

# MEMORANDUM

#2016-029



To: Mayor Muhlfeld  
City Council Members

*Chuck*

From: Chuck Stearns, City Manager

Re: Ramsey and other various parcels for a Wholly Surround Annexation – Schedule for annexation and draft report on extension of services

Date: October 4, 2016

As approved by City Council at October 3, 2016 regular meeting.

This memo will present the discussion, rationale, and schedule for considering the annexation of forty-four (44) properties on Ramsey Avenue and various other parcels using the wholly surround method of annexation. Thirty-four (34) of the properties are taxable properties and ten properties are tax-exempt, of which six (6) properties are either right-of-way (now required to annex by §7-2-4211 (2) MCA) or is the Montana Department of Transportation stormwater detention pond south of the Mountain Mall. This memo also presents the maps, plans, and report for the extension of services as required by §7-2-4506, §7-2-4736, and §7-2-4732 MCA.

Most of the requirements for compliance with §7-2-4732 are met by our Extension of Services plan as adopted on March 2, 2009 by Resolution No. 09-04 which is incorporated by reference within this report and is available for review at the City Clerk's office or on the City website at <http://www.cityofwhitefish.org/large-files/pdf/Planning/Final%20Extension%20of%20Services%20Plan%202009.pdf>.

## **DISCUSSION AND RATIONALE**

When the Whitefish City Council met in a work session on March 3, 2014 and again on July 5, 2016 to discuss the extent of utility connections and services provided outside of city limits and possible areas for annexation, the City Council's first priority expressed at that meeting was to annex the Houston Drive area on East Lakeshore Drive. However, that annexation has been held up by preventive litigation. We then annexed the West Lakeshore area properties on July 18, 2016. The next priority area discussed to be annexed is the area around Ramsey Avenue and other various, wholly surrounded parcels of land throughout the City.

This annexation is being pursued using the "Wholly Surrounded Land" method of annexation found in Title 7, Chapter 2, Part 45 of Montana Code Annotated. This separate method of annexation allows the City to annex certain property without the property owners having the right to protest and prevent the annexation. Section 7-2-4502 MCA provides as follows:

**7-2-4502. Protest not available.** Wholly surrounded land is annexed, if so resolved by the city or town council, whether or not a majority of the real property owners of the area to be annexed object. The question of annexing the wholly surrounded land is not subject to being voted on by the registered voters of the area to be annexed.

A Montana Attorney General Opinion provides additional legal interpretation of when property is “wholly surrounded”. From Montana Attorney General Opinion No. 41; 1987 Mont. AG LEXIS 9; 42 Op. Atty Gen. Mont. No. 41; November 18, 1987:

While not statutorily defined, the term "wholly surrounded" was construed in *Calvert v. City of Great Falls*, 154 Mont. 213, 217, 462 P.2d 182, 184 (1969), to include land which, while not completely contiguous with the municipality, was nonetheless surrounded by it: "The term 'wholly surrounded' means that . . . where all lands on the side of the tract are within the city and where it is impossible to reach the tract without crossing such territory, the tract is 'wholly surrounded'."

THEREFORE, IT IS MY OPINION:

A parcel of land is "wholly surrounded" under section 7-2-4501, MCA, when access may be gained only by crossing through the municipality.

Given that all of these properties proposed for annexation can only gain access to their property by crossing through the municipality on various streets and highways which are already in City limits, these properties are “wholly surrounded”.

### **SCHEDULE FOR CONSIDERATION OF ANNEXATION**

September 6- City Council reviews draft memo and extension of services plan and authorizes consideration of annexation to proceed.

September 8 - City Manager mails letter and draft plan for extension of service to affected property owners. Letter includes notice of September 22<sup>nd</sup> meeting with property owners.

September 8- City Manager mails draft plan for extension of service to County, special districts, and WFSAs providing them notice before approval of the report and asking if they want to consult on the orderly transfer of services pursuant to HB575 from 2011 Legislature.

September 22<sup>nd</sup> - City Manager and staff meet with affected property owners at a neighborhood meeting at City Council Chambers.

October 3- City Council considers a Resolution of Intention to annex pursuant to §7-2-4501 MCA and modifies and/or approves this report as the required plan and report on extension of services provided. After approval, make approved report available to the public.

October 12 and 19 – Publish notice as required by §7-2-4501, §7-2-4313, and §7-1-4127 MCA and mailed to property owners and occupants of the parcels. .

November 21 – Hold public hearing on annexation and if appropriate, adopt Resolution of annexation to annex the properties.

December 6th - City Clerk makes and certifies a copy of the Resolution and the minutes from the July 20<sup>th</sup> meeting and files those records with the Flathead County Clerk and Recorder.

**PLANS AND REPORT ON EXTENSION OF SERVICES AS REQUIRED BY §7-2-4731 MCA**

Section 7-2-4506 and 7-2-4732 MCA requires making of plans and the preparation of a report for the extension of services to any property annexed under this part, Annexation of Wholly Surrounded Land.

