

Staff Note: This is a recent example of when eminent domain was granted to a Metropolitan District for the sake of acquiring right-of-way. Similar to Miller Downs Metropolitan District, this case limited the eminent domain allowance to include only certain property to prevent further usage of this power.

Title

A resolution of the City Council of the City of Colorado Springs, Colorado providing written consent authorizing the Bradley Heights Metropolitan District No. 2 to utilize eminent to complete the intersection of Bradley Road with Marksheffel Road in Southeastern Colorado Springs.

Presenter:

Mike Tassi, Assistant Director, Planning and Community Development Department

Peter Wysocki, Planning and Community Development Director

Summary:

The attached resolution will act as the required written consent of the City to allow the Bradley Heights Metropolitan District No. 2 (the "District") to utilize eminent domain powers as provided for in the District's approved service plan. The request, if approved, would allow use of eminent domain to acquire right-of-way parcels totaling 3.8 acres for a planned intersection for the Bradley Heights Development to Marksheffel Road. Eminent domain is necessary because of title defects with the property required for the intersection.

Background:

Colorado statutes permit metropolitan districts to finance, construct, and maintain certain public improvements. Under state law, metropolitan districts have eminent domain powers, which the City has limited by the terms and conditions of service plans.

The amended and restated service plan for the District was approved by Resolution 67-10 on May 11, 2010, which provides: "*The District shall not exercise the power of eminent domain except upon the prior written consent of the City.*" Service Plan, Section V.A.15, page 8 (attached).

An unusual set of circumstances (detailed below) related to the planned roadway connection to Marksheffel Road has resulted in a request to utilize powers of eminent domain as the only practicable solution. This is the first such request made to the City, and it presents unique circumstances.

The parcels to be acquired are a portion of a larger proposed right-of-way dedication from the early 1980's intended to serve as an interchange along Marksheffel Road. This interchange included two widened areas of Marksheffel Road known as "bump-outs," on both sides of the planned roadway. Through omissions in deed transfers that occurred over forty (40) years ago, portions of the bump outs were not conveyed for roadway purposes, leaving a gap between the Bradley Heights Development and Marksheffel Road. The title commitment provided to the City indicates the owner of the gap area as L-P Associates, a Colorado general partnership, which is no longer in

existence. The applicant state it is unable to contact the owners of the defunct entity; accordingly, the request to utilize eminent domain is the only means available to acquire the necessary parcels.

The applicant has requested the use of eminent domain on Legal #2 containing 3.19 acres(attached) and Legal #3 containing.59 acres as shown on the attached drawing.

Financial Implications:

There are no financial implications to the City. The District is not requesting additional debt associated with this request and any costs incurred in the process of using eminent domain will be borne by the District.

Board/Commission Recommendation:

N/A

Stakeholder Process:

The staff-level Special District Committee has been provided with the materials associated with this request. As of the date of this staff report no comments have been received.

Previous Council Action:

Council approved an amended and restated service plan for the Bradley Heights Metropolitan District Nos. 1,2, and 3 on May 11, 2010 (Resolution 67-10).

Alternatives:

City Council could choose to approve, deny, or modify the proposed resolution.

Proposed Motion:

Adopt a resolution of the City Council of the City of Colorado Springs, Colorado providing written consent authorizing the Bradley Heights Metropolitan District No. 2 to utilize limited eminent domain (as defined by the resolution) for a district located southeast of the intersection of Bradley Road and Marksheffel Road in Southeastern Colorado Springs.

Summary of Ordinance Language

N/A

RESOLUTION NO. 105 – 23

A RESOLUTION OF THE CITY COUNCIL OF COLORADO SPRINGS, COLORADO, PROVIDING WRITTEN CONSENT TO ALLOW THE BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2 TO UTILIZE EMINENT DOMAIN TO COMPLETE THE INTERSECTION OF BRADLEY ROAD WITH MARKSHEFFEL ROAD IN SOUTHEASTERN COLORADO SPRINGS

WHEREAS, City Council by Resolution No. 67-10, approved the amended and restated service plan for Bradley Heights Metropolitan District No. 2 (the "District"), which provides that "[t]he District shall not exercise the power of eminent domain except upon the prior written consent of the City"; and

WHEREAS, the District desires to construct an intersection of Bradley Road with Marksheffel Road, which will provide access for the Bradley Heights development (the "Intersection"); and

WHEREAS, Land Title Guarantee Company provided a title search (the "Title Search") of relevant deeds for the property comprising the Intersection; and

WHEREAS, the Title Search shows that El Paso County, Colorado, acquired the portion of Marksheffel Road adjacent to the Intersection by deed from L-P Associates, a Colorado general partnership ("LP Associates"), dated January 26, 1986, and recorded in Book 5120, page 92, in the real property records of the El Paso County, Colorado, Clerk and Recorder (the "Road Deed"); and

WHEREAS, El Paso County, Colorado, subsequently conveyed to the City the property in the Road Deed, together with other property comprising Marksheffel Road, by deed dated September 27, 2022, and recorded at Reception Number 222132266 in the real property records of the El Paso County, Colorado Clerk and Recorder; and

