



**City of New Fairview
Zoning Board of Adjustment
Special Meeting
999 Illinois Lane
Monday, November 7, 2022, at 7:00 pm**

REGULAR SESSION

1. **Call to Order and Determination of Quorum**
2. **Public Comment:** The Zoning Board of Adjustment invites persons with comments or observations related to Zoning Board of Adjustment items or issues, to briefly address the Zoning Board of Adjustment. Anyone wishing to speak should sign-in with the City Secretary before the beginning of the Zoning Board of Adjustment meeting. In order to expedite the flow of business and to provide all citizens the opportunity to speak, there is a three-minute limitation on any person addressing the Zoning Board of Adjustment. State law prohibits the Zoning Board of Adjustment from discussing or taking action on any item not listed on the posted agenda.
3. **New Business:** All matters listed in New Business will be discussed and considered separately.
 - A. **Hold a public hearing and consider a zoning variance of a manufactured home from City Code Chapter 5, Article 4, Section 5.04.012 (b) gas well setback requirements and Chapter 9B, Article 3 "Zoning Districts" Section 16.4, the minimum side property line setback, located at 193 Wilson Court, Lot 47, Block 3, Phase 3 of the of Chisholm Hills subdivision survey.**
4. **Executive Session:** Recess to Executive Session to consult with the City Attorney pursuant to §551.071, Texas Government Code. The Zoning Board of Adjustment may go into closed session at any time when permitted by Chapter 551, Texas Government Code. Before going into closed session, a quorum of the Zoning Board of Adjustment must be present, the meeting must be convened as an open meeting pursuant to proper notice, the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551, Texas Government Code authorizing the closed session.
5. **Return to Open Session:** Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.
6. **Adjournment**

I, the undersigned authority, do hereby certify the above notice of the meeting of the Zoning Board of Adjustment of New Fairview, is a true and correct copy of the said notice that I posted on the official posting place at New Fairview City Hall, FM 407, New Fairview, Texas, a place of convenience and readily accessible to the general public at all times, and on its website, said notice being posted this 4th day of November, 2022 at 5:00 PM at least 72 hours preceding the meeting time.

Brooke Boller

Brooke Boller, City Secretary

SEAL:



This facility is wheelchair accessible; parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary at City Hall 817-638-5366 or fax 817-638-5369 or by email at citysecretary@newfairview.org for further information.



Zoning Board of Adjustment AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

November 7, 2022

Public Hearing for a zoning variance regarding setback requirements of a manufactured home located at 193 Wilson Court

DESCRIPTION:

Hold a public hearing and consider a zoning variance of a manufactured home from City Code Chapter 5, Article 4, Section 5.04.012 (b) gas well setback requirements and Chapter 9B, Article 3 “Zoning Districts” Section 16.4, the minimum side property line setback, located at 193 Wilson Court, Lot 47, Block 3, Phase 3 of the of Chisholm Hills subdivision survey.

BACKGROUND INFORMATION:

On September 17, 2021, the City received an application from Patriot Realty and Title Investors, to move a manufactured home on to 193 Wilson Court, Lot 47, Block 3, Phase 3 of the Chisholm Hills subdivision survey. The permit was approved on the same day by the City’s Building Inspector, with a note that the “structure must be 35 feet from front property line.”

On March 25, 2022, the City was contacted regarding the installation of an on-site septic facility (OSSF) on this property. Our OSSF inspector went out on site and noticed that the manufactured home had been placed inside of the two hundred (200) foot setback from an active gas well (see attached survey and Google Earth Map). City Council Ordinance 2007-11-126, (which amended Ordinance 2007-03-118) modified the , he distance a structure may be built or placed from an oil or gas well, reducing the setback distance to Two Hundred (200) feet for any residence or occupied structure (Chapter 5, Article 4, Section 5.04.012 (b)). The building inspector has determined that the manufactured home is One Hundred and Eighty-three (183) feet from the gas well. It was also determined that the side of the manufactured home is eleven and one-half (11.5) feet from the north property line. Per Chapter 9B, Article 3 “Zoning Districts,” Section 16.4, the minimum setback from the side property line is 25 feet.

