



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of November 19, 2011

DATE: October 31, 2011

SUBJECT: Enactment of an Ordinance to Vacate: 1) all of that portion of a ten (10) foot drainage easement located on Lots "M", "N" and on the southerly part of Lot "O"; 2) all of that portion of a five (5) foot sanitary sewer easement located on Lot "N" and on the southerly part of Lot "O"; and 3) all of that portion of a ten (10) foot storm sewer easement located on Lot "N" and on the southerly part of Lot "O," said lots being part of a Resubdivision of Lots 44-60 Inclusive, Tuckahoe Village, located at the northeast corner of 22nd Street North and North Kentucky Street, (RPC # 10-009-013 and -014), with conditions.

Applicants: Nathan Glick and Isa Glick

By: Benjamin Danforth, Esquire
Lawson, Tarter, & Charvet
6045 Wilson Boulevard, Suite 100
Arlington, Virginia 22205- 1546

C. M. RECOMMENDATION:

1. Enact the attached Ordinance to Vacate: 1) all of that portion of a ten (10) foot drainage easement located on Lots "M", "N" and on the southerly part of Lot "O"; 2) all of that portion of a five (5) foot sanitary sewer easement located on Lot "N" and on the southerly part of Lot "O"; and 3) all of that portion of a ten (10) foot storm sewer easement located on Lot "N" and on the southerly part of Lot "O," said lots being part of a Resubdivision of Lots 44-60 Inclusive, Tuckahoe Village, located at the northeast corner of 22nd Street North and North Kentucky Street, (RPC # 10-009-013 and -014), with conditions (Attachment 1).
2. Authorize the Real Estate Bureau Chief, or his designee, to execute the Deed of Vacation and all related documents on behalf of the County Board, subject to approval of the Deed of Vacation, as to form, by the County Attorney.

ISSUES: This is a request for the vacation of portions of three existing easements for the purposes of facilitating potential future construction and consolidating the area of three existing

County Manager:

County Attorney:

17.

Staff: Ryan Johnson & Lynne Porfiri—DES, Real Estate Bureau

easements into one larger easement for public utilities purposes. No pipes or other facilities will be removed or relocated from the existing easements. No issues have been identified.

SUMMARY: The applicants, Nathan Glick and Isa Glick, have requested the vacation of portions of three existing easements: 1) a One Thousand Four Hundred and seventy (1,470) square foot portion of a ten (10) foot drainage easement running east from the western boundaries of Lot “N” and the southerly part of Lot “O” and then running north to the northern boundaries of Lot “M” and the southerly part of Lot “O”; 2) a Four Hundred and Seventy-four (474) square foot portion of a five (5) foot sanitary easement running in a northerly direction from the southern boundary of Lot “N” to the northern boundary of the southerly part of Lot “O”; and 3) a One Thousand and Sixty-seven (1,067) square foot portion of a ten (10) foot storm sewer easement running south from the northern boundary of the southerly part of Lot “O”, and then running diagonally to the southwest, on Lot “N” to the southern boundary of Lot “N”, said lots being part of a Resubdivision of Lots 44-60 Inclusive, Tuckahoe Village, located at the northeast corner of 22nd Street North and North Kentucky Street. The vacations are requested to accommodate future construction of a single family home on the subject parcels. With the enactment of the Ordinance of Vacation, upon satisfaction of the conditions and recordation of the Deed of Vacation, the County’s interest in the vacated portions of each of the three easements will be extinguished. As a condition of the Ordinance, the applicants will be required to dedicate a Three Thousand and Three Hundred and Seventy-two (3,372) square foot single large contiguous easement for public utilities purposes which will accommodate all current and planned public utilities. The newly dedicated easement will allow for better access for the maintenance of the public sanitary and storm sewer utilities located therein.

BACKGROUND: On January 14, 1941, the County Board acquired a five (5) foot sanitary sewer easement by Agreement recorded in the land records of Arlington County, Virginia, in Deed Book 538, at Page 83. An eight (8) inch sanitary pipe was installed and is currently located within the sanitary sewer easement. This sanitary sewer pipe will remain in its current location and within a proposed new larger consolidated easement for public utilities.

On September 27, 1948, a ten (10) foot drainage easement was dedicated by the then owner’s of the applicants' property by recordation of a resubdivision plat, recorded in the land records of Arlington County, Virginia, in Deed Book 853, at Page 209. At no time since the dedication of the easement has the County installed or maintained any drainage infrastructure or improvements within the area of the drainage easement.

