ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of March 13, 2010

DATE: February 23, 2010

SUBJECT: Enactment of an Ordinance to Amend and Reenact an Ordinance to Vacate on Part of Parcel B-2A, Western Electric Company, Incorporated: 1) a Portion of a 10' Utility Easement for Water Main on the Southwest Portion of the Parcel; and, 2) a 15' Storm Sewer Easement on the Southwest Portion of the Parcel, known as 1201 S. Hayes Street and 1200 S. Fern Street, Arlington County, Virginia (RPC No. 35004001), with Conditions.

Applicant/Owner: PL Pentagon LLC, c/o Kimco Realty Corporation

By: Megan Shilling, Agent/Attorney
c/o Walsh, Colucci, Lubeley, Emrich & Walsh, PC
2200 Clarendon Boulevard, Suite 1300
Arlington, VA 22201

C. M. RECOMMENDATIONS:

1. Enact the attached Ordinance to Amend and Reenact an Ordinance to Vacate on Part of Parcel B-2A, Western Electric Company, Incorporated: 1) a Portion of a 10' Utility Easement for Water Main on the Southwest Portion of the Parcel; and, 2) a 15' Storm Sewer Easement on the Southwest Portion of the Parcel, known as 1201 S. Hayes Street and 1200 S. Fern Street, Arlington County, Virginia (RPC No. 35004001), with Conditions.

2. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, or his designee, to execute, on behalf of the County Board, the Deed(s) of Vacation, subject to approval as to form by the County Attorney.

ISSUE: The Applicant has requested an extension from the existing July 19, 2011 deadline until July 1, 2014 of a previously approved Ordinance of Vacation. The reason for the extension request is to make the extended vacation deadline coincide with extension of a special exception site plan provided by recently enacted Virginia Code Sec. 15.2-2209.1. There are no outstanding issues.

County Manager: BMD/GA

County Attorney: BAK/SAM

Staff: Betsy Herbst, DES, Real Estate Bureau

13.

SUMMARY: The Applicant has requested an amendment and reenactment of a vacation ordinance ("Amended Ordinance") associated with Site Plan #297 ("Site Plan"), for the purpose of extending the expiration of the vacation ordinance originally enacted by the County Board on July 21, 2008, with conditions ("2008 Ordinance"). As provided in the conditions of the 2008 Ordinance, the Applicant has until noon on July 19, 2011, to complete all conditions of the Ordinance of Vacation. However, given current market conditions, the Applicant has not begun construction of the project that includes phased construction of a mixed use development, including office, retail, hotel and residential space, under approved Site Plan #297 ("Project"). In March 2009, an amendment to Virginia Code Section 15.2-2209.1 was enacted providing for an extension of special exceptions, approved by localities on or before January 1, 2009, until July 1, 2014. The Applicant has indicated that the extension of the Site Plan and associated vacations would improve the Applicant's ability to obtain financing for the Project since the extension of time to vest the Site Plan and satisfy the vacation ordinance conditions would be considered more favorable to potential lenders given the present economic situation.

The 2008 Ordinance authorized the vacation of the following County interests subject to conditions specified in the Ordinance: 1) a Portion of a 10' Utility Easement for Water Main on the Southwest Portion of the Parcel; and, 2) a 15' Storm Sewer Easement on the Southwest Portion of the Parcel, on the properties known as 1201 S. Hayes Street and 1200 S. Fern Street. The Amended Ordinance to reenact and amend the 2008 Ordinance is attached to this report as Attachment 1. The conditions of the 2008 Ordinance have not yet been satisfied.

Upon enactment of the Amended Ordinance, the Applicant would be required to satisfy the Ordinance conditions by the earlier of July 1, 2014, or the date when the County Board amends Site Plan #297, if such amendment changes, deletes or modifies the requirement for an Ordinance of Vacation or the time period for obtaining the same. Except for the expiration date, all other conditions of the 2008 Ordinance are incorporated into, and made part of, the Amended Ordinance. The Applicant is also being required to remove and relocate the existing utilities located within the portions of the easements being vacated, and rededicate new utility easements as provided in the approved Site Plan. With completion of the conditions specified in the Amended Ordinance and recordation of the Deed of Vacation by the Applicant before the expiration date of the Amended Ordinance, the County's interests in the vacated portion of the 10' utility easement for water main and the 15' storm sewer easement near the intersection of South Fern Street and 15th Street South will be extinguished.

