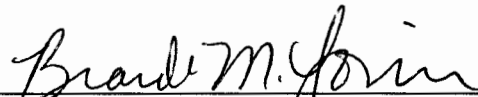
ATTORNEY FOR PLAINTIFF  
CITY OF DALLAS

**CERTIFICATE OF SERVICE**

I, Brandi M. Youngkin hereby certify that a true and correct copy of the above and foregoing *Plaintiff's Response to Defendant's Motion to Dismiss for Want of Prosecution* was served by certified mail, return receipt requested on April 5, 2013 to:

**Via CMRRR: 7007 0220 0000 5571 2112**

Ms. Hayley D. Ailshie  
Mr. Eddie Vassallo  
3710 Rawlins, Suite 1200  
Dallas, Texas 75219-6410  
Attorneys for Defendants  
Highway 205 Farms, LTD.,  
and Maurice E. Moore, Jr.



BRANDI M. YOUNGKIN  
Assistant City Attorney

5

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

NO. 84262CC

2013 MAR 27 AM 11:08

CITY OF DALLAS,

§

IN COUNTY COURT

VS.

§

RHONDA HUGNEY  
DISTRICT CLERK

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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AT LAW

BY  DEPUTY

KAUFMAN COUNTY, TEXAS

**NOTICE OF SPECIAL COMMISSIONERS' HEARING**

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

TO: THE DOW CHEMICAL COMPANY  
c/o C.T. Corporation, Registered Agent  
350 N. St. Paul St.  
Dallas, Texas 75201

Mineral Interest

**THE SPECIAL COMMISSIONERS WILL HEAR THE PARTIES ON THE 8<sup>TH</sup> DAY OF MAY, 2013, AT 10:00 O'CLOCK A.M. IN THE MEETING ROOM OF THE KAUFMAN COUNTY LIBRARY LOCATED AT 3790 S. HOUSTON STREET, KAUFMAN, TEXAS 75142 FOR THE PURPOSE OF ASSESSING DAMAGES IN ACCORDANCE WITH THE EVIDENCE PRESENTED AT THE HEARING.**

The City of Dallas, Petitioner, has filed a statement in condemnation in the above-captioned and numbered cause with the District Clerk and Judge of the County Court at Law of Kaufman County, Texas. Petitioner seeks to acquire certain real property through proceedings in eminent domain for the purpose of the City approved Resolution No. 081245 which entails the construction of the Lake Tawakoni 144-inch Raw Water Transmission Pipeline in the County of Kaufman, Texas. The property being acquired is described in the above-referenced statement in condemnation, a true and correct copy of which has been delivered to each defendant in said cause of action. The Special Commissioners have been appointed by the Judge of said court to assess the damages occasioned by the condemnation of the real property described in the statement in condemnation and now have ordered the hearing to commence on the 8<sup>th</sup> day of May, 2013 at 10:00a.m in the Kaufman County Library.

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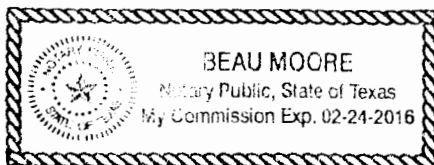
### RETURN OF NOTICE OF HEARING

State of Texas       §  
                             §  
County of Dallas     §

I hereby certify that a copy of the written Notice of Special Commissioners' Hearing in Cause No. 84262CC came to hand on the 26 day of March, 2013 at 11:00pm. The same was served at 11:55 A.m. on the 26 day of MARCH, 2013, in Dallas County, Texas, by delivering a copy of the written Notice of Special Commissioners' Hearing to MARIA GARCIA, AGENT, of CT Corporation, agent of service for the Dow Chemical Company, by personal service located at 350 N. St. Paul, Suite 2900 Dallas, Texas 75201.

Steven W. Thomas  
Steven W. Thomas  
Certified Process Server  
SCH#00001226

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 26<sup>th</sup> day of March, 2013.



[Signature]  
Notary Public  
In and For Texas

5

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

NO. 84262CC

CITY OF DALLAS,

§

IN COUNTY COURT 2013 MAR 27 AM 11:08

VS.

§

RHONDA HUGHEY  
DISTRICT CLERK

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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AT LAW

BY  DEPUTY

KAUFMAN COUNTY, TEXAS

**NOTICE OF SPECIAL COMMISSIONERS' HEARING**

STATE OF TEXAS

§

§

COUNTY OF KAUFMAN

§

TO: KAUFMAN COUNTY,  
in its own behalf and on behalf of  
Terrell Independent School District, and  
Trinity Valley Community College

Statutory tax lienholder

Agent for service:

Tonya Ratclif, Tax Assessor/Collector  
100 N. Washington  
Kaufman, Texas 75142

**THE SPECIAL COMMISSIONERS WILL HEAR THE PARTIES ON THE 8<sup>TH</sup> DAY OF MAY, 2013, AT 10:00 O'CLOCK A.M. IN THE MEETING ROOM OF THE KAUFMAN COUNTY LIBRARY LOCATED AT 3790 S. HOUSTON STREET, KAUFMAN, TEXAS 75142 FOR THE PURPOSE OF ASSESSING DAMAGES IN ACCORDANCE WITH THE EVIDENCE PRESENTED AT THE HEARING.**

The City of Dallas, Petitioner, has filed a statement in condemnation in the above-captioned and numbered cause with the Judge of the District Court at Law No. 1 of Kaufman County, Texas. Petitioner seeks to acquire certain real property through proceedings in eminent domain for the purpose of the City approved Resolution No. 081245 which entails the construction of the Lake Tawakoni 144-inch Raw Water Transmission Pipeline in the County of Kaufman, Texas. The property being acquired is described in the above-referenced statement in condemnation, a true and correct copy of which has been delivered to each defendant in said cause of action. The Special Commissioners have been appointed by the Judge of said court to assess the damages occasioned by the condemnation of the real property described in the

statement in condemnation and now have ordered the hearing to commence on May 8, 2013 at 10:00a.m in the Kaufman County Library.

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### RETURN OF NOTICE OF HEARING

State of Texas  
County of Kaufman

I hereby certify that a copy of the written Notice of Special Commissioners' Hearing in Cause No. 84262CC came to hand on the 26 day of March, 2013 at 11:00 a.m. The same was served at 1:59 p.m. on the 26 day of March, 2013, in Kaufman County, Texas, by delivering a copy of the written Notice of Special Commissioners' Hearing to Tonya Ratcliff, Tax Asessor/Collector for Kaufman County, by personal service at 100 N. Washington, Kaufman, TX 75142 .

Steven W. Thomas  
Steven W. Thomas  
Certified Process Server  
SCH#00001226

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 26<sup>th</sup> day of March, 2013.



Beau Moore  
Notary Public  
In and For Texas

ORIGINAL

NO. 84262CC

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

CITY OF DALLAS

§

IN COUNTY COURT 2013 APR 15 PM 3:34

V.

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HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY,  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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AT LAW

BY RHODEN RUSHEY  
DISTRICT CLERK  
DEPUTY

KAUFMAN COUNTY, TEXAS

**REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS  
FOR WANT OF PROSECUTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Hwy 205 Farm, Ltd. and Maurice E. Moore, Jr. (collectively "Defendants") file this Reply to Plaintiff City of Dallas' ("City") Response to Defendants' Motion to Dismiss for Want of Prosecution and re-urge the Court to dismiss the above action for failure to prosecute pursuant to Texas Rule of Civil Procedure 165a and the Court's inherent authority to control its docket. In support thereof, Defendants show the Court the following:

**A. The City's Response demonstrates its lack of diligence in prosecuting this case**

1. In Plaintiff's Response to Defendants' Motion ("Response"), the City provides the Court a timeline of relevant facts. Defendants do not dispute the City's recitation of the facts. Instead, Defendants point the Court to the City's own timeline as proof of the necessity to dismiss this case. The City's timeline is an admission that from August 30, 2011, the date the City filed its Statement in Condemnation, to March 15, 2013, the City took absolutely no action in this proceeding.

2. The City allowed this case to sit on the Court's docket, with no action, for nearly 19 months. Moreover, there is no evidence the City would have pursued this matter in 2013, but

for Defendants filing of their Motion to Dismiss for Want of Prosecution (“Defendants’ Motion”). Ironically, after Defendants filed their Motion, within a matter of days the Special Commissioners scheduled the Special Commissioners’ Hearing and the City served a Notice of Hearing on Defendants. The City’s actions clearly support Defendants’ contention that the City failed to prosecute its case with diligence. If the City disagreed with Defendants’ contention, why the abrupt revival of the litigation?

3. A revival after the fact is not enough to prevent this Court from dismissing the action. A motion to dismiss may in the court’s discretion be sustained even though the negligent party purports to have revived its interest in the litigation.<sup>1</sup>

**B. The City provides no relevant authority which precludes this Court from dismissing**

4. The City asserts this Court lacks the jurisdiction to dismiss this case, yet provides no authority on point. Each case cited by the City in support of its Response is clearly distinguishable from the instant proceeding. The City alleges this Court does not have jurisdiction to interfere with the administrative phase of a statutory eminent domain proceeding. Without judicial oversight, entities with the power of eminent domain would be free to file statutory eminent domain proceedings and notices of lis pendens to freeze a landowner’s property indefinitely. According to the City, property owners do not have any ability to free themselves from the dormant eminent domain proceeding or the notice of lis pendens. Using the City’s logic, Texas courts would suffer the same as property owners as the courts would have dormant eminent domain proceedings which cannot be dismissed. Clearly, that is not an intended result of the Texas legislature.

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<sup>1</sup>*Johnson v. J.W. Const. Co.*, 717 S.W.2d 464 (Tex. App. – Fort Worth 1986, no writ); *State v. Rotello*, 671 S.W.2d 507 (Tex. 1984); *Frenzel v. Browning-Ferris Industries, Inc.*, 780 S.W.2d 844 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1989, no writ) (on docket 41 months, no discovery); and *Bard v. Frank B. Hall & Co.*, 767 S.W.2d 839 (Tex. App. – San Antonio 1989, writ denied).

5. In each case cited by the City, the courts interfered with the special commissioners' hearing in violation of statutory provisions to the contrary. In *Pearson v. State*, landowners failed to timely object to the award of special commissioners, the court entered a judgment and the landowners appealed the judgment to the Austin Court of Appeals. The Texas Supreme Court, relying on the predecessor statute to Texas Property Code, Section 21.061, held the trial court complied with the following statutory requirements:

If no objections to the decision are filed within ten (10) days, the county judge shall cause said decision to be recorded in the minutes of the county court, and shall make the same the judgment of the court and issue the necessary process to enforce the same.<sup>2</sup>

6. In *Gulf Energy Pipeline Co. v. Garcia*, the court acted in direct contradiction to statutory mandates in the Texas Property Code. The landowners in this case requested a continuance of the special commissioners' hearing after the special commissioners set a date and time for the hearing. The court granted the continuance, causing the condemnor to suffer penalties with contractors and other expenses. The court held that because Section 21.015 of the Property Code clearly limits the authority to set the date and time for a special commissioners' hearing to the special commissioners, the court exceeded its authority when it reset the hearing date established by the appointed special commissioners.<sup>3</sup>

7. Similar to *Gulf Energy*, the court in *Lo-Vaca Gathering Co. v. Gardner* entered a temporary injunction preventing the special commissioners from convening the hearing in order to hear a plea to the jurisdiction filed by the landowners, and the Court of Appeals held the trial court lacked jurisdiction.<sup>4</sup>

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<sup>2</sup>*Pearson v. State*, 315 S.W.2d 395 (Tex. 1958).

<sup>3</sup>*Gulf Energy Pipeline Co. v. Garcia*, 884 S.W.2d 821 (Tex. App. – San Antonio 1994, writ granted).

<sup>4</sup>*Lo-Vaca Gathering Co. v. Gardner*, 566 S.W.2d 366 (Tex. Civ. App. – San Antonio 1978).

8. In *Blasingame v. Kruger*, the court conducted a hearing and ruled on discovery motions prior to the special commissioners' hearing. The Houston Court of Appeals considered, but refused to address, whether the court had jurisdiction and instead decided the question of whether a writ of mandamus should issue. Ultimately the court refused to issue the writ and remanded the proceeding because the landowners had an adequate remedy at law.<sup>5</sup>

9. In contrast to cases cited by the City, there is no statutory prohibition on this Court to dismiss this case for want of prosecution. To the contrary, this Court has the statutory authority to dismiss this case for want of prosecution under Texas Rule of Civil Procedure 165a.

10. In addition to the City's failure to provide supporting statutory authority for its position, the City's arguments are in direct contradiction to Texas case law. The Texas Supreme Court provides ample authority allowing this Court to dismiss the instant proceeding.

Every court has power, in the absence of statutory prohibition, to dismiss a suit for want of prosecution. *Bevil v. Johnson*, 157 Tex. 621, 307 S.W.2d 85, 87 (1957) (quoting *First Nat'l Bank v. Fox*, 121 Tex. 7, 39 S.W.2d 1085, 1086 (1931)). A court's power to dismiss for want of prosecution arises from two sources: (1) rule 165a of the Texas Rules of Civil Procedure, and (2) the court's inherent power. *Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex.1999). A trial court may dismiss under rule 165a when any party seeking affirmative relief fails to appear for any hearing or trial of which the party had notice or when a case is not disposed within the time standards promulgated by the supreme court. Tex. R. Civ. P. 165a(1), (2). Additionally, common law vests the trial court with inherent power, independent of the rules of procedure, to move its docket by dismissing cases that are not prosecuted with due diligence.<sup>6</sup>

11. In its Response, the City fails to cite this Court to any statutory authority which would preclude the Court from dismissing this case for want of prosecution. In contrast, Defendants provide ample authority for the Court to dismiss to this case under Rule 165(a) of the

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<sup>5</sup>*Blasingame v. Kruger*, 200 S.W.2d 391 (Tex. App. – Houston 1990, orig. proceeding [writ denied]).

<sup>6</sup>*Villarreal*, 994 S.W.2d at 630; *Rizk v. Mayad*, 603 S.W.2d 773, 776 (Tex.1980).

Texas Rules of Civil Procedure and the Court's inherent authority to control its docket.<sup>7</sup> This "Court has the right to dismiss a suit for failure to prosecute it with due diligence. The matter rests in the sound discretion of the trial court. It is not an unbridled discretion but a judicial discretion subject to review. Upon review, the question is whether there was a clear abuse of discretion by the trial court. That is a question of law."<sup>8</sup>

**C. The City attempted to avoid changes to the Property Code by filing its case long before it was prepared to go forward**

12. In early 2011, the Texas Legislature amended Chapter 21 of the Texas Property Code related to statutory eminent domain proceedings and these amendments went into effect on September 1, 2011. Many of the amendments, compared to the predecessor statute, provided additional or expanded rights for property owners in condemnation cases.

13. The City filed its Statement in Condemnation on August 30, 2011, two (2) days before the amendments went into effect. Clearly, shown by the inactivity in this case for over 18 months, the City was not prepared to litigate this condemnation case when it filed its Statement in Condemnation on August 30, 2011. The City's premature filing precluded application of the 2011 amendments in statutory condemnation proceeding and deprived Defendants of their rights due under the Property Code.

**D. Defendants have suffered damage**

14. When the City filed its Statement in Condemnation, it contemporaneously filed a Lis Pendens against Defendants' property in the Real Property Records of Kaufman County. A lis pendens is a mechanism to give constructive notice to all those taking title to the property that

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<sup>7</sup>Tex. R. Civ. P. 165a; *Villarreal*, 994 S.W.2d at 630).

<sup>8</sup>*Bevil v. Johnson*, 307 S.W.2d 85, 87 (Tex. 1957).

the claimant is litigating a claim against the property.<sup>9</sup> A lis pendens creates a cloud on a property's title.<sup>10</sup>

15. When the City filed the Lis Pendens, a cloud was immediately placed on Defendants' title precluding Defendants from attempting to convey title to any potential purchaser. Further, the Lis Pendens could have hampered the ability of Defendants to develop their property. The City acted in complete disregard of the property owners' rights when it filed the Statement in Condemnation and Lis Pendens prematurely, precluding Defendants from utilizing their property.

### **E. Conclusion**

16. "Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take shortcuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility."<sup>11</sup> This Court has authority to dismiss this proceeding pursuant to Texas Rule of Civil Procedure 165a and the Court's inherent authority to control its docket. The City's failure to prosecute this case with any degree of due diligence, combined with its obvious intention to deny Defendants of their rights due under the Texas Property Code and Texas Constitution, provides this Court sufficient reason to dismiss this case with prejudice.

For the above reasons, Defendants Hwy 205 Farm, Ltd and Maurice E. Moore, Jr. respectfully request the Court grant Defendants' Motion to Dismiss for Want of Prosecution;

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<sup>9</sup>*Garza v. Pope*, 949 S.W.2d 7 (Tex. App. San Antonio 1997, reh'd overruled); Tex. Prop. Code Ann. §§ 12.007, 13.004.

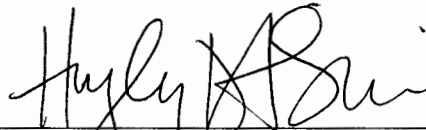
<sup>10</sup>*Neyland v. Brammer*, 146 S.W.2d 261 (Tex. Civ. App. – Galveston, 1940, writ dismiss'd, jdgmt corrected).

<sup>11</sup>*State v. Rotello*, 671 S.W.2d 507, 509 (Tex. 1984).

dismiss this case with prejudice; grant Defendants their fees and expenses in accordance with the Texas Property Code; and grant Defendants all other relief to which they are entitled.

Respectfully submitted,

VASSALLO & SALAZAR, P.C.



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EDDIE VASSALLO  
State Bar No. 20503000  
CHARLES A. SALAZAR  
State Bar No. 17526750  
HAYLEY D. AILSHIE  
State Bar No. 24069280  
3710 Rawlins, Suite 1200  
Dallas, Texas 75219-6410  
(214) 559-7200 telephone  
(214) 559-7209 telecopy

Attorneys for Defendants Hwy 205 Farm, Ltd. and  
Maurice E. Moore, Jr.

### **CERTIFICATE OF SERVICE**

This certifies a copy of Defendants' Reply to Plaintiff's Response to Defendants' Motion to Dismiss for Want of Prosecution was served on the following as indicated below on April 15, 2013:

Brandi Youngkin  
Assistant City Attorney  
7BN Dallas City Hall  
1500 Marilla Street  
Dallas, Texas 75201



---

HAYLEY D. AILSHIE

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

CITY OF DALLAS,  
Plaintiff,  
VS.

IN COUNTY COURT AM 8:39  
2013 APR 17

RHONDA HUGHEY  
DISTRICT CLERK

HIGHWAY 205 FARMS, LTD.,  
THE DOW CHEMICAL COMPANY,  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT  
Defendants

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AT LAW BY  DEPUTY

KAUFMAN COUNTY, TEXAS

**1<sup>st</sup> AMENDED STATEMENT IN CONDEMNATION**

NOW COMES THE CITY OF DALLAS (hereafter, "City"), a municipal corporation, incorporated under and by virtue of a Special Act of the Legislature of the State of Texas, exercising the functions of a municipal corporation under said Special Act of the Legislature of the State of Texas, approved April 13, 1907, which said Act and its amendments constitute the Charter of the City of Dallas, and would show the Court as follows:

I.

The City complains of the following parties:

HWY 205 FARM, LTD.  
*Via Attorney of Record*  
Mr. Eddie Vassallo  
3710 Rawlins, Suite 1200  
Dallas, TX 75219-6410

Owner of Record

THE DOW CHEMICAL COMPANY  
c/o C.T. Corporation, Registered Agent  
350 N. St. Paul St.  
Dallas, Texas 75201

Mineral Interest

KAUFMAN COUNTY,  
in its own behalf and on behalf of  
Kaufman County Emergency Service District # 6 (Forney),  
Kaufman County Road and Bridge, and Terrell Independent  
School District, Trinity Valley Community College District  
Agents for service:

Statutory tax lienholder

Tonya Ratcliff  
Tax Assessor/Collector  
Kaufman County Annex  
100 N. Washington  
Kaufman, Texas 75142

II.

It is intended that discovery, if any, will be conducted under Level 2.

III.

Under and by virtue of the provisions of the Charter of the City of Dallas and the statutes of the State of Texas, the City is authorized to acquire title to property and to exercise its power of eminent domain to extend, improve or enlarge its water supply system, including the laying, building, maintenance and construction of water mains and any necessary appurtenances. To that end, the governing body of the City on April 23, 2008 approved resolution no. 081245 (hereafter, "Resolution") which authorized and required, for the Lake Tawakoni 144-inch Raw Water Transmission Pipeline Project, the condemnation of the property described in Exhibit A which is attached hereto and incorporated by reference (hereafter, "Property").

IV.

The Resolution authorized the City Attorney to file condemnation proceedings to appropriate the Property and vest fee simple title in the City of Dallas. By this condemnation proceeding, the City seeks fee simple title to the Property, for the purposes described above for the Lake Tawakoni 144-inch Raw Water Transmission Pipeline Project in Kaufman County, Texas, save and except all the oil, gas and other minerals beneath said land, with no right remaining in the owner or owners of said oil, gas and other minerals of ingress or egress to or from the surface of said land for the purpose of exploring, developing, drilling, or mining of same.

Provided, however, that there shall be reserved to the Owner, and Owner's heirs, successors, and assigns the easement described in Exhibit "B" attached hereto and made a part hereof.

V.

By diligent search, the City found that the parties listed in paragraph I (hereafter, "Owners") own or claim some interest in the Property. Should it be disclosed that other persons own or claim some interest in the Property, then the City reserves the right to amend this Statement in Condemnation and include such persons in this condemnation suit.

VI.

The City could not and cannot agree with the Owners upon the amount of damages legally allowable and payable to the Owners by reason of the appropriation of the Property by the City. In that connection, the City designated one of its agents and representatives, by resolution duly adopted, and authorized said agent and representative to make an offer on behalf of the City of a sum of money stated in said resolution. That offer has been made but the parties have been unable to agree upon the terms of a voluntary conveyance, and further offers would be futile.

VII.

The City provided the Owners with the landowner's bill of rights statement in accordance with Section 21.0112 of the Texas Property Code.

WHEREFORE, PREMISES CONSIDERED, the City prays of the Court:

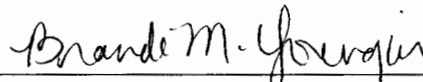
1. The appointment of necessary commissioners as provided by law for the purpose of assessing the damages occasioned by the condemnation of the Property,
2. A final judgment or a decree of condemnation vesting fee simple title to the Property in the City of Dallas for the purposes aforesaid, save and except all the oil, gas and other minerals

beneath said land, with no right remaining in the owner or owners of said oil, gas and other minerals of ingress or egress to or from the surface of said land for the purpose of exploring, developing, drilling, or mining of same.

3. Costs of suit, and
4. Such other and further relief to which the City may be entitled.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
CITY OF DALLAS, TEXAS  
Thomas P. Perkins  
City Attorney

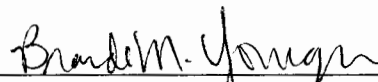


BRANDI M. YOUNGKIN  
Assistant City Attorney  
State Bar of Texas No. 24053740  
7BN Dallas City Hall  
1500 Marilla Street  
Dallas, Texas 75201  
Telephone (214) 671-8085  
Facsimile (214) 670-0622

ATTORNEY FOR PLAINTIFF  
CITY OF DALLAS

### CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy the foregoing 1<sup>st</sup> Amended Statement in Condemnation has been served upon all parties in this cause in accordance with the provisions of Rule 21a, Texas Rules of Civil Procedure, on this 17<sup>th</sup> day of April, 2013.