This section of this report presents the plans and report on extension of services. A listing of the properties proposed for annexation is in Exhibit A along with other property, tax, and assessment information for each property. A map of the proposed annexations are shown in Exhibits B through I (Maps A-H). The properties and areas conform to our Growth Policy adopted on November 19, 2007 and as subsequently amended. The current Growth Policy is available for review in the City Clerk's office or on the City's website at <http://www.cityofwhitefish.org/planning-and-building/long-range-plans.php>.

The following are the statements as to the plans for extending each major municipal service performed within the municipality to the property at the time of annexation.

- Electoral services - voting for municipal offices, ability to run for municipal offices will all be provided to the resident property owners immediately or in conformity to existing, applicable laws.
- Municipal Court – property owners and residents would immediately be afforded to all of the protections and services of the Municipal Court.
- Administration – The City Manager, City Clerk, and other administration services would all be available to the property owners and residents immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality. Property owners or residents of the annexed properties would now be subject to business licensing, dog licensing, and resort tax payments if applicable.
- Legal Services – the protections and services of the City Attorney would all be available to the property owners and residents immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality.

- **Planning and Building** – The City would take over providing Planning and Zoning services and regulations from Flathead County. The City provided such services before the Montana Supreme Court rescinded our extra-territorial jurisdiction in 2014. The properties’ zoning would have to be revised pursuant to a separate notification and public hearing process. Building permits and associated impact fees will now be required for new development on these properties and all building services will be immediately available to the property owners. Building and Planning Services would all be available to the property owners immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality.
- **Police** – While the Flathead County Sheriff currently provides public safety services to these properties, the City of Whitefish would often be the first responder in the case of an emergency. The Police Department is closely located in the Emergency Services Center to these properties and public safety services should increase greatly because of the reduced response time. Police Department services would all be available to the property owners immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality.
- **Fire** – The City of Whitefish Fire Department currently provides service to these properties under our contract with the Whitefish Fire Service Area. Therefore, there is no change in the level of service for fire protection and fire services. However, their Insurance Services Office (ISO) fire rating for property insurance should decrease from a rating of 6 to 4, thus reducing their annual fire insurance premiums, but it is hard to quantify how much of a decrease that will be. Fire services would all be provided to the property owners immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality.
- **Ambulance** - The City of Whitefish Fire Department currently provides ambulance service to these properties and that service will continue in the same manner. Property owners and residents will now be able to obtain the \$200.00 discount on any ambulance calls afforded to property owners and residents of Whitefish. Ambulance services would all be provided to the property owners immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality.
- **Public Works** –Water and Wastewater lines extend and available throughout the areas other than the property up by the Lookout Ridge subdivision. As shown on the property owner list and spreadsheet attached to this report (Exhibit A), there are 16 properties already on the water and/or sewer system. With annexation, their residential monthly bills for the base rate would decrease by 10.27% and their rate for quantity of water used would decrease by 27.49%. For a house that uses 3,000 gallons of water per month, those reductions would equal \$11.53 per month.

Stormwater services would remain as is until any street reconstruction project installed storm drainage or the residents created a SID for a stormwater system. The City of

Whitefish already plows all of the roads in these areas other than the Whitefish Lookout Road. Therefore, there would be no change in snow plowing.

All Public Works services would all be available to the property owners immediately in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality. The property owners would face the normal connection costs when they want to connect to the municipal water or sanitary sewer system.

- Garbage Collection – the properties to be annexed will have garbage collection services provided under our current contract for services with North Valley Refuse. Thus, they will now be able to avail themselves of the quantity discounts and billing efficiencies that our contract for services provides. However, billing for use of the service is mandatory as it is for all other property inside the City. Garbage collection services would be available to the property owners immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality.
- Parks and Recreation – These properties already benefit from, but are not charged for our greenway maintenance along Hwy 93. The property owners would now begin to pay for these services. All other Parks and Recreation services, facilities, and programs would all be available to the property owners immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality.
- Library – no change in service. Library services would be available to the property owners immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality. Property owners may currently use the Whitefish Community Library although, upon annexation, they would begin paying for those services.

A copy of our Extension of Services plan as adopted on March 2, 2009 by Resolution No. 09-04 is incorporated by reference within this report and is available for review at the City Clerk's office or on the City website at <http://www.cityofwhitefish.org/large-files/pdf/Planning/Final%20Extension%20of%20Services%20Plan%202009.pdf>.

The validity and applicability the City's Extension of Services Plan was upheld by the Montana Supreme Court in their ruling of September 21, 2004 upholding the City's 1998 annexations in their decision "NO. 03-229, IN THE SUPREME COURT OF THE STATE OF MONTANA 2004 MT 262"

Given that these properties are already using many city services and this annexation is an "in-fill" type of annexation, the financing of all services provided to these properties shall come from the city property tax levies and assessments that will be levied on these properties in the future. The estimated new property taxes from the annexation equal approximately \$12,025.35 and the assessments for streets, greenway, street lights, and stormwater will equal approximately

\$16,310.28 for total revenue to the City of approximately \$28,335.63 based on the most recent valuation and the FY16 and Tax Year 2015 tax rate (see Exhibit A). The property owner will face the normal connection costs when they choose or need to connect onto the city's sanitary sewer or water system unless they are already connected.