WHEREAS, the Road Deed does not include a small area on the west side of Marksheffel Road that is shown on road maps and intended as a widened stretch of right of way (the "Gap Area"); and

WHEREAS, the Title Search shows that L-P Associates, and subsequent owners in its chain of title, did not include the Gap Area within the legal description of any conveyances; and

WHEREAS, the Title Search shows that L-P Associates is still in title to the Gap Area; and

WHEREAS, L-P Associates is no longer an existing business entity in Colorado, and the District has not been able to contact the owners of L-P Associates to negotiate for the acquisition of the portion of the Gap Area required for the Intersection; and

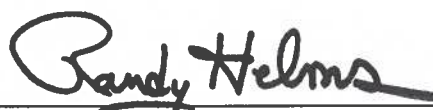
WHEREAS, the District seeks the Council's authorization to utilize eminent domain to acquire a portion of the land within the Gap Area necessary for the Intersection, being Parcel # 2 (3.19305 acres, more or less) and Parcel #3 (0.58599 acres, more or less), as described and depicted in Exhibit "A," attached hereto and made a part hereof.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council consents to the District's use of eminent domain for the limited purpose of acquiring the real estate necessary for the Intersection, which is more particularly described and depicted in Exhibit "A."

Section 2. The District's use of eminent domain shall be at the District's sole cost and expense and shall be in compliance with applicable Colorado statutes and laws.

Dated at Colorado Springs, Colorado this 25th day of July 2023.


Randy Helms, Council President

ATTEST:


Sarah B. Johnson, City Clerk



RESOLUTION

EXHIBIT A

EXHIBIT A PARCEL DESCRIPTION (#2)

A PARCEL OF LAND LYING WITHIN THE NORTHEAST ONE-QUARTER OF SECTION 15, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH BEARINGS REFERENCED TO THE NORTH-SOUTH CENTERLINE OF SECTION 9, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO, BEING MONUMENTED AT EACH END WITH A 3-1/4 INCH ALUMINUM CAP STAMPED "RLS 10377" RECOVERED 0.1' BELOW THE SURFACE, HAVING AN ASSUMED BEARING OF SOUTH 00° 19' 23" EAST A DISTANCE OF 5252.20 FEET;

COMMENCING AT THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 9;

THENCE NORTH 88°57'55" EAST, ON THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 9, A DISTANCE OF 2,642.71 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 9;

THENCE SOUTH 83°46'17" EAST A DISTANCE OF 3,118.79 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF MARKSHEFFEL BOULEVARD, AS DESCRIBED IN THAT QUITCLAIM DEED RECORDED OCTOBER 18, 2022 IN THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER UNDER RECEPTION NUMBER 222132266, SAID POINT BEING THE POINT OF BEGINNING;

THENCE SOUTH 42°37'37" EAST, ON SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 624.62 FEET;

THENCE SOUTH 47°22'08" WEST A DISTANCE OF 344.94 FEET TO A POINT ON THE EXTERIOR OF A PARCEL OF LAND AS DESCRIBED IN THAT SPECIAL WARRANTY DEED RECORDED MAY 31, 2022 IN SAID RECORDS UNDER RECEPTION NUMBER 222074546;

THENCE NORTH 42°37'48" WEST, ON SAID EXTERIOR, A DISTANCE OF 332.64 FEET TO THE EXTERIOR OF PARCEL OF LAND AS DESCRIBED IN THAT DEED RECORDED AUGUST 25, 1989 IN SAID RECORDS IN BOOK 5661 AT PAGE 1398;