BRANDI M. YOUNGKIN

EXHIBIT A  
081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 7**

BEING a 6.054 acre tract of land in the Elizabeth Graves Survey, Abstract No. 168, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "96 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at the east corner of said "96 Acres" tract and the south corner of a tract of land described in Warranty Deed to M. Logan Swords and wife, Ruth Riley Swords, dated November 16, 1990, as recorded in Volume 578, Page 277, D.R.K.C.T., said corner also being in Kaufman County Road No. 243, an unrecorded right-of-way;

THENCE North 45 degrees 58 minutes 13 seconds West, along the common line between the northeast line of said "96 Acres" tract and the southwest line of said Swords tract, passing at a distance of 31.00 feet a fence corner post, and continuing along said common line for a total distance of 278.72 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 80 degrees 34 minutes 33 seconds West, departing said common line and crossing said "96 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of a City of Dallas Water Line Right-of-Way (variable width) as recorded in Volume 436, Page 258, D.R.K.C.T., a distance of 1,229.74 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 80 degrees 49 minutes 43 seconds West, continuing across said "96 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 702.19 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 82 degrees 30 minutes 27 seconds West, continuing across said "96 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 95.08 feet to a 1/2-inch set iron rod with cap on the common line between the southwest line of said "96 Acres" tract and the northeast line of a tract of land described in Warranty Deed with Vendor's Lien to Darrel R. Stephens and Wife, Dimple M. Stephens, dated February 11, 1981, as recorded in Volume 692, Page 335, D.R.K.C.T., said point being in Kaufman County Road No. 245 (Kuban Road), an unrecorded right-of-way;

THENCE North 46 degrees 04 minutes 40 seconds West, along said common line and said Kuban Road, a distance of 166.31 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of said City of Dallas Water Line Right-of-Way;

THENCE North 82 degrees 30 minutes 27 seconds East, departing said common line and Kuban Road and along the southeast line of said City of Dallas Water Line Right-of-Way, passing at a distance of 10.37 feet a found concrete monument with a brass disk stamped "City of Dallas", and continuing along the southeast line of said City of Dallas Water Line Right-of-Way for a total distance of 196.89 feet to a found broken concrete monument for an angle point; **T.D.K.**

REVIEWED BY *D. N. C. 11-19-82*

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
 WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

Parcel: 7

THENCE North 80 degrees 49 minutes 43 seconds East, continuing along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 700.00 feet to a found concrete monument with a brass disk stamped "City of Dallas" for an angle point;

THENCE North 80 degrees 34 minutes 33 seconds East, continuing along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,133.10 feet to a 1/2-inch set iron rod with cap for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the northeast line of said "96 Acres" tract and the southwest line of said Swords tract;

THENCE South 45 degrees 58 minutes 13 seconds East, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 161.82 feet to the POINT OF BEGINNING AND CONTAINING 263,705 square feet or 6.054 acres of land, more or less. **T.O.K.**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore Date: 9/27/06

Surveyor's Name: Alan Moore  
 Registered Professional Land Surveyor  
 Texas No. 5537



REVIEWED BY Don J. Campbell  
 11-19-06

081245

REVIEWED BY *A. J. Cull*  
10-11-1994

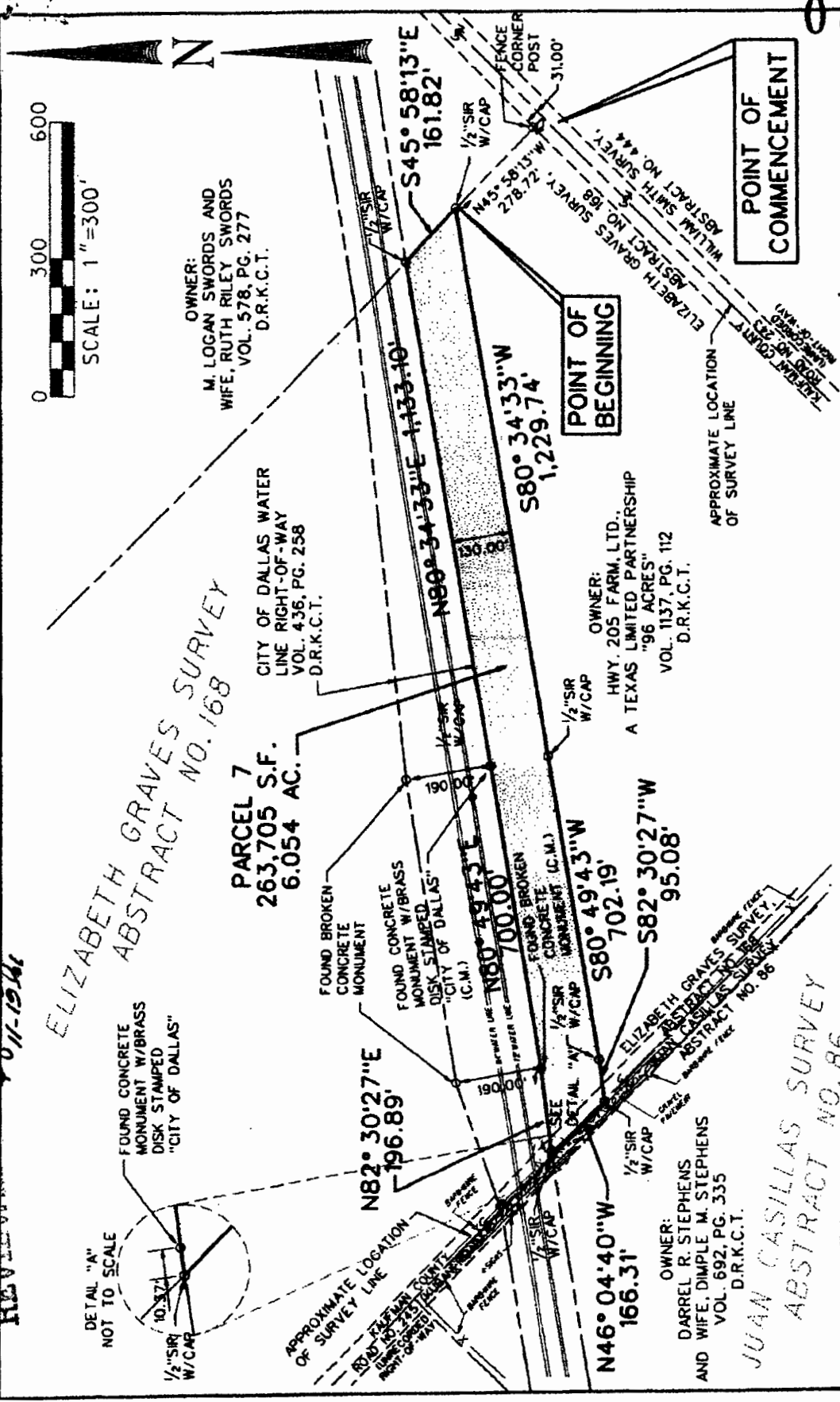


EXHIBIT OF A

RIGHT-OF-WAY ACQUISITION

STATED IN THE  
ELIZABETH GRAVES SURVEY, ABSTRACT NO. 168  
KAUFMAN COUNTY, TEXAS

FOR THE  
CITY OF DALLAS

BY  
DAL-TECH ENGINEERING, INC. 1701 DALLAS HWY., SUITE 300  
DALLAS, TEXAS 75201-3701 TEL. 817/258-3701 FAX 817/258-3701

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83 TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NOS CONTIGUOUSLY OPERATING REFERENCE STATIONS COLLIN COUNTY APP. DALLAS COUNTY APP. KAUFMAN COUNTY APP. TARRANT COUNTY APP. AND PARIS COUNTY APP. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

| LEGEND: | S.F.                                      | SQUARE FEET |
|---------|---|-------------|
| C.M.    | CONTROL MONUMENT                          |             |
| O.F.I.  | FOUND IRON ROD                            |             |
| O.F.P.  | FOUND IRON PIPE                           |             |
| O-2"    | SET IRON ROD                              |             |
| W/CAP   | WITH A RED PLASTIC CAP STAMPED "DAL-TECH" |             |
| 5X      | SET "X" CUT IN CONCRETE                   |             |
| SPK     | FOUND PK. NAIL                            |             |
| SPK     | SET PK. NAIL                              |             |

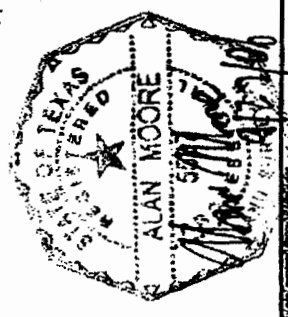


EXHIBIT A  
081245

**FIELD NOTES  
DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN  
KAUFMAN COUNTY, TEXAS**

**Parcel: 10**

BEING a 4.110 acre tract of land in the Juan Casillas Survey, Abstract No. 86, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "First Tract 40.25 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a found 4-inch steel fence post for the north corner of said "First Tract 40.25 Acres" and the west corner of a tract of land described as "First Tract" in Warranty Deed with Vendor's Lien to W.R. Kuban, dated December 5, 1956, as recorded in Volume 407, Page 32, D.R.K.C.T., said corner being on the southeast line of a tract of land described as "Second Tract" in said Warranty Deed with Vendor's Lien to W.R. Kuban, dated December 5, 1956, as recorded in Volume 407, Page 32, D.R.K.C.T.;

THENCE South 46 degrees 31 minutes 59 seconds East, along the common line between the northeast line of said Hwy. 205 Farm, Ltd. tract and the southwest line of said Kuban "First Tract", passing at a distance of 583.12 feet the intersection of said common line with the northwest line of a City of Dallas Water Line Right-of-Way (130 feet wide) described as "Second Tract" as recorded in Volume 435, Page 330, D.R.K.C.T., and continuing along said common line, crossing said City of Dallas Water Line Right-of-Way, for a total distance of 746.61 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING, said point being the intersection of said common line with the southeast line of said City of Dallas Water Line Right-of-Way;

THENCE South 46 degrees 31 minutes 59 seconds East, continuing along said common line, a distance of 163.49 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 80 degrees 47 minutes 44 seconds West, departing said common line and crossing said Hwy. 205 Farm, Ltd. tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,513.06 feet to a 1/2-inch set iron rod with cap on the common line between the northwest line of said Hwy. 205 Farm, Ltd. tract and the southeast line said Kuban "Second Tract";

THENCE North 43 degrees 49 minutes 11 seconds East, along said common line, a distance of 216.13 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of said City of Dallas Water Line Right-of-Way, said point being North 80 degrees 47 minutes 44 seconds East, a distance of 449.96 feet from a found concrete monument with a brass disk stamped "City of Dallas" on the southeast line of said City of Dallas Water Line Right-of-Way, said point also being North 80 degrees 47 minutes 44 seconds East, a distance of 1.00 feet from a found concrete monument with a brass disk stamped "City of Dallas" on the southeast line of said City of Dallas Water Line Right-of-Way;

THENCE North 80 degrees 47 minutes 44 seconds East, departing said common line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,241.26 feet to the POINT OF BEGINNING AND CONTAINING 179,031 square feet or 4.110 acres of land, more or less. **T.O.N.**

REVIEWED BY *K. H. G. G. G.*  
11-19-06

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**  
**Parcel: 10**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project. **T.D.K.**

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore Date: 9/27/06

Surveyor's Name: Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



REVIEWED BY David C. Gault  
11-13-06

081245

EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE  
JUAN CASILLAS SURVEY, ABSTRACT NO. 86  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY  
DAL-TECH ENGINEERING INC. 1701 DALLAS HWY., SUITE 300  
DALLAS, TEXAS 75244 TEL. 817/280-3727 FAX 817/280-4774  
DATE: 07/28/2006 SHEET 3 OF 3

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83  
TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL  
ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NOS  
CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN  
CORS ARP., DALLAS CORP. ARP., KAUFMAN CORP. ARP., TYLER  
CORS ARP., AND PARIS CORP. ARP. THE KAUFMAN COUNTY  
SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE  
TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS  
DISTRICT WAS USED FOR THIS PROJECT.

LEGEND:

|        |                           |
|--------|---------------------------|
| S.F.   | SQUARE FEET               |
| C.M.   | CONTROL MONUMENT          |
| O.F.P. | FOUND IRON ROD            |
| O.F.P. | FOUND IRON PIPE           |
| O.F.P. | FOUND IRON ROD            |
| O.F.P. | WITH A RED PLASTIC        |
| O.F.P. | W/ CAP STAMPED "DAL-TECH" |
| SX     | SET "X" CUT IN CONCRETE   |
| FPK    | FOUND PK. NAIL            |
| SPK    | SET PK. NAIL              |

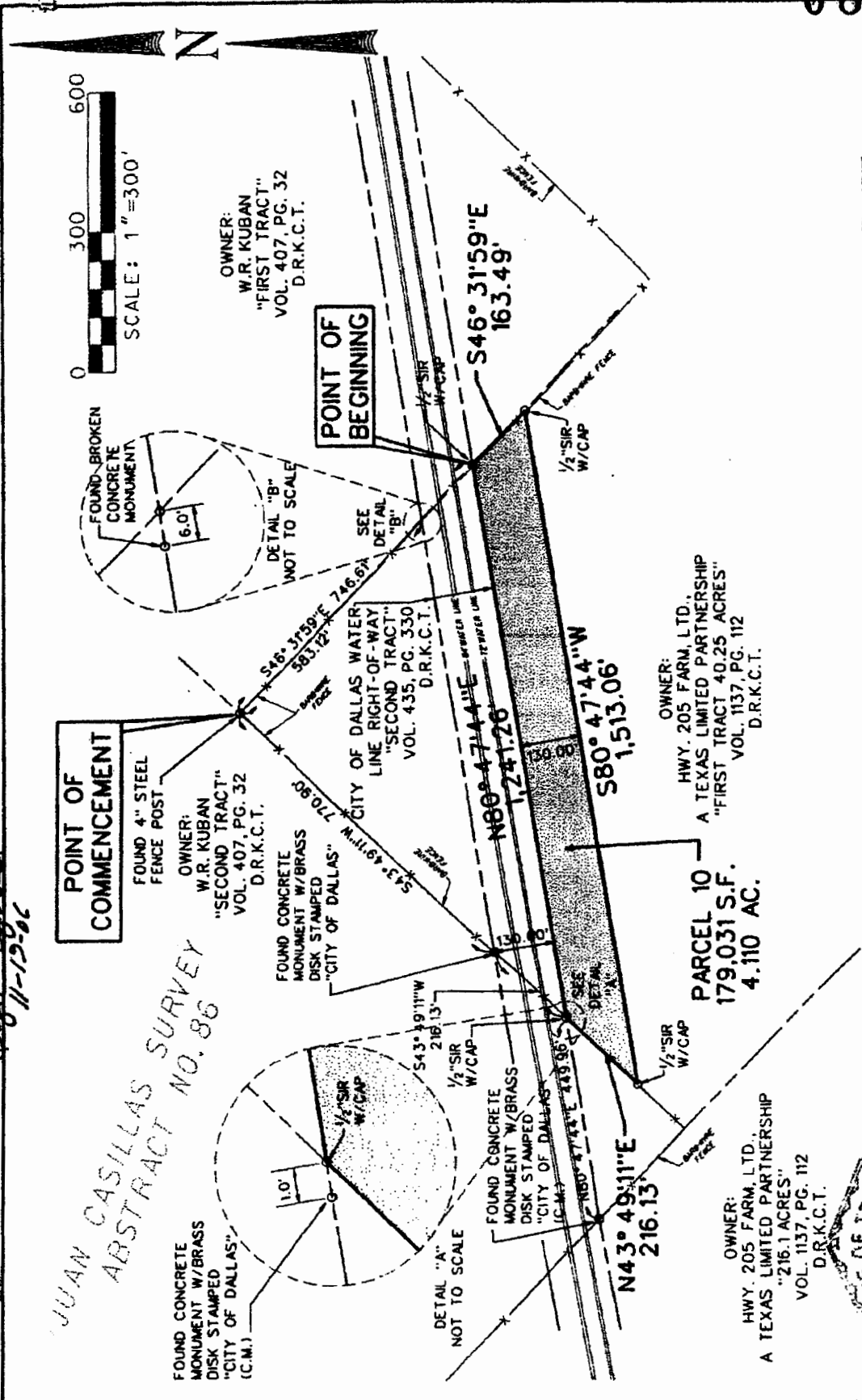


EXHIBIT A  
081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-**  
**WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 12**

BEING a 5.780 acre tract of land in the Juan Casillas Survey, Abstract No. 86, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "216.1 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod for the west corner of a tract of land described as "Tract No. I 85.02 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 44 degrees 13 minutes 37 seconds East, along the common line between the northwest line of said "Tract No. I 85.02 Acres" and the southeast line of a tract of land described as "First Tract 353 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T., a distance of 1,666.88 feet to the north corner of said "Tract No. I 85.02 Acres" and the west corner of said "216.1 Acres" tract;

THENCE North 43 degrees 45 minutes 04 seconds East, along the common line between the northwest line of said "216.1 Acres" tract and the southeast line of said "First Tract 353 Acres", a distance of 340.61 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE North 43 degrees 45 minutes 04 seconds East, continuing along said common line, a distance of 223.78 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of a City of Dallas Water Line Right-of-Way (130 feet wide) as recorded in Volume 435, Page 330, D.R.K.C.T., said point being South 43 degrees 45 minutes 04 seconds West, a distance of 1,463.38 feet from a found 4-inch steel fence corner post for the north corner of said "216.1 Acres" tract;

THENCE North 79 degrees 15 minutes 58 seconds East, departing said common line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,766.22 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE North 80 degrees 47 minutes 44 seconds East, continuing along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 32.25 feet to a found concrete monument with a brass disk stamped "City of Dallas" for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the northeast line of said "216.1 Acres" tract and the southwest line of a tract of land described as "Second Tract" in Warranty Deed with Vendor's Lien to W.R. Kuban, dated December 5, 1956, as recorded in Volume 407, Page 32, D.R.K.C.T.;

THENCE South 46 degrees 14 minutes 56 seconds East, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 162.87 feet to a 1/2-inch set iron rod with cap for corner; **T. D. K.**

REVIEWED BY *Don Gull*  
11/19/02

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
 WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 12**

THENCE South 80 degrees 47 minutes 44 seconds West, departing said common line and crossing said "216.1 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 128.64 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 79 degrees 15 minutes 58 seconds West, continuing across said "216.1 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,946.64 feet to the POINT OF BEGINNING AND CONTAINING 251,794 square feet or 5.780 acres of land, more or less. **T. D. K.**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

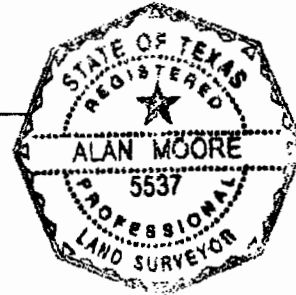
Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore

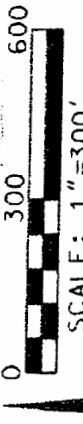
Date: 9/27/06

Surveyor's Name:

Alan Moore  
 Registered Professional Land Surveyor  
 Texas No. 5537



REVIEWED BY Dee N. Goff  
 11-13-06



REVIEWED BY *Opal*  
11-19-86

E.L. BOYD SURVEY  
ABSTRACT NO. 48

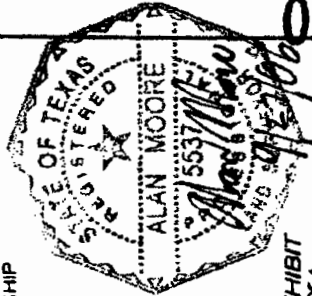
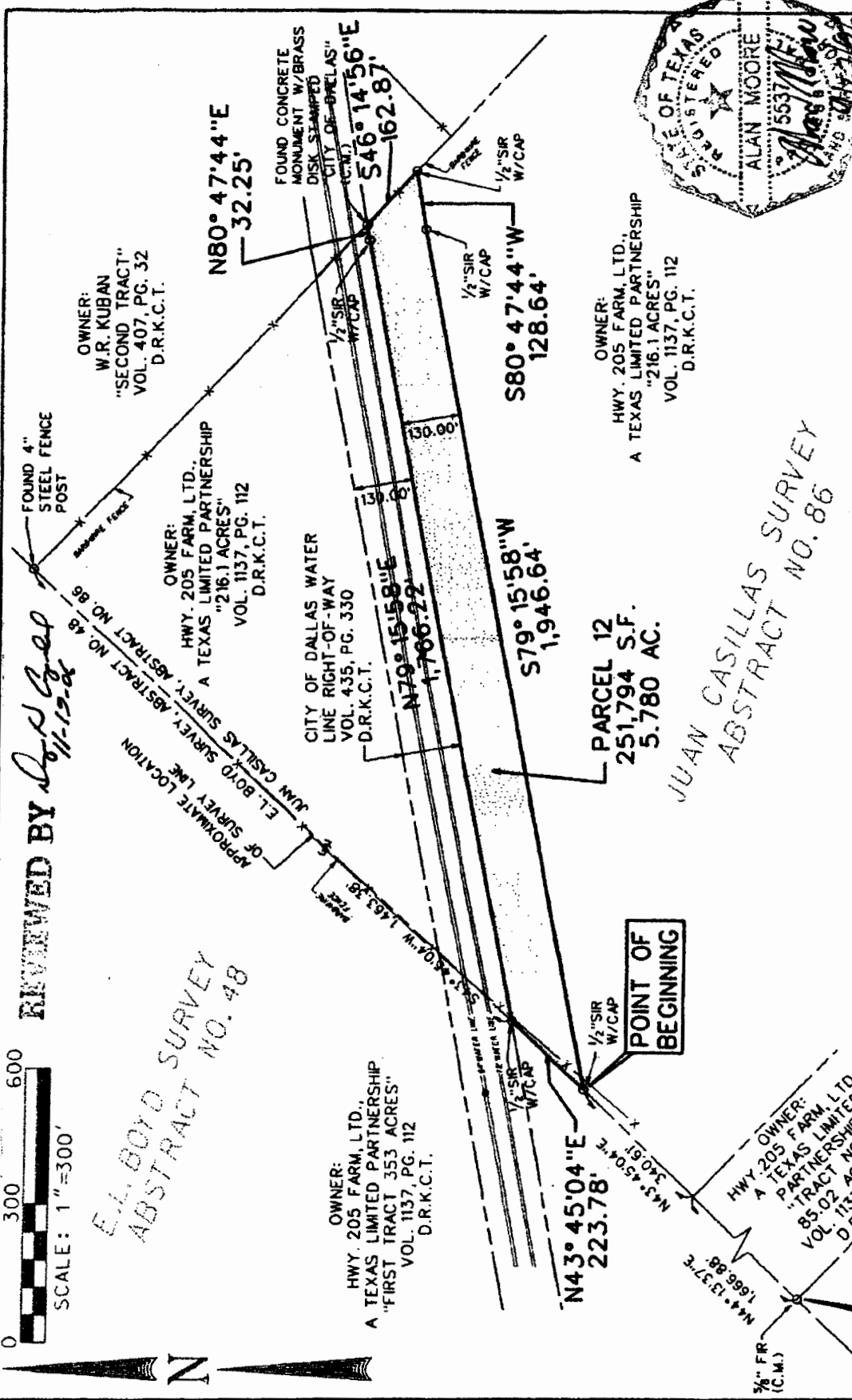


EXHIBIT  
OF A

RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE

JUAN CASILLAS SURVEY, ABSTRACT NO. 86  
KAUFMAN COUNTY, TEXAS

FOR THE  
CITY OF DALLAS

BY  
DAL-TECH ENGINEERING, INC., 12011 DALLAS HWY., SUITE 300  
DALLAS, TEXAS 75244, TEL. (972) 380-2721, FAX (972) 380-4774

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83  
TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL  
ZONE 4202, ACCORDING TO MEASUREMENTS MADE AT NGS  
CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN  
CORS ARP, DALLAS CORP ARP, KAUFMAN CORP ARP, TYLER  
CORS ARP, AND PARIS CORP ARP. THE KAUFMAN COUNTY  
SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE  
TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS  
DISTRICT WAS USED FOR THIS PROJECT.

LEGEND:

|        |                         |
|--------|-------------------------|
| S.F.   | SQUARE FEET             |
| C.M.   | CONTROL MONUMENT        |
| O.F.P. | FOUND IRON ROD          |
| O.F.P. | FOUND IRON PIPE         |
| O.F.P. | FOUND IRON ROD          |
| O.F.P. | SET IRON ROD            |
| O.F.P. | WITH A RED PLASTIC      |
| O.F.P. | CAP STAMPED "DAL-TECH"  |
| SK     | SET "X" CUT IN CONCRETE |
| FPK    | FOUND PK. NAIL          |
| SPK    | SET PK. NAIL            |

POINT OF  
COMMENCEMENT

JUAN CASILLAS SURVEY  
ABSTRACT NO. 86

081245

EXHIBIT A 081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 13**

BEING a 9.595 acre tract of land in the E.L. Boyd Survey, Abstract No. 48, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "First Tract 353 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod for the west corner of a tract of land described as "Tract No. I 85.02 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T., said corner being on the southeast line of said "First Tract 353 Acres";

THENCE North 44 degrees 13 minutes 37 seconds East, along the common line between the southeast line of said "First Tract 353 Acres" and the northwest line of said "Tract No. I 85.02 Acres", a distance of 1,666.88 feet to the north corner of said "Tract No. I 85.02 Acres" and the west corner of a tract of land described as "216.1 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 43 degrees 45 minutes 04 seconds East, along the common line between the northwest line of said "216.1 Acres" tract and the southeast line of said "First Tract 353 Acres", a distance of 340.61 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 79 degrees 15 minutes 58 seconds West, departing said common line and crossing said "First Tract 353 Acres" along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of a City of Dallas Water Line Right-of-Way (130 feet wide) as recorded in Volume 435, Page 330, D.R.K.C.T., a distance of 3,077.46 feet to a 1/2-inch set iron rod with cap on the common line between the southwest line of said "First Tract 353 Acres" and the northeast line of a tract of land described as "Second Tract 128 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 46 degrees 18 minutes 10 seconds West, along said common line, a distance of 159.82 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of said City of Dallas Water Line Right-of-Way, said point being North 79 degrees 15 minutes 58 seconds East, a distance of 1054.02 feet from a found broken concrete monument for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the northwest line of said "Second Tract 128 Acres" and the southeast line of a tract of land described as "159 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 79 degrees 15 minutes 58 seconds East, departing said common line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 3,352.57 feet to a 1/2-inch set iron rod with cap for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the southeast line of said "First Tract 353 Acres" and the northwest line of said "216.1 Acres" tract, said point being South 43 degrees 45 minutes 04 **T.D.K.**

REVIEWED BY *Do N. Gual*  
11-12-06

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**  
**Parcel: 13**

seconds West, a distance of 1,463.38 feet from a found 4-inch steel fence corner post for the north corner of said "216.1 Acres tract;  
THENCE South 43 degrees 45 minutes 04 seconds West, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 223.78 feet to the POINT OF BEGINNING AND CONTAINING 417,952 square feet or 9.595 acres of land, more or less. **T.D.K.**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore Date: 9/27/06

Surveyor's Name: Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



REVIEWED BY Steph A. Aguilera  
11-19-06

081245

EXAMINED BY *Dr. L. G. Hall*  
11-19-84

E.L. BOYD SURVEY  
ABSTRACT NO. 48

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"159 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"FIRST TRACT 353 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

CITY OF DALLAS WATER  
LINE RIGHT-OF-WAY  
VOL. 435, PG. 330  
D.R.K.C.T.

