

ORDINANCE NO. 2004 - 355

AN ORDINANCE AMENDING ORDINANCE NO. 2004-354 AND
CONDITIONALLY APPROVING SERVICE PLAN FOR PROPOSED
ANNEXATION OF A TRACT OF LAND AND SETTING PUBLIC HEARINGS
AND PROVIDING FOR THE PUBLICATION OF NOTICE IN
ACCORDANCE WITH THE REQUIREMENTS OF LAW.

WHEREAS, the City Council of the City of Magnolia finds and determines that it is in the best interest of the City for the City to annex certain property lying within the City's extraterritorial jurisdiction, all of which is subject to annexation by the City of Magnolia in accordance with the provisions of Chapter 43 of the Texas Local Government Code; and

WHEREAS, the City Council finds and determines that the proposed service plan to be approved and adopted at the time of initiation of the annexation, as required by law, is generally in accordance with the provisions of law; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF MAGNOLIA, TEXAS:**

Section 1. The City Council of the City of Magnolia ordains its intent, upon the completion of all required public hearings, to initiate annexation of certain property lying within its extraterritorial jurisdiction, an area being generally described in Exhibit "A" attached hereto.

Section 2. The City Council of the City of Magnolia does hereby conditionally approve the preliminary service plan for the area to be annexed in a form attached hereto and marked Exhibit "B," and orders the same to be made available for public inspection, by any persons affected by the annexation, during regular business hours at the office of the City Secretary of the City of Magnolia.

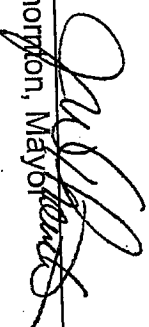
Section 3. The City Council of the City of Magnolia does amend Ordinance No. 354 and does hereby call and schedule two (2) public hearings in accordance with the requirements of law and orders that notice of such hearings be published not more than twenty (20) days nor fewer than ten (10) days prior to the dates of each hearing, and the City Council does order that publication of two (2) notices shall occur within the time as provided for by law and does hereby call the first public hearing to be held at 7:00 p.m. on the 9th day of November, 2004 and the second public hearing to be held at 7:00 p.m. on the 23rd day of November, 2004. The City Council of the City of Magnolia does hereby indicate an intent to initiate by first reading of an Ordinance to annex the subject property at a regular Council meeting at 7:00 p.m. on the 14th day of December 2004. The City Council of the City of Magnolia does hereby approve the form for notices attached hereto and marked Exhibit "C."

Section 4. The City Council of the City of Magnolia does find and determine that it can initiate the proceedings for annexation of the property as specifically referenced in Exhibit "A".

Section 5. Severability.


It is the intention of the City Council of the City of Magnolia that if any phrase, sentence, section, or paragraph of this Ordinance shall be declared unconstitutional or otherwise invalid by final judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remainder of this Ordinance since the same would have been enacted by the City Council without the incorporation of the unconstitutional or invalid phrase, sentence, section or paragraph.

PASSED, APPROVED, AND ADOPTED this 27 day of October, 2004.



Jimmy Thornton, Mayor

ATTEST:



Asst. City Secretary

EXHIBIT "A"

A TRACT OF LAND CONTAINING 580.7754 ACRES SITUATED IN THE EDWARD TAYLOR SURVEY, A-554, MONTGOMERY COUNTY, TEXAS, BEING A PORTION OF A CALLED 313.0 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8442992, A PORTION OF A CALLED 102.0 ACRE TRACT AS DESCRIBED UNDER C. F. No. 9132796, ALL OF A CALLED 150.0 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8115438, ALL OF A CALLED 3.645 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8115439, AND ALL OF A CALLED 169.0 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8716200 OF THE REAL PROPERTY RECORDS OF MONTGOMERY COUNTY, TEXAS; SAID 580.7754 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: (BEARINGS BASED ON DEEDS RECORDED UNDER C.F. No. 8115438 & C.F. No. 8115439)