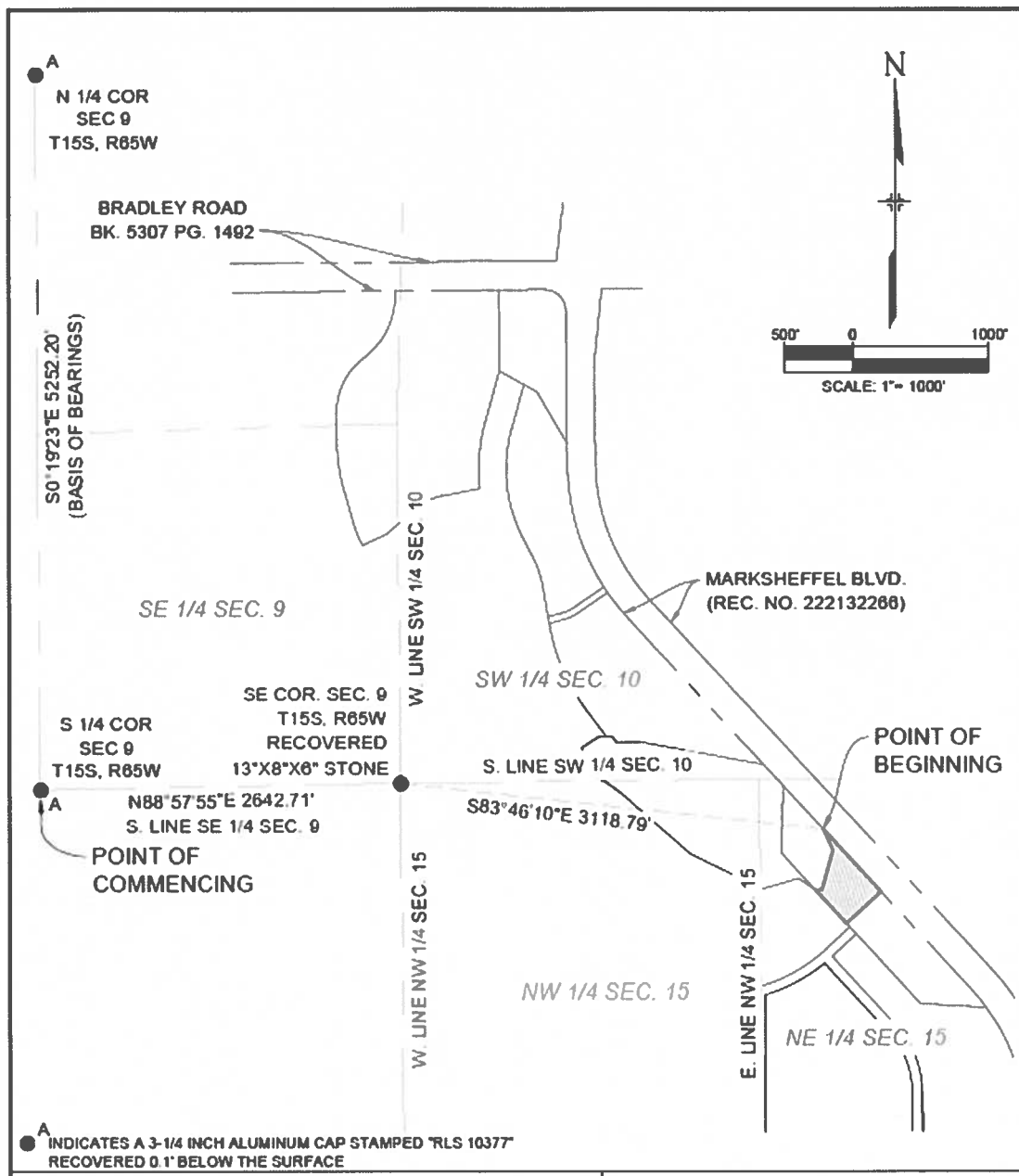
THENCE ON SAID EXTERIOR THE FOLLOWING THREE (3) COURSES:

1. NORTH 85°30'01" EAST A DISTANCE OF 44.54 FEET;
2. NORTH 15°19'53" EAST A DISTANCE OF 303.67 FEET;
3. NORTH 24°17'08" WEST A DISTANCE OF 166.88 FEET TO THE POINT OF BEGINNING.

THE ABOVE PARCEL DESCRIPTION CONTAINS A CALCULATED AREA OF 139,069 SQUARE FEET OR (3.19305 ACRES), MORE OR LESS, AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.



PATRICK S. JERNIGAN, PLS 38977
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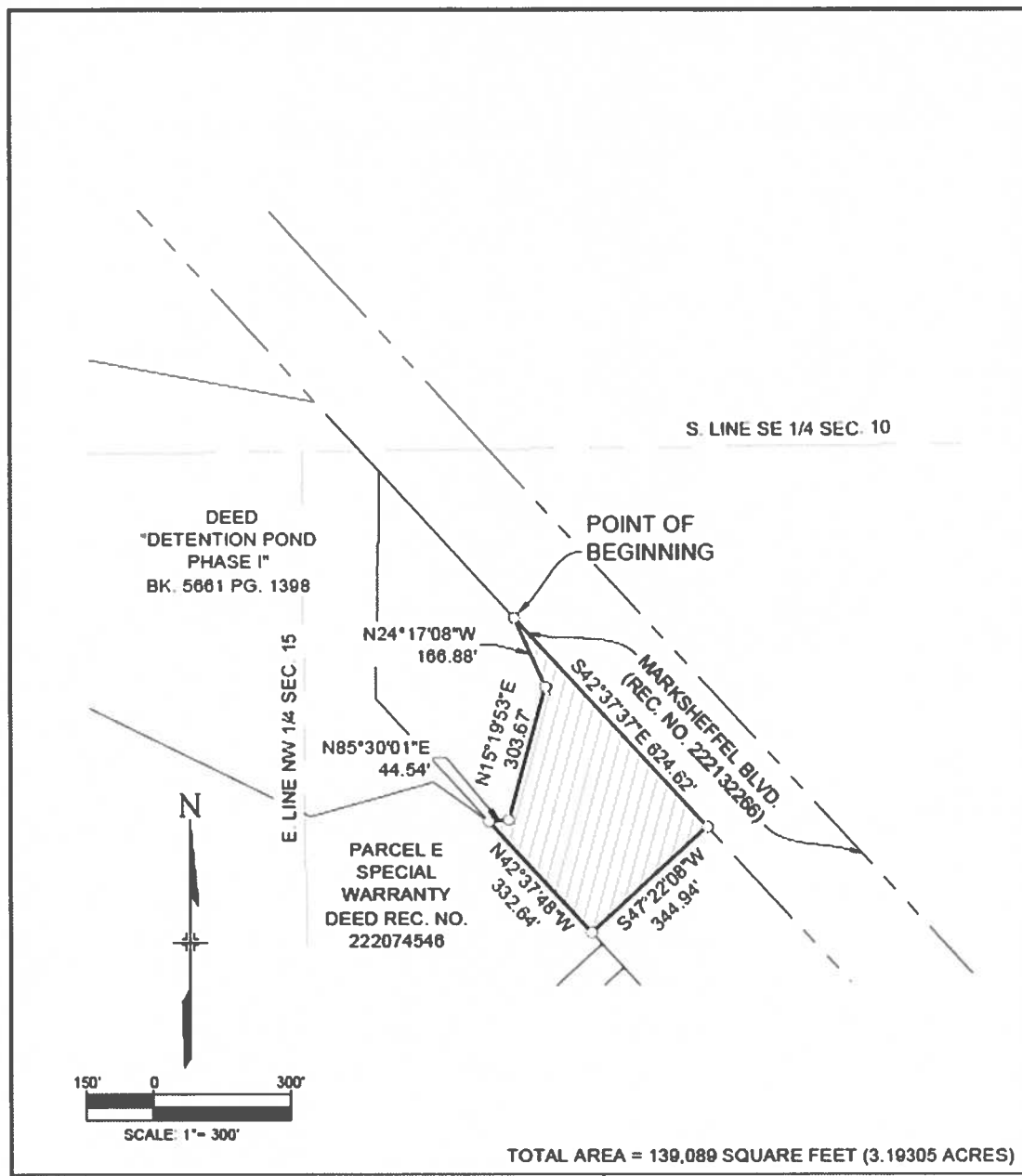