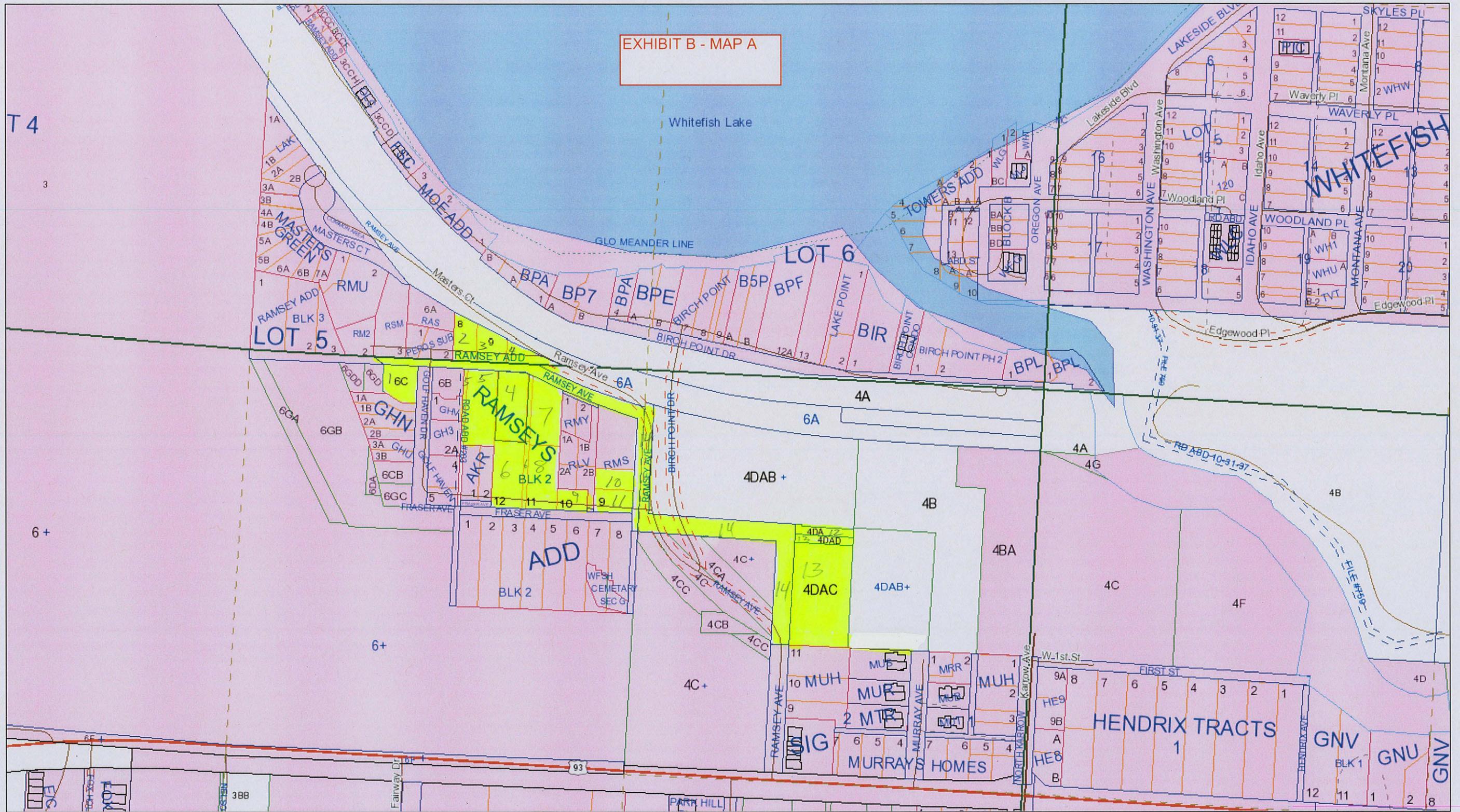
Property owners in this area will typically face a 16-28% increase in their property tax bill, with some exceptions for low value, vacant land or large lots, both of which have high percentage increases because of assessments, but relatively lower dollar increase impacts. The table in Exhibit A shows the City revenue and prospective increase in taxes (based on the most recent FY16- tax year 2015 property tax bills and last year's mill levies) that each property might face. Of course, mill levies can change each fall and reappraisal occurs every two years, with the next reappraisal coming in 2017. The property owners first tax bill with City taxes will not be issued until the fall of 2017.

The entire municipality tends to share the tax burden for these services, therefore the area may be annexed without a bond issue under the provisions of state law. As in-fill property, we do not anticipate the need to hire additional staff in order to provide the same level of service that is currently provided to other residents and property owners in Whitefish. Any increased costs will be marginal and incremental and offset by the new property taxes and assessments collected.