PARCEL 13  
417,952 S.F.  
9.595 AC.

FOUND BROKEN  
CONCRETE  
MONUMENT  
(C.M.)

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"SECOND TRACT 128 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.

OWNER:  
HWY. 205 FARM, LTD.,  
A TEXAS LIMITED PARTNERSHIP  
"FIRST TRACT 353 ACRES"  
VOL. 1137, PG. 112  
D.R.K.C.T.



MATCH LINE SEE SHEET 3

N79°15'58"E  
3,352.57'

S79°15'58"W  
3,077.46'

N46°18'10"W  
159.82'

N79°15'58"E 1054.02'

1/2" S.I.R.  
W/CAP

1/2" S.I.R.  
W/CAP

LEGEND:

|             |   |
|-------------|---|
| S.F.        | SQUARE FEET                               |
| C.M.        | CONTROL MONUMENT                          |
| O.F.I.R.    | FOUND IRON ROD                            |
| O.F.I.P.    | FOUND IRON PIPE                           |
| O'2" S.I.R. | 1/2" SET IRON ROD                         |
| W/CAP       | WITH A RED PLASTIC CAP STAMPED "DAL-TECH" |
| SX          | SET "X" CUT IN CONCRETE                   |
| FPK         | FOUND PK. NAIL                            |
| SPK         | SET PK. NAIL                              |

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83 TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE 4202, ACCORDING TO MEASUREMENTS MADE AT NGS CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN CORPS ARP, DALLAS CORPS ARP, KAUFMAN CORPS ARP, TYLER CORPS ARP, AND PARIS CORPS ARP. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE

EL BOYD SURVEY, ABSTRACT NO. 48  
KAUFMAN COUNTY, TEXAS

FOR THE  
CITY OF DALLAS

BY  
DAL-TECH ENGINEERING, INC. 17311 DALLAS PKWY, SUITE 300  
DALLAS, TEXAS 75248, TEL. (972) 250-2727, FAX (972) 250-1774

EXHIBIT A 081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-**  
**WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

**Parcel: 14**

BEING a 3.555 acre tract of land in the E.L. Boyd Survey, Abstract No. 48, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "Second Tract 128 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a found broken concrete monument on the northeast right-of-way line of State Highway No. 205 (100 feet wide at this point);

THENCE North 45 degrees 33 minutes 19 seconds West, along said northeast right-of-way line, a distance of 535.90 feet to a found broken concrete monument for the southwest end of a 10-foot offset in said northeast right-of-way line;

THENCE North 44 degrees 26 minutes 41 seconds East, along said 10-foot offset, a distance of 10.00 feet to a found broken concrete monument for the northeast end of said offset;

THENCE North 45 degrees 33 minutes 19 seconds West, along said northeast right-of-way line (120 feet wide at this point), a distance of 1,186.12 feet to the intersection of said northeast right-of-way line with the common line between the northwest line of said "Second Tract 128 Acres" tract and the southeast line of a tract of land described as "159 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE North 43 degrees 41 minutes 50 seconds East, departing said northeast right-of-way line and along said common line, a distance of 1,106.47 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE North 43 degrees 41 minutes 50 seconds East, continuing along said common line, a distance of 223.34 feet to a found broken concrete monument for the intersection of said common line with the southeast line of a City of Dallas Water Line Right-of-Way (130 feet wide) as recorded in Volume 435, Page 330, D.R.K.C.T.;

THENCE North 79 degrees 15 minutes 58 seconds East, departing said common line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,054.02 feet to a 1/2-inch set iron rod with cap for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the northeast line of said "Second Tract 128 Acres" and the southwest line of a tract of land described as "First Tract 353 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T.;

THENCE South 46 degrees 18 minutes 10 seconds East, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 159.82 feet to a 1/2-inch set iron rod with cap for corner; **T.D.K.**

REVIEWED BY *D. H. G. C. G. L.*  
11-19-01

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

Parcel: 14

THENCE South 79 degrees 15 minutes 58 seconds West, departing said common line and crossing said "Second Tract 128 Acres" along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,146.17 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 79 degrees 17 minutes 39 seconds West, continuing across said "Second Tract 128 Acres" along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 182.48 feet to the POINT OF BEGINNING AND CONTAINING 154,874 square feet or 3.555 acres of land, more or less. **T.D.K.**

All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore Date: 9/27/06

Surveyor's Name: Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



REVIEWED BY Dr. H. G. G. G.  
11-19-06

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

Parcel: 14

THENCE South 79 degrees 15 minutes 58 seconds West, departing said common line and crossing said "Second Tract 128 Acres" along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,146.17 feet to a 1/2-inch set iron rod with cap for an angle point;

THENCE South 79 degrees 17 minutes 39 seconds West, continuing across said "Second Tract 128 Acres" along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 182.48 feet to the POINT OF BEGINNING AND CONTAINING 154,874 square feet or 3.555 acres of land, more or less. **T.D.M.**

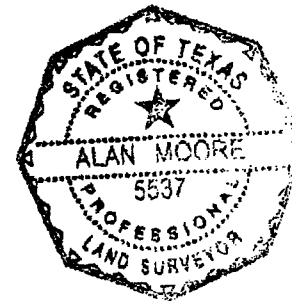
All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project.

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: Alan Moore Date: 9/27/06

Surveyor's Name: Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



REVIEWED BY Ed. J. Gaudin  
11-19-06

081245

REVIEWED BY *For Approval*  
11-19-08

EL-BOYD SURVEY  
ABSTRACT NO. 48

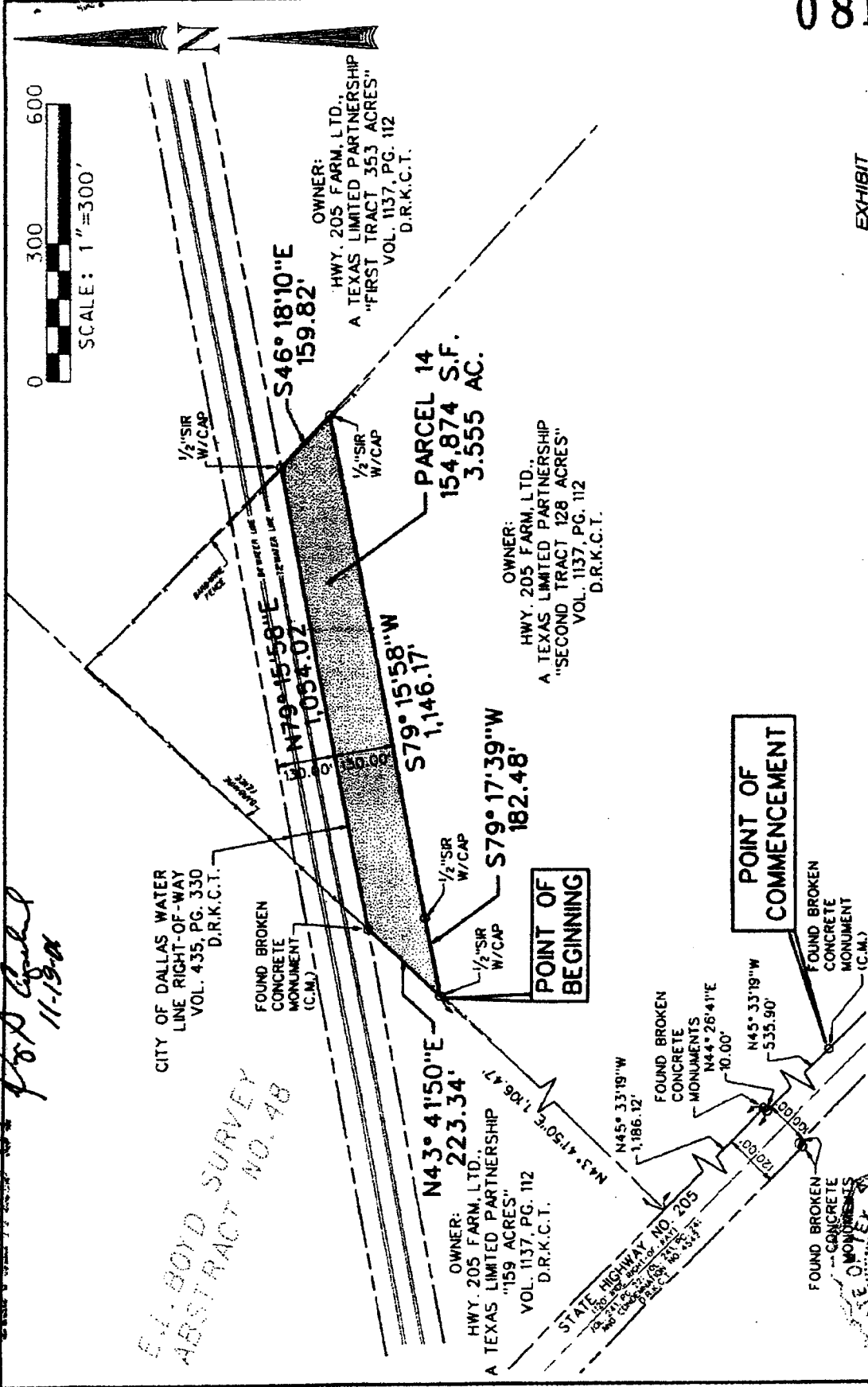


EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE  
EL-BOYD SURVEY, ABSTRACT NO. 48  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY  
DAL-TECH ENGINEERING, INC., 17201 DALLAS HWY., SUITE 300  
DALLAS, TEXAS 75244, TEL. (972) 250-9727, FAX (972) 250-4774  
SCALE: 1"=300' SHEET 3 OF 3

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83 TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NGS CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN COBBS APP., DALLAS COBBS APP., KAUFMAN COBBS APP., TYLER COBBS APP., AND PARIS COBBS APP. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

LEGEND:

|        |   |
|--------|---|
| S.F.   | SQUARE FEET                               |
| C.M.   | CONTROL MONUMENT                          |
| O.F.P. | FOUND IRON ROD                            |
| O.F.P. | FOUND IRON PIPE                           |
| O-2"SR | 1/2" SET IRON ROD                         |
| W/CAP  | WITH A RED PLASTIC CAP STAMPED "DAL-TECH" |
| SX     | SET "X" CUT IN CONCRETE                   |
| FPK    | FOUND PK, NAIL                            |
| SPK    | SET PK, NAIL                              |

POINT OF  
COMMENCEMENT

POINT OF  
BEGINNING

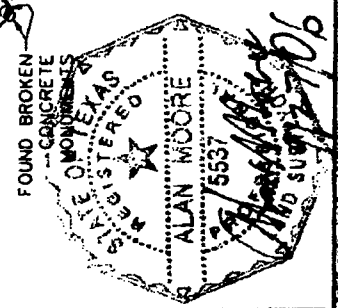


EXHIBIT A  
081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**  
**Parcel: 15**

BEING a 4.430 acre tract of land in the E.L. Boyd Survey, Abstract No. 48, and being located in Kaufman County, Texas, and being a portion of a tract of land described as "159 Acres" in Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112 of the Deed Records of Kaufman County, Texas (D.R.K.C.T.), and being more particularly described as follows:

COMMENCING at a found broken concrete monument on the northeast right-of-way line of State Highway No. 205 (100 feet wide at this point);

THENCE North 45 degrees 33 minutes 19 seconds West, along said northeast right-of-way line, a distance of 535.90 feet to a found broken concrete monument for the southwest end of a 10-foot offset in said northeast right-of-way line;

THENCE North 44 degrees 26 minutes 41 seconds East, along said 10-foot offset, a distance of 10.00 feet to a found broken concrete monument for the northeast end of said offset;

THENCE North 45 degrees 33 minutes 19 seconds West, along said northeast right-of-way line (120 feet wide at this point), passing at a distance of 1,186.12 feet the intersection of said northeast right-of-way line with the common line between the southeast line of said "159 Acres" tract and the northwest line of a tract of land described as "Second Tract 128 Acres" in said Special Warranty Deed to Hwy. 205 Farm, Ltd., a Texas Limited Partnership, dated May 31, 1994, as recorded in Volume 1137, Page 112, D.R.K.C.T., and continuing along said northeast right-of-way line for a total distance of 1,970.92 feet to a 1/2-inch set iron rod with a red plastic cap stamped "DAL-TECH" (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE North 45 degrees 33 minutes 19 seconds West, continuing along said northeast right-of-way line, a distance of 158.41 feet to a 1/2-inch set iron rod with cap for the intersection of said common line with the southeast line of a City of Dallas Water Line Right-of-Way (130 feet wide) as recorded in Volume 437, Page 85, D.R.K.C.T.;

THENCE North 79 degrees 17 minutes 39 seconds East, departing said northeast line and along the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,620.28 feet to a found broken concrete monument for the intersection of the southeast line of said City of Dallas Water Line Right-of-Way with the common line between the southeast line of said "159 Acres" tract and the northwest line of said "Second Tract 128 Acres";

THENCE South 43 degrees 41 minutes 50 seconds West, departing the southeast line of said City of Dallas Water Line Right-of-Way and along said common line, a distance of 223.34 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 79 degrees 17 minutes 39 seconds West, departing said common line and crossing said "159 Acres" tract along a line parallel with and 130 feet perpendicularly distant southeast from the southeast line of said City of Dallas Water Line Right-of-Way, a distance of 1,348.16 feet to the POINT OF BEGINNING AND CONTAINING 192,948 square feet or 4.430 acres of land, more or less. T.D.K.

REMOVED BY *Don L. Cappel*  
11-19-94

081245

**FIELD NOTES**  
**DESCRIBING A TRACT OF LAND TO BE ACQUIRED FOR THE RIGHT-OF-  
WAY FOR THE LAKE TAWAKONI RAW WATER TRANSMISSION MAIN**  
**KAUFMAN COUNTY, TEXAS**

Parcel: 15

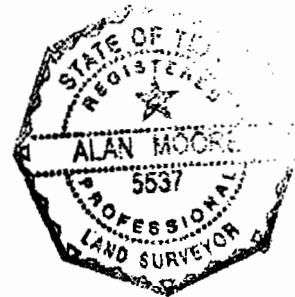
All bearings for this tract refer to the NAD-83 Texas State Plane Coordinate System, North Central Zone 4202, according to measurements made at NGS continuously operating reference stations Collin CORS ARP, Dallas CORS ARP, Kaufman CORS ARP, Tyler CORS ARP, and Paris CORS ARP. The Kaufman County scale factor of 1.000114077 as published by the Texas Department of Transportation, Dallas District was used for this project. **T.D.K.**

A plat of even survey date herewith accompanies this legal description.

Company Name: DAL-TECH Engineering, Inc.

By: *Alan Moore* Date: 9/27/06

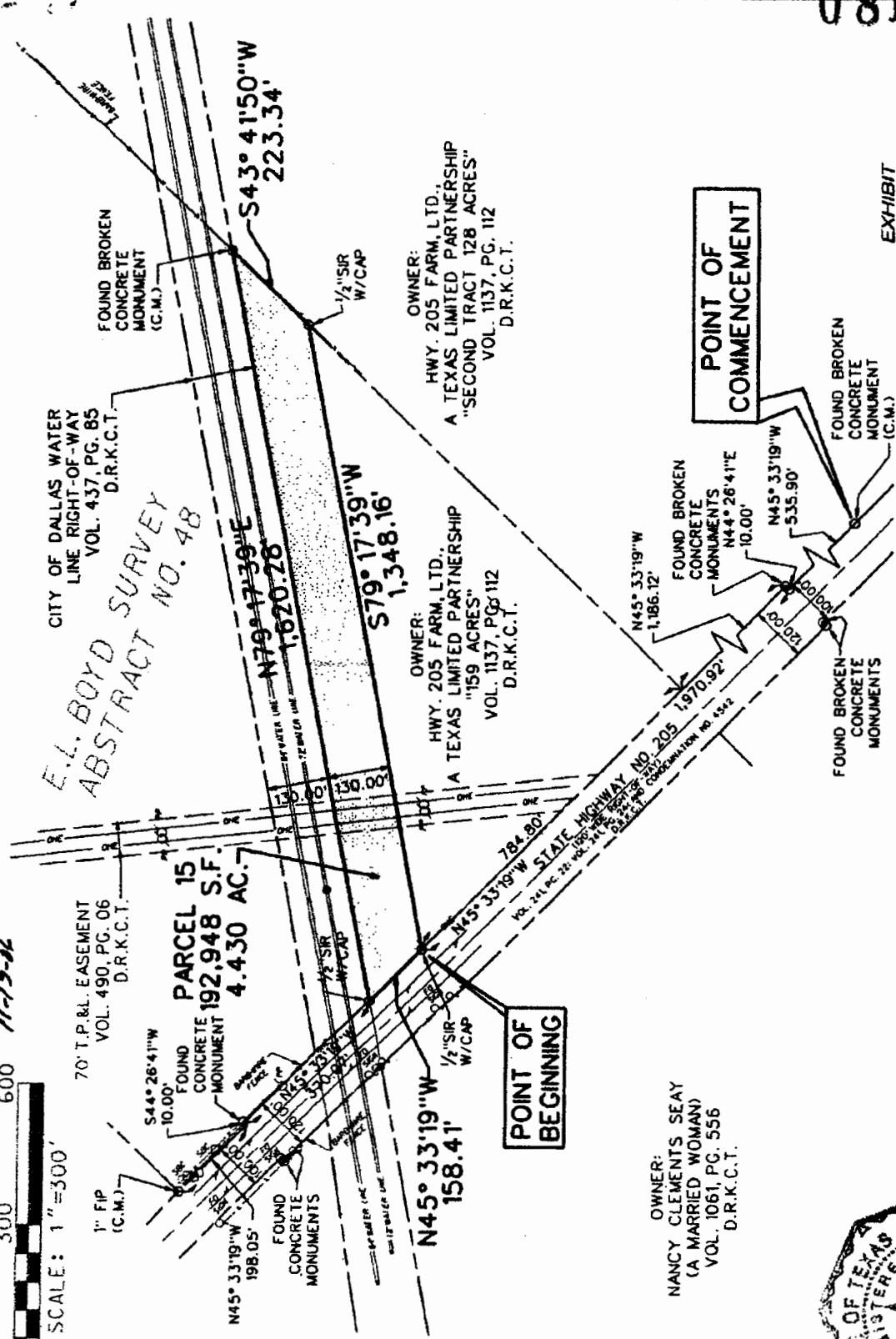
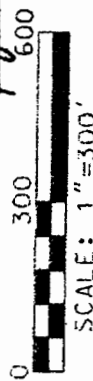
Surveyor's Name: Alan Moore  
Registered Professional Land Surveyor  
Texas No. 5537



REVIEWED BY *[Signature]*  
11-13-06

081245

DI 4/11/19-06

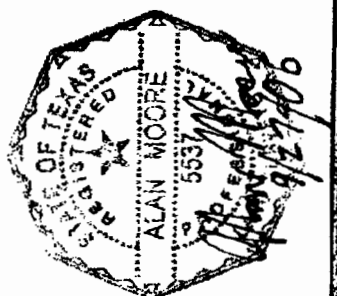


LEGEND:

|        |   |
|--------|---|
| S.F.   | SQUARE FEET                               |
| C.M.   | CONTROL MONUMENT                          |
| O.F.P. | FOUND IRON ROD                            |
| O.F.P. | FOUND IRON PIPE                           |
| O.F.P. | SET IRON ROD                              |
| O.F.P. | WITH A RED PLASTIC CAP STAMPED "DAL-TECH" |
| SX     | SET "X" CUT IN CONCRETE                   |
| FPK    | FOUND PK. NAIL                            |
| SPN    | SET PK. NAIL                              |

ALL BEARINGS FOR THIS TRACT REFER TO THE NAD-83 TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE 4202. ACCORDING TO MEASUREMENTS MADE AT NCS CONTINUOUSLY OPERATING REFERENCE STATIONS COLLIN CO. APP. DALLAS CO. APP. KAUFMAN CO. APP. TYLER CO. APP. AND PARIS CO. APP. THE KAUFMAN COUNTY SCALE FACTOR OF 1.000114077 AS PUBLISHED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, DALLAS DISTRICT WAS USED FOR THIS PROJECT.

EXHIBIT  
OF A  
RIGHT-OF-WAY ACQUISITION  
SITUATED IN THE  
EL BOYD SURVEY, ABSTRACT NO. 48  
KAUFMAN COUNTY, TEXAS  
FOR THE  
CITY OF DALLAS  
BY  
DAL-TECH ENGINEERING, INC. 1201 DALLAS PKWY, SUITE 300  
DALLAS, TEXAS 75244 TEL. 872-880-2727, FAX 872-880-1774  
DATE: 08/12/05  
SCALE: 1"=300'  
SHEET 3 OF 3



## **EXHIBIT B**

### **EASEMENT -- GRAZING AND AGRICULTURAL USE**

Grantor, for Grantor and Grantor's heirs, successors and assigns ("the holder of the easement") does hereby reserve an easement over, on and across the property described in Exhibit "A" for agricultural and/or grazing purposes in connection with Grantor's use of Grantor's adjoining or abutting property and in a manner as not to endanger or interfere with the safe, efficient and/or convenient use of and activity on the property described in Exhibit "A" by City.

In no event may the holder of the easement construct or install, or cause to be constructed or installed, in the easement any permanent improvements, roads, pavement, utilities, structures, buildings, cattle tanks and/or stock ponds. Any activity by the holder of the easement involving excavation, contouring, and/or grading beyond normal agricultural tillage and installation of fence posts is strictly prohibited. Any activity by the holder of the easement causing or likely to cause excessive erosion, as determined by City, is strictly prohibited. In no event and under no circumstances may the holder of the easement operate within the easement any vehicles, equipment or machinery exceeding 15,000 lbs in weight. The holder of the easement shall not grow any trees, shrubs, vines or other excessive undergrowth that would prevent or unreasonably impair aerial inspection of the property by City.

The holder of this easement may fence the boundaries of the easement (but no cross fencing) to control livestock and wildlife; provided, however, adequate gates, cattle guards and other means of access are provided and maintained by the holder of the easement to facilitate City's full and unlimited access to, from and across the easement at all times for any and all purposes.

This easement is nonexclusive, and City reserves for City and City's successors and assigns the right to convey to others easements that do not unreasonably impair or obstruct this easement. Notwithstanding any provision of this easement reservation to the contrary, City and City's successors and assigns shall in all respects and at all times have the superior and paramount right of use, access and control of the property described in Exhibit "A" and covered by this easement, without any liability for damages to planted, growing or mature crops and/or to the turf that may be growing thereon. City and City's successors and assigns will repair any boundary fences it may cut or damage by its activities and will endeavor to exercise due care to avoid damage to or the escape of livestock that may be pastured in the easement.

The holder of the easement agrees to indemnify, defend and hold City and City's successors in interest harmless from any loss, attorney's fees, court and other costs, expenses or claims attributable to any breach or default of any provision of this easement by the holder and/or any negligent act or omission by the holder with regard to this easement. In the event the holder of the easement shall place any unpermitted structure, improvement, use or material within the easement and fails to remove same immediately upon receipt of notice from City, City shall have the right, but not the obligation, to remove such structure, improvement, use and/or material, and the holder of the easement shall reimburse City for any and all costs connected with such action immediately upon demand.

This easement shall terminate if and when the holder of the easement no longer owns or uses adjoining or abutting property for agricultural and/or grazing purposes.

NO. 84262CC

CITY OF DALLAS

V.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY,  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

2013 APR 23 AM 10:54

RHONDA HUGHEY  
DISTRICT CLERK

BY  DEPUTY

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR WANT OF  
PROSECUTION**

On this day the Court considered Defendants Hwy 205 Farm, Ltd. and Maurice E. Moore,  
Jr.'s Motion to Dismiss for Want of Prosecution. *w/o Prejudice.*

The Court, after considering the pleadings, evidence and argument from all counsel, finds  
the Motion should be GRANTED. *w/o Prejudice.*

It is, therefore, ORDERED that Defendants' Motion to Dismiss for Want of Prosecution is  
GRANTED. *w/o Prejudice.*

SIGNED: April 17, 2013.

  
JUDGE PRESIDING

CITY OF DALLAS,

VS.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

NO. 84262CC

§  
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§  
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§

IN COUNTY COURT


AT LAW

KAUFMAN COUNTY, TEXAS

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

2013 MAY -9 PM 1:58

RMD DA HUSHEY  
DISTRICT CLERK

BY  DEPUTY

### **PLAINTIFF'S VERIFIED MOTION TO REINSTATE**

Plaintiff, the City of Dallas, asks the Court to reinstate this case on its docket, under the authority of Texas Rule of Civil Procedure 165a.