BACKGROUND: The subject property is located on a block near the intersection of South Fern Street and 15th Street South. (See Vicinity Maps at Attachments 2 and 3.) The parcel is currently developed with several large box stores, various smaller retail stores, restaurants, surface and garage parking. The Applicant acquired the property by Special Warranty Deed dated December 21, 2004, and recorded in Deed Book 3795 at Page 1258 among the land records of Arlington County, Virginia ("Land Records").

In conjunction with its plans to redevelop the subject property, the Applicant obtained approval of an application for modification of use regulations concerning building height, a phased development site plan and a final site plan application proposing phased redevelopment of the site to include construction of office space, retail space, hotel rooms, residential units and

retention of retail space. The site consists of approximately 731,873 square feet (or 16.80149 acres). As the result of rezoning approved by the County Board, along with Site Plan #297 in July, 2008, the property was rezoned from M-1 "Light Industrial District" to C-O-2.5 "Commercial Office Building, Hotel and Apartment District". The Applicant proposes to concentrate a mixed-use development, including residential, commercial and office uses, with the Pentagon City Metro station area, provide mixed-use development to enable a balance of residential, shopping and employment opportunities and increase the supply of housing. The Site Plan area is bounded by Pentagon City Mall and the Parc Vista Apartments to the west, by Southampton Condominiums to the south, by Pentagon Industrial Centre (Metropolitan One) residential and commercial development to the east and Brookfield office building to the north.

DISCUSSION: The Applicant requests that the County amend and reenact an ordinance, for the purpose of extending the expiration of the original vacation ordinance, to vacate a portion of an existing 10' utility easement for water main and a 15' storm sewer easement, as designated on the plat entitled "Plat Showing the Vacation of a Portion of a 10' Utility Easement for Water Main, Deed Book 1934 Page 387, and the Vacation of 15' Storm Sewer Easement, Deed Book 1142 Page 469, on Part of Parcel "B-2A", Western Electric Company, Incorporated, Deed Book 2620 Page 409, Arlington County, Virginia", prepared by VIKA Incorporated, dated March 7, 2007, revised June 5, 2008, and attached hereto as Exhibit A, to permit redevelopment in conjunction with Site Plan #297 for Pentagon Centre. These easements run generally along the southwesterly side of the property near the intersection of 15th Street South and South Hayes Street. Under the Site Plan, the Applicant proposes to dedicate new utility easements to serve the proposed improvements. As conditions of the Amended Ordinance, the Applicant will be required to remove and relocate the existing utilities located within the portions of the easements being vacated, and dedicate new easements as provided in the Site Plan.

Legal and Physical Description: The 10' Utility Easement for Water Main was established by Deed of Easement dated November 8, 1976, and recorded in Deed Book 1934 at Page 387 among the Land Records. The 15' Storm Sewer Easement was established by Deed of Dedication and Exchange dated February 25, 1954, and recorded in Deed Book 1142 at Page 469 among the Land Records. The portions of the easements to be vacated are in the southwestern corner of the parcel.

Public Notice: Public notice of the proposed vacations was given in accordance with the Code of Virginia. Notices were placed in the February 16 and February 23, 2010 issues of the Washington Times for the County Board Meeting of March 13, 2010.

Compensation: In keeping with current practice, staff recommends that no compensation be required from the Applicant for vacating the portions of the utility easement for water main and the storm sewer easement located on Applicant's property, which easements will be vacated for redevelopment and replaced with new easements dedicated to serve the proposed new improvements, as provided in the Site Plan.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board enact the attached Ordinance to Amend and Reenact an Ordinance of Vacation as set forth in Attachment 1 hereto.