The current owners acquired the Lots “M”, “N” and part of “O” (the “Property”) by deed recorded May 9, 1969 in Deed Book 1699, at Page 558 in the land records of Arlington County, Virginia.

Beginning in the 1950s, the County initiated the Westover Branch Stormwater Drainage Project (the “Project”) in the Tuckahoe Village subdivision. As part of this project, existing stormwater management pipes and facilities were removed and replaced with a more robust comprehensive storm drainage system. This system included a 54-inch concrete stormwater drainage pipe which courses through the subdivision. During the Project, the applicants were requested by the County to grant the County a new storm sewer easement to accommodate the placement of the

54-inch stormwater drainage pipe across their Property to 22nd Street North. In response to the County's request, the applicants dedicated an easement to the County by Deed of Easement dated June 11, 1969, recorded in the land records of Arlington County, Virginia, in Deed Book 1702, at Page 248. During the Project, existing storm drainage pipes and facilities were removed, unneeded portions of the existing easements were then vacated by the County, and new easements were obtained from homeowners, as necessary. With the installation of the 54-inch pipe and associated storm drainage facilities as part of the Project, there was no longer any need for the existing drainage easement across the applicants' Property. Typically, where a large storm drainage pipe is constructed within a new easement dedicated to the County, the County will vacate the "old" unimproved drainage easement which does not contain any facilities. This is consistent with the typical prior practice.

A recent survey of the applicants' Property revealed that a portion of the 54-inch storm sewer pipe on the applicant's Property is not located within the storm sewer easement dedicated to the County in 1969. To correct this deficiency, County staff recommended that: i) the existing 1969 storm sewer easement and the nearby sanitary sewer easement dedicated in 1941 be vacated; and ii) a new, larger consolidated easement for public utilities purposes be dedicated to the County to include the location of the existing County utilities, as well as additional area which would accommodate access to, and maintenance of, the utilities and provide for future additional public utility needs. The applicants agreed to the dedication of such an easement as a condition of the vacation of the existing drainage easement, which contains no public drainage facilities and which is not needed by the County.

Prior Board Action: The applicants' request for the vacations was originally scheduled for action by the Board at the Board's meeting of October 15, 2011. At the recessed meeting on Tuesday, October 18, 2011, a petition was presented to the Board by an adjacent property owner, signed by eighteen neighboring residents, who expressed written opposition to the proposed vacations due to "drainage and other concerns". The petition did not state any specific concerns. The Board deferred consideration of the County Manager's recommendations until the November 2011 meeting of the Board for staff investigation of the petitioners' concerns.

DISCUSSION: The existing ten (10) foot drainage easement contains no pipes or other County facilities. The County has no current need or plan to use this drainage easement in the future. The consolidation and widening of the existing sanitary and storm sewer easements into one larger consolidated easement for public utilities purposes will provide the County with: (i) better access for maintenance of all of the facilities located within the easement; (ii) additional easement area that will include a portion of the 54" storm sewer pipe constructed outside of the existing easement; and iii) broader rights of use within the entire larger easement area. The applicants have agreed to dedicate the new larger, consolidated easement, as a condition of the vacations that they have requested.

The three easement areas to be vacated are depicted on a plat attached hereto as Exhibit "A". The area to be dedicated to the County as an easement for public utilities purposes is highlighted on a map attached hereto as Exhibit "B". Vicinity maps of the project are attached hereto as Exhibit "C", Exhibit "D", and Exhibit "E".

With the enactment of the Ordinance, upon satisfaction of the conditions, and upon recordation of the Deed of Vacation, the County's interest in the vacated portions of the subject easements will be extinguished.

Legal and Physical Description: The property located at the northeast corner of 22nd Street North and North Kentucky Street (RPC #10-009-013 and #10-009-014) is owned by Nathan and Isa Glick. RPC # 10-009-013 is an improved lot with a single family home and RPC #10-009-014 is an unimproved, buildable lot. Both parcels are zoned R-6. The unimproved lot is Ten Thousand and Six Hundred and Eighty-one (10,681) square feet, and per R-6 zoning regulations, only one house can be constructed on each lot. The relevant interests in the applicant's Property were created by the following recorded instruments:

- The applicants acquired the Property by Deed dated January 1, 1969, and recorded May 9, 1969 among the land records of Arlington County, Virginia, in Deed Book 1699, at Page 558.
- The County Board acquired the drainage easement that is the subject of this vacation request by Deed of Vacation and Resubdivision dated September 27, 1948, and recorded October 13, 1948 among the land records of Arlington County, Virginia in Deed Book 853, at Page 209.
- The County Board acquired the sanitary sewer easement that is the subject of this vacation request by Agreement dated January 14, 1941 and recorded among the land records of Arlington County, Virginia in Deed Book 538, at Page 83.
- The County Board acquired the storm sewer easement that is the subject of this vacation request by Deed of Easement dated June 11, 1969, and recorded June 11, 1969 among the land records of Arlington County, Virginia in Deed Book 1702, at Page 248.

