



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council

From: Bill Riley, Assistant City Attorney

Date: June 10, 2019

Subject: **Authorization to use the City of Dunwoody's powers of eminent domain to obtain certain interests in property necessary for construction of the sidewalks from the parcel located at 4988 Tilly Mill Road**

BACKGROUND

The Dunwoody City Council has adopted and accepted a plan for the creation of sidewalks along Tilly Mill Road. In order to construct such sidewalks, it is necessary to obtain certain interests in real property from parcels adjacent to Tilly Mill Road. The City of Dunwoody has attempted to negotiate for certain property interests located at 4988 Tilly Mill Road Dunwoody, Georgia 30338, however, the City has been unable to come to an agreement with the owner of the property as they have refused to respond to the City's offers.

An appraiser hired by the City was employed to appraise the tract of land located at 4988 Tilly Mill Road Dunwoody, Georgia 30338, bearing Parcel ID 18 359 01 022 and has determined that just and adequate compensation for the property interests necessary to construct the sidewalk improvements is One Thousand Nine Hundred Dollars (\$1,900.00). Consequently, the City of Dunwoody sent the landowner a letter offering Two Thousand Five Hundred Dollars (\$2,500.00) for the interests in property necessary to construct the sidewalk, which represents more than a 20% premium on the appraised value of the property.

The owner of 4988 Tilly Mill Road was provided notice, via mail and statutory overnight delivery, of the City's intention to consider this Resolution at this Council hearing and has failed to respond to the City's good faith offers to obtain the easements necessary to facilitate the construction of the new public sidewalks along Tilly Mill Road

RECOMMENDED ACTION

The City Attorney's Office requests Council approve the attached resolution which authorizes use of the City of Dunwoody's powers of eminent domain to condemn the property interests described in the attached resolution.

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2019-XX-XX

A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DUNWOODY, GEORGIA AUTHORIZING THE USE OF EMINENT DOMAIN TO OBTAIN CERTAIN PROPERTY INTERESTS LOCATED IN LAND LOT 359 OF THE 18TH DISTRICT OF DEKALB COUNTY, GEORGIA FOR THE PUBLIC USE AND PUBLIC BENEFIT OF CONSTRUCTING A PUBLIC SIDEWALK ALONG TILLY MILL ROAD IN DUNWOODY, GEORGIA.

WHEREAS, the City of Dunwoody, Georgia possesses the power of eminent domain as provided in O.C.G.A. § 22-1-1 et seq and O.C.G.A. § 32-3-1 et seq; and

WHEREAS, the Mayor and Council of the City of Dunwoody, Georgia have determined that it is in the public interest and benefit to construct sidewalks along Tilly Mill Road within the City of Dunwoody city limits and have adopted and accepted a plan for the creation of such sidewalks; and

WHEREAS, in order to construct said sidewalk for the public use and for the public benefit, it is necessary to obtain certain interests in real property from parcels adjacent to Tilly Mill Road; and

WHEREAS, an appraiser familiar with real estate values in DeKalb County, Georgia, was employed to appraise the tract of land located at 4988 Tilly Mill Road Dunwoody, Georgia 30338, bearing Parcel ID 18 359 01 022 and has determined that just and adequate compensation for the property interests necessary to construct the sidewalk improvements, which are more specifically described in Exhibit A, and for any consequential damages or benefits considered, is One Thousand Nine Hundred Dollars (\$1,900.00); and

WHEREAS, the City of Dunwoody communicated by letter dated March 25, 2019, attached hereto as Exhibit B, to the property owner, Jane Brown Gorman, that the City was willing to offer Two Thousand Five Hundred Dollars (\$2,500.00) for the property interests sought; and

WHEREAS, the City made additional attempts to contact the property via phone and by mail, however, the only communication received in response to these attempts was from the property owner's son, who stated that he represented his mother and that they would not have anything to do with the City's sidewalk project; and

WHEREAS, the owner of the parcel referenced herein was provided notice, via mail and statutory overnight delivery, of the City's intention to consider this

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2019-XX-XX

Resolution at this Council hearing and has failed to respond to the City's good faith offers to obtain the easements necessary to facilitate the construction of the new public sidewalks along Tilly Mill Road.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Dunwoody, Georgia as follows:

- 1) That the Dunwoody City Council declares it to be the policy and desire of the City to acquire the property interests described in Exhibit A from the tract of land located at 4988 Tilly Mill Road Dunwoody, Georgia 30338, bearing Parcel ID 18 359 01 022.
- 2) That the Dunwoody City Council finds that the public purpose of the acquisition authorized by this resolution shall be to facilitate the adopted and accepted plan of constructing sidewalks along Tilly Mill Road which the Council believes is necessary to enhance pedestrian safety along the Tilly Mill Road corridor.
- 3) That the Dunwoody City Council finds that the public necessity for immediately acquiring all of the property interests specifically described in Exhibits A for the above stated purposes is hereby declared; and further, a finding is hereby made that the circumstances are such that it is necessary to proceed with condemnation proceedings by use of the declaration of taking method of condemnation, as authorized by O.C.G.A. § 32-3-1 et seq, and use of this method is hereby authorized for the acquisition of the property interests described in Exhibit A.
- 4) That the City of Dunwoody has determined that One Thousand Nine Hundred Dollars (\$1,900.00) is the just and adequate compensation to be remitted for the property interests sought and that amount is specifically authorized by this resolution.
- 5) That the City Attorney is authorized and directed by this Resolution to institute condemnation proceedings in the name of the City of Dunwoody, Georgia for the quick and effective condemnation of the property interests described in Exhibit A for the public use set forth above, as provided by the Constitution of Georgia,
- 6) That the City Manager is hereby authorized and directed to expend all necessary and proper payments for the expenses incurred in carrying out the acquisition and condemnation of this property upon receipt of a requisition therefor from the City Attorney and to make all necessary and proper payments in connection with such acquisition, including but not limited to, title searches, appraisals, surveys, specialty reports, expert fees, closings and/or any other costs associated with the condemnation action authorized by this Resolution.
- 7) That the Mayor of the City of Dunwoody is authorized and directed to sign a declaration of taking related to the property interests specified in Exhibit A, as required by O.C.G.A. § 32-3-6, on behalf of the governing authority of the City of Dunwoody.

SO RESOLVED this _____ day of June, 2019.

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2019-XX-XX

Approved:

Denis L. Shortal, Mayor

Approved as to Form:

City Attorney's Office

Attest:

Sharon Lowery, City Clerk

(Seal)

Exhibit A

Temporary Easement

Beginning at a point 27.256 feet right of DE1 at Station 124+50.00 thence S 38°39'10.5" E a distance of 14.584 feet to a point 30.011 feet right of DE1 at Station 124+64.22 thence S 43°42'07.6" W a distance of 22.686 feet to a point 52.658 feet right of DE1 at Station 124+62.92 thence along an arc 5.150 feet to the right, having a radius of 3.500 feet, the chord of which is S 85°51'20.9" W for a distance of 4.698 feet, to a point 55.953 feet right of DE1 at Station 124+59.61 thence N 51°59'24.2" W a distance of 18.293 feet to a point 56.764 feet right of DE1 at Station 124+41.58 thence N 41°50'22.2" E a distance of 6.765 feet to a point 50.000 feet right of DE1 at Station 124+41.72 thence S 49°23'06.0" E a distance of 8.381 feet to a point 50.000 feet right of DE1 at Station 124+50.00 thence N 40°33'25.7" E a distance of 22.744 feet to a point 27.256 feet right of DE1 at Station 124+50.00 and the POINT OF BEGINNING.

The above described parcel contains ± 0.01 acres (428.247 sq. ft.)

Permanent Easement

Beginning at a point 25.760 feet right of DE1 at Station 124+42.21 thence S 38°35'10.6" E a distance of 7.981 feet to a point 27.256 feet right of DE1 at Station 124+50.00 thence S 40°33'25.7" W a distance of 22.744 feet to a point 50.000 feet right of DE1 at Station 124+50.00 thence N 49°23'06.0" W a distance of 8.381 feet to a point 50.000 feet right of DE1 at Station 124+41.72 thence N 41°50'22.2" E a distance of 24.245 feet to a point 25.760 feet right of DE1 at Station 124+42.21 and the POINT OF BEGINNING.