EXHIBIT A
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THENCE NORTH 42°37'48" WEST, ON SAID EXTERIOR, A DISTANCE OF 40.06 FEET TO THE EXTERIOR OF "PARCEL E" OF THAT SPECIAL WARRANTY DEED RECORDED MAY 31, 2022 IN SAID RECORDS UNDER RECEPTION NUMBER 222074546;

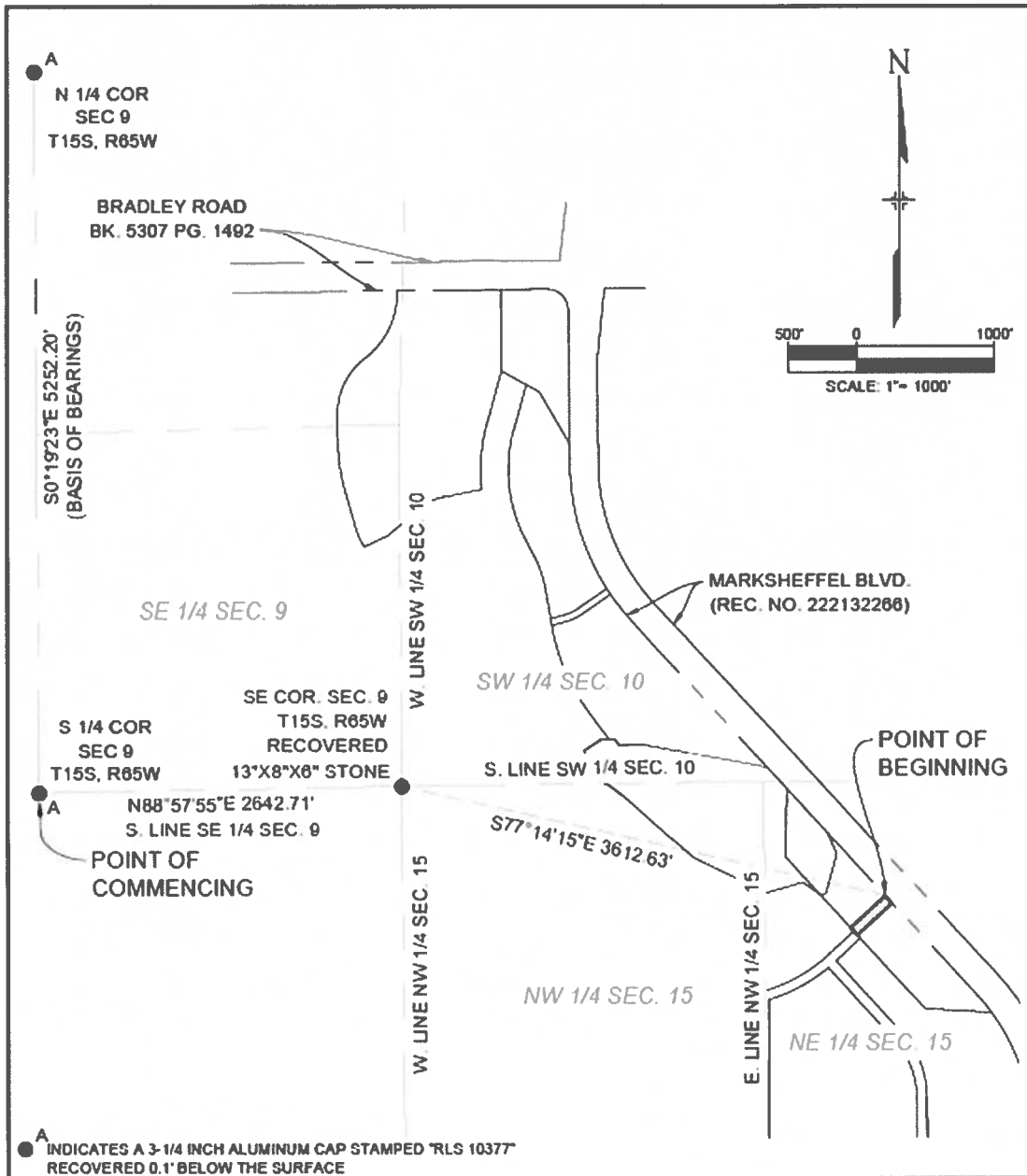
