

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation to Determine)	DOCKET NO. 891034-EU
Whether the Ultimate Goals of Resolving)	
Overlap, Eliminating Duplication of)	
Service and Providing the Best Electrical)	ORDER NO. 23823
Service to Customers in the Sebring Area)	
are being met by Sebring Utilities)	
Commission and Florida Power Corporation)	ISSUED: 12/04/90

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

ORDER APPROVING SETTLEMENT AGREEMENT AND
GRANTING ENFORCEMENT OF TERRITORIAL AGREEMENT

BY THE COMMISSION:

Background

In 1985, citizen complaints prompted a Commission investigation of duplication of electric utility services by Florida Power Corporation ("FPC") and Sebring Utilities Commission ("Sebring" or "Sebring Utilities") in the Sebring area. After the investigation, which was held in Docket No. 850605-EU, Commission staff believed that there was a potential for uneconomic duplication wherever these two utilities serve common areas, and asked the parties to agree to a moratorium which would apply to all service boundaries between the two utilities. The parties agreed. On September 16, 1986, in Order No. 16602, the Commission imposed the moratorium, which provided specific procedures for determining which utility should provide new service in the Sebring area.

Once the moratorium was in place, Sebring and FPC renewed negotiations toward a territorial agreement to prevent future overlapping services and duplication of facilities. Thereafter, the utilities reached an agreement and petitioned for Commission approval on December 16, 1986. By Order No. 17215, issued on February 23, 1987, the Commission proposed to approve the territorial agreement. Although the proposed agency action was protested by a third party, the protest was ultimately dismissed, and the Commission approved the territorial agreement in Order No. 18018, issued on August 20, 1987, in Docket No. 861596-EU.

Thereafter, in Order No. 17215, the Commission directed FPC and Sebring to report on their proposals for resolving problems of

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FPC-RECORDS/REPORTING

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overlapping services, duplication of facilities and potential safety hazards. FPC and Sebring could not agree upon a resolution. Each utility, therefore, submitted a separate report, neither of which adequately addressed the problems of overlapping services, duplication of facilities and safety hazards. Accordingly, by recommendation dated October 19, 1987, Commission staff recommended that both FPC and Sebring be ordered to remove all of their facilities from the other party's service areas. This recommendation came to be known as the "Colson Plan".

The utilities did not want to implement the Colson Plan, and requested the opportunity to resolve the problem of overlapping services between themselves. In Order No. 18472, dated November 24, 1987, the Commission granted the parties ninety days in which to reach a joint resolution, but warned that the Colson Plan would be implemented if no joint resolution was forthcoming. Thereafter, Sebring and FPC negotiated and executed their Joint Plan to Resolve Overlapping Services, which was approved by the Commission in Order No. 19432, on June 6, 1988.

The purpose of the Joint Plan was to implement the approved territorial agreement and to resolve overlapping services in the greater Sebring area. As a result of the agreement, FPC retained 912 customers in Sebring's service area and Sebring retained 656 customers in FPC's service area. The plan identified certain overlapping facilities to be eliminated before December 31, 1988 in Lake Haven Estates, Orange Blossom Estates, Sebring Hills South, Sebring Hills, Sebring County Estates, Randal Road, Lake Shore Park, Lake Sebring Estates, Longwood Acres, Sebring Oaks, Van House Trailer Park and Sebring Hills North Mobile Home Park. In these areas, the parties agreed to remove their facilities in the other party's territory, while retaining their existing customers. The "foreign", or non-territorial utility, would serve its existing customers from the distribution line of the territorial utility "host". Meters would be retained by the foreign utility and accounts would remain the foreign utility's accounts.

Sebring and FPC identified approximately 82 foreign utility customers who would be served from the distribution line of a host utility. The parties also identified nine areas which they classified as "pure" areas, consisting discrete pockets of facilities and customers located outside of a utility's territorial boundary, but confined to a single development served exclusively by that utility. The parties agreed that such pure areas would continue to be served exclusively by the utility already providing service. FPC identified 330 customers in its pure areas, while Sebring identified 547 customers in its pure areas. The Joint Plan did not address 497 customers which FPC continued to serve in

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Sebring's territory, nor did it address 26 customers Sebring retained in FPC's territory.