ORDINANCE TO AMEND AND REENACT AN ORDINANCE TO VACATE ON PART OF PARCEL B-2A, WESTERN ELECTRIC COMPANY, INCORPORATED: 1) A PORTION OF A 10' UTILITY EASEMENT FOR WATER MAIN ON THE SOUTHWEST PORTION OF THE PARCEL; 2) A 15' STORM SEWER EASEMENT ON THE SOUTHWEST PORTION OF THE PARCEL, KNOWN AS 1201 S. HAYES STREET AND 1200 S. FERN STREET, ARLINGTON COUNTY, VIRGINIA (RPC NO. 35004001), WITH CONDITIONS:

BE IT ORDAINED that, pursuant to a request on file by PL Pentagon LLC, c/o Kimco Realty Corporation (the "Applicant/Property Owner") in the Office of the Department of Environmental Services, on property known as Part of Parcel B-2A, Western Electric Company, Incorporated: 1) a portion of a 10' Utility Easement for Water Main on the Southwest Portion of the parcel, being established by Deed of Easement dated November 8, 1976, and recorded in Deed Book 1934 at Page 387 among the Arlington County, Virginia land records; and 2) a 15' Storm Sewer Easement on the Southwest Portion of the Parcel, being established by Deed of Dedication and Exchange dated February 25, 1954, and recorded in Deed Book 1142 at Page 469 among the Land Records, which easements are designated on the plat entitled "Plat Showing the Vacation of a Portion of a 10' Utility Easement for Water Main, Deed Book 1934 Page 387, and the Vacation of 15' Storm Sewer Easement, Deed Book 1142 Page 469, on Part of Parcel "B-2A", Western Electric Company, Incorporated, Deed Book 2620 Page 409, Arlington County, Virginia", prepared by VIKA Incorporated, dated March 7, 2007, revised June 5, 2008, and attached to the County Manager's Report dated February 23, 2010, as Exhibit A are hereby vacated subject to the following conditions:

1. The Applicant/Property Owner shall submit, for review and approval, to the Department of Environmental Services ("DES"), a utility relocation and engineering design plan for the construction, relocation, removal, and/or replacement of the storm sewer and water facilities located, in whole or in part, within the portion of the easements vacated by this Ordinance of Vacation ("Plan") in compliance with the Arlington County Construction Standards and Specifications. The Plan shall be subject to approval by the Director of DES, or his designee.
2. The Applicant/Property Owner shall submit to the Director of DES, or his designee, a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or his designee, to secure the construction, relocation, removal, and/or replacement of the storm sewer and water facilities pursuant to the approved Plan.
3. The Applicant/Property Owner shall, at its own cost and expense, remove, relocate and reconstruct the existing storm sewer and water facilities, located within the portions of the easements herein vacated, with new storm sewer, water and related appurtenant facilities of size, dimension and location acceptable to Arlington County ("County"), in strict accordance with Arlington County Construction Standards and Specifications, and all applicable laws, ordinances, regulations and policies.
4. The Applicant/Property Owner shall dedicate, grant and convey to the County new storm sewer and water facilities easements, at locations and of dimensions necessary to accommodate the relocated facilities as required by the County and as provided in Site Plan # 297, approved by the County Board on July 21, 2008. The Real Estate Bureau

Chief, Department of Environmental Services, or his designee, is authorized to accept the storm sewer and water facilities easements on behalf of the County, subject to approval thereof as to form by the County Attorney.

5. The Applicant/Property Owner shall prepare and submit to the County for review and approval, the Deed(s) of Vacation, and all required plats, subject to the approval thereof by the County Manager, or his designee, and approval of the deeds as to form by the County Attorney.
6. The Applicant/Property Owner shall record the Deed(s) of Vacation and all plats, subject to the approval of the County Manager, or his designee, and approval as to form by the County Attorney.
7. The Applicant/Property Owner shall pay all fees, including the fees for plat review, approval and recordation of the Deed(s) of Vacation associated with the Ordinance of Vacation.
8. All conditions of the Ordinance of Vacation shall be met by the earlier of: a) noon on July 1, 2014, or b) the date when the County Board amends Site Plan #297, if such amendment changes, deletes or modifies the requirement for an Ordinance of Vacation or the time period for obtaining the same. In either instance, the Ordinance of Vacation shall become null and void.