As this report shows, the City of Whitefish is ready and able to provide its full complement of municipal services to this property. Upon annexation, city services will be provided immediately, in substantially the same equitable basis, and in the same manner as such those services are provided within the rest of the municipality.

cc: Department Directors





August 1, 2016

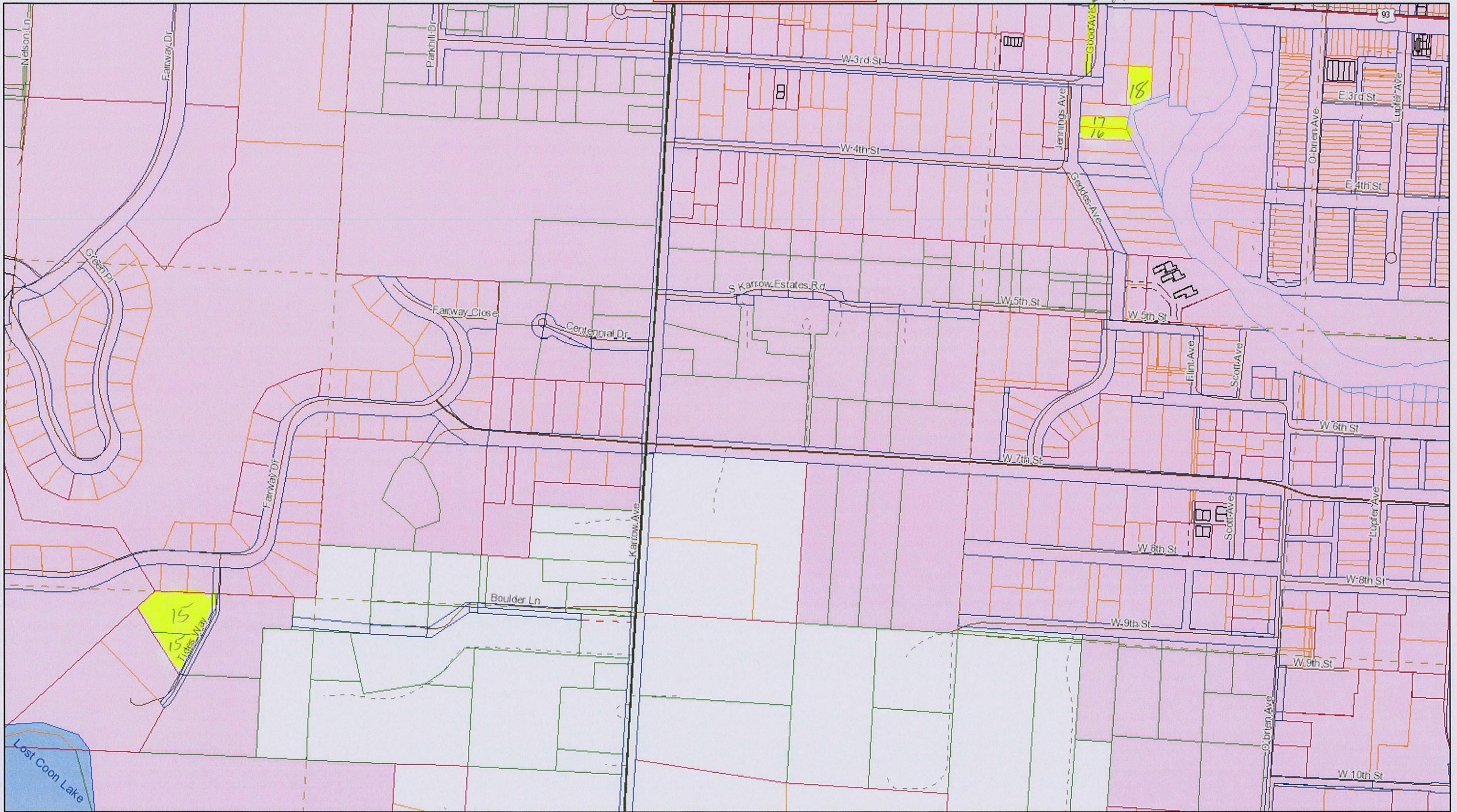
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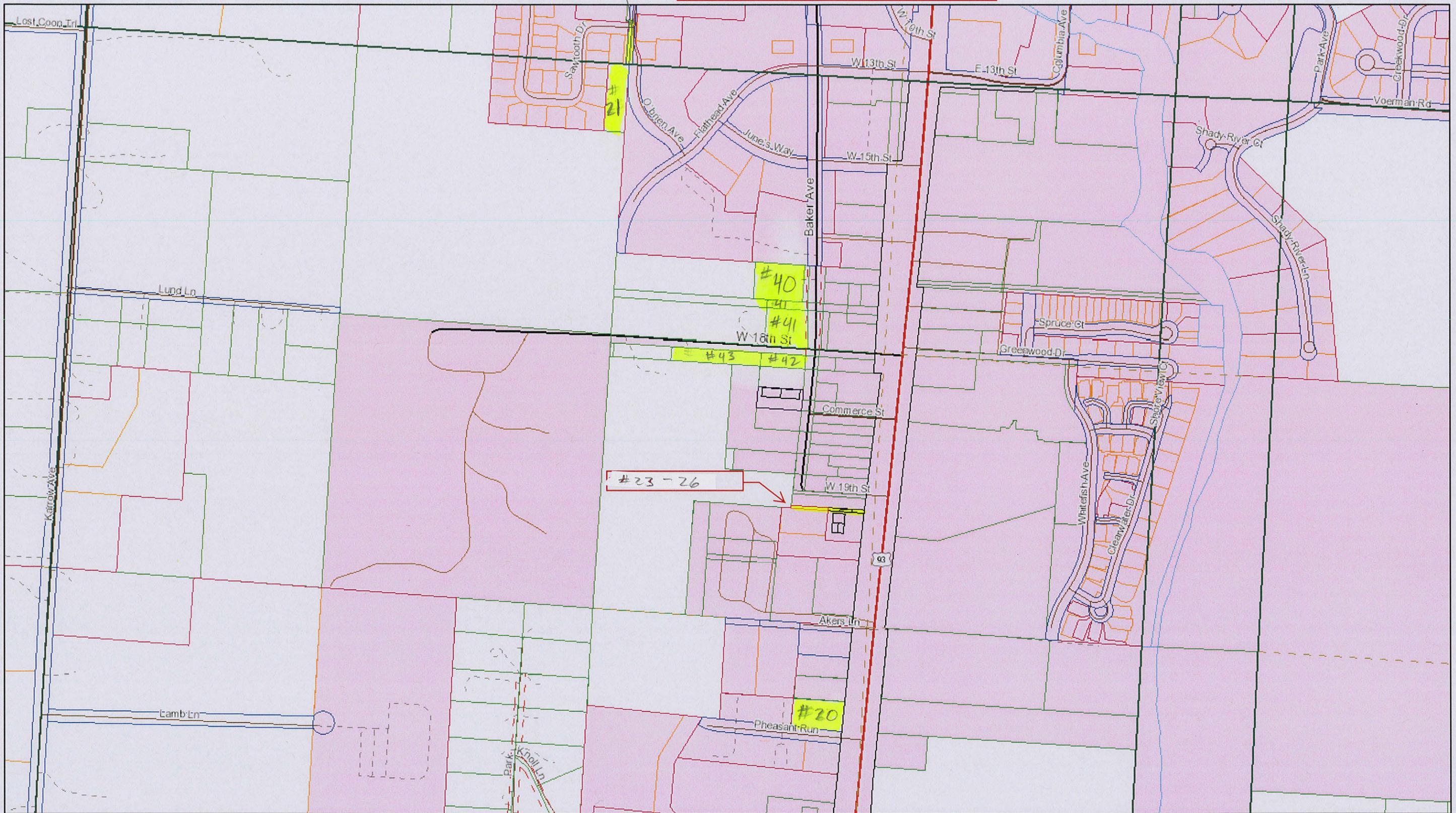
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August 8, 2016