On September 16, 1989, Sebring moved for enforcement of the Joint Plan, alleging that FPC refused to transfer to Sebring some of the 497 customers which FPC retained in Sebring's service territory. A hearing on the motion was held on March 29, 1989, after which the Commission denied Sebring's motion on the grounds that the Joint Plan did not require FPC to transfer the customers in question. However, in Order No. 21478, the Commission directed its staff to open a new docket to determine whether the ultimate goals of resolving overlap, eliminating duplication of service and providing the best service to customers in the Sebring area were being met. Thereafter, this docket was opened.

When members of Commission staff visited the Sebring area in November, 1989 to inspect electrical distribution facilities, they found that the Joint Plan had been effective in eliminating duplication of lines in some subdivisions, but that both utilities continued to have dual lines along the same streets in other areas. In Order No. 22626, issued on March 1, 1990, the Commission proposed to order the parties to resolve the overlap and duplication of service in the Sebring area by implementing the Colson Plan on March 23, 1990, unless they received Commission approval of an alternate plan on or before March 8, 1990. The proposed agency action order was protested by FPC, after which a hearing was set for November 21, 1990.

A petition filed by Sebring Airport Authority ("SAA" or "Sebring Airport") on January 2, 1990 was also set for hearing at the same time. In its petition, Sebring Airport asked the Commission to modify, nullify, set aside, or interpret the territorial agreement between Sebring and FPC insofar as it allows for the transfer of SAA from the FPC service territory to the Sebring service territory. SAA alleged that it was not properly subject to transfer under the agreement. The parties stipulated to relevant facts and agreed to brief legal issues for resolution by the Commission. Oral argument was held at the November 21, 1990 hearing.

Duplication of Facilities in the Sebring Area

Prior to hearing, FPC and Sebring reached an agreement which would resolve the problems of overlap and duplication of service in the Sebring area. The agreement, entitled "Settlement Agreement Between Florida Power Corporation and Sebring Utilities Commission", is attached hereto as Attachment "A". The agreement specifies facilities maintained by each utility in the other

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utility's service territory which parallel, duplicate, or overlap the host utility's facilities. According its terms, the agreement terminates the Joint Plan to Resolve Overlapping Services which was approved in Order No. 19432.

The settlement agreement provides for removal of certain foreign facilities identified therein, and further provides for the continued service and eventual exchange of the foreign accounts served by such facilities. We find that the Settlement Agreement will accomplish the aims of the Colson Plan over a period of time and will resolve problems which we have identified in the Sebring area. Based on the record in this docket, we approve the agreement, and overrule that portion of Order No. 19432 which approved the Joint Plan to Resolve Overlapping Services.

We note that the Settlement Agreement, like the Joint Plan to Resolve Overlapping Services, provides for the transfer of certain facilities at replacement cost less depreciation. Order No. 19432, in which the Joint Plan was approved, required FPC to book facilities bought or sold at the original cost, or closest estimate of the original cost, along with related depreciation of the facilities, according to the applicable accounts in the Uniform System of Accounts established by the Federal Energy Regulatory Commission. The order sets forth the appropriate regulatory accounting treatment for such purchases or sales. We do not overrule this portion of Order No. 19432, nor were we asked to do so. Therefore, we find that FPC should accord the same regulatory accounting treatment to purchases or sales of facilities made pursuant to the Settlement Agreement as was required under the Joint Plan.

Service to the Airport Area

In Order No. 18018, issued on August 20, 1987 in Docket No. 861596-EU, we approved the present territorial agreement between Sebring and FPC. Section 6 of the Territorial Agreement provides for the transfer of certain customers and facilities located in the Sebring airport area:

If on January 1, 1990, the Sebring Airport is not owned or controlled by the City of Sebring, Florida, then Florida Power shall continue to provide all electric service in the separate Sebring Utilities retail service area in and around the Sebring Airport for the balance of the term of this Agreement. If, however, on January 1, 1990, the Sebring Airport is owned or controlled by the City of Sebring, Florida, then Sebring utilities may, within thirty (30) days of January 1, 1990, elect in

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writing to acquire Florida Power's customers and facilities in that area.

Sebring Airport took the position that Sebring was not entitled to exercise its option under Section 6 of the Territorial Agreement, and thereby acquire FPC's customers and facilities in the retail service area in and around the Sebring airport. Sebring Utilities, on the other hand, took the position that the option was properly and timely exercised. FPC took no position.