### **INTRODUCTION**

Plaintiff is the City of Dallas. The City filed a Statement of Condemnation to acquire real property from Defendants, Highway 205 Farms, Ltd., Maurice E. Moore, Jr., Dow Chemical Company, Kaufman County, Terrell Independent School District, and Trinity Valley Community College District.

### **FACTS**

On April 17, 2013, the Court dismissed the case for failure to prosecute the suit diligently.

The City files this motion while the court has plenary power, within thirty (30) days of dismissal. The Court, therefore, has jurisdiction to reinstate the case. Tex. R. Civ. P. 165a(3).

The proceeding before the Court was filed by the City in the exercise of its power of Eminent Domain under the procedures required by Chapter 21 of the Texas Property Code. After the filing of a condemnation petition the judge of a court in which a condemnation petition is filed is required to appoint three disinterested persons who reside in the county as special

commissioners. Tex. Prop. Code § 21.014(a). The purpose of appointing special commissioners is to create the administrative proceeding. After taking an oath, the special commissioners schedule a hearing. Tex. Prop. Code § 21.015(a). On September 7, 2011, the commissioners were appointed. On October 26, 2011, a commissioner was replaced. On November 18, 2011, the commissioners took their oaths.

In the beginning of 2012, the senior attorney handling eminent domain cases for the City announced his retirement. The City initiated steps to promote an internal attorney and hire an additional attorney to handle all eminent domain cases related to the City's Department of Water Utilities. The proceeding before the Court is a Water Utilities case. This case was always ready to proceed to the commissioners hearing, however, the interim attorney handling all eminent domain cases pushed as many cases forward as possible. Around August 2012, the City interviewed potential new hires for the Water Utilities eminent domain position. On September 12, 2012, the undersigned started working in the position.

On September 25, 2012, a Notice of Appearance was filed for all Water Utilities cases, including this case. On October 17, 2012, the City contacted the special commissioners to set multiple hearings for all filed cases. The City attempted to set a hearing for this case on November 14, 2012 and again in December, 2012, but was unable to secure a date where all commissioners and the City's appraiser could attend. On November 13, 2012, the City hired a new appraiser, with an open schedule, to conduct an updated appraisal for this case in an attempt to get a hearing set as soon as possible. Beginning in January 2013, the City diligently worked to get all hearings set for all filed Water Utilities cases. From the date of serving Defendants a copy of the petition to the date Defendants filed a motion to dismiss under Rule 165a, the City has not heard anything from Defendants. Defendants also did not contact the commissioners or the

Court.

Instead of requesting a hearing before the commissioners, on March 7, 2013, Defendants filed a motion to dismiss under Rule 165a. They asserted that the Court should dismiss because the City was solely responsible for the delay and the case was not disposed of within eighteen (18) months as provided in Texas Rule of Judicial Administration 6. As previously stated, the City was diligently trying to set a hearing for this case when they received a copy of the motion to dismiss. At the City's request, on March 15, 2013, the Commissioners set a hearing for May 8, 2013. Rather, than allowing the commissioners hearing to proceed, the Court dismissed this Statement of Condemnation for want of prosecution.

### **ARGUMENT AND AUTHORITIES**

#### **I. A court is without jurisdiction to dismiss a Statement of Condemnation during the administrative proceeding.**

An eminent domain proceeding consists of two (2) distinct parts; the first is of a generally administrative nature, which is governed by chapter 21 of the Texas Property Code. The second is judicial in nature and is tried "in the same manner as other civil causes." *See* Tex. Prop. Code § 21.018(b). An eminent domain proceeding is an administrative proceeding until a party files an objection (appeal) to the award of the special commissioners. *See John v. State*, 826 S.W.2d 138, 141 (Tex. 1992); *State v. Giles*, 368 S.W.2d 943, 947 (Tex. 1963); *Denton County v. Brammer*, 361 S.W.2d 198, 200 (Tex. 1962); *Pearson v. State*, 315 S.W.2d 935, 937 (Tex. 1958); *Gulf Energy Pipeline Co. v. Garcia*, 884 S.W.2d 821, 823 (Tex. App.—San Antonio 1994, no writ); *Patrick Media Grp., Inc. v. Dallas Area Rapid Transit*, 879 S.W.2d 375, 376 (Tex. App.—Eastland 1994, writ denied); *City of Dallas v. Martin*, 711 S.W.2d 285, 287 (Tex. App.—Dallas 1986, writ ref'd n.r.e.). Under Texas law, such an administrative proceeding is not a judicial case. *See Rose v. State*, 497 S.W.2d 444, 445-46 (Tex. 1973); *Lower Nueces River*

*Water Supply Dist. v. Cartwright*, 328 S.W.2d 752 (Tex. 1959); *Patrick Media Grp.*, 879 S.W.2d at 376. The appointing of the special commissioners by the assigned judge creates the administrative proceeding. The judge acts purely as an administrative agent.

During the time the proceeding is administrative in nature, the Court cannot act until the commissioners have determined the compensation due the property owners. *See Giles*, 368 S.W.2d at 947; *State v. Nelson*, 334 S.W.2d 788, 790-91 (Tex. 1960); *Gulf Energy Pipeline*, 884 S.W.2d at 823; *Peak Pipeline Corp. v. Norton*, 629 S.W.2d 185, 186 (Tex. App.—Tyler 1982, no writ). The judge may not interfere with the proceedings before the commissioners file their decision from the special commissioner's hearing, as the court has no authority in the administrative proceeding. *Peak Pipeline*, 629 S.W.2d at 186. As a Houston court of appeals explains:

The power of the county court as a judicial tribunal in eminent domain proceedings is limited to that which is conferred upon it by statute. Accordingly, in the absence of timely filed objections, the county court *has no jurisdiction to do anything more* than accept and adopt the award of the special commissioners as its judgment. This follows by operation of law and the ministerial act of the county judge. As distinguished from the county judge in his administrative capacity, there is nothing which the county court can hear and determine by the exercise of its judicial powers in a special commissioners proceeding.

*Blasingame v. Krueger*, 800 S.W.2d 391, 394 (Tex. App.—Houston [14th Dist.] 1990, orig. proceeding [writ denied]) (emphasis added) (citations omitted).

Neither does the Court have jurisdiction to set deadlines within which a special commissioners hearing must be held. In *Gulf Energy Pipeline Co.*, the court considered the propriety of the district court resetting the special commissioners hearing to a later date and granting to the landowners a sixty-day continuance of the special commissioners hearing. 884 S.W.2d 821. The court concluded that such orders were void and mandamus was proper. *Id.* at 821. In arriving at this conclusion, the court explained:

An eminent domain proceeding is not within the general jurisdiction of the court; any power to act is special and depends upon the eminent domain statute. . . . The statute expressly gives the court administrative jurisdiction to appoint the commissioners, receive their opinion of value, and render judgment based upon the commissioners' award. . . . The parties may invoke the trial court's jurisdiction by timely objecting to the commissioners' findings. . . . The proceeding then becomes a civil case, and the district court has jurisdiction to determine all issues in the suit. . . . Without a timely filed objection, however, an eminent domain proceeding never becomes a civil case. *Id.* at 822-23.

Regarding the orders resetting the commissioners hearing and granting continuances, the *Garcia* court held that these orders were outside the scope of the trial court's jurisdiction during the administrative proceeding. The trial court had no authority to grant the continuance or set the hearing dates, and entering these orders was a clear abuse of discretion. *Id.* at 823.

Likewise, the Court does not have the jurisdiction to dismiss the administrative proceeding because the proceeding was not yet a civil case. The Court's jurisdiction to control its docket begins when the administrative proceeding is complete. Accordingly, the Court must reinstate the administrative proceeding.

## **II. Rule 165a does not apply to the administrative proceeding.**

Defendants claimed the Court should dismiss based on Rule 165a. Defendants argued that the City failed to set a hearing within eighteen (18) months under a rule for a "judicial" proceeding. For a case dismissed under that rule, the Court should grant a motion to reinstate if (1) the suit was dismissed before the expiration of appropriate time standards, (2) the plaintiff has a reasonable excuse for not prosecuting the case within the time limits, or (3) there is good cause to maintain the case on the docket. *See* Tex. R. Civ. P. 165a(1), (2); *Polk v. Sw. Crossing Homewoners Ass'n*, 165 S.W.3d 89, 96 (Tex. App.—Houston [14th Dist.] 2005, pet. denied); *Johnson-Snodgrass v. KTAO, Inc.*, 75 S.W.3d 84, 87 (Tex. App.—Fort Worth 2002, pet. dismissed).

As to the first two requirements, because the proceeding is administrative, *John*, 826 S.W.2d at 141, not a judicial proceeding, no deadlines are in effect for the prosecution of the administrative proceeding. Rule 6(a) of the Rules of Judicial Administration provides that the civil jury trial shall be within 18 months of the appearance date. A Statement of Condemnation does not require an appearance and the defendant is not required to appear at the commissioners hearing. In fact, the first appearance Defendant made in this cause was on March 7, 2013 when Defendants filed their motion to dismiss. Certainly, there has been no lapse of 18 months from Defendants' appearance. The very nature of the time requirements indicates that they were not intended to affect the administrative procedure. The time standards begin with the objections to the award when the judicial proceedings begin.

Because Rule 165a and Rule 6 do not apply at this time in the proceeding, no reasonable excuse is needed for not prosecuting the condemnation to trial. Nevertheless, the change in personnel at the City and the difficulty in arranging a time that commissioners and witnesses could be present at the hearing are reasonable excuses for the delay in setting the commissioners hearing.

Moreover, the City is ready to proceed with a special commissioners hearing. The City still wants and needs to acquire the property made the subject of this proceeding to improve the Tawakoni Pipeline. As a result, the City shares the Court's desire to expedite and hopefully resolve this proceeding in the near future. The City had a special commissioners hearing set for May 8, 2013.

If the Court does not reinstate the proceeding, the City will be required to refile a Statement of Condemnation to acquire the property, with considerable duplication of effort and costs. There is good cause to reinstate the proceeding. The defendants complained about delay but the failure to reinstate will only cause more delay in the acquisition of the property. Accordingly, because

Rule 165a does not apply and there is good cause to reinstate, the Court should reinstate the proceeding.

**III. The City has diligently prosecuted this cause.**

After a case is dismissed for failure to diligently prosecute, if the Plaintiff files a motion to reinstate showing that it was in fact reasonably diligent in prosecuting the suit, the Court should grant the motion and reinstate the case. *See MacGregor v. Rich*, 941 S.W.2d 74, 76 (Tex. 1997). A motion to reinstate provides a plaintiff with an opportunity to explain its diligence and to request that the Court reconsider the order of dismissal. *Ellmossallamy v. Huntsman*, 830 S.W.2d 299, 302 (Tex. App.—Houston [14th Dist.] 1992, no writ).

The Court should reinstate this case because the Plaintiff has diligently prosecuted the case. The City filed a petition in condemnation on August 30, 2011. The judge appointed three special commissioners on September 7, 2011. The judge replaced one special commissioner on October 26, 2011. The commissioners took the oath on November 18, 2011.

The City diligently pursued this case and a special commissioners hearing was set for May 8, 2013. The setting was first delayed because of an attorney retirement and change of personnel. After the change in personnel, the City had difficulty in arranging an earlier time for the hearing where commissioners and witnesses could be present. Defendants made no request for a hearing. Defendants did not try to contact the commissioners, the Court, or the City until filing a motion to dismiss.

Because the City has acted with diligence, it requests that the Court reconsider the order of dismissal and reinstate the condemnation proceeding.

**IV. The City did not delay the progress of the administrative proceeding because the City is not required to schedule the hearing.**

Under state law, the commissioners, *not the City of Dallas*, schedule the hearing. *See Tex.*

Prop. Code § 21.015(a) (“[T]he special commissioners . . . shall promptly schedule a hearing for the parties . . .”). The City did get the hearing set for May 8, 2013, with the special commissioners. Nonetheless, the City should not be punished because the special commissioners did not schedule the hearing sooner.

**V. The City requests a hearing on its Motion to Reinstate.**

The City requests the trial Court conduct an oral hearing. Rule 165a requires an oral hearing on any timely filed motion to reinstate. Tex. R. Civ. P. 165a(3); *Gulf Coast Inv. Corp. v. NASA I Bus. Ctr.*, 754 S.W.2d 152, 153 (Tex. 1988). The Court must set a hearing on the motion to reinstate as soon as practicable. Tex. R. Civ. P. 165a(3); *Thordson v. City of Houston*, 815 S.W.2d 550 (Tex. 1991).

**CONCLUSION AND PRAYER**

The dismissal of the administrative condemnation proceeding for want of prosecution is erroneous. The 18 month standard in Rule 6 of the Rules of Judicial Administration does not apply. There were no grounds for dismissal of the proceeding for want of prosecution.

For these reasons, the City asks the Court to set this motion for hearing and, after the hearing, grant the motion to reinstate this case on the docket.

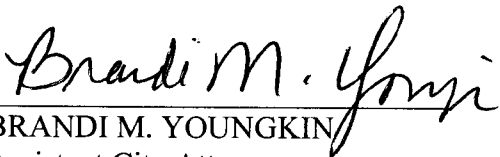
Respectfully submitted,

OFFICE OF THE CITY ATTORNEY

CITY OF DALLAS, TEXAS

Thomas P. Perkins

City Attorney

  
BRANDI M. YOUNGKIN

Assistant City Attorney

State Bar of Texas No. 24053740

BARBARA ROSENBERG

Assistant City Attorney

State Bar of Texas No. 17267700

Dallas City Hall

1500 Marilla Street, 7DN

Dallas, Texas 75201

Telephone - (214) 670-3519

Telecopier - (214) 670-0622

ATTORNEYS FOR PLAINTIFF

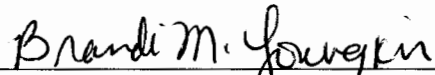
CITY OF DALLAS

**VERIFICATION**

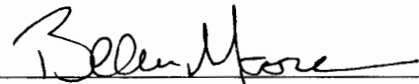
**STATE OF TEXAS §**  
**DALLAS COUNTY §**

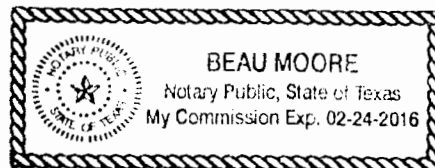
Before me, the undersigned notary, on this day personally appeared BRANDI M. YOUNGKIN, the affiant, a person whose identity is known to me. After I administered the oath to affiant, affiant testified:

"My name is BRANDI M. YOUNGKIN. I am capable of making this verification. I read the Plaintiff's Verified Motion to Reinstate. The facts stated in it are within my personal knowledge and are true and correct."

  
\_\_\_\_\_  
BRANDI M. YOUNGKIN

Sworn to and subscribed before me by BRANDI M. YOUNGKIN on May 9, 2013.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas



## CERTIFICATE OF SERVICE

I, Brandi M. Youngkin hereby certify that a true and correct copy of the above and foregoing *Motion to Reinstate* was served by certified mail, return receipt requested on May 9, 2013 to:

**Via CMRRR: 7007 0220 0000 5571 1412**

Ms. Hayley D. Ailshie  
Mr. Eddie Vassallo  
3710 Rawlins, Suite 1200  
Dallas, Texas 75219-6410

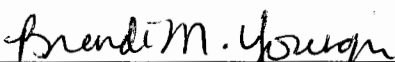
Attorneys for Defendants  
Highway 205 Farms, LTD.,  
and Maurice E. Moore, Jr.

**Via CMRRR 7007 0220 0000 5571 1405**

Dow Chemical Company  
c/o CT Corporation System  
350 N. St. Paul St., Suite 2900  
Dallas, TX 75201

**Via Hand Delivery**

Tonya Ratcliff, Tax Assessor/Collector  
Kaufman County Taxing Authorities  
100 N. Washington  
Kaufman, TX 75142

  
\_\_\_\_\_  
BRANDI M. YOUNGKIN  
Assistant City Attorney

ORIGINAL

NO. 84262CC

CITY OF DALLAS

V.

HIGHWAY 205 FARMS, LTD., MAURICE  
E. MOORE, JR., THE DOW CHEMICAL  
COMPANY, KAUFMAN COUNTY,  
TERRELL INDEPENDENT SCHOOL  
DISTRICT and TRINITY VALLEY  
COMMUNITY COLLEGE  
DISTRICT

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IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS  
2013 JUN 19 PM 12:47  
RHONDA HUGHLEY  
DISTRICT CLERK  
BY [Signature] DEPUTY

**DEFENDANTS' RESPONSE TO PLAINTIFF'S VERIFIED MOTION TO REINSTATE**

Defendants Hwy 205 Farm, Ltd. and Maurice E. Moore, Jr. file this Response to Plaintiff's Verified Motion to Reinstate. In support of this motion, Defendants show the Court the following:

**A. Plaintiff's Motion Should Be Denied**

1. On April 17, 2013, the Court granted Defendants' Motion to Dismiss for Want of Prosecution. Defendants request the Court to deny Plaintiff's Verified Motion to Reinstate as it fails to offer evidence that identifies valid reasons why the matter remained pending on the trial court's docket with almost no activity for 19 months.

2. Plaintiff City of Dallas ("City") is solely responsible for failure to diligently prosecute this proceeding to conclusion within the timeframe established by the Texas Supreme Court. Further, it is within this Court's inherent power to maintain control of its docket and to dismiss proceedings that have languished without activity to timely dispense with the proceeding. Consequently, dismissal of the proceeding for want of prosecution was proper.

**B. Background**

3. Defendants filed their Motion to Dismiss for Want of Prosecution under Texas Rule of Civil Procedure 165a(2) as the City failed to dispose of this case within the time

standards promulgated by the Supreme Court under its Administrative Rules. Further, Defendants' relied upon the Court's inherent authority to control its docket because the City failed to prosecute the above action with diligence.

4. A brief chronology of the litigation history shows:
  - a. August 3, 2011.....City filed its Statement in Condemnation
  - b. September 7, 2011 .....Special Commissioners were appointed
  - c. November 18, 2011 .....Special Commissioners took oaths
  - d. September 25, 2012 .....City filed a Notice of Appearance and Designation of Lead Counsel
  - e. April 17, 2013.....Order Granting Defendants' Motion to Dismiss for Want of Prosecution entered

### **C. Background**

5. Texas Rule of Judicial Administration 6 provides that civil jury cases should be disposed of within 18 months of the appearance date.<sup>1</sup> "Any case not disposed of within time standards promulgated by the Supreme Court under its administrative rules may be dismissed."<sup>2</sup>

6. The common law vests the trial court with the inherent power to dismiss independently of the Rules of Civil Procedure when a plaintiff fails to prosecute his or her case with due diligence.<sup>3</sup> In *Bevil v. Johnson*, the Supreme Court explained that "even without statutory authority, a court has the right to dismiss a suit for failure to prosecute it with due

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<sup>1</sup>*Maida v. Fire Ins. Exchange*, 990 S.W.2d 836, 841 (Tex. App. – Fort Worth 1999, no pet.) citing, Tex. R. Jud. Admin. 6 reprinted in Tex. Gov't Code Ann. tit. 2, subtit. F app. (West 2013) (other than family law cases, time standard governing civil jury cases encourages trial or final disposition within 18 months, 12 months for nonjury civil cases, from appearance date).

<sup>2</sup>*Nichols v. Sedalco Const. Services*, 228 S.W.3d 341, 342 (Tex. App. – Waco 2007, pet. denied), citing, Tex. R. Civ. P. 165a (2).

<sup>3</sup>*Manning v. N.*, 82 S.W.3d 706, 709 (Tex. App. – Amarillo 2002, no pet.), citing, *Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999).

diligence.”<sup>4</sup> The Supreme Court iterated and reiterated that fundamental power of a trial court in *Villarreal v. San Antonio Truck & Equip.* and *Veterans’ Land Bd. v. Williams*.<sup>5</sup>

7. Where a dismissal “order does not state the specific ground on which it was granted,” the appellant “must show that each independent ground alleged in the motion to dismiss is insufficient to support the order.”<sup>6</sup> In this instance, the City is required to show the court improperly dismissed the proceeding pursuant to both Rule 165a and the Court’s inherent power to dismiss based on the City’s failure to prosecute the matter with due diligence.

8. A dismissal under Rule 165a is proper when the City failed to comply with the time standards promulgated by the Texas Supreme Court.<sup>7</sup> Rule 6 of the Judicial Rules of Administration requires judges to ensure, so far as reasonably possible, that civil non-jury cases are brought to trial or final disposition within 12 months from appearance date, and that civil jury cases are brought to trial or final disposition within 18 months from appearance date.<sup>8</sup>

9. In reviewing a dismissal pursuant to the court’s inherent power, “the central issue is whether the plaintiffs exercised reasonable diligence.”<sup>9</sup> “In determining...whether a party has demonstrated a lack of diligence in prosecuting a claim, a trial court may consider the entire history of the case; including the length of time the case was on file, the extent of activity in the case, whether a trial setting was requested, and the existence of reasonable excuses for delay.”<sup>10</sup> “No single factor is dispositive....”<sup>11</sup>

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<sup>4</sup>*Bevil v. Johnson*, 157 Tex. 621, 307 S.W.2d 85, 87 (1957).

<sup>5</sup>*Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex.1999) and *Veterans’ Land Bd. v. Williams*, 543 S.W.2d 89, 90 (Tex.1976).

<sup>6</sup>*Harrison v. Tex. Dep’t of Crim. Justice*, 164 S.W.3d 871, 875 (Tex. App. – Corpus Christi 2005, no pet.), accord, *Morris v. Collins*, 916 S.W.2d 527, 530 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1995, no writ).

<sup>7</sup>*Polk v. Sw. Crossing Homeowners Ass’n*, 165 S.W.3d 89, 96 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2005, pet. denied).

<sup>8</sup>*Id.*, citing, Tex. R. Jud. Admin. 6.

<sup>9</sup>*Nichols v. Sedalco Const. Services*, 228 S.W.3d 341, 342 (Tex. App. – Waco 2007, pet. denied), citing, *MacGregor v. Rich*, 941 S.W.2d 75 (Tex. 1997, per curiam).

<sup>10</sup>*Id.*, citing, *Dueitt v. Arrowhead Lakes Prop. Owners, Inc.*, 180 S.W.3d 733, 739 (Tex. App. – Waco 2005, pet. denied).

<sup>11</sup>*Dueitt*, 180 S.W.3d at 739.

10. A motion to reinstate essentially provides a dismissed plaintiff the opportunity to explain a failure to prosecute with due diligence and ask the trial court to reconsider its decision to dismiss.<sup>12</sup>

#### **D. Eminent Domain Proceedings in Perpetuity**

11. The City suggests this Court lacks jurisdiction to dismiss a statement in condemnation during the administrative phase of a statutory eminent domain proceeding.<sup>13</sup> To fully embrace the City's theory, this Court has to assume that Rule 165a and Texas Rule of Judicial Administration 6 are rendered meaningless upon the filing of a statutory eminent domain proceeding. However, neither Rule 165a nor Texas Rule of Judicial Administration 6 provide for such a limitation. Further, there is no reported Texas opinion that has held Rule 165a and/or Texas Rule of Judicial Administration 6 do not apply to the administrative phase of a statutory eminent domain proceeding.

12. In addition to vitiating Rule 165a and Texas Rule of Judicial Administration 6, this Court, in following the City's logic, must also determine that the filing of a statutory eminent domain proceeding terminates the trial court's inherent common-law power to dismiss a statutory eminent domain proceeding independently of the Rules of Civil Procedure when a plaintiff fails to prosecute a case with due diligence. There is no reported Texas precedent that supports the City's position regarding the trial court's inherent power to control its docket.

13. The City's Motion to Reinstate relies upon Texas precedent which clearly and unequivocally states a trial court is not permitted to interfere with the administrative proceeding in statutory eminent domain proceedings but none of the cited precedent determined a condemning authority is granted a right, unfettered by judicial oversight, to maintain a

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<sup>12</sup>*Ellmossallamy v. Huntsman*, 830 S.W.2d 299, 302 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1992, no writ).

<sup>13</sup>See Plaintiff's Verified Motion to Reinstate at page 3.

condemnation on the court's docket in perpetuity while the proceeding remains in the administrative phase.

**E. The City Did Not Diligently Prosecute Its Claim**

14. In this proceeding, the trial court performed all of the administrative tasks, including, but not limited to, appointing the special commissioners necessary for the City to schedule a special commissioners' hearing. The Court's appointment of the special commissioners was complete on October 26, 2011 when this Court replaced one of the original commissioners. The only activity that occurred after the Court concluded its administrative actions was the filing of the oaths of the special commissioners on November 18, 2011.

15. The record in this proceeding establishes the City permitted this case to remain on the Court's docket without any activity from November 18, 2011 to September 25, 2012, when the City filed Notice of Appearance and Designation of Counsel in Charge. At the inception of this proceeding, on August 3, 2011, the City filed in the Kaufman County Deed Records its Notice of Lis Pendens asserting the existence of the pending claim against Defendants' property. The notice remains pending and continues to cloud Defendants' title. The cloud on title hampers Defendants' ability to use and enjoy its property free from interference by the City. The City has completely failed to provide substantive reasons for permitting the statutory eminent domain proceeding to remain pending without any effort to timely dispose of the proceeding.