The property is approximately 1.59 acres, has an active gas well and storage tank located on the east and northeast section of the parcel. There is a ten (10) foot utility easement that runs along all the sides of the parcel. There is a thirty-five (35) foot building line along the westside of the property, on the Wilson Court side. The topography has a significant grade going up from

the westside of the property to the east. The manufactured home was placed on the northwest corner of the parcel and is very near the building line along the west property line, so there is little to no room to move the structure further west. Also, the manufactured home is located closer to the north property line than allowed by setback requirements, but it is not near the manufactured home located on the northern adjacent property. There is also no room to move the manufactured home further south because this would place the structure into the OSSF spray area.

The Property Owner's Attorney, John G. Meazell, contacted the City to inquire about these issues and filed a Variance Application on September 27, 2022. Variance public hearings are held by the Zoning Board of Adjustment (ZBA) (Chapter 9B, Article 5 "Administration", Section 36.1). If the City does not have a ZBA, then the City Council may serve as the Zoning Board of Adjustment, according to Section 211.008(9) of the Texas Local Government Code. Accordingly, the City Council is hearing this matter as the City's Zoning Board of Adjustment.

City Code requires that a written notice of public hearing on every application for a variance shall be sent to all owners of property located within 200 feet, within not less than 10 days before such hearing. In addition, a list of items on the agenda to be heard by the Board shall be posted at a public place in City Hall at least 72 hours before the hearing, and also published in a newspaper of general circulation in the City of New Fairview at least twenty-four (24) hours before the hearing. These notices were taken care of by City staff.

Per Chapter 9B, Article 5 "Administration", Section 36.4, the ZBA is authorized, upon appeal in specific cases, to grant variances from the height, yard area, coverage, and parking regulations set forth in the City's ordinances, as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape, or slope that it cannot be appropriately developed without such modification. A variance from the terms of this ordinance shall not be granted by the ZBA unless and until it finds that:

- a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
- b. That literal interpretation of the provisions of this ordinance would deprive the Applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
- c. That the special conditions and circumstances do not result from the actions of the Applicant.
- d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district.

- e. The Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
- f. The Zoning Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- g. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

Per Chapter 9B, Article 5 “Administration”, Section 36.6, every decision of the Board shall be based upon findings of fact and every finding of fact shall be supported in the record of proceedings. The concurring vote of four members of the board shall be necessary to decide in favor of the applicant. In approving any request, the ZBA may designate such conditions in connection therewith in order to secure substantially the objectives of the regulations or provisions to which such variance is granted and to provide adequately for the maintenance of the integrity and character of the zone in which such permit is granted. When necessary, the Board of Adjustment may require guarantees, in such form as it deems proper, to insure that conditions designated in connection therewith are being or will be complied with. No appeal or application that has been denied shall be further considered by the Board under a subsequent request obtained by filing new plans and obtaining of a new decision from the administrative official unless:

- a. The new plans materially change the nature of the request; or
- b. The permitted development of other nearby property in the same zone has been substantially altered or changed by a ruling of the Board, so as to support an allegation of changed conditions.

FINANCIAL CONSIDERATION:

None

RECOMMENDED MOTIONS FOR ZONING BOARD OF ADJUSTMENT :

After finding that the conditions required by City Code of Ordinances, Chapter 9B, Article 5 “Administration”, Section 36.4, **have/have not** been satisfied, I move to **Approve/Deny** the granting of a zoning variance of a manufactured home located at 193 Wilson Court, Lot 47, Block 3, Phase 3 of the of Chisholm Hills subdivision survey from City Code Chapter 5, Article 4, Section 5.04.012 (b) gas well setback requirements and from Chapter 9B, Article 3 “Zoning Districts” Section 16.4, minimum side property line setback,.