BEGINNING AT AXLE FOUND FOR THE NORTHWEST CORNER OF THE LYNDON C. APPLEWHITE "TRACT 2" AS DESCRIBED UNDER C. F. No. 9132796, THE NORTHEAST CORNER OF A CALLED 11.028 ACRE TRACT AS DESCRIBED BY DEED RECORDED IN VOLUME 893, PAGE 932, MONTGOMERY COUNTY DEED RECORDS, THE SOUTHEAST CORNER OF A CALLED 11.4366 ACRE TRACT AS DESCRIBED UNDER C.F. No. 9024410 OF THE REAL PROPERTY RECORDS OF MONTGOMERY COUNTY, TEXAS, AND BEING IN THE SOUTH LINE OF A 1.981 ACRE ROADWAY EASEMENT AS DESCRIBED BY DEED RECORDED IN VOLUME 1016, PAGE 376, MONTGOMERY COUNTY DEED RECORDS;

THENCE, N 89°51'24" E, ALONG APPLEWHITES NORTH LINE, PASSING AT 99.78 FEET A 3/8 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID 1.981 ACRE TRACT IN THE SOUTH LINE OF A CALLED 34.1265 ACRE TRACT AS DESCRIBED UNDER C.F. No. 8316313 OF THE REAL PROPERTY RECORDS OF MONTGOMERY COUNTY, TEXAS AND CONTINUE IN ALL FOR A TOTAL DISTANCE OF 1,112.70 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID 34.1265 ACRE TRACT AND A CORNER OF A CALLED 755.103 ACRE TRACT AS DESCRIBED UNDER C. F. No. 9047315 OF THE REAL PROPERTY RECORDS OF MONTGOMERY COUNTY, TEXAS;

THENCE, N 89°48'52" E, ALONG THE SOUTH LINE OF SAID 755.103 ACRE TRACT AND APPLEWHITES NORTH LINE, A DISTANCE OF 4,074.42 FEET TO A 1 INCH PINCH TOP PIPE FOUND FOR THE NORTHWEST CORNER OF A CALLED 77.051 ACRE TRACT AS DESCRIBED BY DEED IN VOLUME 803, PAGE 773, MONTGOMERY COUNTY DEED RECORDS;

THENCE, S 00°31'48" E, ALONG THE WEST LINE OF SAID 77.051 ACRE TRACT, A DISTANCE OF 2,032.09 FEET TO A 1/2 INCH IRON ROD FOUND FOR APPLEWHITES SOUTHEAST CORNER AND THE NORTHWEST CORNER OF A CALLED 72.73 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8322970 OF THE REAL PROPERTY RECORDS OF MONTGOMERY

COUNTY, TEXAS, FROM WHICH A 3/4 INCH IRON PIPE FOUND FOR THE SOUTHWEST OF SAID 77.051 BEARS S 00°31'48" E, 208.40 FEET;

THENCE, S 89°41'30" W, ALONG APPLEWHITES SOUTH LINE, THE NORTH LINE OF SAID 72.73 ACRE TRACT, A DISTANCE OF 1,079.67 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF A 154.7783 ACRE TRACT AS DESCRIBED UNDER C.F. No. 8115438 AND C.F. No. 8115439;

THENCE, S 00°28'17" E, ALONG THE EAST LINE OF SAID 154.7793 ACRE TRACT, A DISTANCE OF 2,894.00 FEET TO A 5/8 INCH IRON ROD (BENT) FOUND FOR ANGLE POINT;

THENCE, S 69°54'06" W, CONTINUE ALONG SAID EAST LINE, A DISTANCE OF 862.55 FEET TO A 1/2 INCH IRON ROD FOUND FOR ANGLE POINT;

THENCE, S 00°32'19" E, CONTINUE ALONG SAID EAST LINE, A DISTANCE OF 193.06 FEET TO A 1/2 INCH IRON PIPE FOUND FOR ANGLE POINT;