The above described parcel contains \pm 0.00 acres (190.712 sq. ft.)

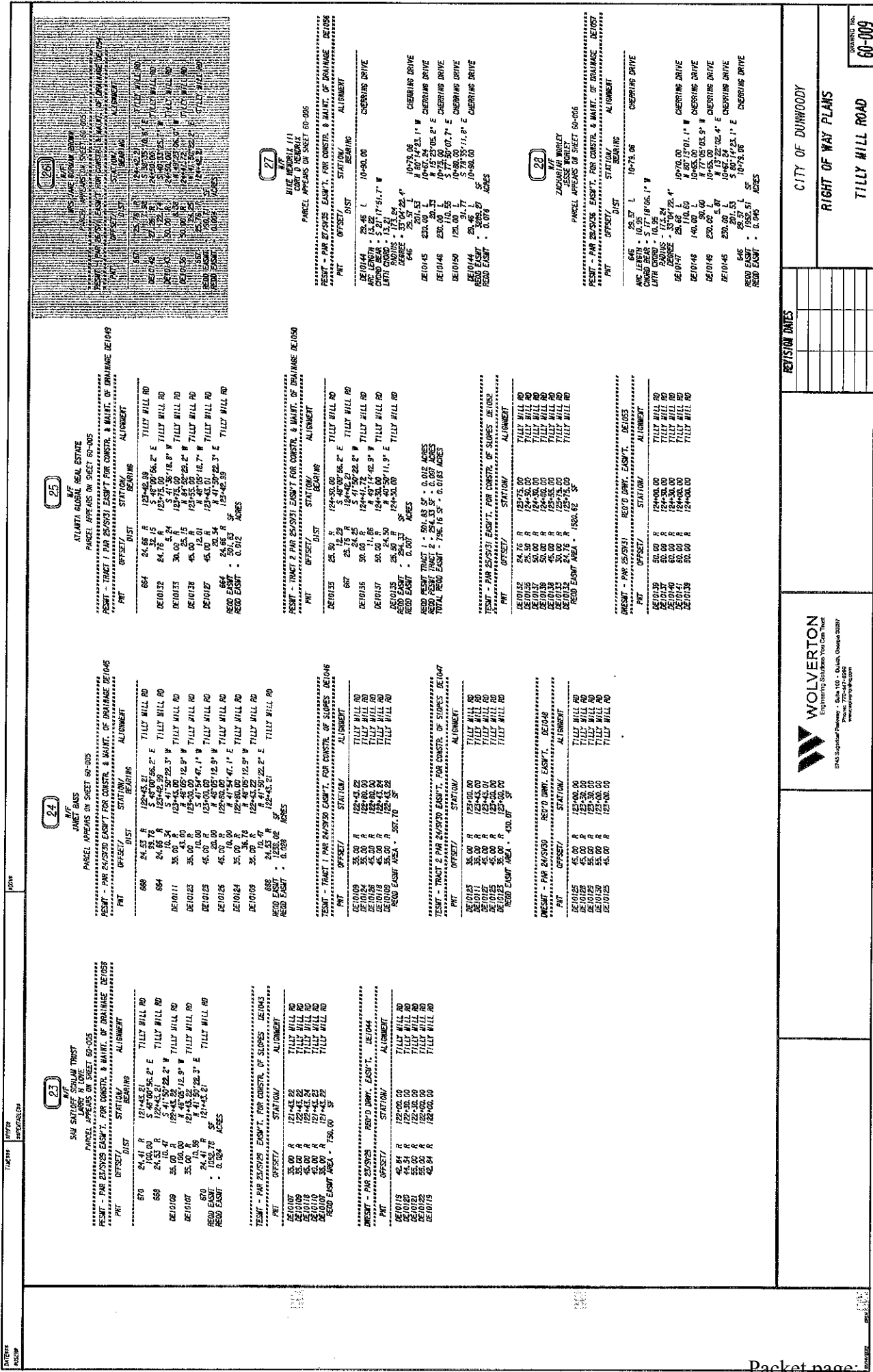
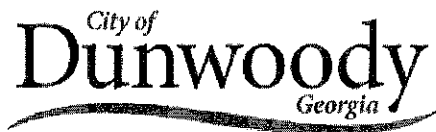


