

Control Number 46078



Item Number 16

Addendum StartPage 0

PUC DOCKET NO. 46078

RECEIVED

2016 AUG 24 PM 3:44

PUBLIC UTIL. T. CG
FILED CLERK 107

**PETITION OF MONTERREY OAKS,
LTD TO AMEND THE CITY OF
SPLENDORA'S CERTIFICATE OF
CONVENIENCE AND NECESSITY
IN MONTGOMERY COUNTY BY
EXPEDITED RELEASE**

§
§
§
§
§
§

PUBLIC UTILITY COMMISSION

OF TEXAS

**MONTERREY OAKS, LTD.
RESPONSE TO ORDER NO. 4**

COMES NOW Monterrey Oaks, Ltd. (Monterrey Oaks) and files this Response pursuant to Order No. 4 in the above referenced docket.

Monterrey Oaks will address the positions of the staff of the Public Utility Commission (Staff) and the City of Splendor (City) separately.

I. RESPONSE TO STAFF

Order No. 2 determined that the application originally filed by Monterrey Oaks was not administratively complete. Subsequent thereto, Monterrey Oaks filed additional information with the PUC as requested by Staff. Staff now submits that the application is administratively complete and should be processed according to a schedule proposed by staff.

Monterrey Oaks concurs with Staff that the application is administratively complete. Monterrey Oaks has no objection to the schedule proposed by Staff to complete processing of this application.

16

II. RESPONSE TO CITY

City has protested this application and has sought to intervene in this docket. City claims that it is ‘servicing’ the property as provided in Chapter 13 of the Texas Water Code and that, for this reason, the application must be denied. City claims it has 2’ water lines adjacent to the property¹ in question and larger lines in adjacent roadways. These assertions are incorrect. City claims it is serving the property because there was a prior inquiry on the availability of service for a proposed school. This alleged inquiry for service to a school is irrelevant since Monterrey Oaks now owns the property and desires to have it released from all existing CCNs so that it may develop a residential subdivision on the property.

City claims it has water lines adjacent to Monterrey Oaks’ property which ‘serve’ the land in question. There are no service connections or meters from the City’s lines serving anyone located on the Monterrey Oaks property. There are no City lines actually on the Monterrey Oaks property. As demonstrated by the attached engineering report from Stephen Troy Toland, P.E. to Mark Martin, Principal with Monterrey Oaks, the City’s representations in its original protest are factually incorrect. Further, this property, which has a potential of over 300 residential service connections,² cannot begin to be served by 2’ water lines already serving adjacent developments or a 6’ water main almost two miles away. While the City is correct that the definition of “service’

¹ See attached affidavit of Bill Daugeette.

² Attached Mark Martin report.

in Texas Water Code 13.002(21) is to be interpreted broadly, the courts have made it clear that this service has to be tied to real water or sewer demands located on the property in question.³ In the *Tex. Gen. Land Office v. Crystal Clear Water Supply Corporation* case cited by the City, the court determined the water supply corporation was not serving the GLO tract because it did not have existing lines with adequate capacity already located on the property to serve the anticipated demands the tract would have when fully developed. This decision was consistent with the court's holding in the *Creedmoor-Maha Water Supply Corporation* case where the court found that service was not being provided because the water supply corporation did not have lines in the ground in the property in question capable of providing the service demands that would be experienced when the property was fully developed. In light of these cases, it is rather disingenuous for the City to claim it is serving a residential property with a demand of over 300 connections plus fire flows through 2' water lines when the City knows that the TCEQ rules limit 2' water lines to having no more than ten residential connections.⁴ City is in no position to claim it can meet the demands of the current landowner with the facilities it has in place today.

For these reasons, the City's protest and intervention request must be denied.

³ 449 S.W. 3d 130, Tex. App. (Austin, 2014, pet. denied); No. 03-09-00460-CV. Texas Court of Appeals, Third District.

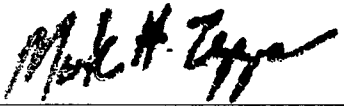
⁴ 30 TAC 290.44(c).