Exhibit D - Map C



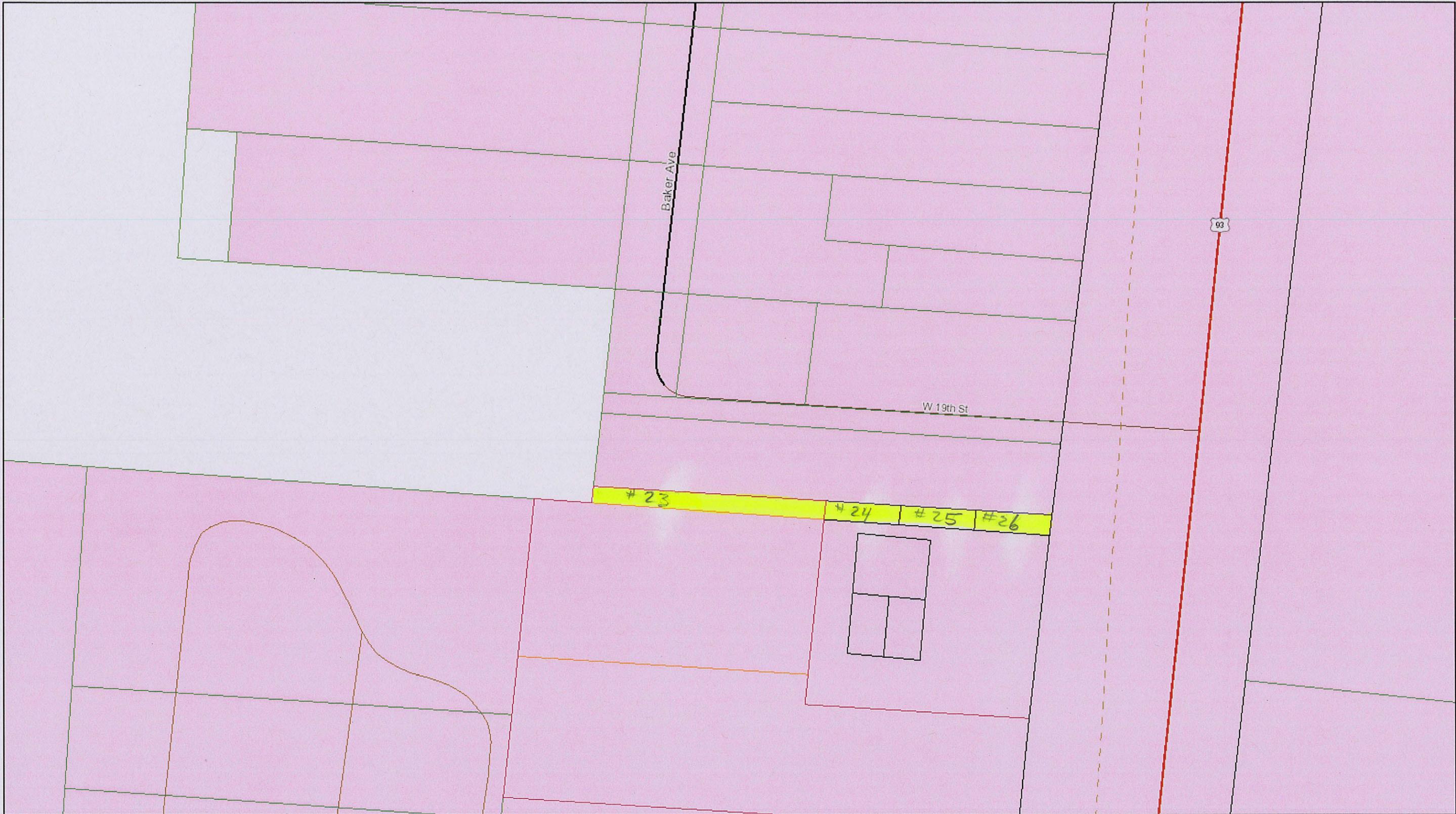
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August 8, 2016