ATTACHMENT(S):

1. Building Permit Application
2. Ordinance 2007-11-126
3. Survey
4. Google Earth Map
5. Variance Application



CITY OF NEW FAIRVIEW
999 ILLINOIS LANE
NEW FAIRVIEW, TX 76078
Phone 817-638-5366 Fax 817-638-5369
BUILDING PERMIT APPLICATION N
(Repair/Construction/Move-In)
Manufactured Home

Name of Applicant: Patriot Realty and Title Investors
Phone # (home)(cell): 832-277-2307 Work #: 833-331-3278
Address: 17350 state highway 249, ste 220 #3840 193 Wilson Ct.
New Fairview, TX 76078

E-Mail: semira@patriotdeedbuyers.com
Name of Property Owner: Patriot Realty and Title Investors
Phone # (home)(cell): 832-277-2307 Work #: 833-331-3278
Address: 17350@patriotdeedbuyers.com

I Semira Arefi, hereby submit this application for a building permit for a 1
story manufactured home (brick, wood, metal, ect) building to be used for residence
(residence, storage, barn, ect) the property is located on R1771-0347-00 Legal
description Lot 47 / Tract Block 3 Phase 3 of the Chisholm Hills
 Subdivision Survey, Ect.

The cost of the work being done under this permit has an estimated value of \$ 12000
and/or the cost of the building being moved or built into the city is \$ 1000.

Documented evidence of ownership of property and property value and or project value must be presented at time of application. Please provide driver license or some kind of ID for approval.

I have carefully examined the completed application and requires support documentation and know the same to be true and correct. I hereby agree to comply with all provisions set forth by the City of New Fairview and the State of Texas wherein specified or otherwise. I am the owner of the property, or his duly authorized agent.

Patriot Realty and Title Investors, LLC
Applicant

Jam Estes 9-17-21
Building Inspector

Cost Evaluation by Building Inspector

06-10-21
Date

MH210917
Permit Number

\$1000.00
Building Permit Fee

Plan Review Fee

Failure to comply with permit requirements range from \$20.00 to \$20,000.00. After the third consecutive day of violation the fine is \$500.00 per day.

Permits shall become invalid unless the work is authorized by this permit is suspended or abandoned for a period of 180 days after its issuance, or if the authorized by permit is suspended or abandoned for a period of 180 days after the time the work is commenced.

Structure must be 35' from front Property line.

ORDINANCE NO. 2007-11-126

AN ORDINANCE OF THE CITY OF NEW FAIRVIEW, TEXAS AMENDING ORDINANCE 2007-03-118 REGULATING THE DISTANCE A STRUCTURE MAY BE BUILT FROM AN OIL OR GAS WELL; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND FOR PUBLICATION.

WHEREAS, the City Council of the City of New Fairview, Texas desires to modify the number of feet from 150 feet to 200 feet from oil and gas wells a structure may be built within the city limits of New Fairview, Texas, of any residence or public occupied structure without the permission of the owner thereof;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS;

That Ordinance 2007-03-118 be amended as follows:

SECTION 1

DELETE PROHIBITING BUILDING WITHIN 150 FEET OF ANY RESIDENCE OR OCCUPIED STRUCTURE

REPLACE PROHIBITING BUILDING WITHIN 200 FEET OF ANY RESIDENCE OR OCCUPIED STRUCTURE

**SECTION 2
REPEALING CLAUSE**

That all provisions of the ordinances of the City of New Fairview in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of New Fairview not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3
SEVERABILITY CLAUSE**

That if any section, subsection, paragraph, sentence, clause, phrase, or word in this ordinance, or application thereof to any person or circumstances held invalid by any court of competent jurisdiction, such holding shall not affect the validity of remaining portions of this Ordinance, and the City Council of the City of New Fairview, Texas, hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 4
SAVINGS CLAUSE

All right and remedies of the City of New Fairview, Texas, are expressly saved as to any and all violations of the provisions of any other Ordinance affecting Permits for Drilling Oil Wells, which have secured at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 5
ENGROSSMENT AND ENROLLMENT

The City Secretary of the City of New Fairview, Texas is hereby directed to engross and enroll this Ordinance by copying the exact caption and effective date clause in the minutes of the City Council of the City of New Fairview, Texas and by filing this Ordinance in the Ordinance records of the City.

SECTION 6
PUBLICATION CLAUSE

ORDINANCE 2007-11-126

**AN ORDINANCE OF THE CITY OF NEW FAIRVIEW, TEXAS
AMENDING ORDINANCE 2007-03-118 REGULATING THE DISTANCE
A STRUCTURE MAY BE BUILT FROM AN OIL OR GAS WELL;
PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING
CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND FOR
PUBLICATION.**

SECTION 7
EFFECTIVE DATE

This Ordinance shall become effective and be in full force and effect from and after the date and passage and publication as required by law.