In lieu of testimony, Sebring Utilities and Sebring Airport stipulated to facts necessary to resolve the dispute. In particular, the parties stipulated that FPC and Sebring had exchanged letters agreeing that the Territorial Agreement meant that Sebring could exercise its option to serve customers in the airport area if the airport lands continued to be owned by the Sebring Airport, that the utility timely exercised the option granted in the territorial agreement and that Sebring Airport was not a party to the correspondence nor was it made aware of its contents.

With regard to the ownership of the airport lands, the parties stipulated that the Sebring Airport Authority was created by the Florida Legislature in 1967 by Chapter 67-2070, Laws of Florida (1967), and that the City of Sebring conveyed the airport lands to the Sebring Airport Authority by warranty deed dated October 3, 1967. Although the parties did not agree whether the Sebring Airport territory was controlled by the City of Sebring, they stipulated to the following control-related facts in their Prehearing Stipulation:

- (a) The SEBRING AIRPORT has all of the powers set out in its enabling act as amended....
- (b) SEBRING AIRPORT board members are appointed by the City of Sebring from a list of nominees submitted by the SEBRING AIRPORT Board (Chapter 67-2070, Section 4), amended by Chapter 89-494, Section 1, Laws of Florida (1989).
- (c) The SEBRING AIRPORT is prohibited from conveying the lands within the SEBRING AIRPORT, without the consent of the City of Sebring....
- (d) The City of Sebring has no control over the SEBRING AIRPORT'S budget. However, the City has the option (under Section 16) of the act, as amended, to cause the audit to be submitted to the State Auditor.
- (e) The SEBRING AIRPORT shall, with the consent of the City, (evidenced by resolution of the City) exercise any

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powers relating to aviation conferred upon municipalities by general law, including Chapter 332 (the Airport Act of 1945).

(f) The SEBRING AIRPORT can lease lands, borrow money, and transact business independent of the City of Sebring subject to the items of control specifically set out [in the stipulation].

(g) The City of Sebring is not liable for the SEBRING AIRPORT'S debts, nor entitled to the SEBRING AIRPORT'S profits.

Based on the record before us, we find that the utility was not entitled to exercise the option because the Sebring Airport was neither owned nor controlled by the City of Sebring on January 1, 1990.

Clearly, the City of Sebring does not own the airport lands. Neither does it control the Sebring Airport: the airport authority is an entity separate and apart from the City of Sebring. The City of Sebring cannot lease the airport lands to third parties nor can it transact other business on behalf of the Sebring Airport. Although the City of Sebring retains the right to veto the sale of the airport lands, and may choose the members of the Sebring Airport's board of directors (from those nominees proposed by the Sebring Airport), we find that these limited powers do not constitute "control" for the purposes of Section 6 of the Territorial Agreement. Therefore, because Sebring was not entitled to exercise the option to serve the airport area, FPC shall continue service. We further find that Sebring Airport has not waived its right to now question the scope and intent of Section 6 of the Territorial Agreement. Sebring Airport is merely requesting enforcement of the agreement and Order No. 18018 as written.

Therefore, it is

ORDERED by the Florida Public Service Commission that the Settlement Agreement attached hereto as Attachment "A" is hereby approved. It is further

ORDERED that Order No. 19432 is hereby overruled, insofar as it approves the Joint Plan to Resolve Overlapping Services discussed herein. It is further

ORDERED that for regulatory purposes, Florida Power Corporation shall book facilities bought or sold pursuant to the Settlement Agreement at the original cost, or closest estimate of the original cost, along with related depreciation of the facilities, according to the applicable accounts in the Uniform

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System of Accounts established by the Federal Energy Regulatory Commission. It is further

ORDERED that Florida Power Corporation shall continue to provide electric service to the Sebring airport area. It is further

ORDERED that this docket be closed.

BY ORDER of the Florida Public Service Commission, this
4th day of DECEMBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
MER:bmi
SAAORD.MER

by: Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be

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completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ATTACHMENT A
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SETTLEMENT AGREEMENT
BETWEEN
FLORIDA POWER CORPORATION
AND
SEBRING UTILITIES COMMISSION

Florida Public Service Commission
Docket No. 891034-EU

FLORIDA POWER CORPORATION (FPC) and SEBRING UTILITIES COMMISSION (Sebring) hereby agree to resolve all outstanding issues in this docket, except those issues concerning Sebring Airport Authority, and agree to eliminate duplication of facilities, and to provide for the exchange of accounts, as follows:

1. Term. This agreement shall become effective upon the date it is allowed to go into effect by the Florida Public Service Commission (Commission), and shall remain in effect until December 31, 2007, or until Sebring no longer has enough Sebring Foreign Accounts to balance the kilowatthours (KWH) (and if appropriate the kilowatts (KW)) associated with FPC Foreign Accounts as provided in paragraph 9, whichever occurs first.