III. PRAYER

For the reasons cited above this application must be declared administratively complete, and processed according to the Staff's schedule without further participation by or interference from the City.

Respectfully submitted,

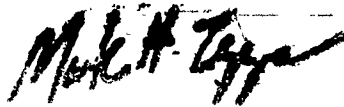
LAW OFFICES OF MARK H. ZEPPA, PC
4833 Spicewood Springs Road, Suite 202
Austin, TX 78759
(512) 346-4011
FAX (512) 346-6847

By: 

Mark H. Zeppa
State Bar No. 22260100

CERTIFICATE OF SERVICE

I, Mark H. Zeppa, counsel for the Applicant, certify the foregoing pleading was served in accordance with 16 TAC § 22.74 on August 24, 2016:



Mark H. Zeppa

AFFIDAVIT OF BILL DAUGETTE

STATE OF TEXAS §
 COUNTY OF MONTGOMERY §

On this day, Bill Daugette, appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

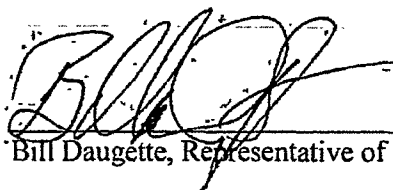
My name is Bill Daugette. I am a representative of the City of Splendora, Texas (the "City"), in Montgomery County. I am more than 21 years of age and capable of making this affidavit. I have personal knowledge of the facts stated herein, which are true and correct.

1. I assisted the City in the preparation and filing of its application to amend water certificate convenience and necessity ("CCN") No. 11727 in Montgomery County, Texas, at the Public Utility Commission ("Commission") which was approved by the Commission on November 30, 2015.
2. I am familiar with the City's water system and facilities in and around the City, particularly those within the boundary of the City's water CCN.
3. I am also familiar with the petition filed by Monterrey Oaks, Ltd. ("Monterrey") for expedited release from the City's water CCN (Commission Docket No. 46078) and the property that is the subject of said petition. The Monterrey property is located within the City's CCN.
4. From my work with the City, I know that the City currently has in place and is operating two 2-inch water lines that end on property adjacent to the Monterrey property within a few feet of the Monterrey property boundary on its northern side. Additionally, the

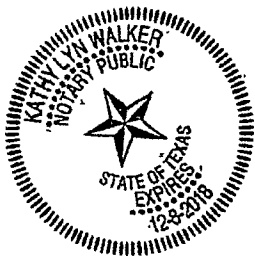
AFFIDAVIT OF BILL DAUGETTE
Page 1

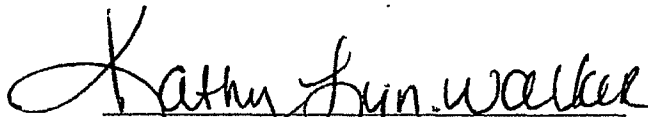
Monterrey property is flanked the entire length of its eastern border by another 2-inch water line that eventually connects to a larger 4-inch water line going south of the Monterrey property. As such, the Monterrey property either touches or runs parallel to City water lines on three of its borders.

- 5. The two 2-inch water lines that abut the Monterrey property on the northern border were placed such that service could be extended to the Monterrey property.
- 6. No other property within the vicinity of the two 2-inch water lines that abut the Monterrey property on the northern border could be served by these lines. The only property these lines could be extended to serve is the Monterrey property.
- 7. I have determined that sufficient capacity currently exists in the existing water lines to provide retail water service to the Monterrey property.
- 8. The City would be able to serve the property.
- 9. Attached to this Affidavit are photographs that I had taken at the northeast corner of the Monterrey property at Morgan Cemetery Road and the northern border of the Monterrey property at Spring Lane depicting the Monterrey property line and the City's abutting water lines.


 Bill Daugette, Representative of the City

SUBSCRIBED AND SWORN TO BEFORE ME this 18 day of August, 2016.