DULY PASSED by the City Council of the City of New Fairview, Texas, this the
7th day of August, 2007

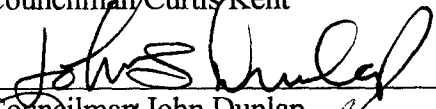
APPROVED:

Mayor Joe Max Wilson

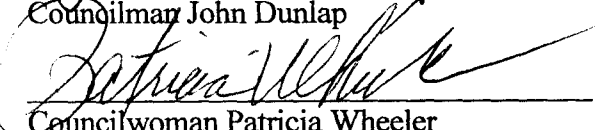
Mayor Pro Tem Louis Moran



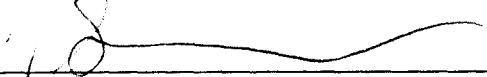
Councilman Curtis Kent



Councilman John Dunlap

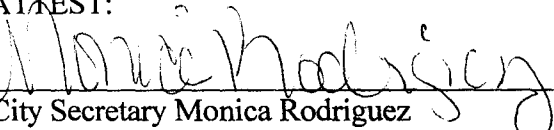


Councilwoman Patricia Wheeler




Councilman Mike Georgia

ATTEST:



City Secretary Monica Rodriguez

JOE MAX WILSON MAYOR




LOUIS MORAN MAYOR PRO TEM

Untitled Map

Write a description for your map.

Legend

 193 Wilson Ct

 193 Wilson Ct

94.99 Feet

162.16 Feet

189.56 Feet

Google Earth



100 ft



**CITY OF NEW FAIRVIEW
VARIANCE REQUEST APPLICATION**

**999 Illinois Lane
New Fairview, TX 76078
Phone: 817-638-5366
Fax: 817-638-5369
Date: 9/27/2022_**

Please note that all applications must be accompanied by all supporting documentation and fees before acceptance as a submittal.

Variance Requester Information

Name of Individual/Group requesting the Variance: Patriot Realty and Title Investors, LLC
Requester's address: 106 N Denton Tap Road, Ste 210-258
Requester's City, State & zip Code: Coppell, TX 75019 _____
Requester's Phone Number: 469-799-4703 ____
Email: info@patriotdeedbuyers.com _____
Fax Number: _____

Property Description: Subdivision Name or Survey and Tract Numbers or Street Address:
_____**CHISHOLM HILLS, 193 Wilson Court, Rhome, TX 76078** _____

Lot Number: 47 _____ **Block number: 3** _____
Number of Lots/Tracts 1 _____
Number of Acres 1.59 _____

Variance Request:

Requested Variance: Seeking a variance of ordinance 2007-11-126 or any amendments to such ordinance to permit the placement of a residence where it presently sits. See also the attachment.

Reason for Variance request: The city approved a building permit to place the residence where it currently sits and the under the current set back requirements and ordinance 2007-11-126 prevents the placement of any residence on the property that is within a subdivision.

Please state the specific section of the Zoning Ordinance in which the variance is being asked. The number of feet specified in the ordinance.

How will public convenience and welfare be substantially served if the variance is granted? It is in the best interest of the city to have single family residences. The neighborhood where the house sits is within a community filled with homes and the ordinance prevents the placement of any residence on this residential lot.

Second, the public must have confidence that when the city grants a building permit the city will not effectively invalidate such permit after thousands of dollars and many man hours have been expended in reliance on the approval.

How will granting this variance affect neighboring properties and what steps will be taken to prevent any substantial or permanent injury to neighboring properties?

Granting this variance will actually improve the neighborhood because more homeowners will reside there. Furthermore, permitting a residence will improve the neighborhood's aesthetics by obscuring the well head from the street.

How would the literal enforcement of the Code requirements result in an unnecessary physical hardship on the subject property?

The enforcement of the Code provision will prevent the placement of any residence on the property and render it completely unusable because no structure can be placed on the property that sits in the middle of a neighborhood.

Describe the physical defect in the subject property that prevents it from being developed in the same manner as neighboring properties.