2. Termination Of Joint Plan. This Agreement terminates the May 12, 1988 Joint Plan To Resolve Overlapping Services approved in Florida Public Service Commission Docket No. 850605-EU; provided, however, that the parties agree to preserve the general concept of Pure Areas, as provided in paragraph 4(e) and Appendix A of this Agreement. FPC and Sebring agree that FPC shall purchase Sebring's facilities in Thunderbird Hill Mobile Home Park South identified in Appendix E as provided in paragraph 10, and the parties further agree that the Sebring and FPC accounts to which the Joint Plan applied shall become accounts subject to being

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exchanged and balanced pursuant to paragraphs 7, 8 and 9 of this Agreement.

3. Territorial Agreement. This Agreement does not alter or amend in any way the December 11, 1986 Territorial Agreement between the parties.

4. Definitions. The following definitions apply to this Agreement:

(a) "Host Utility" means the utility in whose retail service area the account is located, as such retail service areas are defined in the Territorial Agreement.

(b) "Foreign Utility" means the utility serving an account in the retail service area of the other utility as such retail service areas are defined in the Territorial Agreement.

(c) "Foreign Facilities" means those facilities currently used by the Foreign Utility to serve its Foreign Accounts located in the Host Utility's retail service area, whether such facilities are located in Foreign Utility Pure Areas or elsewhere in the Host Utility's retail service territory.

(d) "Foreign Accounts" means a utility's accounts located in the other utility's retail service area.

(e) "Pure Areas" are those areas containing facilities and accounts of a Foreign Utility located in the Host Utility's territory which are totally located within a single development and said development is exclusively served by the Foreign Utility. There are no overlapping facilities within the Pure Areas. Pure

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Areas subject to being exchanged are only those areas designated in Appendix D.

(f) "End User Change" means when service to an account at a given location is terminated, and service at that location is provided to a new and different customer.

5. Foreign Accounts And Facilities. With respect to FPC, this Agreement applies to only those FPC Foreign Facilities identified in Appendix B and the FPC accounts served by such facilities. With respect to Sebring, this Agreement applies to only those Sebring Foreign Facilities identified in Appendix C and the Sebring accounts served by such facilities.

6. Removal Of Foreign Facilities. Foreign Facilities identified in Appendices B and C shall be removed by the Foreign Utility, or if usable by the Host Utility at its discretion, sold to the Host Utility, within six months of the final Commission order approving this Agreement; provided, however, that certain Foreign Facilities, including but not limited to through feeders, shall not be removed by the Foreign Utility if they are necessary to maintain service to accounts that ultimately will be retained by the Foreign Utility under this Agreement. The cost of the removal of Foreign Facilities not sold to the Host Utility, and the connection of Foreign Accounts to the Host Utility's distribution transformer shall be borne by the Foreign Utility. The Host Utility shall be responsible for all other facilities necessary to serve such an account.

7. Accounts Subject To Being Exchanged. FPC Foreign Accounts served by facilities identified in Appendix B shall continue to be FPC accounts and shall continue to utilize an FPC meter but shall be served by Sebring by connecting these accounts to Sebring's distribution system until there is an End User Change. Sebring Foreign Accounts served by facilities identified in Appendix C shall continue to be Sebring accounts and shall continue to utilize a Sebring meter but shall be served by FPC by connecting these accounts to FPC's distribution system until such time as such accounts are transferred to FPC in order to effect a KWH (and if appropriate a KW) balance pursuant to paragraph 9.

8. True-Up Of Energy And Capacity Provided By Host Utility To Foreign Accounts.

Energy (and if appropriate capacity) provided by one Host Utility to Foreign Accounts in the Host Utility's service territory shall be approximately equal to the energy (and if appropriate capacity) provided by the other Host Utility to Foreign Accounts in its service territory at the time of the removal of Foreign Facilities made pursuant to paragraph 6, and shall remain approximately equal thereafter. The parties will balance or "true up," on a quarterly basis any difference in the amounts of energy (and if appropriate capacity) provided. To this end, each party in its role as Foreign Utility shall on a quarterly basis report its Foreign Account KWH (and if appropriate KW) usage to the Host Utility, and the Host Utility that has provided the greater amount

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of KWH (and if appropriate KW) shall invoice the other Host Utility for the difference.