THENCE, S 67°43'41" W, CONTINUE ALONG SAID EAST LINE, A DISTANCE OF 394.62 FEET TO A 1/2 INCH IRON ROD FOUND FOR ANGLE POINT;

THENCE, S 54°29'33" W, CONTINUE ALONG SAID EAST LINE, A DISTANCE OF 250.42 FEET TO A 1/2 INCH M: \Jane\Ordinances\355. amending ord 354 service plan for annexation of tract of land.doc

IRON ROD FOUND FOR ANGLE POINT;

THENCE, S 47°01'34" W, CONTINUE ALONG SAID EAST LINE, A DISTANCE OF 476.29 FEET TO A 1/2 INCH IRON ROD FOUND FOR ANGLE POINT;

THENCE, S 32°45'19" W, CONTINUE ALONG SAID EAST LINE, A DISTANCE OF 357.92 FEET TO A 1/2 INCH IRON ROD FOUND IN THE NORTHERLY LINE OF THE I. & G.N. RAILROAD RIGHT-OF-WAY;

THENCE, N 57°13'59" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 210.00 FEET TO AN IRON ROD WITH CAP FOUND FOR THE SOUTHEASTERLY CORNER OF A CALLED 5.301 ACRE TRACT AS DESCRIBED UNDER C.F., No. 9745541 OF THE REAL PROPERTY RECORDS OF MONTGOMERY COUNTY, TEXAS.

THENCE, N 32°48'00" E, DEPARTING THE NORTHERLY LINE OF SAID I. & G.N. RAILROAD, ALONG THE EASTERLY LINE OF SAID 5.301 ACRE TRACT, A DISTANCE OF 351.90 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER,

THENCE, N 57°11'13" W, ALONG THE NORTHERLY LINE OF SAID 5.301 ACRE TRACT, A DISTANCE OF 656.36 FEET TO A 5/8 INCH IRON ROD FOUND FOR CORNER;

THENCE, S 32°38'00" W, ALONG THE WESTERLY LIKE OF SAID 5.302 ACRE TRACT, A DISTANCE OF 352.43 FEET TO A 1/2 INCH IRON ROD SET IN THE NORTHERLY LINE OF SAID I. & G.N. RAILROAD RIGHT-OF-WAY;

THENCE, N 57°13'59" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 1,723.73 FEET TO A 1/2 INCH IRON FOD SET AT A FENCE CORNER FOUND IN THE WEST LINE OF THE EDWARD TAYLOR SURVEY, A-554 AND THE EAST LINE OF THE B. SOMES SURVEY, A-541, MARKING THE SOUTHWEST CORNER OF A CALLED 169.0 ACRE TRACT AS DESCRIBED UNDER C.F. No. 8716200;

THENCE, N 00°44'32" W, ALONG SAID SURVEY LINES AND THE WEST LINE OF SAID .169.00 ACRE TRACT, A DISTANCE OF 3,124.20 FEET TO A FENCE POST FOUND MARKING THE NORTHEAST CORNER OF A CALLED 50.183 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8254584 OF THE REAL PROPERTY RECORDS OF MONTGOMERY COUNTY, TEXAS;

THENCE, S 88°57'09" W, ALONG THE NORTH LINE OF SAID 50.183 ACRE TRACT, A DISTANCE OF 591.09 FEET TO A FENCE POST FOUND FOR CORNER MARKING THE SOUTHEAST CORNER OF A CALLED 68.20 ACRE TRACT AS DESCRIBED BY DEED RECORDED IN VOLUME 173, PAGE 412 OF THE DEED RECORDS OF MONTGOMERY COUNTY, TEXAS, AND THE SOUTHEAST CORNER OF THE G.W. LONIS SURVEY, A-320;