EXHIBIT A
VACATION PLAT

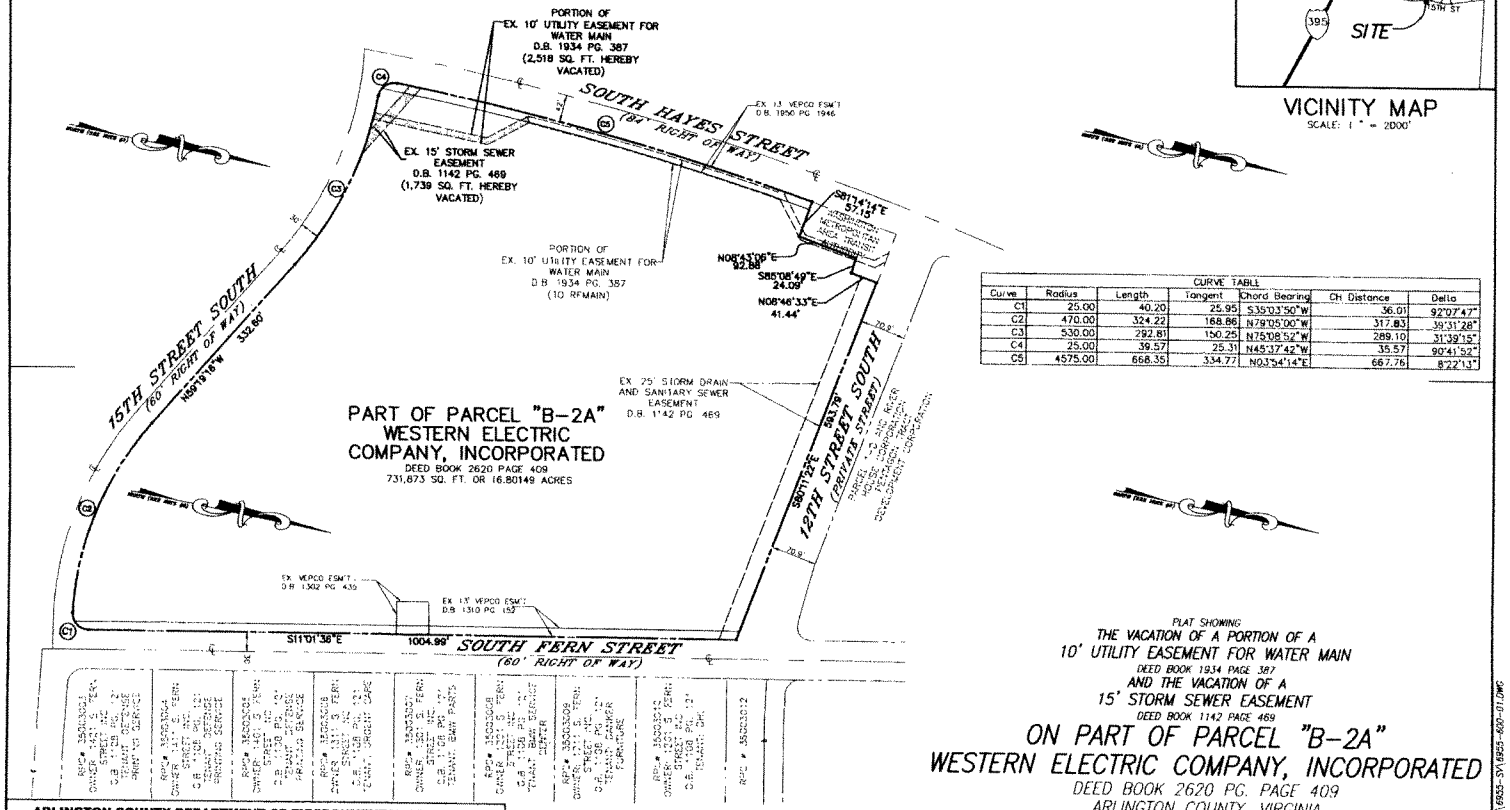
GENERAL NOTES:

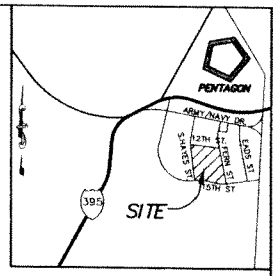
1.) THE SUBJECT PROPERTY SHOWN HEREON IS IDENTIFIED ON ARLINGTON COUNTY TAX ASSESSMENT MAP 75-6 AS RPC 35004001 AND IS ZONED M-1.