9. Exchange Of Accounts, Kilowatthours And Kilowatts. After End User Changes have occurred with respect to FPC's Foreign Accounts identified in Appendix B such FPC accounts shall become Sebring accounts, provided, however, that on the first day of the next quarter, Sebring shall provide FPC with whatever number of Sebring accounts is necessary to balance the KWH (and if appropriate KW) associated with the FPC accounts exchanged pursuant to this paragraph. In order to measure such balance, the prior 12-month KWH (and if appropriate KW) of FPC accounts exchanged shall be compared to the KWH (and if appropriate KW) of Sebring accounts to be exchanged for the same 12-month period.

10. Price Of Facilities. The price of facilities purchased by the Host Utility shall be replacement cost less depreciation, except in the case of Sebring's facilities in Thunderbird Hill Mobile Home Park South, which facilities are designated in Appendix E, and which shall be sold to FPC for \$51,500.

11. Pure Areas. In order to achieve a balance of KWH (and if appropriate KW) pursuant to paragraphs 8 and 9 the Sebring Foreign Facilities located in areas identified in Appendix D shall be removed by Sebring, or if usable by FPC at its discretion purchased by FPC, in accordance with paragraph 6. Sebring's Foreign Accounts which were served by such Sebring Foreign Facilities shall continue to be Sebring accounts and shall continue to use a Sebring meter but shall be served by FPC by connecting

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those accounts to FPC's distribution system until such accounts are transferred to FPC in order to effect a KWH (or if appropriate KW) balance pursuant to paragraph 9. New residential dwellings or commercial space added within the areas identified in Appendix D shall become FPC accounts, but Sebring shall be given credit (based on estimated 12-month usage) for such new dwellings or space that occur during the first 12 years of this Agreement, in the exchange of accounts made pursuant to paragraph 9. FPC accounts located in its Pure Areas are not subject to being exchanged under this Agreement.

12. Avoiding Future Duplication. In order to avoid future duplication of facilities, the parties agree that when Sebring is required to construct and serve new accounts in its service area, the parties will jointly arrive at a solution which avoids duplication of any FPC Foreign Facilities that may be in the vicinity. Such solutions may include, but are not limited to, joint use of facilities, FPC serving Sebring's new account, or purchase of FPC's Foreign Facilities by Sebring and Sebring in turn serving FPC's accounts. If pursuant to such a solution, FPC at its sole discretion elects to sell, and Sebring purchases, FPC Foreign Facilities and Sebring in turn serves FPC's Foreign Account, such FPC Foreign Account shall be transferred to Sebring upon an End User Change pursuant to paragraphs 7, 8 and 9.

13. Commission Approval. The parties' consent to this Agreement is contingent upon approval by the Commission without modification.

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14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon FPC and Sebring and their respective successors and assigns.

15. Complete Agreement. The terms and provisions contained in this Agreement constitute the entire agreement between the parties and supersedes all previous communications, representations or agreements either verbal or written with respect to this docket.

16. Appendices. The following Appendices are incorporated by reference into this agreement:

- Appendix A - FPC and Sebring Joint Plan Pure Areas
- Appendix B - FPC Foreign Facilities Subject To Removal
- Appendix C - Sebring Foreign Facilities
- Appendix D - Sebring Pure Areas Which Contain Accounts Subject To Being Exchanged And Balanced
- Appendix E - Sebring's Facilities In Thunderbird Hill Mobile Home Park South

IN WITNESS WHEREOF, FPC and Sebring have caused this agreement to be executed by their duly authorized representatives.

By: [Signature]
 FLORIDA POWER CORPORATION

By: [Signature]
 SEBRING UTILITIES COMMISSION

Date: October 25, 1990

Date: October 26, 1990

Attest: Patricia G. Blower

Attest: [Signature]