None.

Variances cannot be granted to relieve self-created, personal, or financial hardships. Describe the hardship for which the variance is being requested.

In reliance on the approval by the city of the building permit, the city's refusal to honor its previous approval has resulted in thousands of dollars in expenditures to improve the subject property.

Will the granting of this variance create a special privilege for the subject property that is not available for other properties under the terms of the Zoning Ordinance?

No

PROPERTY OWNER INFORMATION
(for multiple owners – please submit information on each owner)

Name **Patriot Realty and Title Investors, LLC and First Landing LLC**

Telephone No. **469-799-4703** _____ Fax No. _____

If the property owner(s) is (are) represented by an authorized agent, please complete the following:

Agent's Name **John G. Mezell** _____

Agent's Title **Attorney at Law** _____

Agent's Address **1400 Gables Court, Plano, Texas 75075**

Agent's Telephone No: **972 881 4300**

Fax No. **972 398 8488** _____

OWNER CERTIFICATION

This is to certify that Patriot Realty and Title Investors, LLC and First Landing LLC

(when owner(s) is/are an individual(s))

The undersigned is/are the sole owner(s) of the property described above on the date of this application.

Owner Signature _____

This is to certify that Patriot Realty and Title Investors, LLC and First Landing LLC

(Owner(s) or Corporation name)

Acting by and through the undersigned, its duly authorized agent is/are the sole owner(s) of the property described above on the date of this application.


Agent Signature _____

For Office Use Only:

Date when the application was received _____.

Fee Paid: _____ Date Paid: _____

Check/Cash: _____ Receipt Number: _____

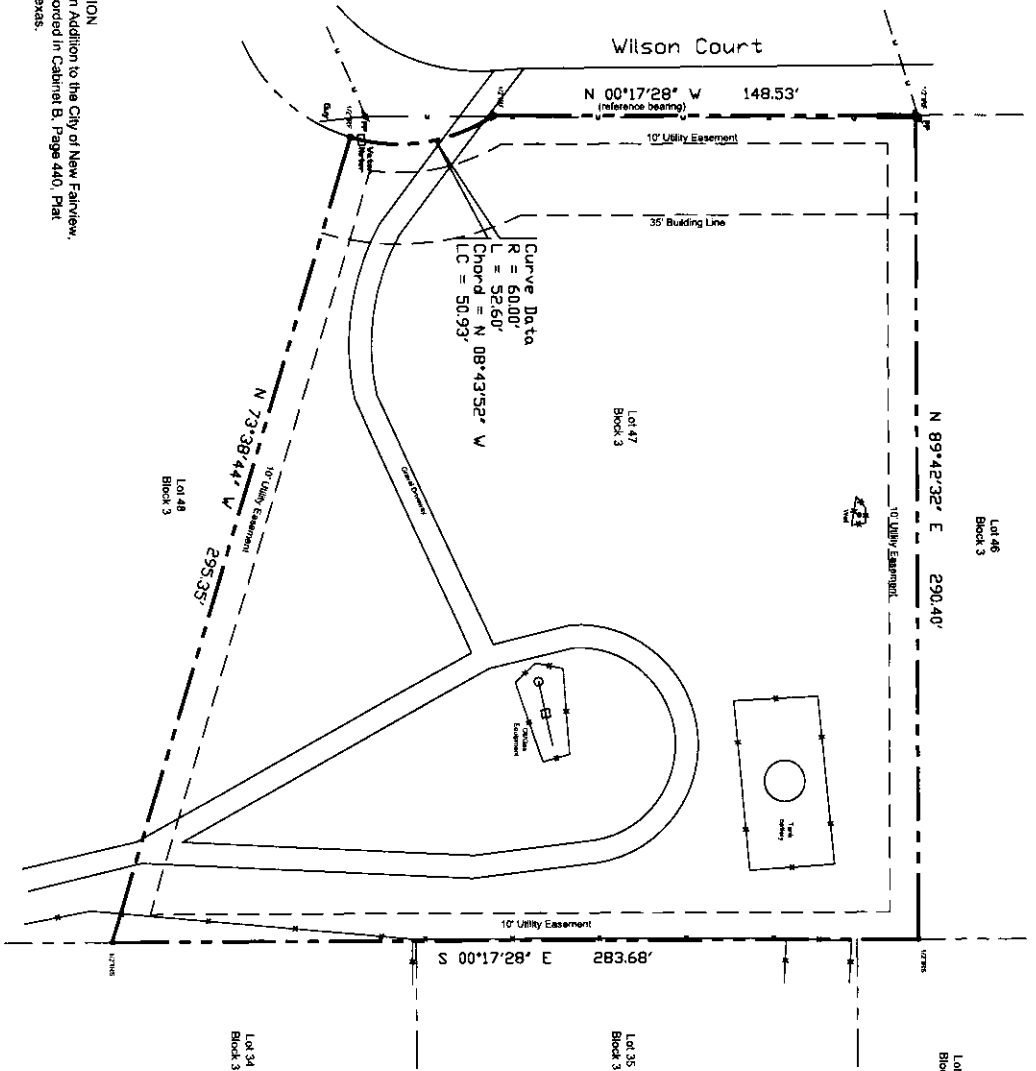
Was the application complete? _____. If no, was applicant informed that the application would not be accepted? _____.