16. The record in this proceeding establishes the matter remained without an attorney between November 18, 2011 and September 25, 2012. The fact this matter remained without an attorney is evidence of the City's disregard for the damage the pending proceeding had on Defendants' ability to use and enjoy its property. The City had an obligation to schedule the special commissioners' hearing and failed to do so. Further, the record establishes that no litigation activity occurred until Defendants' Motion to Dismiss for Want of Prosecution was

filed. Immediately after that filing, the City was able to schedule the special commissioners' hearing but the scheduled hearing would have occurred well after the timeframe established by the Texas Supreme Court for resolution of this proceeding.

17. The City requests this Court to reinstate its eminent domain proceeding by attempting to shift the blame for this matter languishing on the Court's docket for 18 months. Specifically, the City alleges the property owner is required to schedule the special commissioners' hearing. The property owner's obligation to schedule the special commissioners' hearing is easily defeated when considering how many condemnation actions would be dismissed because the property owner failed to schedule the commissioners' hearing in statutory eminent domain proceedings. It is hard to imagine a circumstance in which a property owner would readily assist in the acquisition of its property.

18. If this Court determines the property owner is not at fault for failing to schedule the special commissioners' hearing, the City alleges it is the court-appointed special commissioners who failed to schedule the commissioners' hearing. However, the City's Motion to Reinstate contradicts this assertion. For example, the City alleges that on October 17, 2012, it "contacted the special commissioners to set multiple hearings for all filed cases."<sup>14</sup> Further, the City alleges it "attempted to set a hearing for this case on November 14, 2012 and again in December 2012 but was unable to secure a date where all commissioners and the City's appraiser could attend."<sup>15</sup> Further, the City alleges that "beginning in January 2013, the City diligently worked to get all hearings set for all filed Water Utilities cases."<sup>16</sup> Finally, the City alleges that at its request, on March 15, 2013, the commissioners set a hearing for May 8, 2013." Clearly, the City's conduct, as identified in its Motion to Reinstate, is an admission of the party

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<sup>14</sup>See Plaintiff's Verified Motion to Reinstate at page 2.

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

charged with that obligation. Also on March 15, 2013, the City notified Defendants a new real estate appraiser had been retained to prepare an appraisal of the property to be acquired.

19. The City's final effort to schedule a special commissioners' hearing in the pending proceeding in response to Defendants' Motion to Dismiss for Want of Prosecution is insufficient activity to warrant retaining this case on the court's docket. The City has not tendered any evidence to establish good cause for permitting the proceeding to remain pending on the Court's docket without activity. A revival of interest in prosecuting the litigation after the filing of a motion to dismiss for want of prosecution is not enough to prevent this Court from dismissing the action. The Texas Supreme Court has held that "a motion to dismiss may in the court's discretion be sustained even though the negligent party purports to have revived its interest in the litigation."<sup>17</sup>

20. The City is not harmed by the dismissal of this proceeding. In fact, the only reason the City persists in seeking reinstatement is to avoid going back to City Council for reauthorization and a new vote, and it would have required a lot of processing.<sup>18</sup> The vague burden of seeking Council approval to exercise its eminent domain authority is far outweighed by the burden a property owner is required to bear during the pendency of a statutory eminent domain proceeding that languished without activity for almost 19 months.

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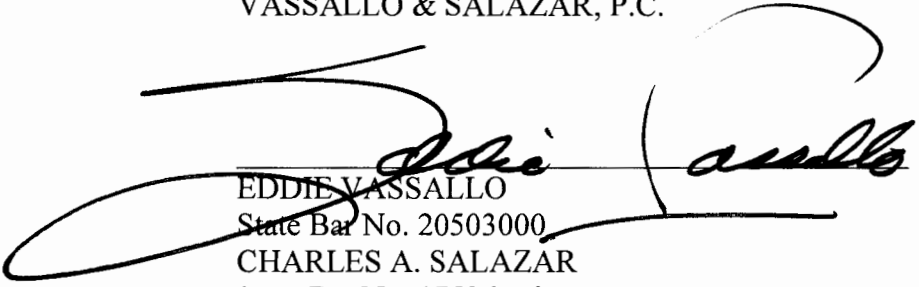
<sup>17</sup>*State v. Rotello*, 671 S.W.2d 507 (Tex. 1984); *Frenzel v. Browning-Ferris Industries, Inc.*, 780 S.W.2d 844 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1989, no writ) (on docket 41 months, no discovery); *Bard v. Frank B. Hall & Co.*, 767 S.W.2d 839 (Tex. App. – San Antonio 1989, writ denied); *Knight v. Trent*, 739 S.W.2d 116 (Tex. App. – San Antonio 1987, no writ) (disapproved of by, *Villarreal v. San Antonio Truck & Equipment*, 994 S.W.2d 628 (Tex. 1999)) (inaction for over two years); *Johnson v. J.W. Const. Co.*, 717 S.W.2d 464 (Tex. App. – Fort Worth 1986, no writ) (case on file for more than five years); *Moore v. Armour & Co., Inc.*, 748 S.W.2d 327 (Tex. App. – Amarillo 1988, no writ) (18 years); *Balla v. Northeast Lincoln Mercury*, 717 S.W.2d 183 (Tex. App. – Fort Worth 1986, no writ) (no activity for almost six years); *Levermann v. Cartall*, 715 S.W.2d 728 (Tex. App. – Texarkana 1986, writ ref'd n.r.e.) (17-year delay); *Sustala v. El-Romman*, 712 S.W.2d 164 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1985, writ ref'd n.r.e.) (case pending for seven years); *Beckham v. Travelers Ins. Co.*, 487 S.W.2d 772 (Tex. Civ. App. – Amarillo 1972, no writ) (over five years); *Uzzell v. Pruski*, 486 S.W.2d 197 (Tex. Civ. App. – Beaumont 1972, no writ) (four years and five months); *Kilpatrick v. Norby*, 302 S.W.2d 492 (Tex. Civ. App. – San Antonio 1957, no writ) (three years); *Coven v. Heatley*, 715 S.W.2d 739 (Tex. App. – Austin 1986, writ ref'd n.r.e.); *Texas Soc., Daughters of the American Revolution, Inc. v. Estate of Hubbard*, 768 S.W.2d 858 (Tex. App. – Texarkana 1989, no writ) (pursuit of settlement after 12 years does not preclude dismissal).

<sup>18</sup>See April 17, 2013 hearing transcript at pages 20-21.

For the above reasons, Defendants Hwy 205 Farm, Ltd and Maurice E. Moore, Jr. respectfully request the Court to deny the City's Verified Motion to Reinstate and grant Defendants all other relief to which they are entitled.

Respectfully submitted,

VASSALLO & SALAZAR, P.C.



EDDIE VASSALLO  
State Bar No. 20503000  
CHARLES A. SALAZAR  
State Bar No. 17526750  
HAYLEY D. AILSHIE  
State Bar No. 24069280  
3710 Rawlins, Suite 1200  
Dallas, Texas 75219-6410  
(214) 559-7200 telephone  
(214) 559-7209 telecopy

Attorneys for Defendants Hwy 205 Farm, Ltd. and  
Maurice E. Moore, Jr.

### CERTIFICATE OF SERVICE

This is to certify a copy of Defendants' Response to Plaintiff's Verified Motion to Reinstate was served on the following by certified mail, return receipt requested on June 19, 2013:

Brandi Youngkin  
Assistant City Attorney  
7BN Dallas City Hall  
1500 Marilla Street  
Dallas, Texas 75201



CHARLES A. SALAZAR

NO. 84262CC

CITY OF DALLAS

V.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY,  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

2013 JUN 21 AM 9:39

RHONDA HUGHEY  
DISTRICT CLERK

BY  DEPUTY

### ORDER DENYING PLAINTIFF'S MOTION TO REINSTATE

On June 19, 2013 the Court considered Plaintiff City of Dallas' Verified Motion to Reinstate. Plaintiff City of Dallas appeared through its attorney of record. Defendants Hwy 205 Farm, Ltd. and Maurice E. Moore, Jr. appeared through their attorneys of record.

The Court, after considering the pleadings, evidence and argument of counsel, finds Plaintiff City of Dallas' Verified Motion to Reinstate should be in all things DENIED.

It is, therefore, ORDERED that Plaintiff City of Dallas' Verified Motion to Reinstate is DENIED without prejudice to re-filing same.

SIGNED: June 21, 2013.

  
JUDGE PRESIDING

NO. 84262CC

CITY OF DALLAS,

V.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

**CITY OF DALLAS'S NOTICE OF ACCELERATED APPEAL**

TO THE HONORABLE COURT:

The City of Dallas gives notice of its intent to appeal from the trial court's order of April 17, 2013, granting the Defendants' Motion to Dismiss this action and the trial court's June 21, 2013, denial of the City's Verified Motion to Reinstate in the above-styled and numbered cause. This appeal is taken to the Fifth Court of Appeals.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY  
Thomas P. Perkins  
City Attorney

*Barbara Rosenberg*

Brandi M. Youngkin  
Assistant City Attorney  
State Bar of Texas No. 24053746  
Barbara Rosenberg  
Assistant City Attorney  
State Bar of Texas No. 17262700  
Dallas City Hall  
1500 Marilla Street, 7BN  
Dallas, Texas 75201  
Telephone - (214) 670-3519  
Telecopier - (214) 670-0622  
ATTORNEYS OF THE CITY OF DALLAS

BY  
DEPUTY

RECORDED  
INDEXED  
CLERK

2013 JUL 12 PM 1:07

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

## CERTIFICATE OF SERVICE

I further certify that on July 12, 2013, a copy of the foregoing document was served by certified mail, return receipt requested, upon:

CMRRR# 7006 2150 0005 3399 7229  
Hayley D. Ailshie  
Charles A. Salazar  
Eddie Vassallo  
3710 Rawlins, Suite 1200  
Dallas, Texas 75219-6410

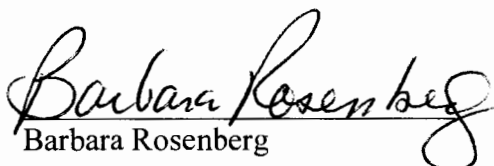
Attorneys for Defendants  
Highway 205 Farms, LTD.,  
and Maurice E. Moore, Jr.

CMRRR# 7007 0220 0000 5573 6514  
Dow Chemical Company  
c/o CT Corporation System  
350 N. St. Paul St., Suite 2900  
Dallas, TX 75201

CMRRR# 7007 0220 0000 5573 6491  
Kaufman County  
c/o County Judge Bruce Wood  
100 W. Mulberry  
Kaufman, TX 75142

CMRRR# 7007 0220 0000 5573 6507  
Terrell Independent School District  
c/o Micheal French, Superintendent  
700 N. Catherine  
Terrell, TX 75160

CMRRR# 7006 2150 0005 3399 7236  
Trinity Valley Community College District  
Dr. Glendon Forgey, President  
100 Cardinal Dr.  
Athens, TX 75751

  
Barbara Rosenberg

NO. 84262CC

|                              |   |                       |
|------------------------------|---|-----------------------|
| CITY OF DALLAS,              | § | IN COUNTY COURT       |
|                              | § |                       |
| VS.                          | § |                       |
|                              | § |                       |
| HIGHWAY 205 FARMS, LTD.,     | § |                       |
| MAURICE E. MOORE, JR., THE   | § | AT LAW                |
| DOW CHEMICAL COMPANY         | § |                       |
| KAUFMAN COUNTY, TERRELL      | § |                       |
| INDEPENDENT SCHOOL DISTRICT, | § |                       |
| and TRINITY VALLEY COMMUNITY | § |                       |
| COLLEGE DISTRICT             | § | KAUFMAN COUNTY, TEXAS |

**RESPONDENTS' REQUEST TO  
PREPARE THE REPORTER'S RECORD**

TO: Scott Smith  
Court Reporter for the County Court at Law, Kaufman County, Texas  
100 W. Mulberry  
Kaufman, Texas 75142-75202  
(972) 932-4331

FROM: Barbara Rosenberg  
Attorney for Defendant

COPY: Clerk, District Clerk of Kaufman County

RE: City of Dallas' request for preparation of the reporter's record for No. 84262CC; *City of Dallas v. Highway 205 Farms, Ltd.*

City of Dallas ("the City") is taking an appeal of the order dismissing for want of prosecution this cause and the denial of the City's verified motion to reinstate to the Fifth District Court of Appeals. The hearing on the on the dismissal was held on April 17, 2013. The Court heard and denied the motion to reinstate on June 21, 2013. Along with this request, the City is making arrangements to pay the court reporter's fee.

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS  
2013 JUL 12 PM 1:07  
BY RHONDA HUGHEY  
DISTRICT CLERK  
DEPUTY

Please prepare, file, and certify an original of the reporter's record containing all the arguments, all discussion during these hearings between the judge and the attorneys, all bench conferences, and all exhibits.

The notice of appeal filed in this case was filed on July 12, 2013. Please advise when you have filed the reporter's record with the court of appeals.

Respectfully submitted,

THOMAS P. PERKINS, JR.  
Dallas City Attorney



Brandi M. Youngkin  
Assistant City Attorney  
State Bar of Texas No. 24053740  
Barbara Rosenberg  
Assistant City Attorney  
State Bar of Texas No. 17267700  
Dallas City Hall  
1500 Marilla Street, 7BN  
Dallas, Texas 75201  
Telephone - (214) 670-3519  
Telecopier - (214) 670-0622

ATTORNEYS OF THE CITY OF DALLAS

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CMRRR# 7006 2150 0005 3399 7229  
Hayley D. Ailshie  
Charles A. Salazar  
Eddie Vassallo  
3710 Rawlins, Suite 1200  
Dallas, Texas 75219-6410

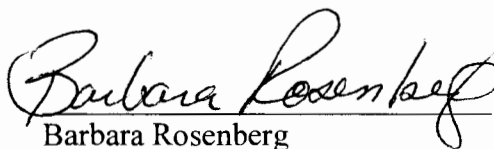
Attorneys for Defendants  
Highway 205 Farms, LTD.,  
and Maurice E. Moore, Jr.

CMRRR# 7007 0220 0000 5573 6514  
Dow Chemical Company  
c/o CT Corporation System  
350 N. St. Paul St., Suite 2900  
Dallas, TX 75201

CMRRR# 7007 0220 0000 5573 6491  
Kaufman County  
c/o County Judge Bruce Wood  
100 W. Mulberry  
Kaufman, TX 75142

CMRRR# 7007 0220 0000 5573 6507  
Terrell Independent School District  
c/o Micheal French, Superintendent  
700 N. Catherine  
Terrell, TX 75160

CMRRR# 7006 2150 0005 3399 7236  
Trinity Valley Community College District  
Dr. Glendon Forgey, President  
100 Cardinal Dr.  
Athens, TX 75751

  
Barbara Rosenberg

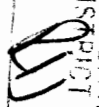
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| CITY OF DALLAS,              | § | IN COUNTY COURT       |
|                              | § |                       |
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| MAURICE E. MOORE, JR., THE   | § | AT LAW                |
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| KAUFMAN COUNTY, TERRELL      | § |                       |
| INDEPENDENT SCHOOL DISTRICT, | § |                       |
| and TRINITY VALLEY COMMUNITY | § |                       |
| COLLEGE DISTRICT             | § | KAUFMAN COUNTY, TEXAS |

**DEFENDANT'S REQUEST TO PREPARE CLERK'S RECORD**

TO THE HONORABLE DISTRICT CLERK:

Pursuant to Rule Texas Rule of Appellate Procedure 34.5(b), Defendant requests that the following documents be included in the clerk's record, in addition to the matters required by rule 34.5(a):

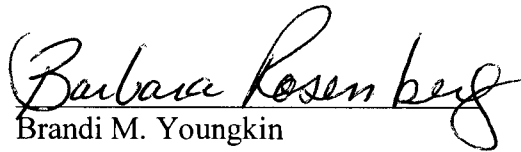
1. City's Petition in Condemnation filed August 30, 2011;
2. Oath of Special Commissioners filed November 18, 2011;
3. Notice of Appearance filed September, 26, 2012;
4. Motion to Dismiss for Want of Prosecution filed Marched 6, 2013.
5. Plaintiff's Response to Motion to Dismiss filed April 5, 2013.
6. Notice of Special Commissioners hearing filed March 27, 2013;
7. Reply to Response to Motion to Dismiss filed April 15, 2013.
8. City's First Amended Petition filed April 17, 2013
9. Order granting dismissal for want of prosecution signed on April 17, 2013;
10. Plaintiff's Verified Motion to Reinstate filed May 9, 2011.
11. Response to Motion to Reinstate filed June 19, 2011.

FILED FOR RECORD  
 KAUFMAN COUNTY  
 TEXAS  
 2013 JUL 12 PM 1:08  
 RHONDA HOOVER  
 DISTRICT CLERK  
 BY  DEPUTY

12. Order denying reinstatement signed on June 21, 2013.
13. The Court's docket sheet.
14. Defendant's Notice Appeal, filed on July 12, 2013;
15. Defendant's letter request for preparation of the reporter's record, filed on July 12, 2013.
16. This request to prepare clerk's record; and
17. The bill of costs for preparation of the record.

Respectfully submitted,

THOMAS P. PERKINS, JR.  
Dallas City Attorney

A handwritten signature in cursive script that reads "Barbara Rosenberg". The signature is written in black ink and is positioned above the printed name and title of the signatory.

Brandi M. Youngkin  
Assistant City Attorney  
State Bar of Texas No. 24053740  
Barbara Rosenberg  
Assistant City Attorney  
State Bar of Texas No. 17267700  
Dallas City Hall  
1500 Marilla Street, 7BN  
Dallas, Texas 75201  
Telephone - (214) 670-3519  
Telecopier - (214) 670-0622

ATTORNEYS OF THE CITY OF DALLAS

## CERTIFICATE OF SERVICE

I further certify that on July 12, 2013, a copy of the foregoing document was served by certified mail, return receipt requested, upon:

CMRRR# 7006 2150 0005 3399 7229

Hayley D. Ailshie

Charles A. Salazar

Eddie Vassallo

3710 Rawlins, Suite 1200

Dallas, Texas 75219-6410

Attorneys for Defendants  
Highway 205 Farms, LTD.,  
and Maurice E. Moore, Jr.

CMRRR# 7007 0220 0000 5573 6514

Dow Chemical Company

c/o CT Corporation System

350 N. St. Paul St., Suite 2900

Dallas, TX 75201

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CMRRR# 7006 2150 0005 3399 7236

Trinity Valley Community College District

Dr. Glendon Forgey, President

100 Cardinal Dr.

Athens, TX 75751

  
Barbara Rosenberg

## Case Transactions Summary for Gunter, Christopher C.

Case Number: 84262CC

| <b>Fee Category</b>                   | <b>Charges</b> | <b>Payments</b> | <b>Credits</b> | <b>Balance</b> | <b>Disb</b> | <b>Escrow</b> |
|---------------------------------------|----------------|-----------------|----------------|----------------|-------------|---------------|
| <b>Court Costs</b>                    | <b>279.00</b>  | <b>167.00</b>   | <b>0.00</b>    | <b>112.00</b>  | <b>0.00</b> | <b>167.00</b> |
| Appellate Fee (civil)                 | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Archive Fee \$5.00                    | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Clerk Fee (civil)                     | 162.00         | 50.00           | 0.00           | 112.00         | 0.00        | 50.00         |
| Courthouse Security (civil)           | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Judicial Fund Support                 | 42.00          | 42.00           | 0.00           | 0.00           | 0.00        | 42.00         |
| Law Library (civil)                   | 35.00          | 35.00           | 0.00           | 0.00           | 0.00        | 35.00         |
| Records Management - District (civil) | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Records Management (civil)            | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Stenographer Fee (civil)              | 15.00          | 15.00           | 0.00           | 0.00           | 0.00        | 15.00         |
| <b>Court Costs (1st Priority)</b>     | <b>50.00</b>   | <b>50.00</b>    | <b>0.00</b>    | <b>0.00</b>    | <b>0.00</b> | <b>50.00</b>  |
| CLSI Fee (civil)                      | 10.00          | 10.00           | 0.00           | 0.00           | 0.00        | 10.00         |
| State Fee (civil)                     | 40.00          | 40.00           | 0.00           | 0.00           | 0.00        | 40.00         |
| <b>Totals</b>                         | <b>329.00</b>  | <b>217.00</b>   | <b>0.00</b>    | <b>112.00</b>  | <b>0.00</b> | <b>217.00</b> |
| <b>Indirect Total</b>                 | <b>0.00</b>    |                 |                |                |             |               |



Kaufman County  
District Clerks Office

**BILL OF COSTS**

THE STATE OF TEXAS

COUNTY OF KAUFMAN

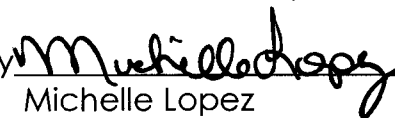
**Cause no. 84262CC**

**City of Dallas Vs. Highway 205 Farms, LTD, Maurice E Moore, Jr., et al**

**I, Rhonda Hughey, Clerk of the District Court in and for said County and State, hereby certify the foregoing to be a correct account of the costs adjudged against the plaintiff in the above entitled and numbered suit up to this date.**

Witness my hand and seal of said Court, on this the 16th day of July,  
2013

Rhonda Hughey  
Kaufman County District Clerk

By  Deputy  
Michelle Lopez

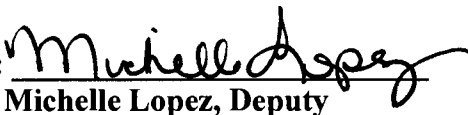
**STATE OF TEXAS**

**COUNTY OF KAUFMAN**

I, Rhonda Hughey, Clerk of the District/ County Court at Law of Kaufman County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

GIVEN UNDER MY HAND AND SEAL at my office in Kaufman, County, Texas this 16th day of July, 2013.

**Rhonda Hughey  
District Clerk  
Kaufman County, Texas**

By:   
**Michelle Lopez, Deputy**



**CLERK'S RECORD**1<sup>st</sup> Supplemental  
Volume 1 of 1Trial Court Cause No. 84262CC

In the \_\_\_\_\_ County Court at Law

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS

7/29/2013 9:31:24 AM

Of \_\_\_\_\_ Kaufman

LISA MATZ, Texas.  
Clerk

Honorable \_\_\_\_\_ Dennis P. Jones

, Judge Presiding

\_\_\_\_\_, City of Dallas, Plaintiff(s)

Vs.

\_\_\_\_\_, Highway 205 Farms, LTD, et al, Defendant(s)

Appealed to the  
5<sup>th</sup> District Court of Appeals

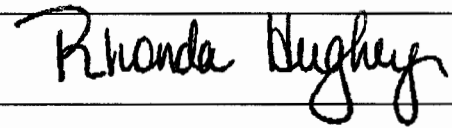
Attorney for appellant(s):

Name Barbara RosenbergAddress Dallas City Hall, 1500 Marilla Street, 7BN, Dallas, TX 75201Telephone No. 214-670-3519Fax No. 214-670-0622SBOT No. 08327050

Attorney for \_\_\_\_\_ City of Dallas, Appellant(s)

Delivered in electronic form to the 5<sup>th</sup> District Court of Appeals  
the 29th day of July, 2013.

Signature of Clerk

Name of Clerk Rhonda HugheyTitle District ClerkAppellate Court Cause No. 05-13-00951-CVFiled in the Court of Appeals Fifth District of Texas at Dallas

this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_, Clerk

By \_\_\_\_\_, Deputy

CITY OF DALLAS

IN THE COUNTY COURT

VS

AT LAW OF

HIGHWAY 205 FARMS, LTD, ET AL

KAUFMAN COUNTY, TEXAS

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| Order Removing Special Commissioner & Appointing A Replacement (filed Oct 26, 2011) -----  | 6  |
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**STATE OF TEXAS**

**COUNTY OF KAUFMAN**

At a regular term of the County Court at Law begun and holden within and for the County of Kaufman, convened on the 7<sup>th</sup> day of January, 2013 and will adjourn on the 8<sup>th</sup> day of July, 2013, with the Honorable Dennis Jones the presiding Judge of the County Court at Law Court, the following cause came on for trial to-wit:

CAUSE NO. 8426200

CITY OF DALLAS,  
Plaintiff,  
VS.

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IN COUNTY COURT

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT  
Defendants

AT LAW

KAUFMAN COUNTY, TEXAS

**ORDER APPOINTING SPECIAL COMMISSIONERS**

Upon reading and considering the Statement in Condemnation in the above numbered and captioned eminent domain case, the following resident citizens and disinterested freeholders of Kaufman County, Texas, are appointed to serve as Special Commissioners in this proceeding:

Bill Jordan  
10575 S. Hwy 243  
Kaufman, Tx 75142  
(214) 202-0538

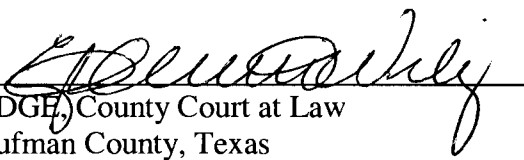
Lee Schaffer  
705 W. Moore Ave.  
Terrell, Tx 75160  
(972) 563-0645


Robert Repka  
9287 S. Raguet St.  
Scurry, Tx 75158  
(972) 979-4985

These Special Commissioners are appointed to determine the just compensation due the owners of land described in the Statement in Condemnation on file in this proceeding, to assess all of the damages that will be caused to the land by virtue of the condemnation, and to exercise all of the powers and duties conferred and imposed by law.