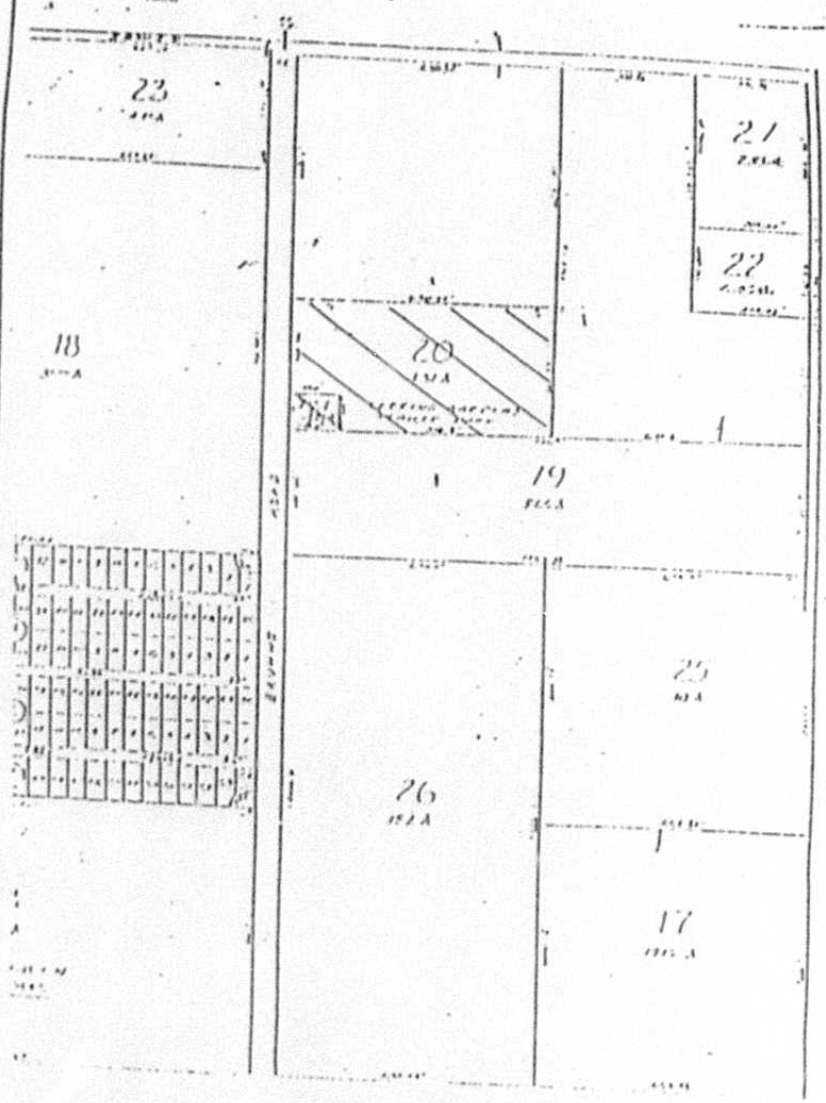


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APPENDICES A' - E

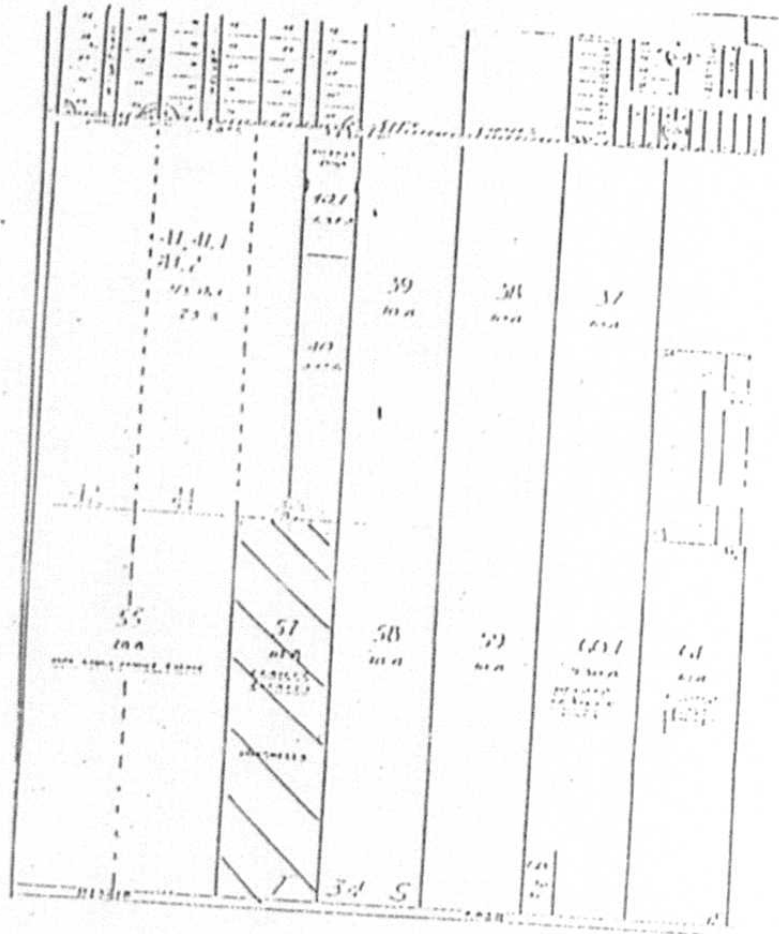
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APPENDIX - A