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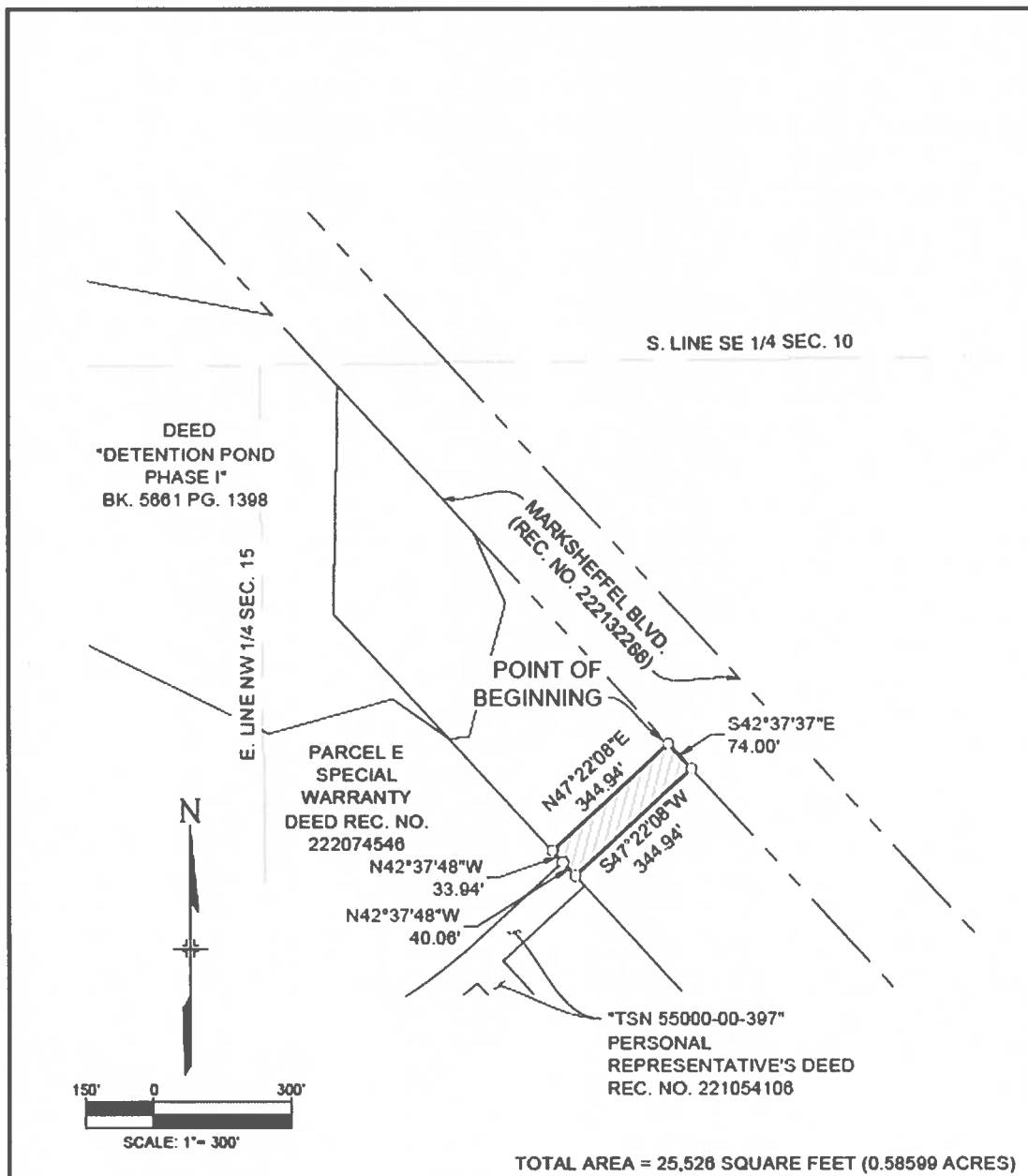
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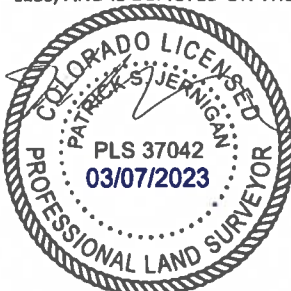
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A
N 1/4 COR
SEC 9
T15S, R65W