The Special Commissioners above named shall be immediately notified of their appointment and proceed according to the requirements of law.

SIGNED in Kaufman County, Texas, this 31<sup>st</sup> day of August, 2011.

  
JUDGE, County Court at Law  
Kaufman County, Texas

FILED  
KAUFMAN COUNTY  
TEXAS  
2011 SEP - 7 AM 10:50  
BY  DEPUTY  
DISTRICT CLERK

NO. 84262CC

CITY OF DALLAS,  
*Plaintiff,*  
VS.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT  
*Defendants*

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IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

**ORDER REMOVING A SPECIAL COMMISSIONER**  
**AND APPOINTING A REPLACEMENT**

Upon reading and considering the Statement in Condemnation in the above numbered and captioned eminent domain case, the following resident citizen and disinterested freeholder of Kaufman County, Texas, was appointed to serve as Special Commissioners in this proceeding:

Mr. Lee Schaffer

The Court now finds that the said Mr. Lee Schaffer, cannot serve as a special commissioner by reason of a conflict of interest and thus has failed to serve within the meaning of section 21.014(a) of the Texas Property Code.


NOW, THEREFORE, the Court hereby relieves the said Mr. Lee Schaffer, of the appointment and appoints the following resident citizen and disinterested freeholder of Kaufman County, Texas, to serve as Special Commissioner in this proceeding:


Don Burt  
10618 CR 4087  
Rosser, TX 75157  
972-486-4060

This Special Commissioner, together with the remaining previously named Special Commissioners, is appointed to determine the just compensation due the owners of land described in the Statement in Condemnation on file in this proceeding, to assess all of the damages that will be caused to the land by virtue of the condemnation, and to exercise all of the powers and duties conferred and imposed by law.

The Special Commissioner above named shall be immediately notified of this appointment and proceed according to the requirements of law.

SIGNED in Kaufman County, Texas, this 24<sup>th</sup> day of October, 2011.

  
JUDGE, Kaufman Court at Law  
Kaufman County, Texas

FILED: DA MCCOBB  
KAUFMAN COUNTY  
TEXAS  
2011 OCT 26 PM 4:40  
BY  DEPUTY  
CLERK

S

NO. 84262CC

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

CITY OF DALLAS,

IN COUNTY COURT 2013 MAR 27 AM 11:08

VS.

RHONDA HUGNEY  
DISTRICT CLERK

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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AT LAW

BY  DEPUTY

KAUFMAN COUNTY, TEXAS

**ORDER SETTING HEARING**

I, the undersigned Special Commissioner, appointed by the Court to assess the damages in the above styled condemnation proceeding, set the time and place, in coordination with each commissioner, for hearing the parties on May 8, 2013, at 10:00 a.m. in the conference room at the Kaufman County Library, 3790 S. Houston Street, Kaufman, Texas 75142.

ORDERED on the 11<sup>th</sup> day of March, 2013.



Don Burt, Special Commissioner

NO. 84262CC

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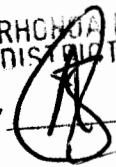
NO. 84262CC

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

CITY OF DALLAS,

IN COUNTY OF KAUFMAN MAR 27 AM 11:08

VS.

RICHARD HUGHEY  
DISTRICT CLERK  
BY  DEPUTY

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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AT LAW

KAUFMAN COUNTY, TEXAS

**ORDER SETTING HEARING**

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ORDERED on the 11<sup>th</sup> day of March, 2013.

  
Robert Repka, Special Commissioner

5

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

NO. 84262CC

CITY OF DALLAS,

§

IN COUNTY COURT

MAR 27 AM 11:08

VS.

§

RHONDA HUGHEY  
DISTRICT CLERK

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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AT LAW

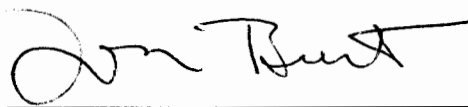
BY  DEPUTY

KAUFMAN COUNTY, TEXAS

**ORDER SETTING HEARING**

I, the undersigned Special Commissioner, appointed by the Court to assess the damages in the above styled condemnation proceeding, set the time and place, in coordination with each commissioner, for hearing the parties on May 8, 2013, at 10:00 a.m. in the conference room at the Kaufman County Library, 3790 S. Houston Street, Kaufman, Texas 75142.

ORDERED on the 11<sup>th</sup> day of March, 2013.



Don Burt, Special Commissioner

9

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS

NO. 84262CC

2013 APR 17 AM 8:38

CITY OF DALLAS,

§

IN COUNTY COURT

VS.

§

RHONDA HUGHEY  
DISTRICT CLERK

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

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BY  DEPUTY

AT LAW

KAUFMAN COUNTY, TEXAS

**NOTICE OF SPECIAL COMMISSIONERS' HEARING**

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

TO: Maurice E. Moore, Jr.  
4214 McFarlin Blvd.  
Dallas, TX 75202-1627

**THE SPECIAL COMMISSIONERS WILL HEAR THE PARTIES ON THE 8<sup>TH</sup> DAY OF MAY, 2013, AT 10:00 O'CLOCK A.M. IN THE MEETING ROOM OF THE KAUFMAN COUNTY LIBRARY LOCATED AT 3790 S. HOUSTON STREET, KAUFMAN, TEXAS 75142 FOR THE PURPOSE OF ASSESSING DAMAGES IN ACCORDANCE WITH THE EVIDENCE PRESENTED AT THE HEARING.**

The City of Dallas, Petitioner, has filed a statement in condemnation in the above-captioned and numbered cause with the Judge of the District Court at Law No. 1 of Kaufman County, Texas. Petitioner seeks to acquire certain real property through proceedings in eminent domain for the purpose of the City approved Resolution No. 081245 which entails the construction of the Lake Tawakoni 144-inch Raw Water Transmission Pipeline in the County of Kaufman, Texas. The property being acquired is described in the above-referenced statement in condemnation, a true and correct copy of which has been delivered to each defendant in said cause of action. The Special Commissioners have been appointed by the Judge of said court to assess the damages occasioned by the condemnation of the real property described in the statement in condemnation and now have ordered the hearing to commence on May 8, 2013 at 10:00a.m in the Kaufman County Library.

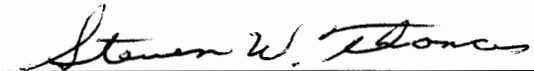
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## RETURN OF NOTICE OF HEARING

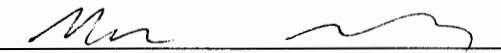
State of Texas  
County of Dallas

I hereby certify that a copy of the written Notice of Special Commissioners' Hearing in Cause No. 84262CC came to hand on the 27 day of March, 2013 at 9<sup>00</sup> A.m. The same was served at 11:00 A.m. on the 4<sup>TH</sup> day of APRIL, 2013, in Dallas County, Texas, by delivering a copy of the written Notice of Special Commissioners' Hearing to CHARLES SALAZAR ATTORNEY, located at 3710 RAULINS, SUITE 1200 DALLAS TEXAS <sup>ACCEPTING FOR MAURICE E. MOORE, JR.</sup> by personal service.



Steven W. Thomas  
Certified Process Server  
SCH#00001226

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on  
this 4<sup>TH</sup> day of April, 2013.



Notary Public  
In and For Texas

5


CITY OF DALLAS, §  
VS. §  
HIGHWAY 205 FARMS, LTD., §  
MAURICE E. MOORE, JR., THE §  
DOW CHEMICAL COMPANY §  
KAUFMAN COUNTY, TERRELL §  
INDEPENDENT SCHOOL DISTRICT, §  
and TRINITY VALLEY COMMUNITY §  
COLLEGE DISTRICT §

NO. 84262CC

IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

FILED FOR RECORD  
KAUFMAN COUNTY  
TEXAS  
2013 APR 17 AM 8:38  
RHONDA HUGHEY  
DISTRICT CLERK  
BY  DEPUTY

**NOTICE OF SPECIAL COMMISSIONERS' HEARING**

STATE OF TEXAS §  
COUNTY OF DALLAS §

TO: Highway 205 Farms, Ltd.  
c/o MR. EDDIE VASSALLO  
Vassallo & Salazar, PC  
3710 Rawlins, Suite 1200  
Dallas, TX 75219

**THE SPECIAL COMMISSIONERS WILL HEAR THE PARTIES ON THE 8<sup>TH</sup> DAY OF MAY, 2013, AT 10:00 O'CLOCK A.M. IN THE MEETING ROOM OF THE KAUFMAN COUNTY LIBRARY LOCATED AT 3790 S. HOUSTON STREET, KAUFMAN, TEXAS 75142 FOR THE PURPOSE OF ASSESSING DAMAGES IN ACCORDANCE WITH THE EVIDENCE PRESENTED AT THE HEARING.**

The City of Dallas, Petitioner, has filed a statement in condemnation in the above-captioned and numbered cause with the Judge of the District Court at Law No. 1 of Kaufman County, Texas. Petitioner seeks to acquire certain real property through proceedings in eminent domain for the purpose of the City approved Resolution No. 081245 which entails the construction of the Lake Tawakoni 144-inch Raw Water Transmission Pipeline in the County of Kaufman, Texas. The property being acquired is described in the above-referenced statement in condemnation, a true and correct copy of which has been delivered to each defendant in said cause of action. The Special Commissioners have been appointed by the Judge of said court to assess the damages occasioned by the condemnation of the real property described in the statement in condemnation and now have ordered the hearing to commence on May 8, 2013 at 10:00a.m in the Kaufman County Library.

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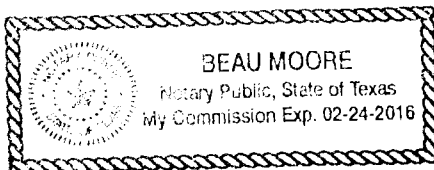
### RETURN OF NOTICE OF HEARING

State of Texas       §  
County of Dallas     §

I hereby certify that a copy of the written Notice of Special Commissioners' Hearing in Cause No. 84262CC came to hand on the 26 day of March, 2013 at 11:00 a.m. The same was served at 9:42 A.m. on the 27 day of March, 2013, in Dallas County, Texas, by delivering a copy of the written Notice of Special Commissioners' Hearing to ACCEPTING FOR EDDIE VASSALO CHARLES SALAZAR ATTORNEY, attorney for Defendant Highway 205 Farms., Ltd, located at 3710 Rawlins, Suite 1200, Dallas, TX 75219, by personal service.

Steven W. Thomas  
Steven W. Thomas  
Certified Process Server  
SCH#00001226

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 28<sup>th</sup> day of March, 2013.



Beau Moore  
Notary Public  
In and For Texas

CITY OF DALLAS,

VS.

HIGHWAY 205 FARMS, LTD.,  
MAURICE E. MOORE, JR., THE  
DOW CHEMICAL COMPANY  
KAUFMAN COUNTY, TERRELL  
INDEPENDENT SCHOOL DISTRICT,  
and TRINITY VALLEY COMMUNITY  
COLLEGE DISTRICT

NO. 84262CC

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IN COUNTY COURT

2013 JUL 26 PM 1:51

RHONDA HUGHES  
DISTRICT CLERK

BY  DEPUTY

KAUFMAN COUNTY, TEXAS

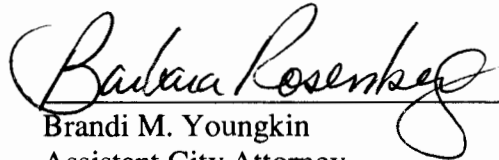
**CITY OF DALLAS' REQUEST TO PREPARE SUPPLEMENT TO CLERK'S RECORD  
TO THE HONORABLE DISTRICT CLERK:**

Pursuant to Rule Texas Rule of Appellate Procedure 34.5(b), City of Dallas' requests that the following documents be included this this supplement to the clerk's record:

1. Notice of Special Commissioners hearing returns (2) filed April 17, 2013;
2. Orders (3) setting special commissioner's hearing filed on March 27, 2013;
3. Order Appointing Special Commissioners filed on August 31, 2011;
4. Order Removing Lee Schaffer and Appointing Don Burt as Special Commissioner filed on October 24, 2011;
5. This request to prepare the supplemental Court's Record;
6. The bill of costs for preparation of the supplemental record.

Respectfully submitted,

THOMAS P. PERKINS, JR.  
Dallas City Attorney

  
Brandi M. Youngkin  
Assistant City Attorney  
State Bar of Texas No. 24053740  
Barbara Rosenberg  
Assistant City Attorney  
State Bar of Texas No. 17267700

Dallas City Hall  
1500 Marilla Street, 7BN  
Dallas, Texas 75201  
Telephone - (214) 670-3519  
Telecopier - (214) 670-0622

ATTORNEYS OF THE CITY OF DALLAS

**CERTIFICATE OF SERVICE**

I further certify that on July 26, 2013, a copy of the foregoing document was served by certified mail, return receipt requested, upon:

CMRRR# 7007 0220 0000 5573 6521  
Hayley D. Ailshie  
Charles A. Salazar  
Eddie Vassallo  
3710 Rawlins, Suite 1200  
Dallas, Texas 75219-6410

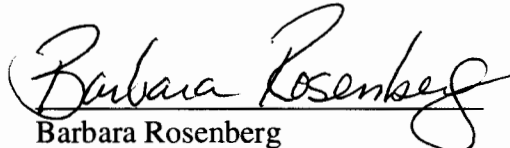
Attorneys for Defendants  
Highway 205 Farms, LTD.,  
and Maurice E. Moore, Jr.

CMRRR# 7007 0220 0000 5573 6538  
Dow Chemical Company  
c/o CT Corporation System  
350 N. St. Paul St., Suite 2900  
Dallas, TX 75201

CMRRR# 7007 0220 0000 5573 6545  
Kaufman County  
c/o County Judge Bruce Wood  
100 W. Mulberry  
Kaufman, TX 75142

CMRRR# 7007 0220 0000 5573 6569  
Trinity Valley Community College District  
Dr. Glendon Forgey, President  
100 Cardinal Dr.  
Athens, TX 75751

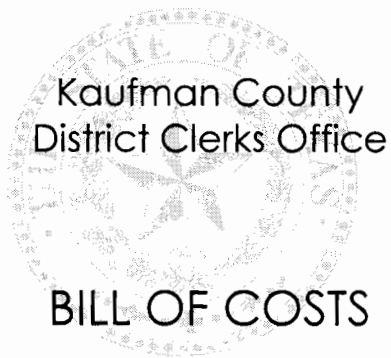
CMRRR# 7007 0220 0000 5573 6552  
Terrell Independent School District  
c/o Micheal French, Superintendent  
700 N. Catherine  
Terrell, TX 75160

  
Barbara Rosenberg

## Case Transactions Summary for Gunter, Christopher C.

Case Number: 84262CC

| <b>Fee Category</b>                   | <b>Charges</b> | <b>Payments</b> | <b>Credits</b> | <b>Balance</b> | <b>Disb</b> | <b>Escrow</b> |
|---------------------------------------|----------------|-----------------|----------------|----------------|-------------|---------------|
| <b>Court Costs</b>                    | <b>309.00</b>  | <b>167.00</b>   | <b>0.00</b>    | <b>142.00</b>  | <b>0.00</b> | <b>167.00</b> |
| Appellate Fee (civil)                 | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Archive Fee \$5.00                    | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Clerk Fee (civil)                     | 182.00         | 50.00           | 0.00           | 132.00         | 0.00        | 50.00         |
| Copies (civil)                        | 10.00          | 0.00            | 0.00           | 10.00          | 0.00        | 0.00          |
| Courthouse Security (civil)           | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Judicial Fund Support                 | 42.00          | 42.00           | 0.00           | 0.00           | 0.00        | 42.00         |
| Law Library (civil)                   | 35.00          | 35.00           | 0.00           | 0.00           | 0.00        | 35.00         |
| Records Management - District (civil) | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Records Management (civil)            | 5.00           | 5.00            | 0.00           | 0.00           | 0.00        | 5.00          |
| Stenographer Fee (civil)              | 15.00          | 15.00           | 0.00           | 0.00           | 0.00        | 15.00         |
| <b>Court Costs (1st Priority)</b>     | <b>50.00</b>   | <b>50.00</b>    | <b>0.00</b>    | <b>0.00</b>    | <b>0.00</b> | <b>50.00</b>  |
| CLSI Fee (civil)                      | 10.00          | 10.00           | 0.00           | 0.00           | 0.00        | 10.00         |
| State Fee (civil)                     | 40.00          | 40.00           | 0.00           | 0.00           | 0.00        | 40.00         |
| <b>Totals</b>                         | <b>359.00</b>  | <b>217.00</b>   | <b>0.00</b>    | <b>142.00</b>  | <b>0.00</b> | <b>217.00</b> |
| <b>Indirect Total</b>                 | <b>0.00</b>    |                 |                |                |             |               |



THE STATE OF TEXAS

COUNTY OF KAUFMAN

**Cause no. 84262CC**

**City of Dallas Vs. Highway 205 Farms, LTD, Maurice E Moore, Jr., et al**

**I, Rhonda Hughey, Clerk of the District Court in and for said County and State, hereby certify the foregoing to be a correct account of the costs adjudged against the plaintiff in the above entitled and numbered suit up to this date.**

Witness my hand and seal of said Court, on this the 29th day of July,  
2013

Rhonda Hughey  
Kaufman County District Clerk

By Michelle Lopez Deputy  
Michelle Lopez

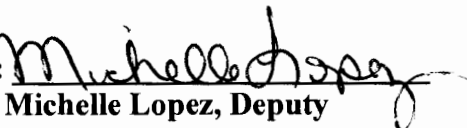
**STATE OF TEXAS**

**COUNTY OF KAUFMAN**

I, Rhonda Hughey, Clerk of the District/ County Court at Law of Kaufman County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

GIVEN UNDER MY HAND AND SEAL at my office in Kaufman, County, Texas this 29th day of July, 2013.

**Rhonda Hughey  
District Clerk  
Kaufman County, Texas**

By:   
**Michelle Lopez, Deputy**

VOLUME 1 OF 2 VOLUME

TRIAL COURT CAUSE NO. 84262CC

CITY OF DALLAS ) IN THE COUNTY COURT  
VS. ) AT LAW  
HIGHWAY 205 FARMS,Ltd.etal ) KAUFMAN COUNTY, TEXAS

## STATEMENT OF FACTS

On the 17th day of April, 2013, the above styled and numbered cause came on to be heard before the Court and the following was had before the Honorable Erleigh Wiley, Judge presiding in the County Court at Law, held in Kaufman, Kaufman County:

Preceedings recorded by computerized stenotype machine; reporters record produced by computer-assisted transcript. Scott Smith, Texas, CSR 1134 Official Court Reporter - County Court at Law 100 W. Mulberry, Kaufman, Texas. 972-932-4331.

Scott Smith  
Court Reporter

## A P P E A R A N C E S ;

Ms. Brandi Youngkin,

#24053740

Attorney at Law

Dallas County, Texas

Attorney for the Plaintiff

-And-

Mr. Eddie Vassallo,

#20503000

Attorney at Law

Dallas County, Texas

Attorney for the Defendant

Mr. Chris Gunter,

#24025750

Attorney at Law

Dallas County, Texas

Attorney for the Plaintiff

-And-

Ms. Hayley Ailshie,

#24069280

Attorney at Law

Dallas County, Texas

Attorney for the Defendant

Scott Smith  
Court Reporter

## I N D E X

Page Vol.

ARRAIGNMENT

OPENING STATEMENT BY PLAINTIFF

OPENING STATEMENT BY DEFENSE

PLAINTIFF'S WITNESS DIRECT CROSS REDIRECT RECROSS VOL.

PLAINTIFF REST

DEFENDANT'S WITNESS DIRECT CROSS REDIRECT RECROSS VOL.

DEFENSE REST

BOTH SIDES CLOSE

CLOSING ARGUMENTS BY PLAINTIFF

CLOSING ARGUMENTS BY DEFENSE

JURY RETIRED FOR DELIBERATIONS

VERDICT RECEIVED

ADJOURNMENT

Scott Smith  
Court Reporter

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ALPHABETICAL INDEX

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Scott Smith  
Court Reporter

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PLAINTIFF'S EXHIBITS

| OFFERED | ADMITTED | VOL | VOL SHOWN |
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Scott Smith  
Court Reporter

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DEFENDANT'S EXHIBITS

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|---------|----------|-----|-----------|

Scott Smith  
Court Reporter

## P R O C E E D I N G S

THE COURT: This is Cause number 84262CC, The City of Dallas verses Highway 205 Farms, Ltd. et al. Please identify yourselves and who you represent.

MR. VASSALLO: Your Honor, Eddie Vassallo and Mr. Charles A. Salazar and Hayley Ailshie, representing Highway 205, the Landowners in this case.

YOUNGKIN: Brandi Youngkin for the City of Dallas.

THE COURT: And your name sir?

MR. GUNTER: Chris Gunter.

THE COURT: Go ahead counsel.

MR. VASSALLO: May it please the Court? Ms. Alshie will be presenting our Motion. The Motion involves a request for Dismissal Without Prejudice Against the City's Condemnation Case that was filed September 2, 2011. The case was based upon the field notes from 2006, nothing has happened since the filing of the case. There's only two real points before the Court, our dismissal for want of prosecution and the city's position that a filing by the City in Kaufman can't be dismissed for any reason -- no matter how long it's pending. Ms. Alshie will go into our Motion and we will do it quickly, we know you have a long docket. Go ahead.

THE COURT: No, I don't have a long docket. I want you to take your time -- I just -- go ahead.

Scott Smith  
Court Reporter

1 MS. ALSHIE: The Defendant filed this Motion to  
2 Dismiss, because the city has failed to diligently prosecute  
3 it's case. As Mr. Vassallo said, the City filed it's petition  
4 for condemnation on August 30th, 2011, to acquire a portion of  
5 Defendant's property for a City of Dallas Water Line Project.  
6 On March 6th, 2013, over eighteen months later, Defendant  
7 filed a Motion to Dismiss, that's before the Court now. The  
8 Motion to Dismiss --

9 THE COURT: Are those documents contained in  
10 the file?

11 MS. ALSHIE: Yes, ma'am.

12 THE COURT: Okay. So, I will take judicial  
13 notice of those. Go ahead.

14 MS. ALSHIE: The Motion to Dismiss is  
15 predicated on the eighteen month of inactivity in this case.  
16 Nine days after the Defendant filed it's Motion to Dismiss,  
17 the Special Commissioners issued an order for a hearing and  
18 Defendant received notice of that hearing on twelve days after  
19 that.

20 THE COURT: And, what date would that have  
21 been?

22 MS. ALSHIE: March 27th, 2013, is when they  
23 received notice of the hearing. It seems that the Motion to  
24 Dismiss is the only reason that the City revived in the action  
25 in this litigation but, the damage has already been done to

Scott Smith  
Court Reporter

1 our client. In our briefing, we informed the Court that on  
2 September 1st, 2011, which is two days after the City filed  
3 it's petition in this case, long anticipated Senate Bill 18  
4 took effect, which amended several Sections of Chapter 21 of  
5 the Property Code, governing Eminent Domain proceedings. And  
6 specifically, several of the Amendments expanded the rights  
7 that are given to land owners and the land owner's ability to  
8 recover in a Condemnation case. So, instead of wait until it  
9 was ready to diligently prosecute it's case, the City filed --  
10 prematurely filed it's petition two days before the Amendments  
11 went into effect to circumvent the Amendments that that were  
12 being made to the Property Code. And, I think that that can  
13 be shown by the City's filing it's Petition and then doing  
14 nothing for over eighteen months. So, we as land owners are  
15 being precluded from recovering under the statutory scheme  
16 that would be in effect when they filed their Petition had  
17 they been ready to go forward. And, then also, when the City  
18 filed it's Petition it also filed a Notice of Lis Pendens,  
19 which essentially puts a cloud on Defendant's property, it  
20 freezes the property preventing any conveyances or  
21 developments and drives the market value down on the property.  
22 Now, I think the City is actually going to support our  
23 allegations because, if the City was secure in it's position  
24 that it was free to wait these eighteen or nineteen months  
25 then why the sudden revival in the litigation right after the

Scott Smith  
Court Reporter

1 filing of the Motion to Dismiss? Also, following the City's  
2 logic, a condemning authority to have the ability to file a  
3 condemnation petition, at any time, file Lis Pendens freezing  
4 a property owner's property to the detrimental of the land  
5 owner and the benefit of the City, and then the city can just  
6 let the case sit there indefinitely. And, I think as you will  
7 see in the City's response, it's the City's position, this  
8 Court can do nothing about it, and that's not what the  
9 Legislature intended. This Court, under rule 165a, Texas Rule  
10 of Civil Procedure, and the Court's inherent authority to  
11 control it's docket has the ability and should dismiss this  
12 case for want of prosecution.