Exhibit B



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

March 25, 2019

Jane G. Brown
4988 Tilly Mill Road
Dunwoody, Georgia 30338

Subject: 10 Day Letter

Tilly Mill Road Pedestrian and Bicycle Improvements (North Peachtree Road to Womack Road)
Parcel 26 - Parcel ID 18 359 01 022
4988 Tilly Mill Road, Dunwoody, Georgia 30338

Dear Homeowner,

As you are aware, the City of Dunwoody is improving Tilly Mill Road with pedestrian and bicycle facility improvements. In order to make this project possible, 190.71 square feet of permanent easement for the construction and maintenance of drainage infrastructure will be needed from the above referenced parcel owned by you. This is more particularly shown in color on the plat and settlement agreement provided with this letter.

We prefer to and are able to purchase most of the property needed for easement through negotiation. However, we have been unable to reach you for negotiations. This is our final attempt to communicate with you. Our next step is to use the authority provided to the City of Dunwoody by law to acquire the defined portion of your property by condemnation.

Through a process of thorough review and expert appraisal, we believe that the Fair Market Value of the portion of your property necessary for the City's fee simple acquisition of the defined area to be \$1,900. As litigation is costly to both the City and the landowner, it is our sincere desire that upon reconsideration of our offer, a settlement agreement can be reached, avoiding litigation. Based on this desire, we are prepared to offer up to **\$2,500**. This is our best and final offer.

If we have not received a satisfactory reply from you by **April 08, 2019**, we will begin the condemnation process based on the Fair Market Value. We regret that such action may become necessary, but we must proceed with acquisition in order to meet the project schedule.

Sincerely,

Ishri Sankar
Capital Projects Manager

Attachments

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Ritcher City Council Post 2
Tom Lambert City Council Post 3

Terry Nall City Council Post 4
Lynn Deutsch City Council Post 5
John Heneghan City Council Post 6



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Mrs. Jane Gorman Brown
4988 Tilly Mill Road
Dunwoody GA 30338

RE: PROJECT: Tilly Mill Road (North Peachtree Road to Womack Road) Multimodal Improvements
COUNTY: DeKalb
PARCEL: 26

Dear Mrs. Jane Gorman Brown:

The City of Dunwoody is in the process of purchasing property to improve the roadway designated above. To make this project possible 190.71 square feet of permanent construction and maintenance of drainage easement will be needed. This is more particularly described on the plat attached to the option with this letter.

After careful consideration, the estimate of value of the property and/or rights to be purchased is **\$500.00**. The attached form, entitled "Statement of Estimated Values", separates certain elements comprising the above listed value.

Our Consultant Right of Way Agent, John Albrycht representing the City of Dunwoody is authorized to explain this and discuss the full effect of the purchase and your rights as provided by law.

If you will agree to the terms expressed herein by signing the enclosed "Agreement to Purchase Real Estate" and returning it to the Right of Way Agent, it will be promptly submitted for closing and payment.

Yours very truly,

Ishri Sankar, P.E.
Capital Projects Manager
City of Dunwoody

BY:

Right of Way Acquisition Consultant
THC, Inc.

Attachment(s)

Rev. 4-21-03
Rev 08-01-2010

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Ritcher City Council Post 2
Tom Lambert City Council Post 3

Terry Nali City Council Post 4
Lynn Deutsch City Council Post 5
John Heneghan City Council Post 6

STATEMENT OF ESTIMATED VALUES

1. Project No.: Tilly Mill Road (North Peachtree Road to Womack Road) Multimodal Improvements County: DeKalb Parcel: 26
2. Owner(s): Mrs. Jane Gorman Brown
Address: 4988 Tilly Mill Road Dunwoody GA 30338
3. Property Location: 4988 Tilly Mill Road Atlanta GA 30338

	<u>FAIR MARKET VALUE REQUIRED</u>	<u>FAIR MARKET VALUE INCLUDING CERTAIN REMNANTS</u>
4. Estimated Value of Land and Improvements and/or Easement if applicable:		
TCE: $190.71 \times \$4.00/\text{SF} \times 50\%$	\$ 381.00	\$0.00
Site Improvements:	\$.00	
5. Estimated Value of all consequential or severance damages:	\$ 0.00	\$ 0.00
6. Estimated Value of Certain Remnant(s):		\$ 0.00
7. Total Estimated Fair Market Value:	\$500.00 (Rounded)	\$ 0.00

(This value is the amount approved by the State for the purchase of the required property and does not contain conjectural decreases or increases in value caused by this project).