Public Notice: Public notice was given in accordance with the Code of Virginia. Notices were placed in the September 20, 2011 and September 27, 2011 issues of the Washington Times for the County Board meeting of October 15, 2011.

Meeting with Petitioning Neighbors: After the October 18, 2011 recessed meeting of the Board, Real Estate Bureau staff was requested by one of the petitioners to attend a meeting organized by the petitioning residents. On October 24, 2011, members of the Real Estate Bureau staff met with six (6) citizens to assess the nature of the "drainage and other concerns" referenced in the petition presented to the County Board on October 18, 2011. The three concerns voiced by the neighboring residents during the meeting were: i) potential future drainage issues; ii) future tree coverage on the unimproved lot; and iii) the size of the house to be built on the lot. County staff has since fully reviewed these issues and relevant facts, and has made the following determinations:

Drainage Issue: Drainage from the applicants' Property appears to have no significant impact on the neighboring lots; the Property sits at the lowest point of its section of the neighborhood. The County Planning Program Coordinator for Stormwater Infrastructure of the Office of Sustainability and Environmental Management visited the applicants' Property and determined that there are no

current significant drainage problems associated with the applicants' Property that adversely affect the neighbors' property. When the contract purchaser of the Property submits a development plan for a future residence on the lot, the plan will be reviewed by County staff to insure that it meets the County criteria and requirements for drainage. Given the topography of the applicants' Property, future development of the applicants' Property may allow for improved drainage.

Tree Canopy Issue: There are two sections of the Arlington County Code that apply to tree canopies on privately owned, by-right development property. The first section is Chapter 61 of the Arlington County Code, *Chesapeake Bay Preservation Ordinance*, which requires the planting or retention of a minimum of twenty percent (20%) tree canopy, when more than two thousand and five hundred (2,500) square feet of land is disturbed for construction of a single family home. Because it is anticipated that the construction of a single family home on the subject lot will disturb more than two thousand and five hundred (2,500) square feet of land, there will be a twenty percent (20%) minimum tree canopy requirement. This tree canopy requirement will be reviewed by appropriate County planning staff before the issuance of any building permit. The second section is Chapter 67 of the Arlington County Code, *Trees and Shrubs*, which prohibits the removal of trees on private property which are designated as Heritage Trees, Memorial Trees, Specimen Trees, and Street Trees. Given that none of the trees on the applicants' lot are designated as such, Chapter 67 of the Arlington County Code does not apply.

House Size: Current zoning (R-6) allows one single family home to be built on the subject ten thousand, six hundred and eighty-one (10,681) square foot lot. The current zoning setbacks in R-6 are a minimum total side yard of eighteen (18) feet, with a minimum of eight (8) feet on either side and a ten (10) foot difference on the opposite side. Because the vacant lot is a corner lot, there is a twenty-five (25) foot minimum yard requirement between the public right of way line(s) and the single family home proposed to be built.

On October 31, 2011, County staff met on site with the engineer for the current contract purchaser of the applicants' Property to further address the petitioners' concerns. The engineer expressed a desire to retain as many of the existing trees on the applicants' Property as possible, and will assess each tree based on new house location and drainage requirements. The engineer also expressed his intention to direct surface drainage of water to the same location it has flowed in the past, which is the drain inlet located on the southwestern corner of the applicants' Property. Drainage from applicants' Property would strictly comply with any applicable County rules and regulations regarding drainage.