 Kathy Lyn Walker
 Notary Public, State of Texas

J. J. Smith

From: Mark Martin <mark@netmass.com>
Sent: Monday, August 22, 2016 10:01 AM
To: jj@zeppalaw.com
Subject: FW: Docket 46078 Express Release Petition for Monterrey Oaks
Attachments: 2016_08_19_15_15_48.pdf; Survey for 102 Acres.pdf; Aerial Boundary of Monterrey Oaks.pdf

Hi JJ see attached.

From: Mark Martin
Sent: Friday, August 19, 2016 4:18 PM
To: 'Mark Zeppa' <markzeppa@austin.rr.com>; 'J. J. Smith' <jjsmith1@austin.twcbc.com>
Subject: Docket 46078 Express Release Petition for Monterrey Oaks

Hi Mark,

Attached is the response from the City of Splendoria intervening on my request for express release. They are attempting to use the broad definition that you and I discussed on the phone. Their claims that my allegations are unsupported are disputed as follows:

Their claim that a 2' water line abuts my property at two separate locations is not correct in the literal/physical sense.

- 1) At the first location mentioned the 2' water line terminates approximately 150' east of my most northern boundary and is in the County road right-of-way. The water line does not abut my property.
- 2) At the second location mentioned the 2' water line terminates at the end of a Spring Lane (a county road) and is approximately 150' from my property. The 2' water line would have to cross private land in order to abut to my property and the City does not have an easement to extend the line.
- 3) The 2' water line along Autumn Lane that parallels my eastern boundary is located approximately 650' from my boundary and is separated by private home sites. There are no easements that currently exists that would allow the City to directly extend from Autumn Lane and they would be reliant upon the County road right-of-way to extend services (if the County permits them to utilize their ROW).

In no case, in the literal sense, do any of the City of Splendoria water lines physically extend, terminate at or abut my property. In all disputes mentioned by the City there is a literal and physical separation of their lines from the property.

There is no current way that these lines have sufficient to provide capacity to my property. I am designing a 8' water system for full fire flow in the Monterrey Oaks subdivision and 2' lines simply do not have the ability to provide sufficient pressure for full fire flow.

Further, Monterrey Oaks intends to apply for a sewer CCN and install a sewer plant on the property to service the 180 residential home sites. It will not be economically feasible for a private utility provider to install a sewer plant without also benefitting from the providing the water service. The City of Splendoria does not have the sewer CCN on or near the property nor do they have any sewer lines within a several mile vicinity of the Monterrey Oaks tract.