BRADLEY ROAD
BK. 5307 PG. 1492

S0°19'23"E 5252.20'
(BASIS OF BEARINGS)

SE 1/4 SEC. 9

S 1/4 COR
SEC 9
T15S, R65W

SE COR. SEC. 9
T15S, R65W
RECOVERED
13"X8"X6" STONE

POINT OF
COMMENCING

N88°57'55"E 2642.71'
S. LINE SE 1/4 SEC. 9

W. LINE SW 1/4 SEC. 10

SW 1/4 SEC. 10

MARKSHEFFEL BLVD.
(REC. NO. 222132266)

S. LINE SW 1/4 SEC. 10

POINT OF
BEGINNING

S83°46'10"E 3118.79'

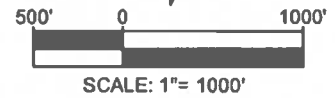
W. LINE NW 1/4 SEC. 15

NW 1/4 SEC. 15

E. LINE NW 1/4 SEC. 15

NE 1/4 SEC. 15

A
INDICATES A 3-1/4 INCH ALUMINUM CAP STAMPED "RLS 10377"
RECOVERED 0.1' BELOW THE SURFACE



Matrix

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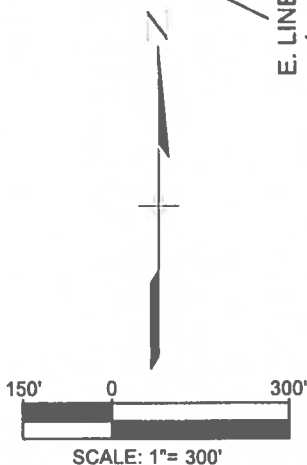
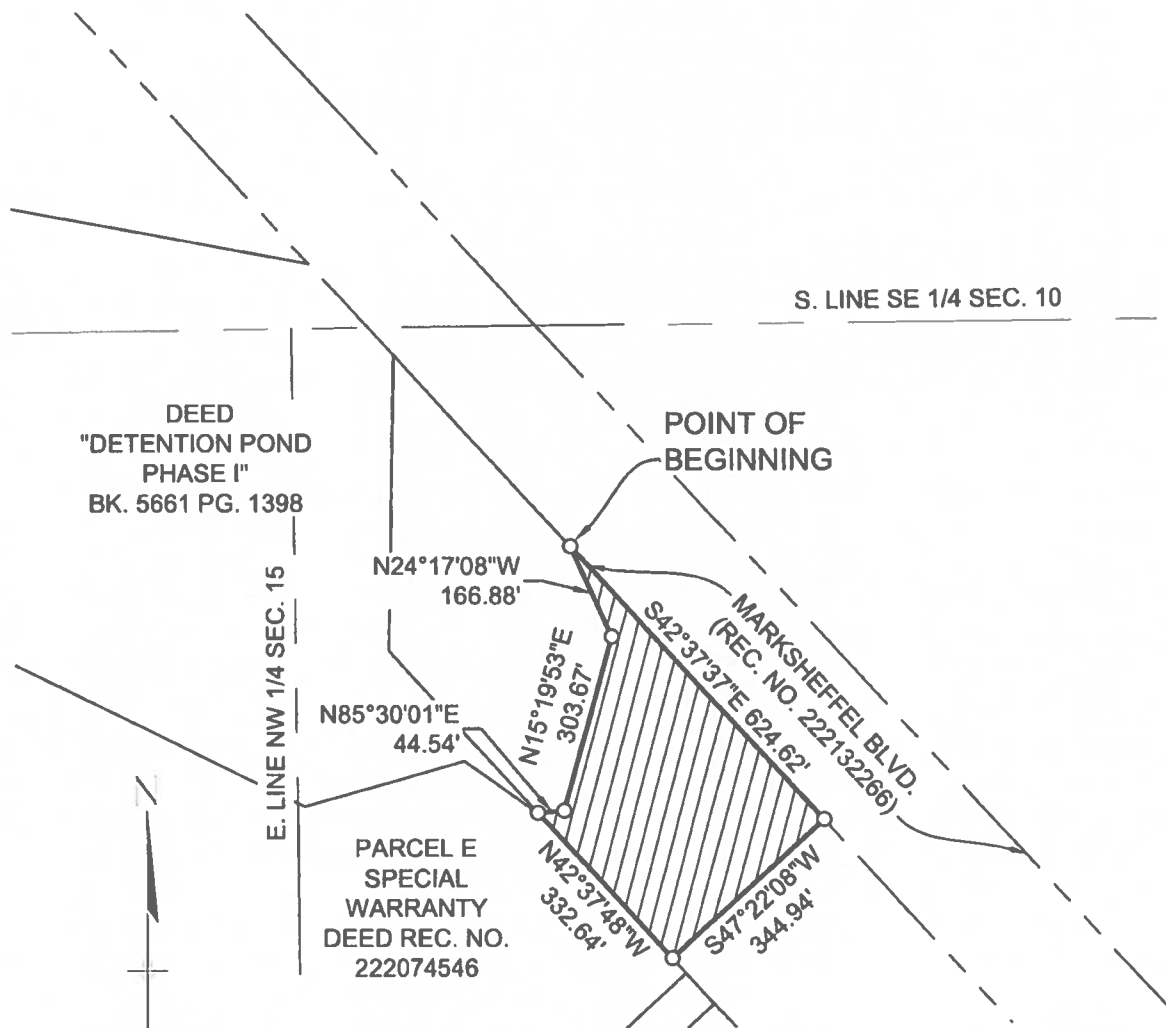
EXHIBIT "B"