County staff's review of the facts and circumstances relevant to the concerns expressed in the petition has not changed staff's recommendation to the County Board to vacate the three easements conditioned upon the dedication from the applicants of the larger, consolidated easement for public utilities purposes. This recommendation is consistent with the County's long-standing and current practice of vacating easements no longer necessary for current or planned future County needs without receiving compensation. In this instance, the applicants have already agreed to dedicate a larger consolidated easement for public utilities purposes, which will provide the County with: (i) better access for maintenance of all of the facilities located within the easement; (ii) additional easement area that will include a portion of the 54" storm sewer pipe constructed outside of the existing easement; and (iii) broader rights of use

within the entire larger easement area. The applicants' dedication of the larger consolidated easement for public utilities purposes will enhance the County's ability to address any future public drainage concerns. No additional conditions in the vacation ordinance are needed to address the petitioners' concerns. Staff believes the petitioners' concerns are already adequately addressed by applicable provisions of the County's Zoning Ordinance, Virginia Chesapeake Bay Preservation Act and County Code Chesapeake Bay Ordinance, and the County building permit approval process, which apply to the construction of all residential properties within the County.

Compensation: Staff recommends that no compensation be required from the applicants for vacating the easements located on the subject properties. This follows the current County practice of not requiring compensation for a requested vacation when the easement is no longer necessary to meet current or planned future County needs.

FISCAL IMPACT: None.

ATTACHMENT 1

ORDINANCE TO VACATE: 1) ALL OF THAT PORTION OF A TEN (10) FOOT DRAINAGE EASEMENT LOCATED ON LOTS “M”, “N” AND ON THE SOUTHERLY PART OF LOT “O”; 2) ALL OF THAT PORTION OF A FIVE (5) FOOT SANITARY SEWER EASEMENT LOCATED ON LOT “N” AND ON THE SOUTHERLY PART OF LOT “O”; AND 3) ALL OF THAT PORTION OF A TEN (10) FOOT STORM SEWER EASEMENT LOCATED ON LOT “N” AND ON THE SOUTHERLY PART OF LOT “O,” SAID LOTS BEING PART OF A RESUBDIVISION OF LOTS 44-60 INCLUSIVE, TUCKAHOE VILLAGE, LOCATED AT THE NORTHEAST CORNER OF 22ND STREET NORTH AND NORTH KENTUCKY STREET, (RPC # 10-009-013 AND -014), WITH CONDITIONS.

BE IT ORDAINED that, pursuant to a request by Nathan and Isa Glick, husband and wife, (“Applicant”), on file in the offices of the Department of Environmental Services, the following described portions of easements: 1) a one thousand four hundred and seventy (1,470) square foot portion of a ten (10) foot wide drainage easement located on Lots “M”, “N” and on the southerly part of Lot “O”, created by a Deed of Vacation and Resubdivision dated September 27, 1948, and recorded in Deed Book 853, at Page 209, among the land records of Arlington County, Virginia; 2) a four hundred and seventy-four (474) square foot portion of a five (5) foot wide sanitary sewer easement located on Lot “N” and on the southerly part of Lot “O”, created by an Agreement dated January 14, 1941, and recorded in Deed Book 538, at Page 83, among the land records of Arlington County, Virginia; and 3) a one thousand and sixty-seven (1,067) square foot portion of a ten (10) foot wide storm sewer easement located on Lot “N” and on the southerly part of Lot “O”, created by a Deed of Easement dated June 11, 1969, and recorded in Deed Book 1702, at Page 248, among the land records of Arlington County, Virginia, which portions of easements are shown on the plat entitled “Plat Showing Existing Sewer Conditions and Vacation of Various Easements Located On Lot “M”, Lot “N” and Southerly Part of Lot “O” of A Resubdivision of Lots 44-60 Inclusive Tuckahoe Village Deed Book 863, Page 209 Arlington County, Virginia”, dated September 22, 2011, prepared by Dominion Surveyors, Inc., attached to the County Manager’s report dated October 31, 2011, as Exhibit “A”, are hereby vacated, subject to the following conditions:

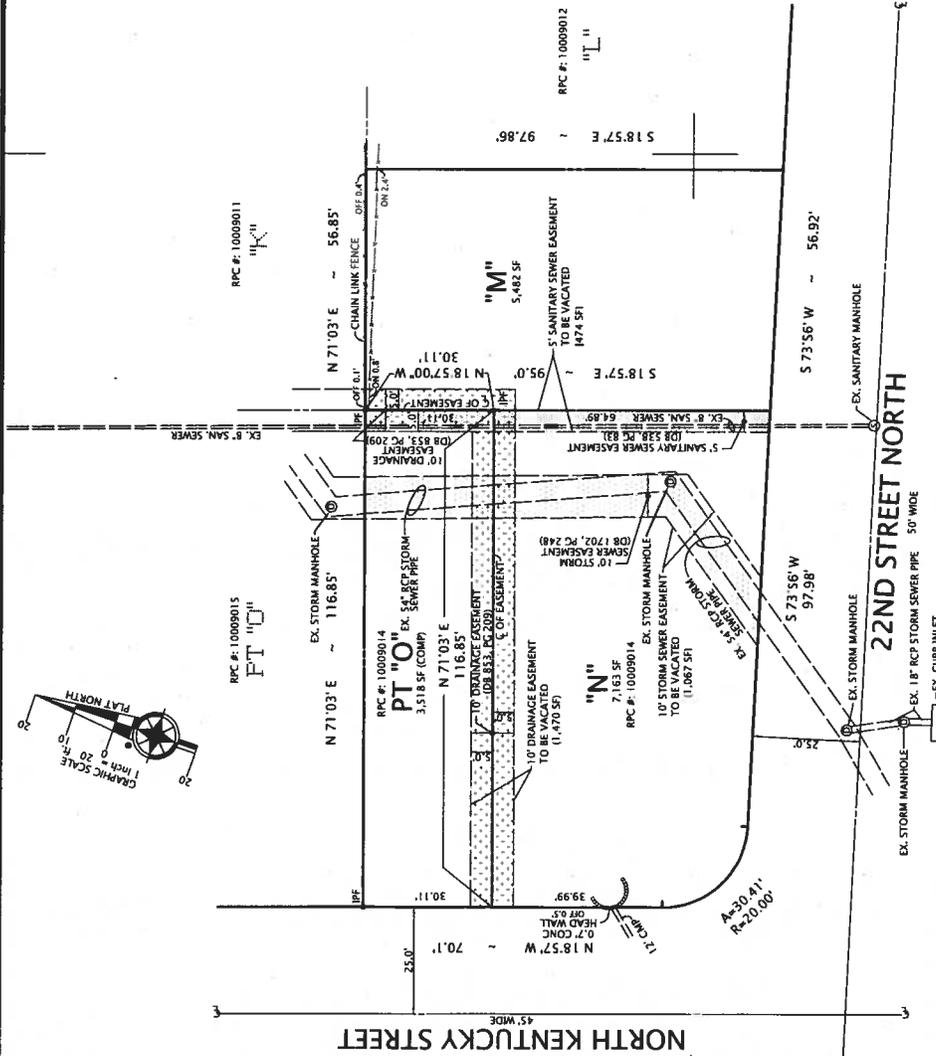
1. The Applicant shall prepare and submit, to the County, for review and approval, the Deed of Vacation, all plats and all required deed(s) of dedication, subject to the approval thereof as to substance by the County Manager, or her designee, and approval as to form by the County Attorney. The Deed of Vacation shall reserve, unto the County, title to all existing County pipes and facilities within the areas of the easements being vacated; such pipes and facilities shall remain the property of the County.
2. The Applicant shall dedicate to the County an easement for public utilities purposes. The easement for public utilities purposes shall be dedicated to replace and expand the area of the existing easements being vacated. The final physical location, width, and dimensions of such easement interest shall be determined by, and are subject to, the approval of the Director of DES, or his designee, provided however that the location, width, and dimensions shall

include the area within which existing County pipes and facilities are located. Such deed of easement is subject to the approval as to form, by the County Attorney. The Real Estate Bureau Chief, Department of Environmental Services, or his designee, is authorized to accept the easement on behalf of the County Board. Applicant shall record at Applicant's expense, the deed of easement in the Land Records of Arlington County, Virginia.

3. The Applicant shall record the Deed of Vacation, all plats, and all required deed(s) of dedication required by the conditions of this Ordinance of Vacation among the land records of the Circuit Court of Arlington County, Virginia.
4. The Applicant shall pay all fees, including the fees for review, approval, and recording of all required documents associated with the Ordinance of Vacation.
5. The Deed of Vacation shall not be executed on behalf of the County Board until all the requirements of this Ordinance are satisfied.
6. All conditions of the Ordinance of Vacation shall be met by noon on November 19, 2013, or this Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.

NOTES:

1. THE PROPERTY DELINEATED HEREON IS SHOWN AS RPC#S: 10009014 & 10009013 AND ARE ZONED R-6.
2. OWNERS: NATHAN AND ISA GLICK
5705 22nd STREET NORTH
ARLINGTON, VIRGINIA 22205
DB. 1699, PC. 558
3. NO TITLE REPORT FURNISHED.
4. THIS PROPERTY IS SUBJECT TO RESTRICTIONS OF RECORD.
5. THERE ARE NO FLOOD PLAINS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.
6. FENCES ARE FRAME.