8. Division of Interests

<u>NAME</u>	<u>KIND OF INTEREST</u>	<u>ESTIMATED VALUE</u>
Mrs. Jane Gorman Brown	Temporary Construction Easement	\$500.00

Total Estimated Fair Market Value: **\$500.00**

9. If you wish to retain and remove, at your own expense, improvements owned by you, we will:

(a) Deduct at Closing \$ N/A (Salvage Value) and/or

(b) Require a Performance Bond of

Total Withheld at Closing \$ N/A

10. You may be entitled to certain benefits under our Relocation Assistance Program. As these benefits are of a special nature, they will be explained separately.

DATE: _____ PREPARED BY: _____

Staff Negotiator

ROW-515-A (Federal Aid) Revised: 8/77, 10/94

AGREEMENT TO PURCHASE REAL ESTATE

RE: Project Name: Tilly Mill Road (North Peachtree Road to Womack Road) Multimodal Improvements
Parcel No.: 26

STATE OF GEORGIA, DEKALB COUNTY

For and in consideration of the sum of One Dollar (\$1.00), receipt whereof being acknowledged, the undersigned grants to City of Dunwoody, GA, an option to acquire the following described real estate:

Right of Way and/or Easement rights through that tract or parcel of land located in Land Lot 359 of the 18th District, of DeKalb County, Georgia, and being more particularly described on Exhibit "A" attached hereto and made a part hereof by reference.

For the sum of \$500.00, the undersigned agrees to execute and deliver to City of Dunwoody, GA, fee simple title and/or easements to the lands owned by the undersigned as reflected on the attached Exhibit "A".

* * * * *

The following conditions are imposed upon the grant of this option:

- 1) This option shall extend for 90 days from this date.
- 2) The consideration recited is full payment for the rights conveyed.

N/A Square Feet or Acres of Right of Way
 190.71 Square Feet of Stormwater Construction and Maintenance Easement
 N/A Square Feet of Temporary Construction Easement
- 3) All Temporary Easements will terminate upon completion and acceptance of the same by the Department of Transportation.
- 4) The undersigned shall obtain all quit claim deeds or releases from any tenant now in possession and any other parties having a claim or interest in the property described above.
- 5) Special Provisions, if any, are listed on Exhibit "B", which is attached hereto and incorporated herein by reference.

Witness my hand and seal this _____ day of _____, _____.

Signed, Sealed and Delivered
in the presence of:

Witness

(Mrs. Jane Gorman Brown) (Seal)

Notary Public

DOT 663-A-LG
Rev 08-01-2010

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TEST - TRACT & PAR 64/340 EAST - FOR CONSTR. OF SIDING DE-1047		TOTAL RESID EAST - 755.16 SF - 0.0183 ACRES	
PNT	OFFSET/	STATION/	ALIGNMENT
DE10123	38.00 R	123+00.00	TILITY WILL RD
DE10124	38.00 R	123+00.00	TILITY WILL RD
DE10127	45.00 R	123+45.00	TILITY WILL RD
DE10128	45.00 R	123+45.00	TILITY WILL RD
DE10129	45.00 R	123+45.00	TILITY WILL RD
DE10130	38.00 R	123+00.00	TILITY WILL RD
RESID EAST AREA = 120.17 SF			