13 THE COURT: Okay. Counsel, that was  
14 sufficient. Okay. What do you think.

15 MS. YOUNGKIN: Your Honor, the remedy is not  
16 Dismissal of the Condemnation Proceedings. The arguments that  
17 the landowner has been using 21.019 of the Property Code --

18 THE COURT: I don't have a copy of that --  
19 Property Code.

20 MS. YOUNGKIN: I have one if you don't. I  
21 printed that specific one.

22 THE COURT: I should. Okay. Go ahead and tell  
23 me.

24 MS. YOUNGKIN: And, so, for dismissal of  
25 condemnation proceedings to be a remedy -- and first of all

Scott Smith  
Court Reporter

1 there are two stages, there's an Administrative Proceeding and  
2 then the Judicial Proceeding. Right now for eminent domain  
3 cases this is different than the other civil cases that they  
4 cited in their motions. Those were all civil jury trial cases  
5 and in that, I understand that the eighteen month rule  
6 applies. However, in eminent domain proceedings there are two  
7 separate stages. We are right now in the administrative  
8 stage. 21.019 says, it addresses when a property owner files  
9 a Motion to Dismiss based on the right to take. Here they  
10 haven't made that claim, and right -- for filing the Motion to  
11 Dismiss For Want Of Prosecution is not the proper remedy in  
12 this stage. The proper remedy is to go ahead and set the  
13 hearing, which has been done. The cases that we've used duly  
14 reflect that the cases in the Administrative Proceeding and  
15 the Judicial Proceeding. The Defendant's cases don't address  
16 any Eminent Domain Cases and the rule they are citing is Texas  
17 Rule of Procedure 165a. Again, that's where they get the  
18 eighteen months. Now, I can address the timeline because,  
19 under 165a in order to dismiss it it means that nothing  
20 has been done. And I would like to clear up a little bit on  
21 why it's been sitting around. Just to go over the timeline  
22 again, the case was filed in August 30th, the Court appointed  
23 Special Commissioners in September, and the Court replaced the  
24 Commissioner in October with -- replaced one Commissioner, Lee  
25 Schaffer with Don Burt, they took their oath in November and

Scott Smith  
Court Reporter

1 then it's in November of that year, sometime after that, their  
2 are two Attorneys in the City Attorney's Office, one handles  
3 all of the Dallas Water Utility Cases, the other one handles  
4 all of other matters. The Senior Attorney retired. So, the  
5 Attorney that was doing all of the DWU cases was promoted and  
6 that left a position to be hired. That's where I came in, I  
7 interviewed in August of 2012 and was hired. Since I've been  
8 here I have been moving these cases. I filed a Notice for  
9 Appearance for this case and all other Tawakoni Cases In  
10 September of 2012, there were eight. In October I contacted  
11 the Special Commissioners to try to set a hearing for November  
12 and December -- not just for this case but for all of the  
13 cases and it was hard to get the Commissioners onto agree to a  
14 date that our Appraiser could also agree to, so, it didn't  
15 work. I did get other cases set. So, then in November I was  
16 able to hire a new Appraiser to go forward with this case in  
17 order to just get things set. From January until now I have  
18 been -- I know that they are saying it's just -- it's more  
19 then just a coincidence, but I have been trying to get this  
20 case set since January. In this next month of May I have five  
21 cases that all of the cases that are going to be set. This  
22 hearing I was trying to already get set when they filed the  
23 Motion to Dismiss.

24 THE COURT: Let me ask you something because,  
25 I'll just tell you what is going on in my mind. But, of

Scott Smith  
Court Reporter

1 course if you get saddled with some of the things that other  
2 people do. I don't think it's you being dilatory. I think it  
3 was the gentleman that was before, I know he's not here to  
4 defend that. You just stepped into what you have, and their  
5 argument and their position about the Legislative changes and  
6 this happened to have been filed two days before -- did you  
7 address that and I just didn't hear that? How was that  
8 timely?

9 MS. YOUNGKIN: I don't know why for sure it  
10 was filed -- I am not saying that. I don't know the reason of  
11 why it was filed then but, it was the intent --

12 THE COURT: Yes.

13 MS. YOUNGKIN: It was not the intent to just  
14 sit on it. They have not contacted us not once. And, it's  
15 not -- it's the Commissioners that are supposed to set the  
16 hearing as soon as possible, we just have been at the  
17 condemner facilitating that. They have not contacted us or  
18 the Court or the Commissioners. I did not know that this case  
19 was moving forward. I have had them on other cases. I also  
20 have other Counsels who have contacted me and said, hey, when  
21 is this going to get set?

22 THE COURT: And, you said you had been with  
23 them -- this law firm or these Commissioners?

24 MS. YOUNGKIN: Both. This firm before and the  
25 way that it has been in the past is they have never went to a

Scott Smith  
Court Reporter

1 Commissioner's Hearing, they've never been contacted. I  
2 wasn't contacted in this case. These Commissioners, I have on  
3 four other cases, I think as you know, they way that the  
4 Commissioners in this County are there's nine and in groups of  
5 three and so, I try to work with where it's most convenient  
6 with them. If I can do two hearings on one day and they have  
7 other cases too. So, it is difficult to get -- I have dealt  
8 with the Commissioners and I'm getting them set as soon as I  
9 can if possible.

10 THE COURT: Well, perhaps and this is not for  
11 today but it's something we can talk about. It maybe  
12 something I can -- I don't want the Commissioners to create  
13 chaos with the landowners if they're being dilatory with not  
14 getting this done because we can expand that list as big as I  
15 need it to be.

16 MS. YOUNGKIN: In this case if I would have  
17 known, if I would have been contacted saying, we want this to  
18 go as soon as possible -- this is the first time I've heard of  
19 any damages and I don't have any proof that they have damage.  
20 I don't know. The first time that I heard anything is when I  
21 received the Motion to Dismiss. So, for that timeline for it  
22 to sit there that long -- it wasn't intentional. Other people  
23 who were calling other opposing counsel or landowners saying I  
24 would like to get this hearing set, it was done.

25 THE COURT: I understand. I'm not totaling

Scott Smith  
Court Reporter

1 making the argument for the defense, but their position is,  
2 it's your case, you're the one who needs to set it and move it  
3 and get it going, I am just saying. I was trying to figure  
4 out, one, about this the timing, the legislation, and now, I  
5 really have to say a little bit outside of this motion from  
6 having met you, you've been very active in the case. I think  
7 it's that period of time with the transition between these  
8 other gentlemen that were on the case, the promotion and that  
9 just happened in here. But, getting back to the bigger  
10 issues, my question is really the request for relief and  
11 legally I can do DWOP but I don't want to create a void order  
12 that there's not a remedy in. You win today and then it's  
13 appealed and you lose and that's just a waste of time. So,  
14 that's what I'm wondering. I'm sitting here reading 21.019,  
15 which is the section that you guys are relying on. And, so  
16 that's that -- no. I want her to finish but just tell me, I  
17 don't think -- when you respond then you will know what I am  
18 thinking because, it's not what I am thinking. Go ahead.

19 MS. YOUNGKIN: They're relying on Texas Rule of  
20 Civil Procedure 165a, which is for a Judicial Proceeding,  
21 where it's a trial -- that is a different proceeding, here  
22 their timeline, they're starting it from the time that we  
23 filed our commission -- that we filed the petition but the  
24 Commissioners haven't been appointed. And, they start in  
25 October the hearings have already been set and it's within the

Scott Smith  
Court Reporter

1 eight month period. So, their remedy is not for dismissal.  
2 If you let us go forward with the hearing that's already been  
3 set for May 8th. My argument is saying on 21.019 the remedy  
4 again, I don't think it should be for the dismissal of the --  
5 the remedy should be for it to push on the Commissioners set  
6 the hearing and get it set, and go forward. On 21.019 the  
7 case that is -- the Board of Regency of Houston vs. FKM  
8 Partnership and it says, that the County Court's dismissal of  
9 the State University condemnation proceedings against the  
10 property owner did not serve the purposes of 21.019 because  
11 the Statutes provisions were designed to make a landowner  
12 whole not to punish the condemning authority. I'm saying in  
13 order to make the landowner whole go forward with the hearings  
14 decide [to|the] objections, go forward. Then at the time they  
15 can make whatever argument they want to make for dismissal or  
16 anything like that. Right now at this point, the only thing  
17 that they are relying on is 165a, which doesn't apply to this  
18 Administrative Proceeding, it's just a Judicial Proceedings.  
19 And, in here the case law that I put in my response all goes  
20 back to when you're in this phase of it, the remedy is to set  
21 the hearing -- set the hearing and go forward.

22 THE COURT: And, this case is set for May 9th.

23 MS. YOUNGKIN: Eighth, eighth, Your Honor.

24 THE COURT: Well, rejoined?

25 MR. VASSALLO: Well, very quickly, Your Honor.

Scott Smith  
Court Reporter

1 First of all --

2 THE COURT: Mr. Smith would appreciate it if I  
3 didn't tell y'all to speak quickly. So, I'm going to stop  
4 because that was like a motor boat. So, slow down, I can hear  
5 his fingers clicking. And, I started it with the wrong tone.  
6 So, don't rush.

7 MR. VASSALLO: No problem.

8 THE COURT: Go ahead.

9 MR. VASSALLO: Not contesting what Counsel has  
10 said about internal workings of the City, that's not being  
11 contested. We put the City on notice in 2007, that we  
12 represented this client. We have met with three Attorneys  
13 before this Counsel has taken over. We've been meeting since  
14 2007. The reason for the filing, in August 30th, was to  
15 circumvent the September 1 in action of Senate Bill 18, which  
16 gives the land owner rights to know what the City is taking,  
17 to have the pleadings in such a form that they trace the  
18 takings, that they are able to know what appraisals have been  
19 made and that they are able to know their result of the taking  
20 and the evaluation of the land taken and damages to the  
21 remainder. We have eighteen hundred acre track in Kaufman  
22 County. This motion that we have here is not the motion  
23 Counsel has been referring to in the case. This is not a  
24 Motion to Dismiss on a Jurisdictional Basis. This is a Motion  
25 to Dismiss Without Prejudice based on the fact of a handling

Scott Smith  
Court Reporter

1 of the Court's docket. It has nothing to do with  
2 Jurisdictional Right, that comes later. After the  
3 Commissioner's hearing we have a right to object to the right  
4 to take, that's what she's -- Counsel is reading from --

5 THE COURT: Is that what you're reading from?

6 MR. VASSALLO: The right to the take.

7 MS. YOUNGKIN: That's not the only argument.

8 I -- THE COURT: I want to hear -- that's where we  
9 are, okay?

10 MR. VASSALLO: We are not talking about the  
11 right to take, that is a later action, that's a jurisdictional  
12 plea for a dismissal with prejudice on a jurisdictional base.  
13 We're talking about the administration through this Court  
14 of the Court's docket. We are also talking about the fact --  
15 and this didn't just happen with the City of Dallas, we had  
16 all types of pipeline people condemning on August 30th, to  
17 circumvent the fact that pipeline cases didn't use to have to  
18 give us an appraisal, the pipeline company because they  
19 weren't within the property code as government. So, this  
20 wasn't unusual. This was the only one, however, that nothing  
21 happened. The petition was filed and nothing happened  
22 afterwards. The City has been on notice for six years about  
23 our representation, we've met with everybody in the City.  
24 We've, as I said, met with three Attorneys. All we're saying  
25 here is, that the amount of time that the landowner has had a

Scott Smith  
Court Reporter

1 Lis Pendens on eighteen hundred acres is at a minimum, a right  
2 for them to start the process over correctly under the  
3 Legislative Enactment of Senate Bill eighteen, which occurred  
4 two days later and given us the proper notices and starting it  
5 in a proper proceeding. They have told the Court that it's  
6 going forward now, there's nothing changed. We got a letter a  
7 week after we filed a Motion to Dismiss that an appraiser  
8 has been hired by the City to appraise the property. So,  
9 we're doing this whole thing backward. Now, we've got a  
10 setting -- they set a hearing for the Special Commissioners  
11 because we filed a Motion to Dismiss. We get a letter from  
12 the appraiser March 18th, says that he's just been hired to  
13 appraise the property. We're supposed to get this stuff in  
14 some type of order, Your Honor, when a property is taken.  
15 We're supposed to know what's being taken, we're supposed to  
16 get appraisals from the Condemning Authority, we're supposed  
17 to be put on notice, we're supposed to have a forty day period  
18 to evaluate the information about the taking and the  
19 evaluation of the taking's value and a right to respond. And,  
20 that's all we are asking for here is that we get our rights  
21 under the status of the rules in 2013, and the status of the  
22 rule has us September 1, 2011, because the actual Property  
23 Code that was in effect August 30th, 2011, wasn't carried  
24 forward by the Condemning Authorities. And, I'm not saying  
25 it's this Counsel's fault. I'm just saying, that's what

Scott Smith  
Court Reporter

1 happened.

2 MR. GUNTER: Your Honor, may I say one  
3 thing? I'm the one that signed the petition that was filed on  
4 August 30th.

5 THE COURT: Okay. You're not invisible, you  
6 are --

7 MR. GUNTER: I'm not invisible.

8 THE COURT: I got you. I'm glad you're here

9 MR. GUNTER: I can answer any questions.

10 THE COURT: Okay.

11 MR. GUNTER: We did not -- it was not done --

12 THE COURT: To circumvent.

13 MR. GUNTER: To circumvent. I was hired the  
14 summer of that year and that was the first thing I was asked  
15 to do was file all of these cases, which added a nightmare  
16 trying to get our appraiser, who did original reports, to give  
17 us an update.

18 THE COURT: Counsel, let's be candid, no one  
19 would blame the City if the law is more favorable for them to  
20 file everything, that's what people do.

21 MR. GUNTER: Yes, Your Honor, and I am not sure  
22 that much if anything has changed, the Petition is the same.  
23 Quite honestly, the main reason we filed then is because we  
24 would of had to gone back to City Counsel for reauthorization,  
25 and a new vote, and it would have been a lot of processing,

Scott Smith  
Court Reporter

1 and we were hoping to get these done quickly. And, so that's  
2 why I was asked in order not to have to go to Counsel, it's  
3 not to hide any appraisal report. I'm not aware of any report  
4 that hasn't been produced.

5 THE COURT: But now we are where we are.

6 MR. GUNTER: Yes.

7 THE COURT: And, nobody did anything and you  
8 guys are here trying to clean this up. And, actually, we can  
9 go on forever arguing. Counsel, you were going to add  
10 something else that you thought was inaccurate.

11 MS. YOUNGKIN: Well, the reply still said that  
12 it was with prejudice and so, to me now that they are saying  
13 this was without prejudice and that they are focusing being on  
14 their clients being damaged I still go back to the remedy to  
15 dismissing is not the answer, it's not going to make their  
16 clients full. If we refile it it's the same thing, we're just  
17 delaying it even further. If we go forward with the hearing  
18 then they can go -- I haven't seen any proof of any damages,  
19 they didn't contact -- I don't know what issues that they're  
20 having if any at all.

21 THE COURT: We all I understand and I don't know  
22 how-- nobody is asking for Dismissal with prejudice,  
23 they're asking DWOP -- because you have a -- case. Then  
24 you're interested in this property still on taking, then  
25 you're are going to refile and then they're going to be able

Scott Smith  
Court Reporter

1 to use a more favorably statute as it applies to that --  
2 that's what they're really asking. And, the remedy to do that  
3 is a DWOP and they're asking the Court to grant that because  
4 you failed to act. That's what they're saying. And, I have  
5 to weigh in my mind and I truly believe that you, before me  
6 and the gentleman behind you that it seems, and it really  
7 concerns me, that there may be some dilatory things that  
8 happened that my Court could have some control over,  
9 commissioners, the scheduling, I know you're trying to  
10 accommodate local people, but I am really bothered by that  
11 because, frankly, in my humble opinion, it's a privilege to be  
12 a Commissioner and if you don't want to do it when you say to  
13 do it then you need to let the staff know and we can put  
14 somebody else in. And, so, I'm really having a problem today  
15 as you're speaking to me, which I have to separate -- not  
16 saying that this action wouldn't actually be brought but, I  
17 hired those Commissioners or asked them to do this but you  
18 guys pay for that and if they can't be available, then they  
19 don't need to do it. Okay. So, that's something I need to  
20 kind of work on internally because if I'm having to have a  
21 litigation because people don't want to do something that  
22 they're asked to do that's not a good way -- that's just a  
23 waste of resources. And, that wasn't all, I mean, there's  
24 things in your office. I think I have heard everything I need  
25 to. I am not cutting y'all off, I need to go back over the

Scott Smith  
Court Reporter

1 pleadings, reread it and make a decision because I want to be  
2 frank, I was a little distracted before I came in and I want  
3 to, you know, be fair. I am leaning, Counsel, toward granting  
4 their Motion and I wanted to tell you that. And, it wouldn't  
5 be with prejudice but I really want to go back and reread  
6 everything in the file again and look at it. And, I also want  
7 you -- I will not be here but I want you as you move forward  
8 to be very aggressive, more with people that make it hard for  
9 you and we are going to try to add a few more people to help  
10 you guys. I think that's one of those things we can do. Let  
11 me think on it. Take it under advisement. Is there anything  
12 else you wanted to share with me that I need to know?

13 MS. AILSHIE: I just have one small issue and I  
14 think it's in our original Motion to Dismiss, not our reply.  
15 We do ask for Dismissal with Prejudice and that was  
16 inadvertent that's on me that was an accident.

17 THE COURT: The motion that I have here --

18 SPEAKER: Is without.

19 THE COURT: Is without, is that your last  
20 order, if I do enter it?

21 SPEAKER: Yes, Your Honor.

22 THE COURT: I am going to read the file again.  
23 That concludes this hearing. Thank y'all.

24 END OF PROCEEDINGS .  
25

Scott Smith  
Court Reporter

Cause No. 84262CC

THE CITY OF DALLAS ( IN THE COUNTY COURT  
VS. ( AT LAW  
HIGHWAY 205 FARMS,Ltd,etal ( OF KAUFMAN COUNTY, TEXAS

I, Scott Smith, Official Court Reporter in and for the  
County Court at Law of Kaufman County, Texas, do hereby  
certify that the following exhibits constitute true and  
complete duplicates of the original exhibits, excluding  
physical evidence, admitted into evidence during the trial on  
the merits in the above entitled and numbered cause as set out  
herein before the Honorable Erleigh Norville Wiley, Judge of  
the County Court at Law of Kaufman County, Texas.

WITNESS MY OFFICIAL HAND this the \_\_\_\_\_ day of  
\_\_\_\_\_, 2013.

\_\_\_\_\_  
Scott Smith  
Official Court Reporter  
County Court at Law  
Texas CSR 1134  
Kaufman, Texas 972-932-4331

Scott Smith  
Court Reporter

1 THE STATE OF TEXAS )

2 COUNTY OF KAUFMAN )

3 I, SCOTT SMITH, Official Court Reporter in and for the  
4 County Court at Law of Kaufman County, Texas, do hereby  
5 certify that the foregoing pages contain a full, true, and  
6 correct transcript of all portions of evidence and other  
7 proceedings requested in writing by counsel for the parties to  
8 be included in this volume of the Reporter's Record in the  
9 above-entitled and numbered cause, all of which occurred in  
10 open court or in chambers and were reported by me.

11 I further certify that this Reporter's Record of the  
12 proceedings truly and correctly reflects the exhibits, if any,  
13 offered by the respective parties.

14 I further certify that the total cost for the  
15 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
16 was paid by \_\_\_\_\_.

17 WITNESS MY OFFICIAL HAND this the \_\_\_\_\_ day of  
18 \_\_\_\_\_, 2013.

21 \_\_\_\_\_  
22 SCOTT SMITH Texas CSR 1134  
23 Official Court Reporter  
County Court at Law  
Kaufman County, Texas  
C.S.R. Certification No. 1134

24 Expires: 12-2014  
25

Scott Smith  
Court Reporter

## REPORTER'S RECORD

VOLUME 2 OF 2 VOLUMES

TRIAL COURT CAUSE NO. 84262CC

CITY OF DALLAS ) IN THE COUNTY COURT  
VS. ) AT LAW  
HIGHWAY 205 FARMS, LTD., ET AL) KAUFMAN COUNTY, TEXAS

## STATEMENT OF FACTS

On the 21st day of June, 2013, the above styled and numbered cause came on to be heard before the Court and the following was had before the Honorable Dennis P. Jones, Judge presiding in the County Court at Law, held in Kaufman, Kaufman County:

Preceedings recorded by computerized stenotype machine; reporters record produced by computer-assisted transcript. Scott Smith, Texas, CSR 1134 Official Court Reporter - County Court at Law 100 W. Mulberry, Kaufman, Texas. 972-932-4331.

Scott Smith  
Court Reporter

## A P P E A R A N C E S ;

Ms. Barbara Rosenberg,

Mr. Chris Gunter,

#17267700

#24025750

Attorney at Law

Attorney at Law

Dallas County, Texas

Dallas County, Texas

Attorney for the Plaintiff

Attorney for the Plaintiff

-And-

-And-

Mr. Eddie Vasallo

Mr. Charles Salazar

#20503000

#17526750

Attorney at Law

Attorney at Law

Dallas County, Texas

Dallas County, Texas

Attorney for the Defendant

Attorney for the Defendant

Scott Smith  
Court Reporter

## I N D E X

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OPENING STATEMENT BY DEFENSE

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DEFENSE REST

BOTH SIDES CLOSE

CLOSING ARGUMENTS BY PLAINTIFF

CLOSING ARGUMENTS BY DEFENSE

JURY RETIRED FOR DELIBERATIONS

VERDICT RECEIVED

ADJOURNMENT

Scott Smith  
Court Reporter

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Court Reporter

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PLAINTIFF'S EXHIBITS

| OFFERED | ADMITTED | VOL | VOL SHOWN |
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DEFENDANT'S EXHIBITS

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Court Reporter

## PROCEEDINGS

1  
2 THE COURT: This is 84262CC, I think this thing  
3 was set last week, I was out of town last week. I believe  
4 this is a -- is it your motion, ma'am?

5 MS. ROSENBERG: Yes, it is.

6 THE COURT: Okay. Since this is your motion  
7 tell me where we are?

8 MS. ROSENBERG: We have filed a Motion to  
9 Reinstate. This case was dismissed for want of prosecution  
10 and this is a Condemnation proceeding in which, it was in the  
11 Administrative process, it was not yet a lawsuit. And, so, we  
12 have filed a Motion to Reinstate saying this Court did not  
13 have jurisdiction to Dismiss for Want of Prosecution under  
14 165a or the inherent authority to dismiss under the case law  
15 in this State. And, I would like to explain those reasons and  
16 also give the Court reasons for the delay in the case.

17 THE COURT: I will let you do that as soon as I  
18 want -- I just want to get a brief tidbit of your position and  
19 then briefly their position and then we will kind of go into  
20 anything, I guess, in depth that you want to put on. Go  
21 ahead, sir.

22 MR. VASSALLO: Thank you, Your Honor. The  
23 case has been pending for eighteen months -- nineteen months  
24 now, and there has been no activity with respect to advancing  
25 this case to a final judgment and we filed a Motion to Dismiss

Scott Smith  
Court Reporter

1 for Want of Prosecution because of the City's failure to  
2 follow through with the positive steps necessary to bring this  
3 case to fruition. And, at this point, we still stand at step  
4 number one, with respect of litigation, and because we're  
5 still at step number one we asked the prior Judge to dismiss  
6 the case and she did dismiss the case.

7 THE COURT: Sir, are you in this case?

8 MR. VASSALLO: Yes, Your Honor. Yes, I'm with  
9 Mr. Salazar, we're both representing Highway 205.

10 THE COURT: Okay. Yes, sir?

11 MR. GUNTER: I am with the City.

12 THE COURT: Okay. Well, does either side want  
13 to put on any evidence or testimony?

14 MS. ROSENBERG: I am going to have Mr. Gunter  
15 talk about the facts of the case but I would like to put on  
16 some legal argument and present some cases about the  
17 jurisdiction of the Court and the posture of this case.