**PLAT SHOWING
EXISTING SEWER CONDITIONS
AND
VACATION OF
VARIOUS EASEMENTS
LOCATED ON
LOT "M", LOT "N" AND SOUTHERLY PART OF LOT "O"OF A RESUBDIVISION OF
TUCKAHOE VILLAGE**

DEED BOOK 853, PAGE 209
ARLINGTON COUNTY, VIRGINIA
SEPTEMBER 22, 2011
SCALE: 1" = 20'

DOMINION Surveyors Inc.

8808-H PEAR TREE VILLAGE COURT
ALEXANDRIA, VIRGINIA 22309
703-619-6555
FAX 703-799-6412

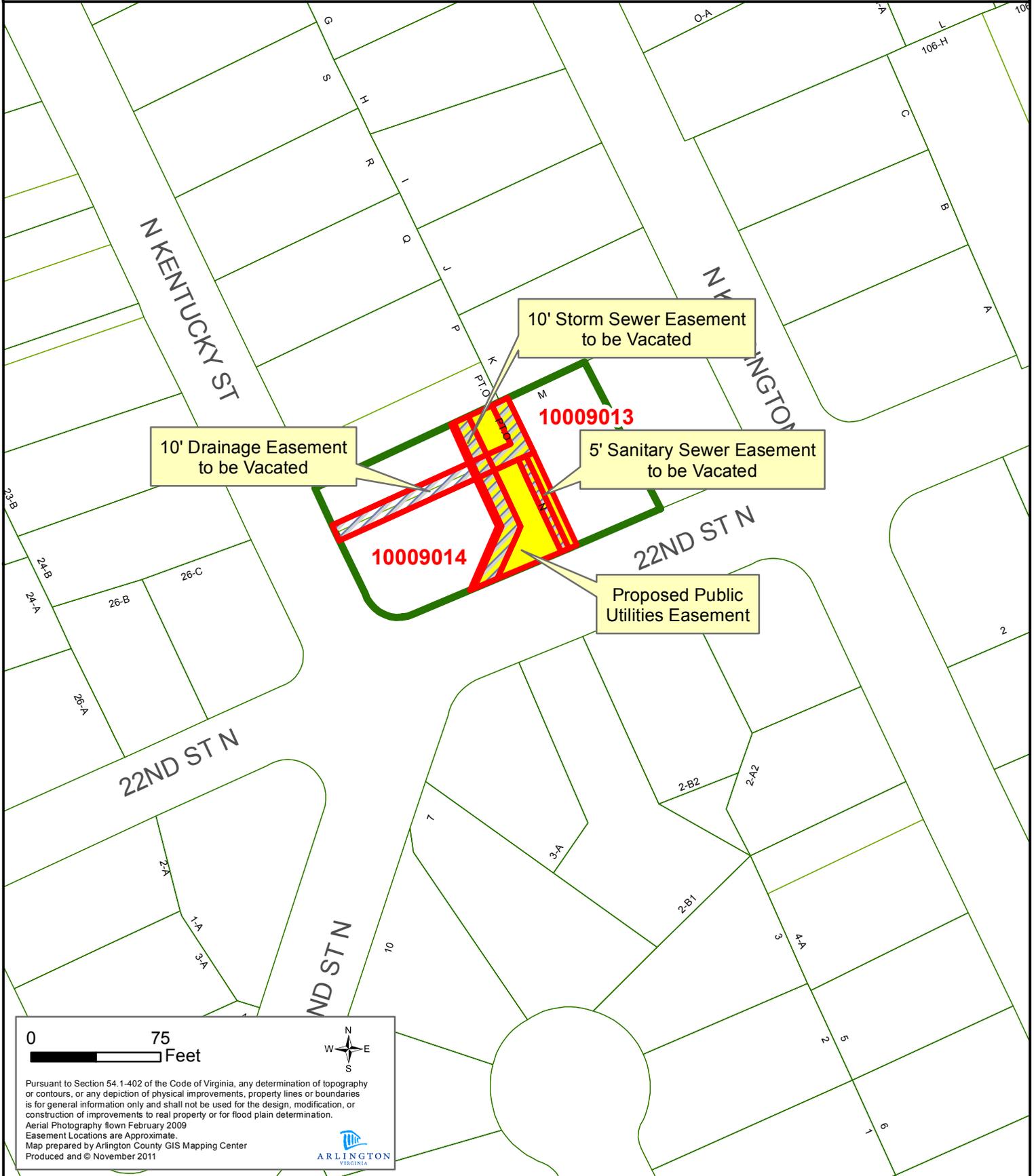
COMMONWEALTH OF VIRGINIA
09/22/2011
GEORGE M. O'QUINN
LICENSE NO. 70669
CIVIL SURVEYOR