List items missing and whether applicant will resubmit

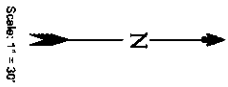
Accepted by: _____

Date: _____

PROPERTY DESCRIPTION
 Being Lot 47, Block 3 of Chisholm Hills - Phase Three, an Addition to the City of New Fairview,
 Wise County, Texas, according to the Plat thereof recorded in Cabinet B, Page 440, Plat
 Records, Wise County, Texas.



Notes: The easements recorded in Vol. 1584, Pg. 573; Vol. 238, Pg. 117; Vol. 244, Pg. 449; Vol. 255, Pg. 903; Vol. 259, Pg. 223; Vol. 243, Pg. 290; Vol. 188, Pg. 215; Vol. 227, Pg. 275; Vol. 208, Pg. 312; Vol. 209, Pg. 379; Vol. 217, Pg. 321; Vol. 232, Pg. 424; Vol. 249, Pg. 706; Vol. 257, Pg. 249; OCMC are deemed easements under quiet title & quiet title and any other this property.
 The property is subject to restrictive covenants recorded in Vol. 238, Pg. 117; Vol. 244, Pg. 449; Vol. 255, Pg. 903; Vol. 259, Pg. 223; Vol. 243, Pg. 290; Vol. 188, Pg. 215; Vol. 227, Pg. 275; Vol. 208, Pg. 312; Vol. 209, Pg. 379; Vol. 217, Pg. 321; Vol. 232, Pg. 424; Vol. 249, Pg. 706; Vol. 257, Pg. 249; OCMC are deemed easements under quiet title & quiet title and any other this property.
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I, the undersigned, hereby certify that the survey map herein, and the accompanying description, contents and data thereon, are a true and accurate survey, made by me or under my direct supervision, and that I am a duly licensed and qualified land surveyor, and that I have no knowledge of any other person or persons who have participated in the preparation of this survey, and that I have no knowledge of any other person or persons who have participated in the preparation of this survey, and that I have no knowledge of any other person or persons who have participated in the preparation of this survey, and that I have no knowledge of any other person or persons who have participated in the preparation of this survey.

ATLOW SURVEYING
 11818 REGISTRATION NO. 5144
 P.O. Box 902, Dumas, Texas 76234
 Ph: (340) 636-8034 e-mail: atlowsurvey@aol.com
 • Iron Rod Set - R-K - Wood or Wire Frame • Civil • Gas Meter
 • Iron Rod Found - U - Overhead Utilities • LHM Historic Marker
 • Corner Markers - C - Air Conditioner • PP - Power Pole
 All iron rods are 1/2" true radius aluminum rods.





Troy Allen Root
 Registered Professional Land Surveyor No. 5144
 Date: 11/21/11
 Drawn by: TR
 Job No. 201019-ACV

Untitled Map

Write a description for your map.

Legend

 193 Wilson Ct

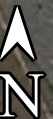
 193 Wilson Ct

94.99 Feet

162.16 Feet

189.56 Feet

Google Earth



100 ft