2.) THE HORIZONTAL DATUM IS REFERENCED TO DEED BOOK 2706 AT PAGE 1559.

3.) THE PROPERTIES SHOWN HEREON ARE CURRENTLY IN THE NAME OF: PL PENTAGON, LLC AS RECORDED IN DEED BOOK 3795 PAGE 1258 AMONG THE LAND RECORDS OF ARLINGTON COUNTY VIRGINIA.

4.) THE SUBJECT PROPERTY LIES IN FLOOD ZONE "C" AND NOT IN A FEMA IDENTIFIED "SPECIAL FLOOD HAZARD AREA" AS PER THE FLOOD INSURANCE RATE MAP OF ARLINGTON COUNTY, VIRGINIA, DATED MAY 3, 1982, PER COMMUNITY NO. 515520, PANEL 0010 B.





VICINITY MAP
SCALE: 1" = 2000'

CURVE TABLE						
Curve	Radius	Length	Tangent	Chord Bearing	Ch. Distance	Delta
C1	25.00	40.20	25.95	S35°03'50"W	36.01'	92°07'47"
C2	470.00	324.22	168.86	N79°05'00"W	317.83	39°31'28"
C3	530.00	292.81	150.25	N75°08'52"W	289.10	31°39'15"
C4	25.00	39.57	25.31	N45°37'42"W	35.57	90°41'52"
C5	4575.00	668.35	334.77	N03°54'14"E	667.76	8°22'13"

PLAT SHOWING
THE VACATION OF A PORTION OF A
10' UTILITY EASEMENT FOR WATER MAIN
DEED BOOK 1934 PAGE 387
AND THE VACATION OF A
15' STORM SEWER EASEMENT
DEED BOOK 1142 PAGE 489

ON PART OF PARCEL "B-2A"
WESTERN ELECTRIC COMPANY, INCORPORATED

DEED BOOK 2620 PG. PAGE 409
ARLINGTON COUNTY, VIRGINIA
SCALE: 1"=100' DATE: 3-7-2007
REVISED 6-5-2008

GRAPHIC SCALE
100 0 50 100 200 400
(IN FEET)
1 inch = 100 ft.

ARLINGTON COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF TRANSPORTATION