THENCE, N 00°10'13" W, ALONG THE EAST LINE OF SAID 68.20 ACRE TRACT AND THE EAST LINE OF SAID G. W. LONIS SURVEY, A DISTANCE OF 921.93 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF THE AFORESAID 11.028 ACRE TRACT (VOL. 893, PG. 932 M. C. D.R.);

THENCE, N 89°55'24" E, ALONG THE SOUTH LINE OF SAID 11.028 ACRE TRACT, A DISTANCE OF 594.55 FEET TO A 1/2 INCH IRON ROD FOUND MARKING THE SOUTHEAST CORNER OF SAME;

THENCE, N 00°53'35" W, ALONG THE EAST LINE OF SAID 11.029 ACRE TRACT, A DISTANCE OF 888.93 FEET TO THE POINT OF BEGINNING AND CONTAINING 580.7754 ACRES OF LAND.

EXHIBIT "B"

CITY OF MAGNOLIA MONTGOMERY COUNTY, TEXAS

SERVICE PLAN

I. INTRODUCTION

This Service Plan ("PLAN") is made by the CITY OF MAGNOLIA ("CITY") pursuant to the Local Government Code. This PLAN pertains to several tracts of land ("TRACTS") located in Montgomery County, Texas, and described in Exhibit "A-1," which is attached to this PLAN and fully incorporated in this PLAN by reference.

II. TERM - EFFECTIVE DATE

This PLAN shall be in effect for a term of ten (10) years commencing on the effective date of the annexation of the TRACTS. Renewal of this PLAN shall be at the discretion of the CITY and such discretion may be exercised by the City Council in such manner and for such time as the CITY may then direct.

III. SERVICE PROGRAMS

A. In General. This PLAN includes two (2) service programs: (1) the Early Action Program, described below, which must be implemented within sixty (60) days after the effective date of annexation; and (2) Capital Improvement Program more specifically described below.

B. Scope and Quality of Service. The CITY shall provide services to the area pursuant to any methods by which it extends or is authorized to extend services to any other area of the CITY. Under this PLAN, the CITY shall not provide fewer services or a lower level of services in the area annexed than were in existence in the area immediately preceding the date of annexation. However, it is not the intent of this PLAN to require that a uniform level of services be provided to all areas of the CITY, including the TRACTS, where differing characteristics of topography, land, use and population density are considered a sufficient basis for providing different levels of service.

C. Definitions.

(1) As used in this PLAN, "providing services" includes having services provided by any method or means by which the CITY extends municipal services to any other area of the CITY. This may include causing or allowing public or private utilities, contractors, governmental entities and other public service organizations to

provide such services, in whole or in part.

(2) As used in this PLAN, the phrase "standard policies and procedures" means those policies and procedures of the CITY applicable to a particular service which is in effect either at the time that the service is requested or at the time the service is made available or provided. The policies and procedures may require that a specific type of request be made, such as an application or petition. It may require that fees or charges be paid, in accordance with the law, and they may include eligibility requirements and similar provisions.

IV. EARLY ACTION PROGRAM - IMPLEMENTATION WITHIN 60 DAYS

These statutorily mandated services will be provided to the TRACTS within sixty (60) days after annexation of the TRACTS:

A. Police Protection. The Police Department of the CITY will provide protection and law enforcement to the TRACTS; and these activities will include normal patrols and responses, the handling of complaints and incident reports, and other services and support provided by the Police Department of the CITY OF MAGNOLIA to other portions of the CITY, all pursuant to standard policies and procedures.

B. Fire Protection. The Magnolia Fire Department will provide fire protection to the TRACTS in accordance with standard policies and procedures.

C. Solid Waste Collection. Business and residential solid waste collection services (garbage service) will be provided to residents and businesses in the TRACTS, all in accordance with standard policies and procedures.

D. Maintenance of Water and Wastewater Facilities. As water and wastewater facilities are available to the TRACTS, such facilities will be maintained in accordance with standard policies and procedures.