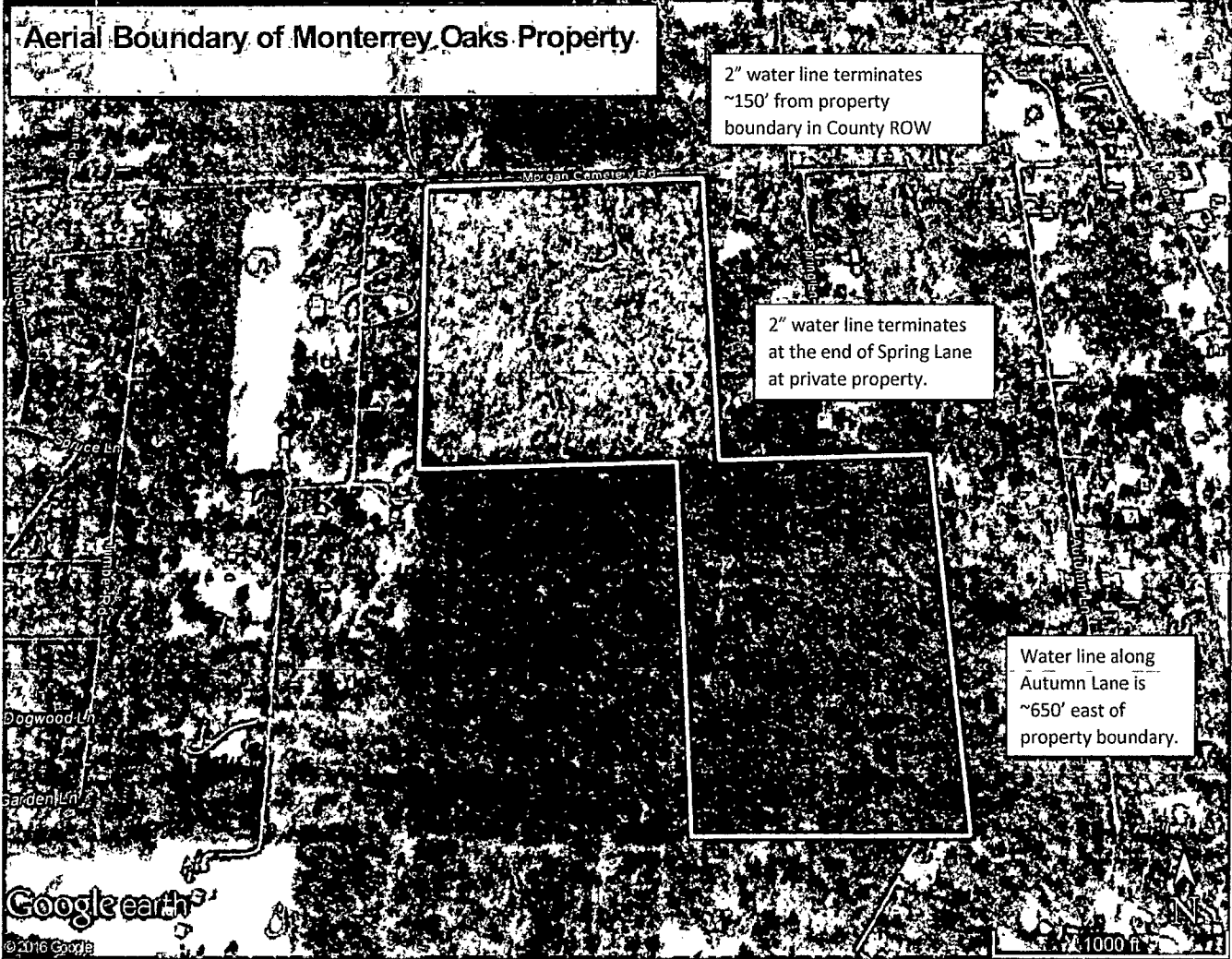
The claim that a prospective buyer from more than two years prior had discussed obtaining water service from the City of Splendoria has no bearing on this application for express release. Monterrey Oaks, LTD was under no legal obligation to extend the City of Splendoria water to this tract when it purchased the land.