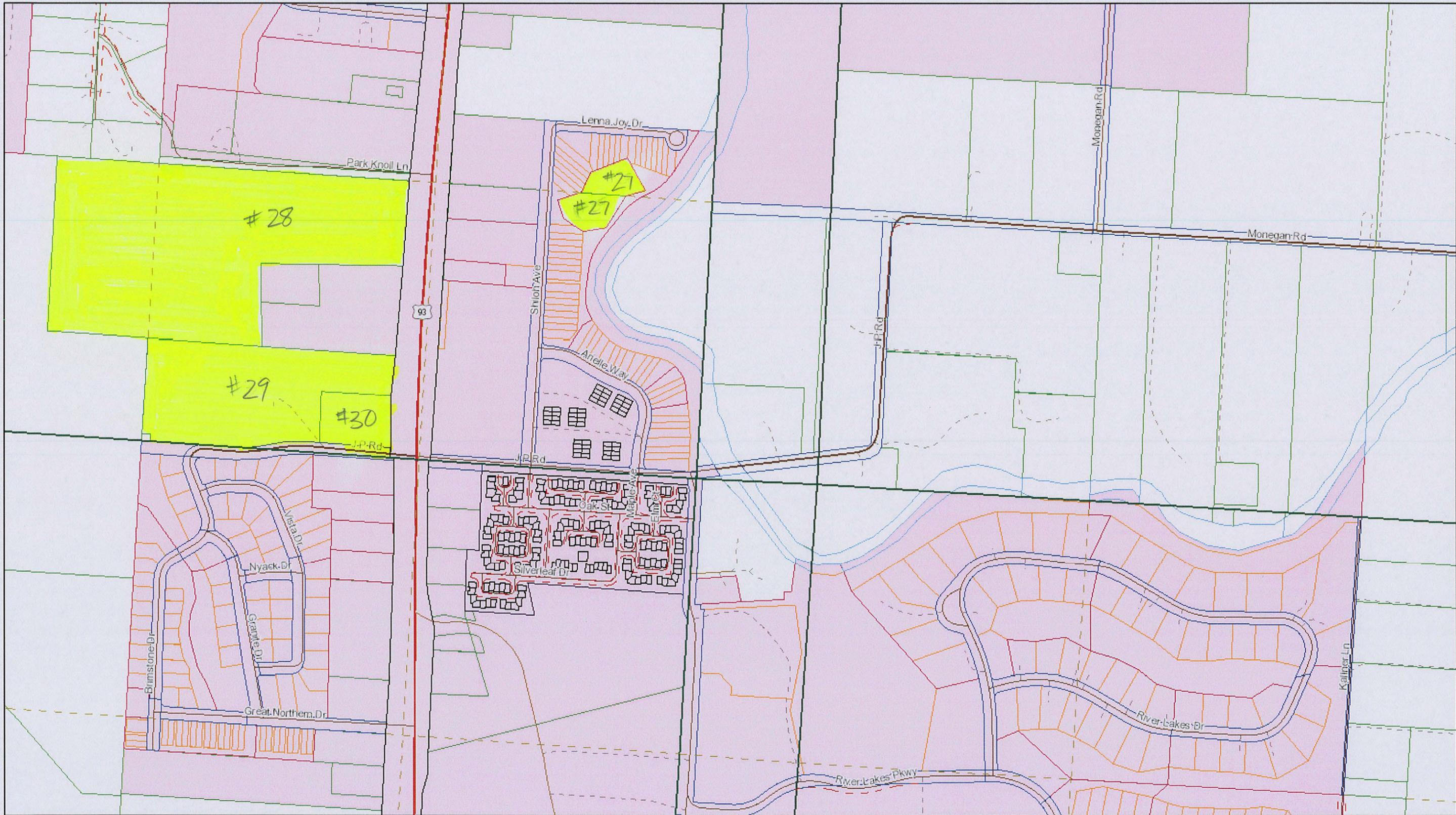


Exhibit E - Map D



August 8, 2016

EXHIBIT F - MAP E



August 8, 2016