E. Maintenance of Roads, Streets, and Street Lighting. The CITY will cause to be provided via a contract with the Montgomery County Road & Bridge Division or, may on its own accord, provide maintenance of public roads and streets under the CITY'S jurisdiction. The CITY will cause to be provided via a contract with the Montgomery County Road & Bridge Division or, may on its own accord, provide traffic control devices for any CITY roads and streets, and the CITY will provide street lighting for such CITY roads and streets through Houston Lighting & Power Company, all according to standard policies and procedures. The CITY will not maintain any private road or street within the TRACTS.

F. Maintenance of Parks, Playgrounds, and Swimming Pools. At this time there are no public parks, playgrounds, and swimming pools within the TRACTS and, therefore, it is unnecessary for the PLAN to address such service items with respect to the sixty (60) day time period. There are existing public parks, playgrounds, and swimming pools in the municipality, and they are available for use and enjoyment by residents of the TRACTS in accordance with standard policies and procedures.

G. Maintenance of Any Other Publicly Owned Facility, Building, or Service. At this time there are no other publicly owned facilities, buildings, or services within the TRACTS and, therefore, it is unnecessary for the PLAN to address such service items with respect to the sixty (60) day time period. There are existing publicly owned facilities, buildings, or services in the municipality, and they are available for use and enjoyment by residents of the TRACTS in accordance with standard policies and procedures.

H. Animal Control. Animal control will be provided to the TRACTS according to standard policies and procedures.

I. Emergency Medical Service. Emergency medical service (i.e., ambulance care) will be provided to the TRACTS by the Magnolia Emergency Medical Service (currently a volunteer service) in accordance with standard policies and procedures.

J. Other CITY Services. All other available CITY services not specifically listed above shall be extended and available to residents of the TRACTS in accordance with standard policies and procedures.

V. CAPITAL IMPROVEMENT PROGRAM

The CITY will initiate construction or acquisition of capital improvements as indicated below. Any necessary construction or acquisition shall begin within two (2) years of the annexation and shall be substantially completed within four and one-half (4 1/2) years of the date of the annexation of the particular TRACTS:

A. Police Protection. Police protection for the TRACTS can be provided by using existing capital improvements.

B. Fire Protection. Fire protection for the TRACTS can be provided using existing capital improvements.

C. Solid Waste Collection. No capital improvements are necessary at this time to provide solid waste collection services within the TRACTS as described in the Early Action Program. However, the TRACTS will be included with other territory in connection with planning for new, revised, or expanded solid waste facilities.

D. Water and Wastewater Facilities. No further improvements are now required, and the CITY will maintain the water system.

E. Roads and Streets. In general, the CITY will acquire dominion, control, and jurisdiction in, over and under public roads and streets within the TRACTS upon annexation, subject to the jurisdiction of other governmental entities, including contractual obligations with Montgomery County. Additional roads, streets, or related facilities are not necessary at this time to serve the TRACTS. Future extensions of roads or streets and future installation of related facilities such as traffic control devices or street lights will be governed by standard policies and procedures. The TRACTS will be included with other territory in connection with planning for new, revised, widened or enlarged roads, streets, or related facilities. The CITY will not maintain any private road or street within the TRACTS.

F. Parks, Playgrounds. There are no plans for capital improvements at this time. The TRACTS will be included with other territory in connection with planning new parks, playgrounds, and related facilities.

VI. AMENDMENT; GOVERNING LAW

This PLAN may not be amended or repealed except as provided by the Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the CITY shall constitute amendments to this PLAN, and the CITY reserves the right to make such changes. This PLAN is subject to, and shall be interpreted in accordance with the Local Government Code, the Constitution and laws of the federal government of the United States of America and the State of Texas.

VII. FORCE MAJEURE

Should a force majeure interrupt the services described herein, the CITY shall resume services under this PLAN within a reasonable time after the cessation of the force majeure. "Force Majeure," for the purposes of this PLAN, shall include, but not be limited to, acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government, explosions, collisions, and any other inability imposed upon the CITY whether similar to those enumerated or otherwise, which is not within the control of the CITY.