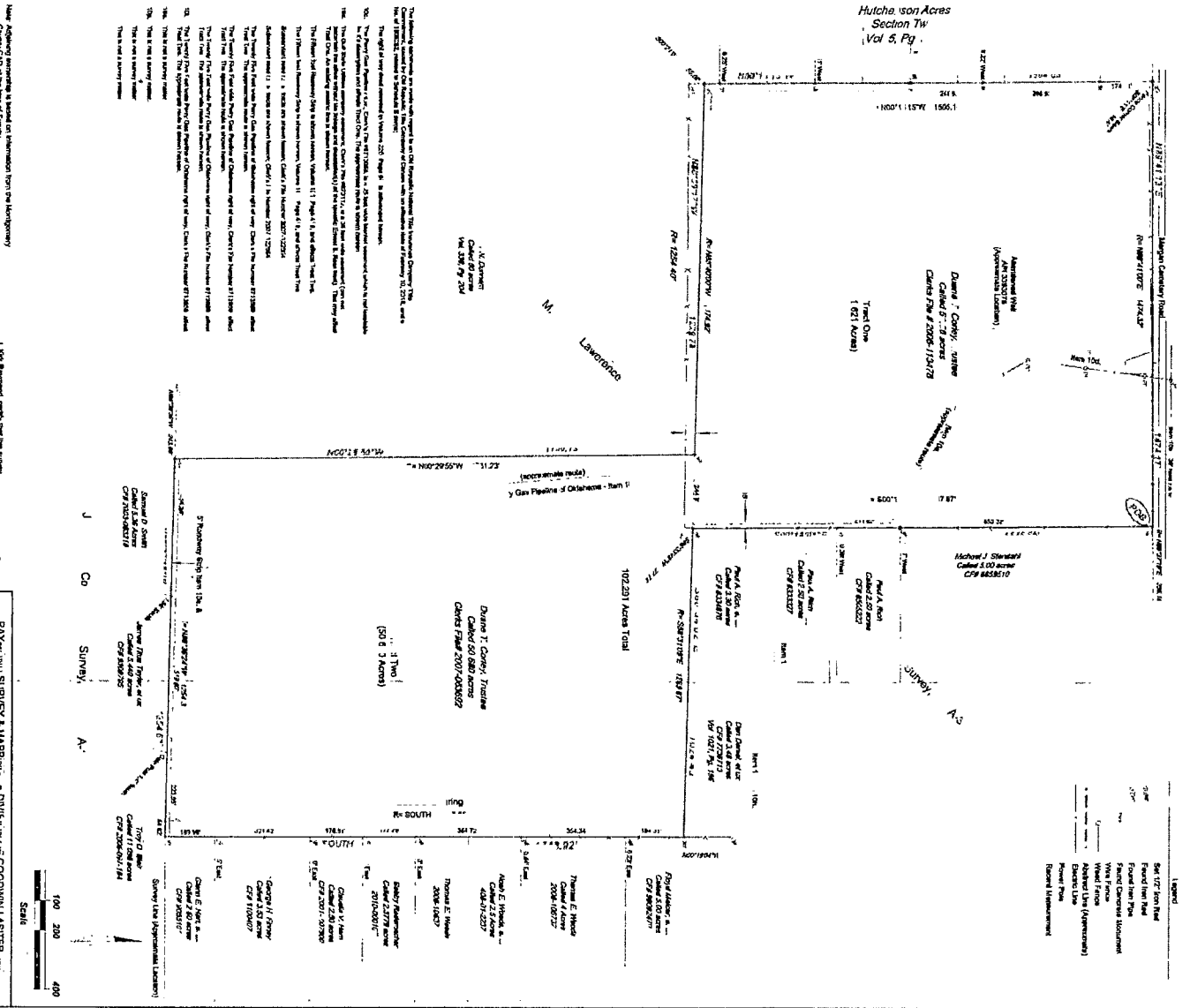
If Monterrey Oaks, LTD, cannot obtain the express release from the City of Splendora water CCN and subsequently obtain a water and sewer CCN from a private provider, then it has no current plans to subsequently apply for nor to extend the City's water service to the property and, instead, will develop a large lot subdivision with 60 lots that have individual water wells and individual septic tanks.

If you think it is relevant, I can provide on the ground surveys to show the actual location of where their water lines terminate in relation to my property boundaries.

Please let me know if you can provide a response to the PUC by next Friday.

Mark





These boundaries are based on information from the Hutchinson County Clerk's Office.

1. All boundaries are based on the survey records on file in the office of the County Clerk, Hutchinson County, Texas.

RAYMOND SURVEY & MAPPING - A DIVISION OF GOODWIN & SISTER, INC.

10000 W. Loop West, Suite 100, Houston, Texas 77042
 Phone: (713) 865-1111
 Fax: (713) 865-1112
 Email: info@raymoundsurvey.com

Surveyed by: [Signature]
 Date: 10/12/2011
 Scale: 1" = 400'

Mark Zeppa

From: Mark Martin <mark@netmass.com>
Sent: Monday, August 22, 2016 12:03 PM
To: Mark Zeppa; J. J. Smith
Subject: FW: Survey location of Splendora lines
Attachments: 2016-08-22-Monterrey Oaks Ex Waterline Location Exhibit.pdf

Hi Mark,

In addition to my comments to you on Friday, please see my engineers comments below and the attached subdivision layout which shows the location of the City of Splendora blow-off valves (identified as B.O.V. on the plat).

Can you please confirm that you will be able to address this by the filing deadline on Friday, August 26?

Thank You,
 Mark Martin
martin@netmass.com
 (281) 989-8185 cell
 (281) 354-3500 office

From: Troy Toland [mailto:ttoland@glstexas.com]
Sent: Monday, August 22, 2016 11:23 AM
To: Mark W. Martin <martin@2mrealty.com>
Subject: RE: Survey location of Splendora lines

Mark,

I read through their comments and have my own to add.