George M. O'Quinn

SHEET 1 OF 1

Vicinity Map
5705 22nd Street North
RPC# 10009013 & 10009014

EXHIBIT B



0 75 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 February 2009
Easement Locations are Approximate.
Map prepared by Arlington County GIS Mapping Center
Produced and © November 2011

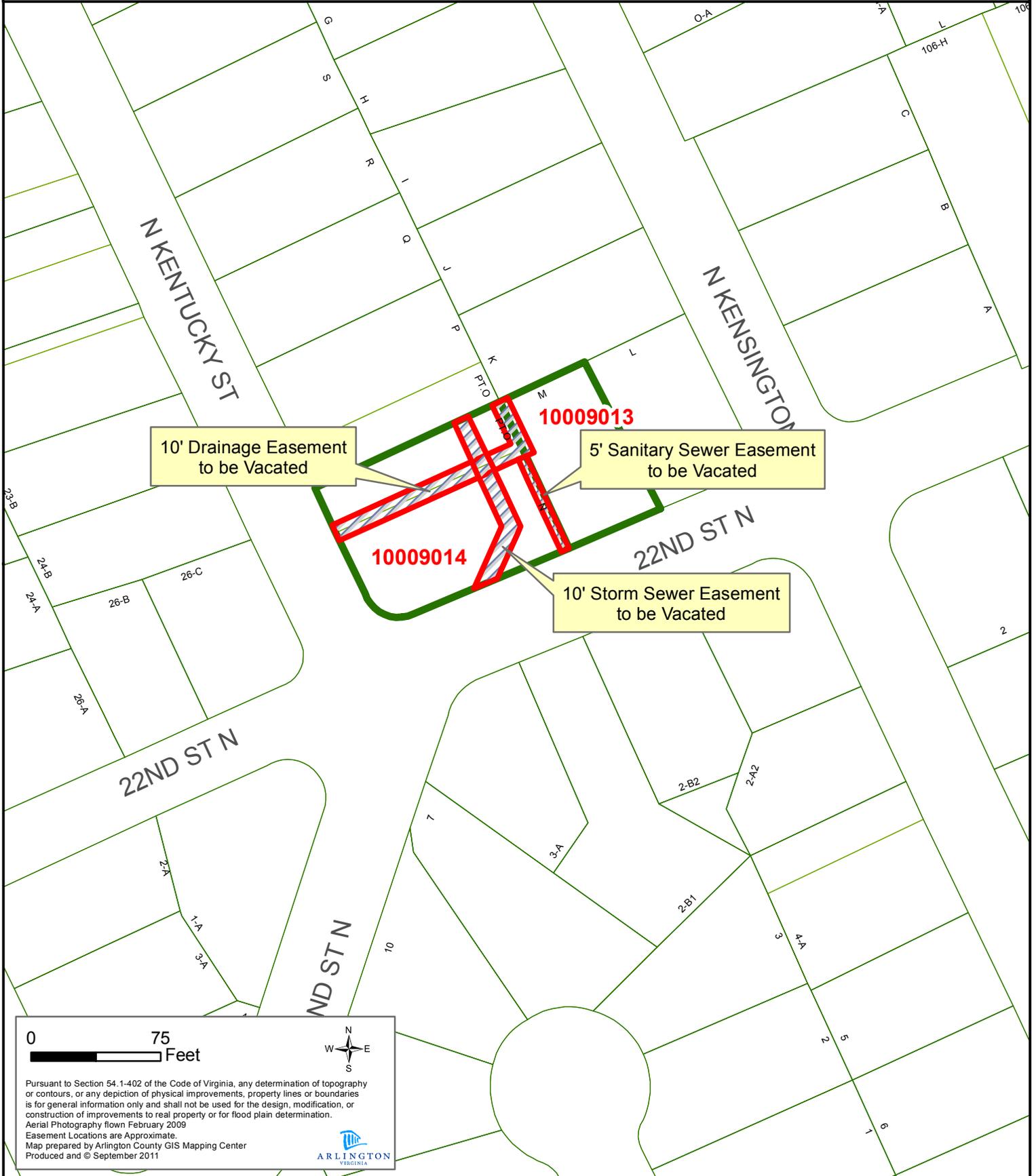


Vicinity Map

5705 22nd Street North

RPC# 10009013 & 10009014

EXHIBIT C



0 75 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 February 2009. Easement Locations are Approximate. Map prepared by Arlington County GIS Mapping Center. Produced and © September 2011.