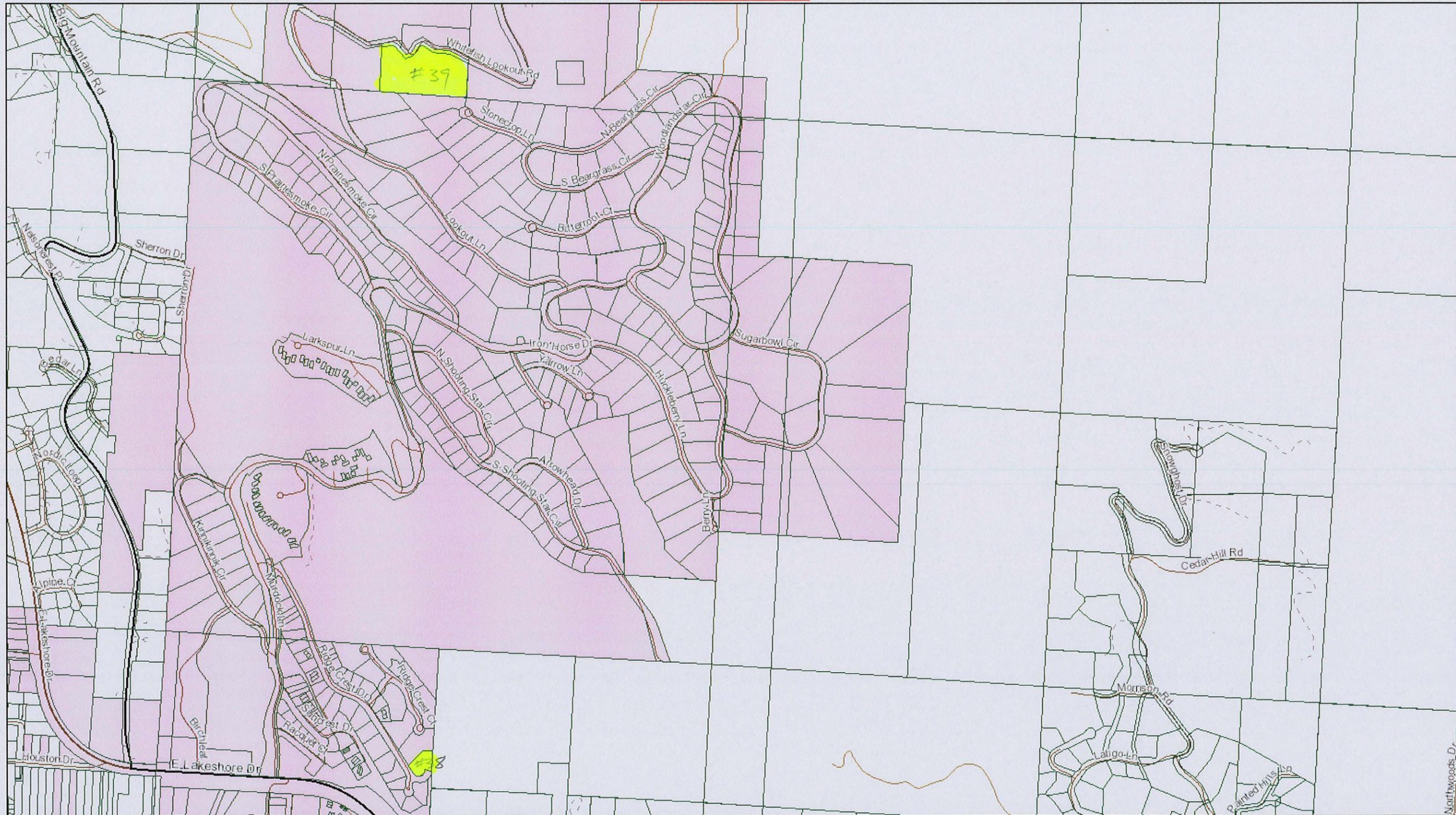




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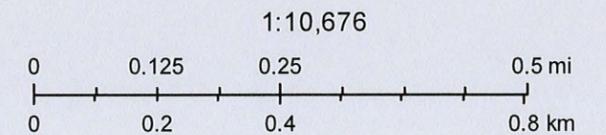