1. Original City Water Map is incorrect.
2. Exhibit A does not correlate properly with information found in the field and Montgomery County Parcel Maps. The blow off valve(end of 2' line) on Morgan Cemetery Road is approximately 75 feet from the property corner and does not directly serve Monterrey. The blow off valve (end of 2' line) on Spring Lane is at the end of the R.O.W. and is approximately 235 ft from the Monterrey property and does not and cannot serve the Monterrey property directly.
3. The two lines in the proximity of the Monterrey property are 2'
4. The nearest 6' line appears to be at Midline Road, approximately 9,200 lf (lay of line).
5. The city may have capacity 9,200 plus feet away, but on Morgan Cemetery, where they would have access, they do not have capacity with a 2' line.
6. With this many lots and with fire protection, they would need a dual feed and/or a larger line than a 6'. There is potential to have over 300 connections with your proposed development combined with the existing connections to be fed off that one line. With that many lots, there should be a dual feed.

Attached are both the new lot layout exhibit and the water line proximity exhibit.

Let me know if you have questions. Thanks,

Stephen Troy Toland, P.E.
 Project Manager

936-367-4100 (O)
936-672-9500 (C)
ttoland@glstexas.com



GOODWIN LASITER STRONG
ENGINEERING ARCHITECTURE INTERIOR DESIGN SUPPLYING

NOTICE: This email message and any files transmitted may include legally privileged and/or confidential information; and is intended solely for the use of the individual(s) named as recipient(s).
If you are not the named recipient you should not disseminate, distribute, copy, or alter this email but notify the sender immediately. Thank you.

From: Mark W. Martin [<mailto:martin@2mrealty.com>]

Sent: Friday, August 19, 2016 4:23 PM

To: Troy Toland

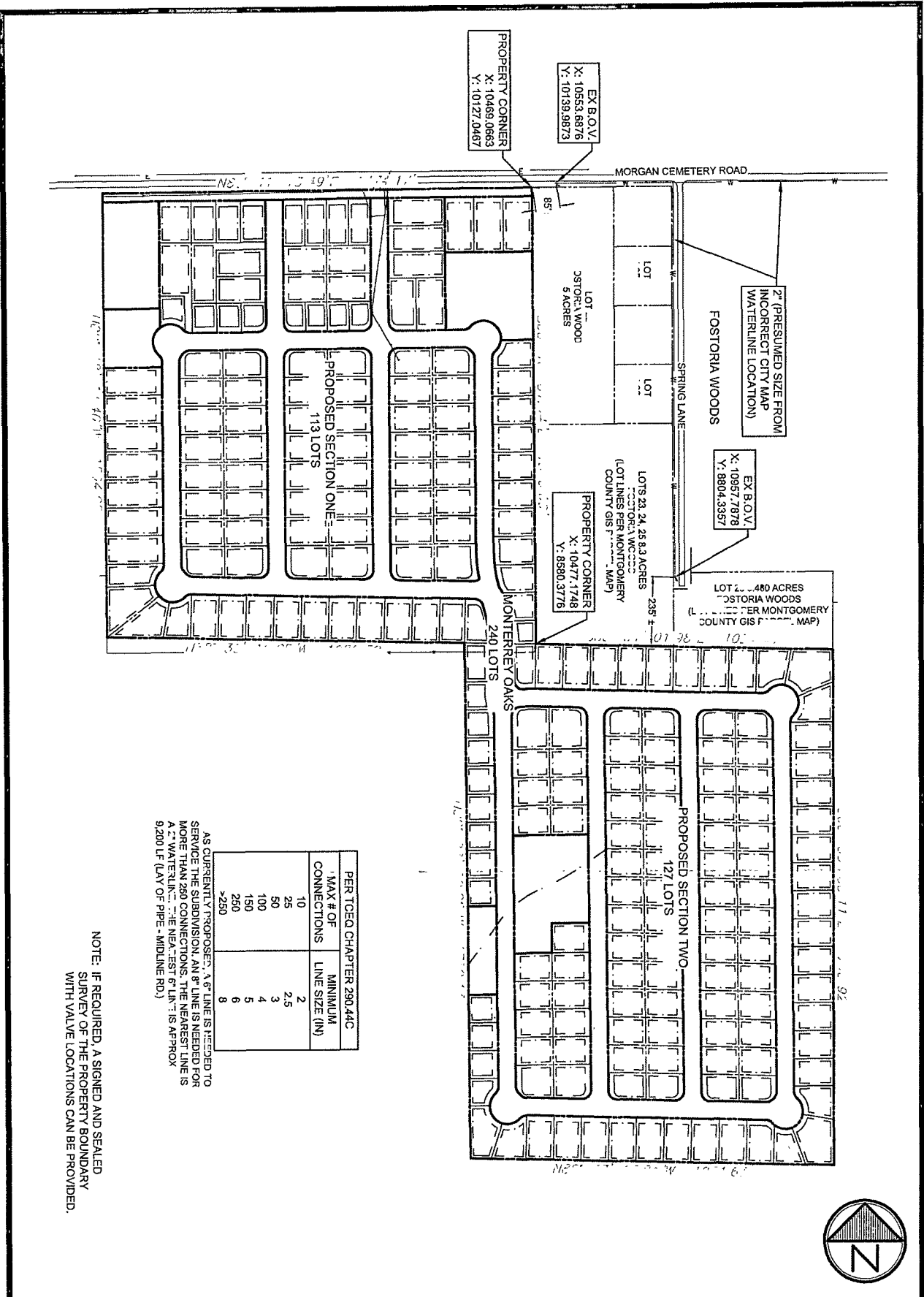
Subject: Survey location of Splendora lines