OVERALL

CHECKED BY: PSJ

DATE: MAR. 7, 2023
JN: 22.1213.006

SHEET
1 of 2



TOTAL AREA = 139,089 SQUARE FEET (3.19305 ACRES)



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EXHIBIT "B"

SUBJECT PROPERTY

CHECKED BY: PSJ

DATE: MAR. 07, 2023
 JN: 22.1213.006

SHEET
 2 of 2



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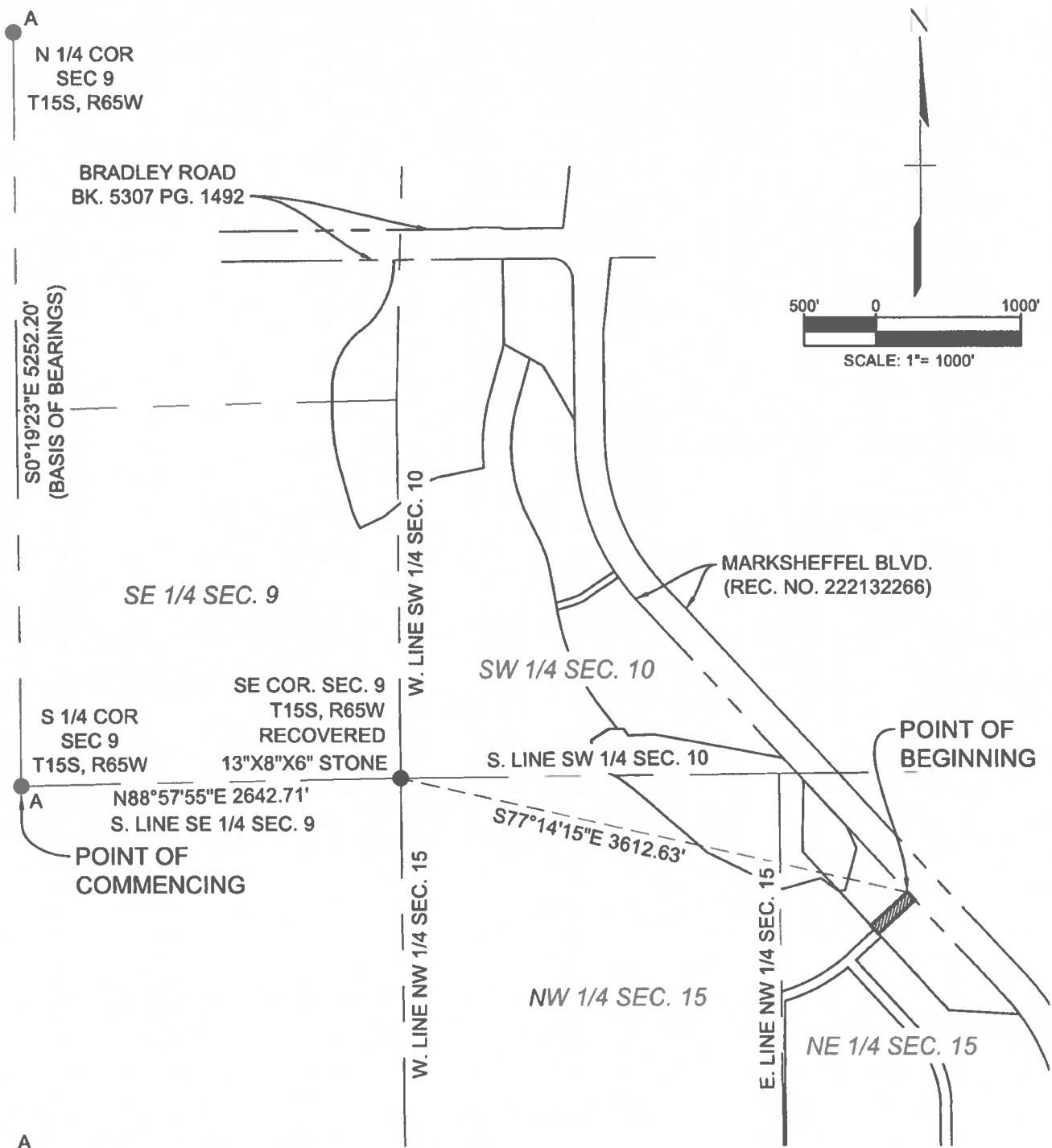