EXHIBIT H - MAP G

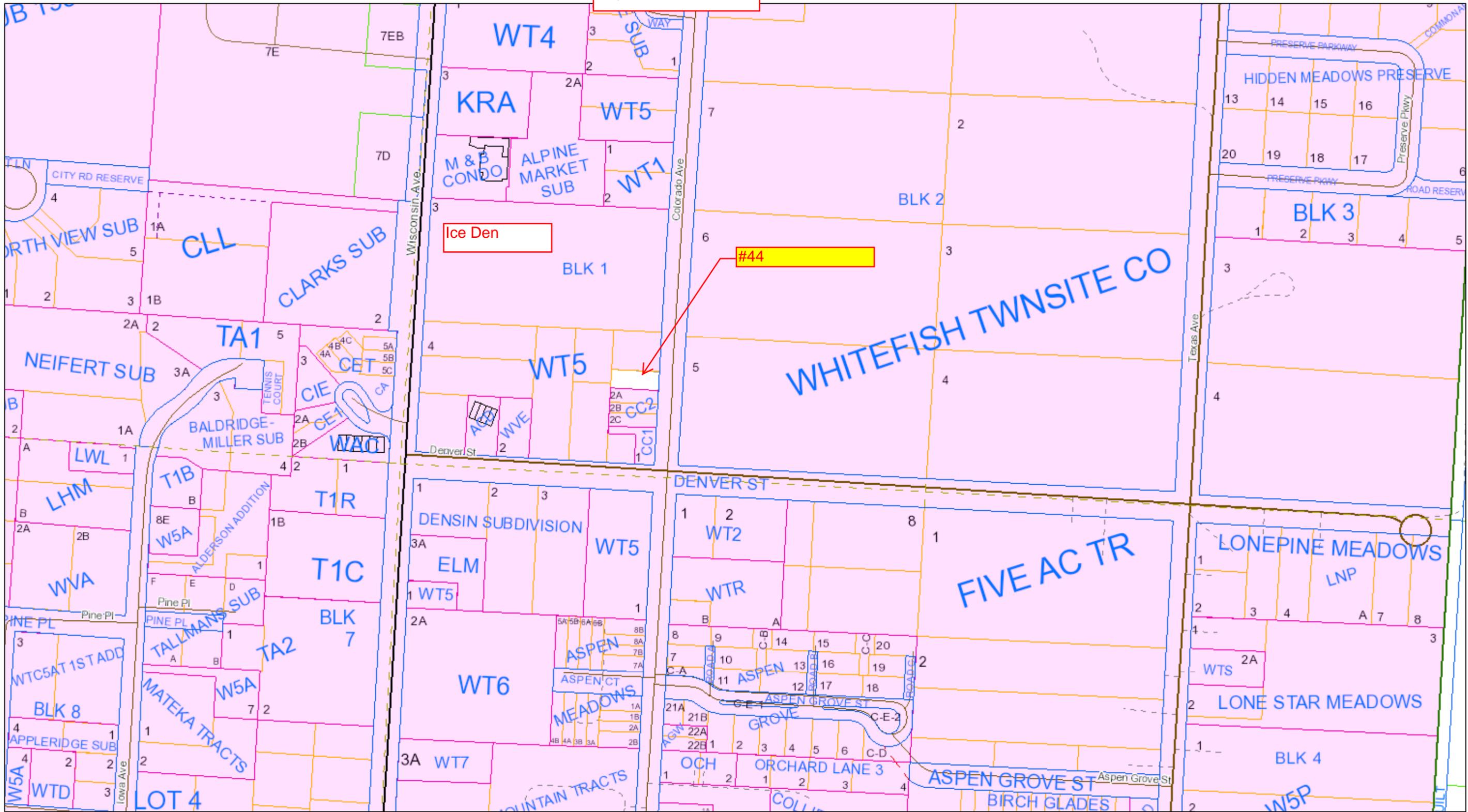


August 8, 2016

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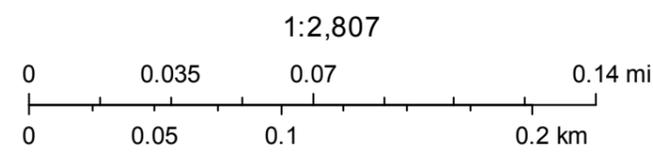


Map H - Exhibit I



September 2, 2016

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