VIII. ENTIRE PLAN

This document contains the entire and integrated Service PLAN relating to the TRACTS and supersedes all other negotiations, representations, plans and agreements, whether written or oral.

EXHIBIT "C"

NOTICE OF INTENT TO ANNEX CERTAIN PROPERTY WITHIN THE
EXTRATERRITORIAL JURISDICTION OF THE CITY OF MAGNOLIA.

NOTICE IS HEREBY GIVEN to all interested persons that the City of Magnolia, Texas proposes to institute annexation proceedings to enlarge and extend the boundary limits of said City to include certain property within the extraterritorial jurisdiction of the City of Magnolia, said property being legally described as follows:

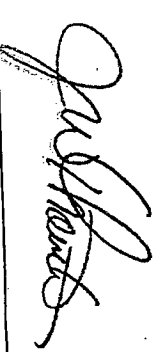
A TRACT OF LAND CONTAINING 580.7754 ACRES SITUATED IN THE EDWARD TAYLOR SURVEY, A-554, MONTGOMERY COUNTY, TEXAS, BEING A PORTION OF A CALLED 313.0 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8442992, A PORTION OF A CALLED 102.0, ACRE TRACT AS DESCRIBED UNDER C. F. No. 9132796, ALL OF A CALLED 150.0 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8115438, ALL OF A CALLED 3.645 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8115439, AND ALL OF A CALLED 169.0 ACRE TRACT AS DESCRIBED UNDER C. F. No. 8716200 OF THE REAL PROPERTY RECORDS OF MONTGOMERY COUNTY, TEXAS

A first public hearing will be held by and before the City Council of the City of Magnolia on the 9th day of November 2004 and a second public hearing will be held by and before the City Council of the City of Magnolia on the 23rd day of November 2004. The hearing to be held on the 9th day of November will be held at 7:00 p.m. and the public hearing to be held on the 23rd day of November will be held at 7:00 p.m., both public hearings to be held in the City Council Chamber of the City Hall of the City of Magnolia, located at 16835 FM 1488, Magnolia, Texas, for all persons interested in the above proposed annexation. At such time and place, all such persons shall have the right to appear and be heard. All persons interested in this annexation and matters in relation thereto shall take notice of the date and time of said hearings.

By Order of the City Council of the City of Magnolia, as contained in Ordinance No. 2004-355, duly adopted by the City Council of the City of Magnolia on the 26th day of October 2004.