Can you provide a drawing that shows the location of the City lines in proximity to my property? They are claiming they run completely through the adjacent properties and abut to my property. I need to present my counter-argument by next Friday.

No virus found in this message.

Checked by AVG www.avg.com

Version: 2016.0.7752 / Virus Database: 4647/12855 Release Date: 08/22/16



PER TCEQ CHAPTER 290.44C	MAX # OF CONNECTIONS	MINIMUM LINE SIZE (IN)
	10	2
	25	2.5
	50	3
	100	4
	150	5
	250	6
	>250	8

AS CURRENTLY PROPOSED, A 6" LINE IS NEEDED TO SERVICE THE SUBDIVISION, AN 8" LINE IS NEEDED FOR MORE THAN 250 CONNECTIONS. THE NEAREST LINE IS A 2" WATERLINE TO THE WEST. EST. 6" UN. IS APPROX. 9,200 LF. (LAY-OF PIPE - MIDLINE RD.)

NOTE: IF REQUIRED, A SIGNED AND SEALED SURVEY OF THE PROPERTY BOUNDARY WITH VALVE LOCATIONS CAN BE PROVIDED.

 GOODWIN.LASITER.STRONG <small>ENGINEERING ARCHITECTURE INTERIOR DESIGN SURVEYING</small>		<table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>REVISIONS</th> </tr> </thead> <tbody> <tr> <td>###</td> <td>###</td> <td>###</td> </tr> <tr> <td>###</td> <td>###</td> <td>###</td> </tr> </tbody> </table>	NO.	DATE	REVISIONS	###	###	###	###	###	###
NO.	DATE	REVISIONS									
###	###	###									
###	###	###									
<p>Monterrey Oaks Mark Marti Cle Elum Rd, Tex Ex. WL Location Exhibit</p>		<p>TBP STRA #-</p>									
<p>DATE: 08-22-16 DRAWN BY: RC APP'D BY: STT SHEET NO: 1</p>	<p>ISSUED: 08-22-16 TYP SCALE: 1"=300'</p>	<p>© 2016 ALL RIGHTS RESERVED BY GOODWIN-LASITER, LLC. UNAUTHORIZED USE OR REPRODUCTION IS PROHIBITED WITHOUT WRITTEN CONSENT FROM GOODWIN-LASITER, L.L.C. D:\714\714001\714001-Xref Site.dwg 8/22/2016 10:05 AM</p>									