TEST - TRACT & PAR 64/340 EAST - FOR CONSTR. OF SIDING DE-1047		TOTAL RESID EAST - 755.16 SF - 0.0183 ACRES	
PNT	OFFSET/	STATION/	ALIGNMENT
DE10137	24.75 R	120+75.00	TILITY WILL RD
DE10138	25.50 R	120+30.00	TILITY WILL RD
DE10139	50.00 R	120+30.00	TILITY WILL RD
DE10140	50.00 R	120+30.00	TILITY WILL RD
DE10141	45.00 R	123+55.00	TILITY WILL RD
DE10142	45.00 R	123+55.00	TILITY WILL RD
DE10143	30.00 R	129+75.00	TILITY WILL RD
DE10144	30.00 R	129+75.00	TILITY WILL RD
DE10145	30.00 R	129+75.00	TILITY WILL RD
DE10146	230.00 L	110+55	TILITY WILL RD
DE10147	120.00 L	110+55	TILITY WILL RD
DE10148	29.45 S	10+90.00	TILITY WILL RD
DE10149	29.45 S	10+90.00	TILITY WILL RD
DE10150	29.45 S	10+90.00	TILITY WILL RD
DE10151	29.45 S	10+90.00	TILITY WILL RD
DE10152	29.45 S	10+90.00	TILITY WILL RD
DE10153	29.45 S	10+90.00	TILITY WILL RD
DE10154	29.45 S	10+90.00	TILITY WILL RD
DE10155	29.45 S	10+90.00	TILITY WILL RD
DE10156	29.45 S	10+90.00	TILITY WILL RD
DE10157	29.45 S	10+90.00	TILITY WILL RD
DE10158	29.45 S	10+90.00	TILITY WILL RD
DE10159	29.45 S	10+90.00	TILITY WILL RD
DE10160	29.45 S	10+90.00	TILITY WILL RD
DE10161	29.45 S	10+90.00	TILITY WILL RD
DE10162	29.45 S	10+90.00	TILITY WILL RD
DE10163	29.45 S	10+90.00	TILITY WILL RD
DE10164	29.45 S	10+90.00	TILITY WILL RD
DE10165	29.45 S	10+90.00	TILITY WILL RD
DE10166	29.45 S	10+90.00	TILITY WILL RD
DE10167	29.45 S	10+90.00	TILITY WILL RD
DE10168	29.45 S	10+90.00	TILITY WILL RD
DE10169	29.45 S	10+90.00	TILITY WILL RD
DE10170	29.45 S	10+90.00	TILITY WILL RD
DE10171	29.45 S	10+90.00	TILITY WILL RD
DE10172	29.45 S	10+90.00	TILITY WILL RD
DE10173	29.45 S	10+90.00	TILITY WILL RD
DE10174	29.45 S	10+90.00	TILITY WILL RD
DE10175	29.45 S	10+90.00	TILITY WILL RD
DE10176	29.45 S	10+90.00	TILITY WILL RD
DE10177	29.45 S	10+90.00	TILITY WILL RD
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DE10179	29.45 S	10+90.00	TILITY WILL RD
DE10180	29.45 S	10+90.00	TILITY WILL RD
DE10181	29.45 S	10+90.00	TILITY WILL RD
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DE10183	29.45 S	10+90.00	TILITY WILL RD
DE10184	29.45 S	10+90.00	TILITY WILL RD
DE10185	29.45 S	10+90.00	TILITY WILL RD
DE10186	29.45 S	10+90.00	TILITY WILL RD
DE10187	29.45 S	10+90.00	TILITY WILL RD
DE10188	29.45 S	10+90.00	TILITY WILL RD
DE10189	29.45 S	10+90.00	TILITY WILL RD
DE10190	29.45 S	10+90.00	TILITY WILL RD
DE10191	29.45 S	10+90.00	TILITY WILL RD
DE10192	29.45 S	10+90.00	TILITY WILL RD
DE10193	29.45 S	10+90.00	TILITY WILL RD
DE10194	29.45 S	10+90.00	TILITY WILL RD
DE10195	29.45 S	10+90.00	TILITY WILL RD
DE10196	29.45 S	10+90.00	TILITY WILL RD
DE10197	29.45 S	10+90.00	TILITY WILL RD
DE10198	29.45 S	10+90.00	TILITY WILL RD
DE10199	29.45 S	10+90.00	TILITY WILL RD
DE10200	29.45 S	10+90.00	TILITY WILL RD

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