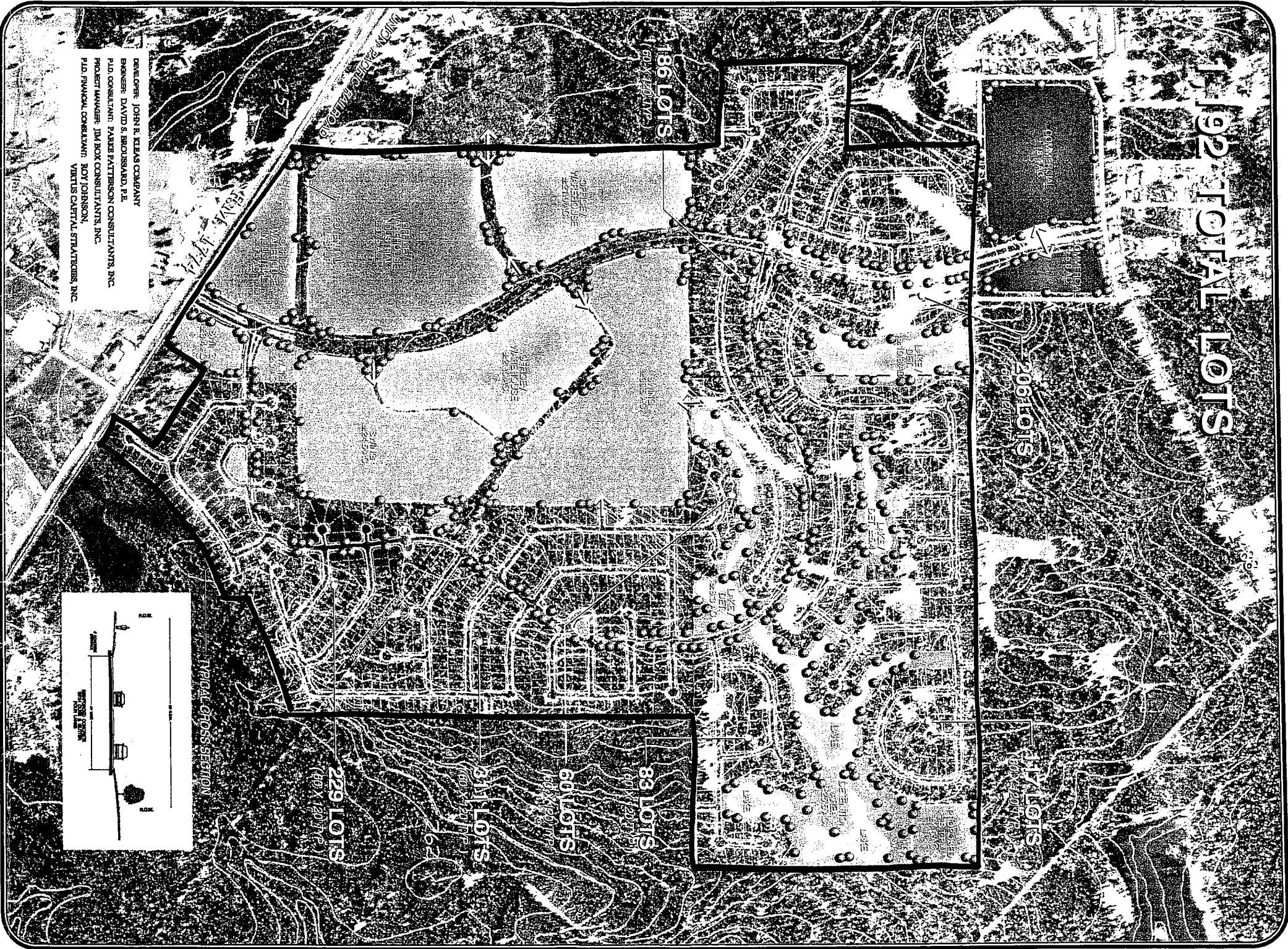


ASST. CITY SECRETARY
City of Magnolia



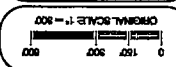
Jimmy Thornton, MAYOR
City of Magnolia

1192 TOTAL LOTS



DEVELOPER: JOHN R. KELAS COMPANY
ENGINEER: DAVID S. BROUSSARD, P.E.
PLD CONSULTANT: PARKER PATTERSON CONSULTANTS, INC.
PROJECT MANAGER: JIM BOY CONSULTANTS, INC.
PLD PHYSICAL CONSULTANT: ROY JOHNSON
VERTICAL CONSULTANT: VERTIS CAPITAL STRATEGIES, INC.

JOB CODE: MLEB 1488
FILE: PRESENTATION-2
DRAWN BY: GRW, SLM, CB
DATE: 08-28-04



MAGNOLIA RIDGE

A MASTER PLAN FOR ±608 ACRES OUT OF THE JOHN DORSEY, A-172,
EDWARD TAYLOR, A-654, B.F. PROCTOR, A-748 SURVEYS IN MAGNOLIA,
MONTGOMERY COUNTY, TEXAS.

THIS PLAN IS THE PROPERTY OF JOHN R. KELAS COMPANY. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF JOHN R. KELAS COMPANY.