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Anniston, AL | Atlanta, GA | Colorado Springs, CO | Denver, CO | Niceville, FL | Parsons, KS | Phoenix, AZ
Sacramento, CA | Tamuning, GUAM | Texarkana, TX | Washington, DC

Page 1 of 1

S:\21.1213.001 BRADLEY HEIGHTS METRO DISTRICT\700 SURVEY\LEGAL DESCRIPTIONS\POND WITHIN FLARE OUT\POND WITHIN FLARE OUT_PARCEL 3.DOCX

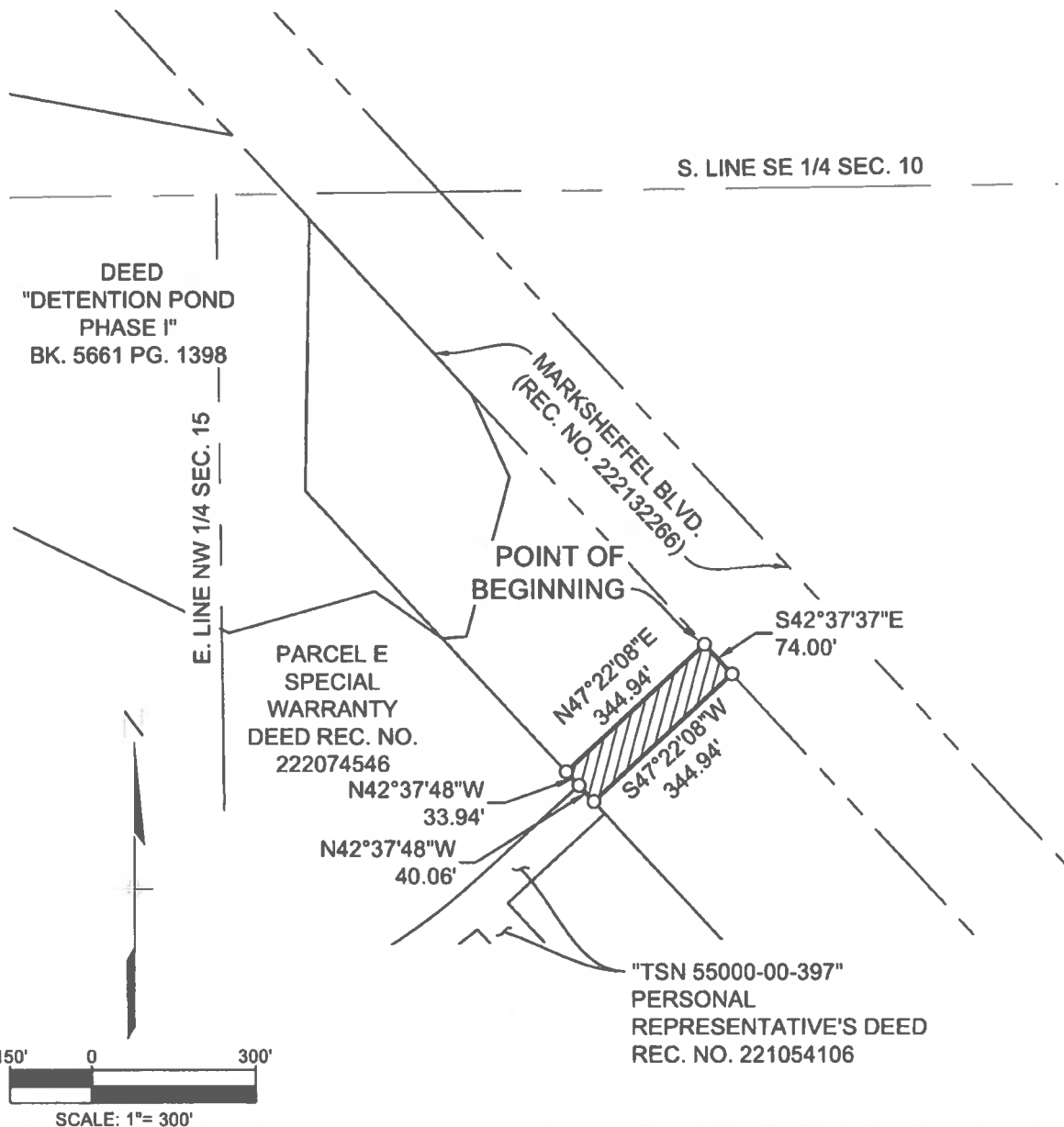


● A INDICATES A 3-1/4 INCH ALUMINUM CAP STAMPED "RLS 10377" RECOVERED 0.1' BELOW THE SURFACE



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EXHIBIT "B"		
OVERALL		
CHECKED BY: PSJ	DATE: MAR. 7, 2023 JN: 22.1213.006	SHEET 1 of 2



TOTAL AREA = 25,526 SQUARE FEET (0.58599 ACRES)



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EXHIBIT "B"

SUBJECT PROPERTY

CHECKED BY: PSJ	DATE: MAR. 07, 2023 JN: 22.1213.006	SHEET 2 of 2
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