18 THE COURT: Okay, that's fine. Y'all can be  
19 seated at the counsel table, this may take more than five  
20 minutes. This is going to be sort of in the realm of an  
21 officer of the court -- advising the Court of their position.  
22 I am not going to need to swear you in unless the opposing  
23 Counsel needs --

24 MR. VASSALLO: Certainly not, Your Honor.

25 THE COURT: Okay. Go ahead.

Scott Smith  
Court Reporter

1 MS. ROSENBERG: Your Honor, our position and we  
2 believe the law supports is that this Court doesn't have the  
3 jurisdiction to dismiss this case in the administrative phase.  
4 This case at this point is not a law suit, and I believe that  
5 Mr. Vassallo and his colleagues agree with that. I have a  
6 paper in which Mr. Vassallo has written that this case, and  
7 until the objection is made to the Special Commissioners'  
8 award, the case is not a civil case, it is not a regular  
9 lawsuit and the Court's legal jurisdiction does not apply  
10 until that time. I've also brought the cases -- case, Gulf  
11 Energy Pipeline Company vs. Garcia, which was a mandamus case.  
12 And, that case on that I have high-lighted shows that an  
13 eminent domain proceeding is not within the general  
14 jurisdiction of the Court and any power to act is special and  
15 depends on the eminent domain statute. And, it's the power  
16 that the Court has is simply to appoint the Commissioners and  
17 to have them sworn in and there's no other duties of the Court  
18 until -- until the objection is made. And, that hasn't  
19 happened. This case is based on a Supreme Court decision in  
20 Pearson, which I also brought with me. I've high-lighted on  
21 page two of that document, that a condemnation proceeding  
22 again is not within the general jurisdiction of a County  
23 Court, and, that the power of the County Court is a Judicial  
24 Tribunal and an Eminent Domain proceeding is limited to that  
25 which is conferred by statute. And so, there is no -- there

Scott Smith  
Court Reporter

1 is nothing in the statute that allows the dismissal of the  
2 Condemnation case at the administrative proceeding before the  
3 Commissioners have acted. And, when there's no Statutory  
4 authority then, the Court can't act here. Now, the  
5 defendant's property owners have not cited one case that has  
6 allowed or to dismiss for want of prosecution at this  
7 Administrative Proceeding. All of the cases that they cite in  
8 their -- in their response to the City's Motion that's the  
9 Bevil verses Johnson Case and the Villarreal Case all involve  
10 lawsuits. And, that's what the Supreme Court says that a  
11 Court has the inherit powers in a suit -- a lawsuit and this  
12 has not gotten -- this case has not gotten to the law suit  
13 stage. In fact, Bevil verses Johnson was a Trespass to Try  
14 Title case and then Villarreal was a negligence case and the  
15 Williams case that they cite was also a Trespass to Try Title.  
16 The case is cited by the City, show that every time a Court  
17 tried to interfere with the Commissioners by delay or  
18 otherwise the Appellant Courts have held that the Court is  
19 without authority. In the Gulf State Case that I've handed  
20 you on page two, the Court stated that the Statute  
21 expressively delegates the authority to set and adjourn the  
22 Commissioners hearings to the commission, not the Court.

23 THE COURT: Are you reading from one of those  
24 cases you gave me?

25 MS. ROSENBERG: Yes, the first one.

Scott Smith  
Court Reporter

1 THE COURT: The pipe line -- Gulf Energy  
2 Pipeline?

3 MS. ROSENBERG: Yes.

4 THE COURT: Okay. Go ahead.

5 MS. ROSENBERG: It says, and by dismissing the  
6 case the Court interfered with the Commissioners authority to  
7 set the hearing. In fact, here the Court prevented by the  
8 dismissal of the Commissioners hearing that had been set for  
9 May. In contrary to the Defendant's claims that there is no  
10 authority that the Court does have jurisdiction the Gulf State  
11 Case and others show the Court must have statutory authority  
12 to act and they have shown none. The cases shows there is no  
13 judicial oversight until the objections to the award are  
14 filed. And, so, this case should be reinstated. I want to  
15 next talk about 165a that they had also cited for a reason,  
16 for the dismissal under section 2 and I have got the Rule here  
17 and I high-lighted the section. And, Rule 6, which provides  
18 the time line in a lawsuit for when a case can be dismissed  
19 for not following the Texas Supreme Court guide lines. Now,  
20 the Rule says that in the lawsuits you follow the guidelines.  
21 The guidelines give the civil -- civil cases -- what civil  
22 cases the guidelines are to be eighteen months for a jury  
23 case, a twelve months for a trial before the Court. But, what  
24 they forget to tell -- to talk about is it's twelve months  
25 from appearance, and that's the appearance of the Defendants.

Scott Smith  
Court Reporter

1 And, that's why none of this really makes sense in the context  
2 of a administrator proceeding that has occurred because, the  
3 Defendants didn't make any appearance. They have not made any  
4 appearance in the Court or even in the proceeding until they  
5 filed their Motion to Dismiss. So, these dates cannot have  
6 anything to do with the proceedings in this Court and they  
7 don't -- and the administrative proceeding and they just  
8 simply, simply don't apply. And, so, that's another reason.  
9 So, the Rule doesn't -- 165a doesn't have any application and  
10 there isn't any inherent power without authority. But, Judge,  
11 what I would like to do is give a reasonable explanation as to  
12 what has occurred in the -- in the proceeding that caused some  
13 of the delay in getting the Commissioners hearing set. And  
14 so, I would like to turn this over to Mr. Gunter to give that  
15 and then I will give the rest of the legal argument.

16 THE COURT: Okay.

17 MS. ROSENBERG: And, I would like you to also  
18 just take judicial notice of our pleadings -- the verified  
19 pleadings and the documents in the file for this  
20 reinstatement?

21 THE COURT: Right, I will.

22 MS. ROSENBERG: Thank you.

23 THE COURT: Go ahead, sir.

24 MR. GUNTER: Yes, Your Honor. I was the one  
25 who originally filed this case back in, I believe, it was

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Court Reporter

1 September of, 2011. At that time, I had just recently been  
2 hired by the City in the summer of 2011. They created a  
3 position for someone to handle Eminent Domain for the Water  
4 Department because the attorney who was handling all of  
5 condemnation for the City needed some assistance. So, the  
6 Water Department offered to fund the position. So, I was  
7 hired and the first thing I was asked to do was to file the  
8 cases that this gentleman had in his office that he had not  
9 been able to get to and, so, I was asked to do that and so  
10 that's what I did. Now, there was a change in the law and,  
11 so, I was attempting to file that before there was a change in  
12 the law because, nobody knows exactly what those changes would  
13 entail and not only the City but condemnors through out the  
14 State that there was a lot of petitions filed right before  
15 that law was changed. However, we had every intention of  
16 proceeding with the case. It wasn't filed just to be under  
17 old law versus new law. And, so the Commissioners were  
18 appointed in September of 2011, and then October 26th, of  
19 2011, one of the Commissioners was replaced, you know, it was  
20 not until November 18th, of 2011, that the Commissioners  
21 actually took their oaths. At that time, we tried to begin  
22 process of getting an updated appraisal report, the appraisal  
23 report in the case was quite old at that time, difficulty  
24 arose with the appraiser and him being able to get him to do  
25 an updated report, and so, that took more time. We would ask

Scott Smith  
Court Reporter

1 for a report and we would be told he was working on it and we  
2 would follow up a couple of months later. We would find out  
3 that it had not been done. During this time in early 2011,  
4 and also the gentleman who had been the primary Condemnation  
5 Attorney for the City of Dallas announced that he would be  
6 retiring at the first part of the fall. And so, I was shifted  
7 into helping with some of those cases, as well as, these  
8 cases. And, just in priority, this case while we were still  
9 trying to get an appraisal report, no one had called to ask us  
10 to push this one, not the landowners, nor my client and so, we  
11 ordered the cases. And, as the gentleman who was retiring his  
12 day came near we went and hired new attorney and she came in  
13 to takeover my old position with water cases. And, when she  
14 took over the case she also attempted to get the appraisal  
15 report from the old appraiser, to get an update because, his  
16 contract was with the Water Department and with the contractor  
17 who was working the project -- she eventually got permission  
18 to get a new appraiser hired on the case, which she did. And,  
19 so, she was going through that process to have a new report  
20 done so, that they could get the case setup and they were in  
21 the process of doing that when Mr. Vassallo and Mr. Salazar  
22 filed their Motion requesting Dismissal for Want of  
23 Prosecution. There was actually commissions hearing dates set  
24 two or three weeks after the hearing, so the case was already  
25 set and would have proceeded to hearing at that time had the

Scott Smith  
Court Reporter

1 Judge not -- your predecessor had not granted their request at  
2 the time and dismissed the case. So, at this point it stands  
3 ready to move forward. An updated appraisal report has been  
4 obtained from the new appraiser and it's Ms. Youngkin's case  
5 now and she is out on maternity leave at the moment but will  
6 be returning within the next one to two months and I know that  
7 she is prepared to move forward with the case.

8 THE COURT: Thank you, sir, I appreciate it.

9 MS. ROSENBERG: Your Honor, I think that that  
10 reasonably explains the time it took to get the setting and  
11 personnel changes that were required and some of the trouble  
12 that we had getting dates with everybody, you know, with the  
13 witnesses and the Commissioners. The Condemnation Case would  
14 have occurred less than eighteen months after the last  
15 Commissioner was sworn even if Rule 6 had applied if it hadn't  
16 been, been stopped by the reinstatement. The cases that the  
17 Defendants have cited in their footnotes 17, involved cases  
18 that had sat for a longer period of time. In fact, some of  
19 them were forty-one months, two years, seven years, eighteen  
20 years. This case does not meet those kinds of dates that make  
21 this a stale case. We think we've shown reasonable diligence  
22 and we ask the Court to reinstate this case to the  
23 administrative proceedings.

24 THE COURT: Thank you, ma'am. Would you like to  
25 respond?

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Court Reporter

1 MR. VASSALLO: Yes, I would like to just  
2 quickly make a statement before Mr. Salazar goes into our  
3 respond, sir, briefly. We had a full hearing in front of  
4 Judge Wiley on this and the statements in the City's Motion at  
5 that time are the same ones we have today. And, they are  
6 simply this one fact, absolutely, Plea to the Jurisdiction and  
7 administrative hearings and soforth, that is our case, that's  
8 not the Pearson case, that's a 1980 case, Amason versus Sea  
9 Way Pipeline. The basis of that has nothing to do with this.  
10 The Court went into detail at the last hearing. The details  
11 have been left out today are, that we were put -- our client  
12 was put on notice in 2007, of our condemnation. The City  
13 Counsel passed a resolution in 2008. The landowner was owner  
14 given a ten day notice letter that in ten days it would be  
15 condemned in 2008. In 2009, they were noticed again the case  
16 was going forward. In 2010, they were noticed again the case  
17 was going forward. The Senate -- Senate Bill 18 was passed  
18 months before a filing of this case but it went into effect  
19 September 1st, where it gave the landowner rights to have the  
20 appraisals, to have the information from the prior appraisals  
21 on a case. That's the reason this case was filed August 30th,  
22 is to have it filed before the landowner rights in Senate Bill  
23 18 on September 1, 2011. We had a Lis Pendens, Your Honor,  
24 filed on this case August 3rd, 2011. There has been a Lis  
25 Pendens on this property, fifteen hundred acres since August

Scott Smith  
Court Reporter

1 2011. Now, the City response to Judge Wiley was, the real  
2 reason is we don't want to go to the trouble of going back to  
3 the City Counsel and getting a new resolution. Well, we've  
4 been under a Lis Pendens since 2011, we've been under a notice  
5 of condemnation since 2007, and now we're here in July going,  
6 into July 2013, and what we are saying is, that the Court has  
7 a right to control their docket. According to the City and  
8 the basis of this whole case is one single point, the City  
9 says that they can file and hold a property hostage with Lis  
10 Pendens and the filing of a lawsuit that never goes forward  
11 until they're ready to, and that the Court can do nothing  
12 about it, ever. So, the situation of we are ready to go  
13 forward and there's good reason and so forth, the end of the  
14 response and the response to wanting a reinstatement is  
15 actually, there's nothing you can do, Judge, because we can  
16 file these cases, freeze the property and never go forward to  
17 the case -- with a case until we are ready to. And, what's  
18 freezing the property does with the Lis Pendens and the filing  
19 of the lawsuit here is -- it avoids the new Property Code Law  
20 which was two days later, and it freezes the property as to  
21 use, as to value, as to the landowner going forward with doing  
22 anything on the property until the City, at the some point and  
23 time, is ready to go forward, that's the basis of it.  
24 Mr. Salazar will speak to the case law.

25 THE COURT: Thank you, sir.

Scott Smith  
Court Reporter

1 MR. SALAZAR: With respect to Counsels  
2 recitation of the law as it pertains to the administrative  
3 phase of an Eminent Domain proceedings, I have no quarrels  
4 about the administrative phase of a condemnation proceeding.  
5 I do have a disagreement with Counsel about the ability of a  
6 condemning authority to file a lawsuit and permit that lawsuit  
7 to remain pending in perpetuity, which is what the City of  
8 Dallas is asking this Court to do. They are asking this Court  
9 to overlook the fact that we have Texas Rules of Civil  
10 Procedure, 165a, which imposes a time frame within which a  
11 lawsuit should be dispensed with, and the City of Dallas is  
12 also asking this Court to overlook the fact that you have an  
13 inherent authority, as a matter of law to control your docket.  
14 And, there is nothing within the construct of Texas president  
15 which would identify a complete termination of Texas Rules of  
16 Civil Procedure, 165a, and or the Court's inherent power to  
17 control it's docket. As Mr. Vassallo was describing to the  
18 Court, what exactly transpired here is that the City of Dallas  
19 in an effort to preserve it's position under the Old Statutes,  
20 which existed as of August 30th -- August 31st, 2011, that's  
21 what the City raced to the Courthouse to do and they filed  
22 their lawsuit on August 30th, 2011. And, the Texas  
23 Legislature changed some of the construct of the Eminent  
24 Domain process on September 1st, 2011. And, at this point the  
25 City of Dallas is struggling mightily to ask this Court to

Scott Smith  
Court Reporter

1 permit it to continue this case under the old construct as  
2 opposed to the new construct of the Property Code. What the  
3 City of Dallas is failing to present to the Court is exactly  
4 why they waited eighteen months to have this proceeding get  
5 set by a Special Commissioner's proceeding. And, what the  
6 City of Dallas attempts to do in written response is to blame  
7 others for the failure to go forward with this lawsuit. First  
8 the City of Dallas alleged that it's the landowner's  
9 obligation to have the Commissioners set a Special  
10 Commissioners' hearing. If that were true, if that were the  
11 basis of Eminent Demand in the State of Texas not much  
12 condemnation would ever go forward. What landowner is going  
13 to assist the condemning authority with the process of  
14 acquiring a property? So, it doesn't make sense within the  
15 general scheme of Eminent Domain to suggest that a property  
16 owner has an obligation to set the Commissioners' hearing.  
17 Then the City of Dallas goes through the process of telling  
18 this Court, well, it was the Commissioner's fault. The  
19 Commissioners didn't do their duty, and the Commissioners  
20 didn't set a hearing. Well, the City of Dallas in their  
21 Motion goes through their process of explaining exactly what  
22 they did to get the Special Commissioners to set this hearing.  
23 And, the City of Dallas in their Motion is essentially  
24 admitting to this Court, yes, it's the City's obligation to  
25 get with Special Commissioners and set this hearing as soon as

Scott Smith  
Court Reporter

1 possible. But, that's not what transpired in this case,  
2 Judge. What transpired in this case is filing of a lawsuit,  
3 and the City permitting it to languish on this Court's docket  
4 for period of months and without any activity whatsoever.  
5 And, the reasons why it's allowed to languish on the Court's  
6 docket is one, had a retiring City Attorney. Well, the  
7 retiring City Attorney didn't file this lawsuit in this Court,  
8 and he was never made Counsel of Record in this proceeding, as  
9 far as, I know. So, the retirement of the City Attorney is of  
10 no moment with respect to the delay. And, then we have a  
11 Notice of Appearance of the new City Attorney who was hired  
12 months, and months after the litigation was filed and yet, the  
13 new City Attorney, whose now out on maternity leave, has still  
14 done nothing to advance this case to a fruition. And, the  
15 property owner is left to languish with the Lis Pendens out  
16 there in an inability to do anything that he chooses to do  
17 with this property because, he's got the suspension to address  
18 if he chooses to sell his property or he chooses to develop  
19 it. So, we have the final reason why the City is struggling  
20 to maintain and reinstate this case, and that final reason,  
21 according to the Attorney of the last hearing was to avoid the  
22 necessity of going through City Counsel and seeking  
23 reauthorization. Either the project is necessary or it is  
24 not. All the City Counsel has to do is make that  
25 determination --

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Court Reporter

1 THE COURT: I am sorry, so say that again, you  
2 lost me somewhere.

3 MR. SALAZAR: I'm sorry. At this point, the  
4 City is continuing to have the case reinstated and pursue from  
5 the filing August, 2011, because it is attempting to avoid  
6 going back to the Dallas City Counsel asking it to reauthorize  
7 the filing of the condemnation case. And, there is nothing  
8 especially difficult about reauthorizing the filing of a  
9 lawsuit. Either it's necessary or it is not. The City either  
10 wants the property or it does not. And, it's just a matter of  
11 making that presentation to the City Counsel. It's not  
12 something which is a overwhelming burden to the City of Dallas  
13 to go and seek and receive permission for a lawsuit that  
14 they've already filed and allowed to languish on this Court's  
15 docket for eighteen months without activity. And, having said  
16 that, Your Honor, I would submit it is not a valid reason to  
17 suggest or no valid reason has been submitted to the Court to  
18 suggest that rule 165a does not apply and that the Court's  
19 inherent knowledge control it's docket, and dismiss those  
20 cases which are not advanced to a fruition in a timely  
21 fashion. So, I would ask the Court to affirm the previous  
22 Judge's ruling to dismiss this case.

23 THE COURT: Okay. And, reply?

24 MS. ROSENBERG: Please. First I want to say  
25 that the test with reinstatement is not the reason we filed.

Scott Smith  
Court Reporter

1 The reason the City filed the case but whether or not there  
2 was actually a good reason when the reason -- there was a  
3 reason to file to be able to have a Motion to Dismiss whether  
4 or not rule 165a applies and even if it does apply the shall  
5 reinstate the case if it's shown that the failure to proceed  
6 is reasonably explained. I believe that we have reasonably  
7 explained because, of the changes in the staffing, the  
8 Attorney that was responsible for this case became responsible  
9 for other cases. We had trouble with our appraiser, the delay  
10 isn't that long. We are not asking that the case be set for  
11 perpetuity and that that be the case. In this case it was  
12 actually moving along when -- and getting set, and getting  
13 ready for the appraisal when the Motion for Dismiss. The City  
14 is not blaming others, we're just explaining what the process  
15 is and how the City believes that there is a basis for  
16 reinstatement. That the Court should not have, in the first  
17 place, dismissed, because this was an administrative  
18 proceeding. It's the responsibility of the Commissioners for  
19 setting the hearing and certainly the City cooperates and  
20 tries to move that along. But, what we're saying is that,  
21 under 165a, it's about lawsuits. This isn't a lawsuit yet.  
22 165a and Rule 6 of the Supreme Court is about an appearance  
23 date, time for an appearance, those rules just simply don't  
24 apply. We ask that the Court reinstate this case, so that we  
25 can get the Commissioners' hearing set, and we have the

Scott Smith  
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1 appraisals now and we are ready to move forward. Thank you,  
2 Your Honor.

3 THE COURT: Ma'am, let me ask you a question.  
4 May I ask the opposing Counsel a question?

5 MR. VASSALLO: Certainly. Of course, Your  
6 Honor.

7 THE COURT: Ma'am, why isn't this a lawsuit?

8 MS. ROSENBERG: It's not a lawsuit, because the  
9 Supreme Court and the others say that the generals -- under  
10 Pearson and the others that, because it's Eminent Domain it's  
11 an administrative procedure in which the Judges are given  
12 certain duties -- specific duties and that is to appoint  
13 Commissioners and swear them in and it doesn't become a  
14 lawsuit until the objections to the Commissioner's Court and  
15 that's just the procedure. So, at that point, a Judge has  
16 limited authority under the case law for the case and  
17 that's -- it becomes a lawsuit but until --

18 THE COURT: It becomes a lawsuit whenever  
19 opposing Counsel files an objection.

20 MS. ROSENBERG: Objection to the Commissioner's  
21 award.

22 THE COURT: Hold that. Let me go back and ask  
23 you fellows, when was the Lis Pendens filed?

24 MR. VASSALLO: August 3rd, 2011.

25 THE COURT: Okay. So, by virtue of them filing

Scott Smith  
Court Reporter

1 Lis Pendens that would not necessitate being a lawsuit?

2 MR. VASSALLO: The City filed a Lis Pendens on  
3 our property August 3rd, 2011.

4 THE COURT: That there was a lawsuit?

5 MR. VASSALLO: That there was a notification.  
6 That there's appending litigation. It is correct that it does  
7 not become a case -- a statutory case before the Court until  
8 after objections are filed with the Commissioners' award, but  
9 a condemnation case is a two part process. The first part is  
10 the administrative, the second part is the trial of the case.  
11 The basis for which we ask for a dismissal and it was granted  
12 was the basis that the position of the City is not that there  
13 is good cause and we had people leave and so forth. The basis  
14 is you can't ever push your docket and you can't ever have any  
15 say so over a condemnation case, ever --

16 THE COURT: Your talking about me as the Court?

17 MR. VASSALLO: Yes, sir, as the Court, because  
18 you can't control your docket because we can file a case and  
19 leave it as long as we want. Now, the fact that they say  
20 after we filed a Motion for Dismissal they set the hearing  
21 like that, Commissioner's hearing. But, they are saying you  
22 can't every do anything in case we decide not to file one, it  
23 stays here in perpetuity. We have a Lis Pendens in perpetuity  
24 on our property. That's the basis, sir.

25 THE COURT: All right, sir.

Scott Smith  
Court Reporter

1 MS. ROSENBERG: I have a copy of the Lis  
2 Pendens, and it was filed, and it says a lawsuit in an Eminent  
3 Domain proceeding is eminent. The lawsuit is -- well, the  
4 lawsuit -- let's see -- it does say that there is a lawsuit,  
5 but we have to file it.

6 THE COURT: All right.

7 MS. ROSENBERG: But, it's not considered --  
8 under Pearson it's not considered a suit in which the Court  
9 has authority. But, I don't think you have to take this and  
10 make this what you can never do, or, yeah, I mean, this  
11 doesn't have to be a, you know, that kind of cause. I mean,  
12 this doesn't have to be to set an example that a Court has  
13 power because I think in this particular case, the Rule  
14 doesn't apply because there hasn't been an appearance and the  
15 other it hasn't been that long and we have a reasonable  
16 explanation. So, there isn't any reason to be setting any  
17 kind of -- that it has to be any kind of an example that the  
18 Court has some sort of power in this case.

19 THE COURT: Give me a second. In response to  
20 the Motion for Reinstatement, I do not believe that a  
21 reasonable explanation has been made. I am going to deny the  
22 reinstatement.

23 MR. VASSALLO: Thank you, Your Honor. We will  
24 submit an order.

25 MR. SALARZAR: Your Honor, I have one.

Scott Smith  
Court Reporter

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THE COURT: Okay.

(End of Proceedings)

Scott Smith  
Court Reporter

Cause No. 842-62CC

CITY OF DALLAS ( IN THE COUNTY COURT  
VS. ( AT LAW  
HIGHWAY 205 FARMS, LTD., ET AL ( OF KAUFMAN COUNTY, TEXAS

I, Scott Smith, Official Court Reporter in and for the  
County Court at Law of Kaufman County, Texas, do hereby  
certify that the following exhibits constitute true and  
complete duplicates of the original exhibits, excluding  
physical evidence, admitted into evidence during the trial on  
the merits in the above entitled and numbered cause as set out  
herein before the Honorable Dennis P. Jones, Judge of the  
County Court at Law of Kaufman County, Texas.

WITNESS MY OFFICIAL HAND this the \_\_\_\_\_ day of  
\_\_\_\_\_, 2013.

\_\_\_\_\_  
Scott Smith  
Official Court Reporter  
County Court at Law  
Texas CSR 1134  
Kaufman, Texas 972-932-4331

Scott Smith  
Court Reporter

1 THE STATE OF TEXAS )

2 COUNTY OF KAUFMAN )

3 I, SCOTT SMITH, Official Court Reporter in and for the  
4 County Court at Law of Kaufman County, Texas, do hereby  
5 certify that the foregoing pages contain a full, true, and  
6 correct transcript of all portions of evidence and other  
7 proceedings requested in writing by counsel for the parties to  
8 be included in this volume of the Reporter's Record in the  
9 above-entitled and numbered cause, all of which occurred in  
10 open court or in chambers and were reported by me.

11 I further certify that this Reporter's Record of the  
12 proceedings truly and correctly reflects the exhibits, if any,  
13 offered by the respective parties.

14 I further certify that the total cost for the  
15 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
16 was paid by \_\_\_\_\_.

17 WITNESS MY OFFICIAL HAND this the \_\_\_\_\_ day of  
18 \_\_\_\_\_, 2013.

21 \_\_\_\_\_  
22 SCOTT SMITH Texas CSR 1134  
23 Official Court Reporter  
24 County Court at Law  
25 Kaufman County, Texas  
C.S.R. Certification No. 1134  
Expires: 12-2014

Scott Smith  
Court Reporter

Order entered July 22, 2014



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-13-00951-CV

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**CITY OF DALLAS, Appellant**

**V.**

**HIGHWAY 205 FARMS, LTD. AND  
MAURICE E. MOORE, JR., Appellees**

**and**

**IN RE CITY OF DALLAS, Relator**

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**On Appeal from the County Court  
Kaufman County, Texas  
Trial Court Cause No. 84262CC**

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**ORDER**

In accordance with Court's opinion issued this date in this consolidated appeal and petition for writ of mandamus, we **CONDITIONALLY GRANT** mandamus relief. The Court **ORDERS** the trial judge of the County Court at Law, Kaufman County, Texas to **VACATE** his April 17, 2013 order granting defendants' motion to dismiss for want of prosecution without prejudice. We **DIRECT** the trial judge to reinstate the case.

Should the trial court fail to comply with this order, the writ will issue. The Court **ORDERS** the trial judge to file with this Court, within thirty (30) days of the date of this order, a certified copy of its order in compliance with this order.

We **ORDER** that City of Dallas recover their costs of this proceeding from Highway 205 Farms, Ltd. and Maurice E. Moore, Jr.

/s/      DAVID EVANS  
JUSTICE