Vicinity Map

5705 22nd Street North

RPC# 10009013 & 10009014

EXHIBIT D

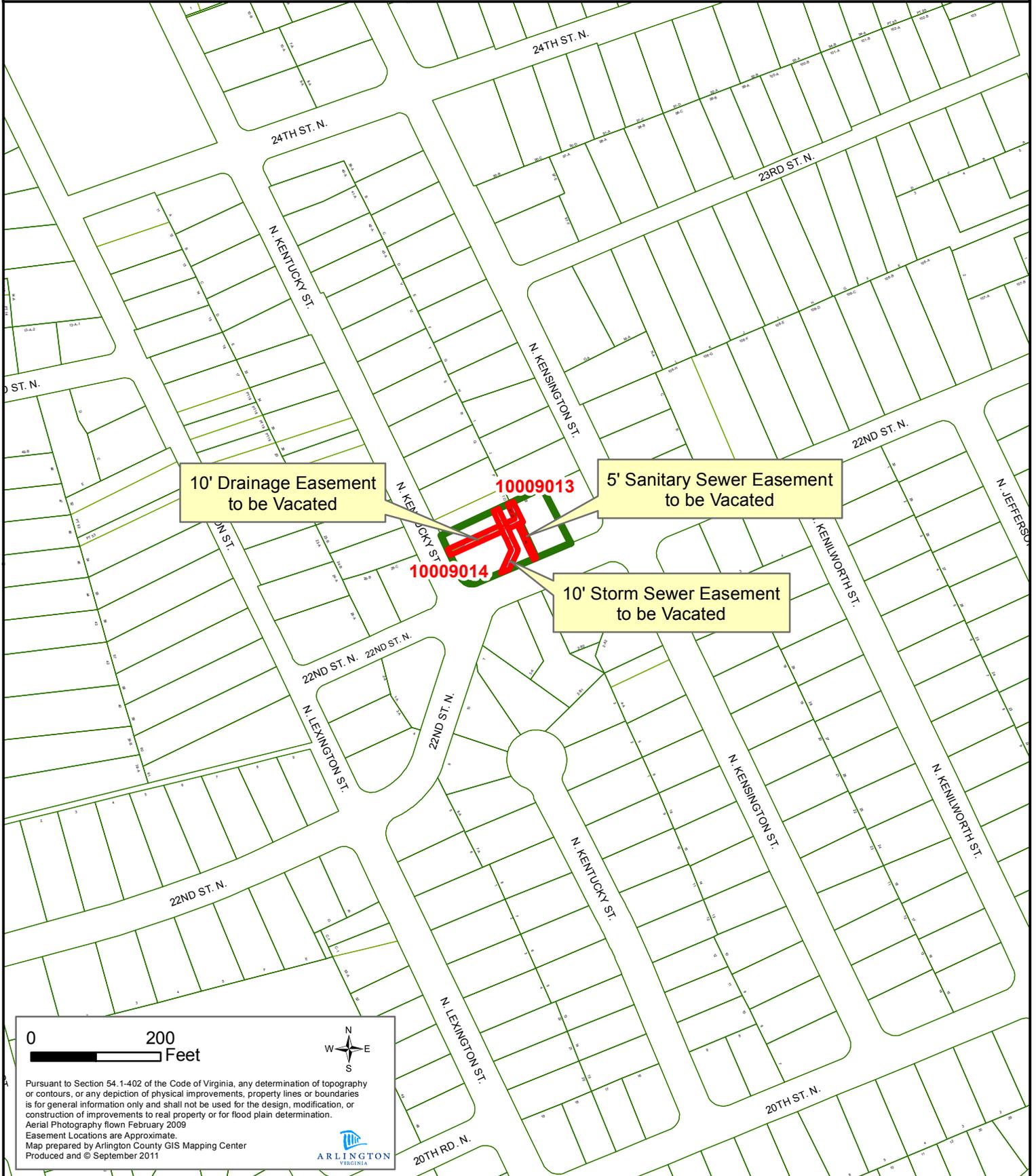


Vicinity Map

5705 22nd Street North

RPC# 10009013 & 10009014

EXHIBIT E



0 200 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 February 2009. Easement Locations are Approximate. Map prepared by Arlington County GIS Mapping Center. Produced and © September 2011.