RECOMMENDED FOR APPROVAL: _____ PLAT EXAMINER

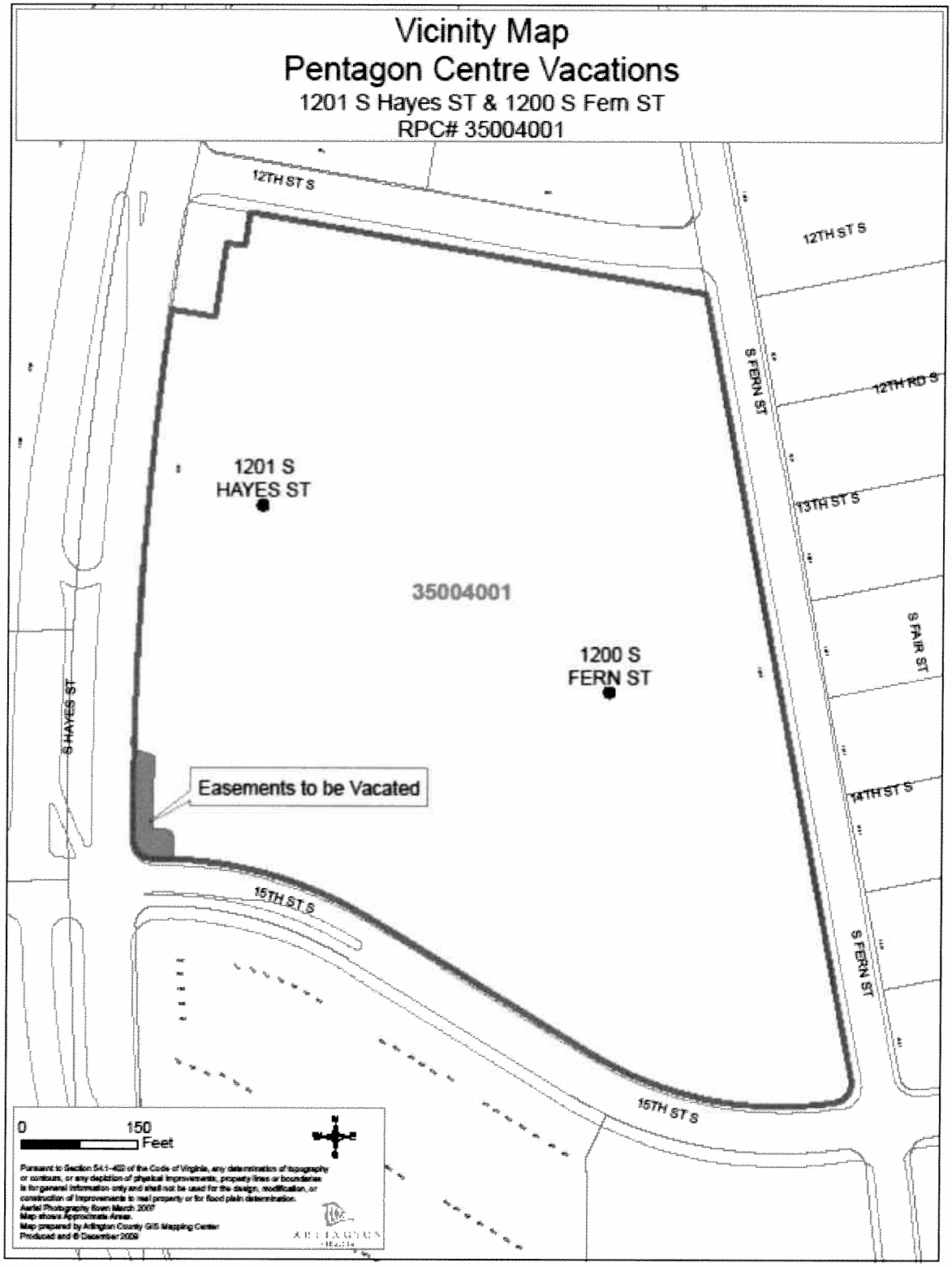
APPROVED: _____ SUBDIVISION AND BONDS ADMINISTRATOR

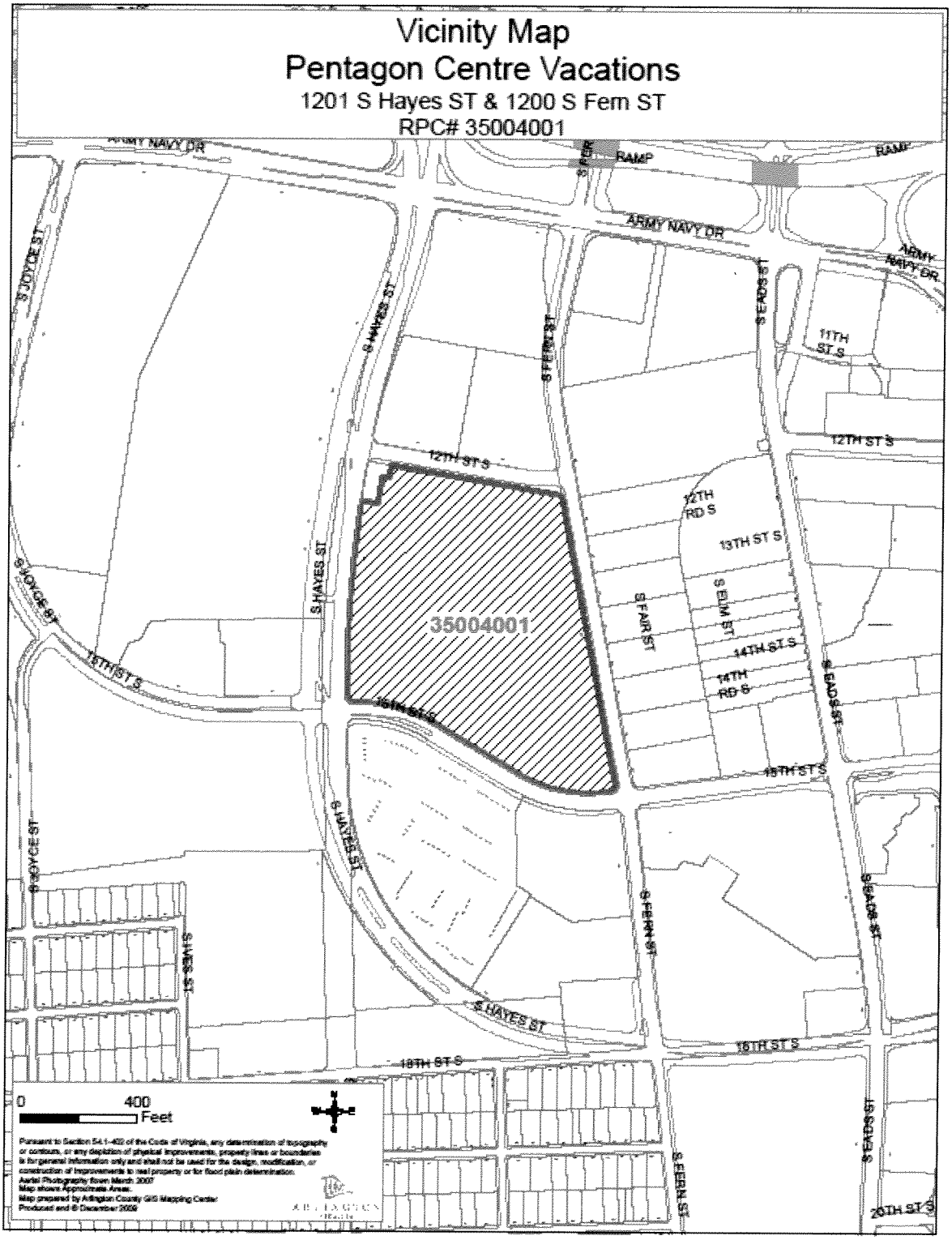
VIKA
ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ G.P.S. SERVICES
VIKA INCORPORATED
8180 GREENSBORO DRIVE SUITE 200 ■ McLEAN, VIRGINIA 22102
(703)442-7800 ■ FAX (703)761-2787
McLEAN, VA GERMANTOWN, MD

PLAT FOR VACATION RESOLUTION

RP/SP

P:\SURVEYS\LDD2-PROJECTS\6925-SV\6925-600-01.DWG


Vicinity Map
Pentagon Centre Vacations
1201 S Hayes ST & 1200 S Fern ST
RPC# 35004001
12TH ST S
12TH ST S
S FERN ST
12TH RD S
1201 S
HAYES ST
13TH ST S
35004001
S FAIR ST
1200 S
FERN ST
S HAYES ST
Easements to be Vacated
14TH ST S
15TH ST S
S FERN ST
15TH ST S
0
150
Feet
Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.
Aerial Photography from March 2007
Map shows Approximate Areas.
Map prepared by Arlington County GIS Mapping Center
Produced and © December 2009


Vicinity Map
Pentagon Centre Vacations
1201 S Hayes ST & 1200 S Fern ST
RPC# 35004001
ARMY NAVY DR
RAMP
S JOYCE ST
S HAYES ST
S FERN ST
S EADS ST
11TH ST S
12TH ST S
12TH RD S
13TH ST S
S FAIR ST
S ELM ST
14TH ST S
14TH RD S
15TH ST S
16TH ST S
17TH ST S
18TH ST S
19TH ST S
20TH ST S
35004001
0
400
Feet
Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.
Aerial Photography flown March 2007
Map shows Approximate Areas.
Map prepared by Arlington County GIS Mapping Center
Produced and © December 2008