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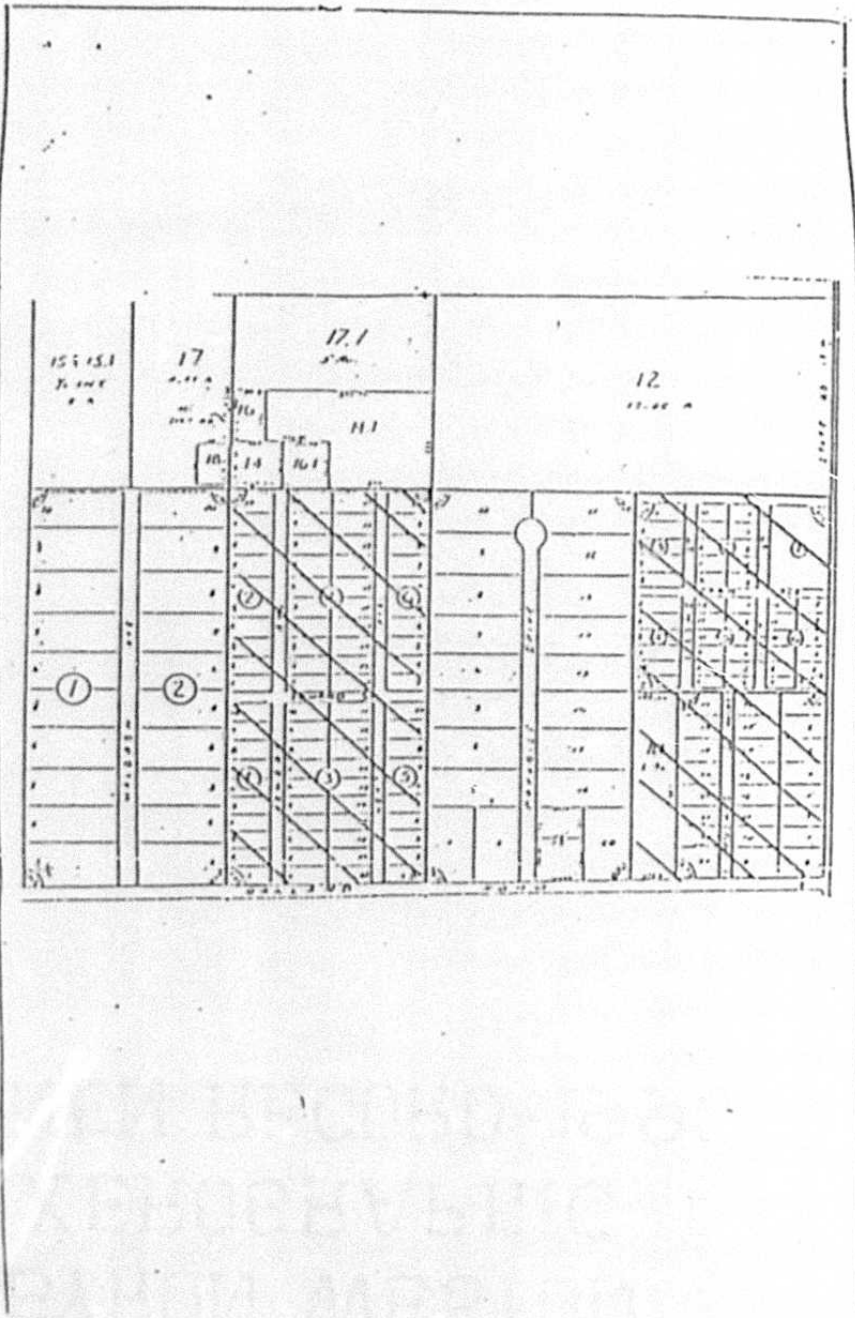
APPENDIX - A



DATE 1
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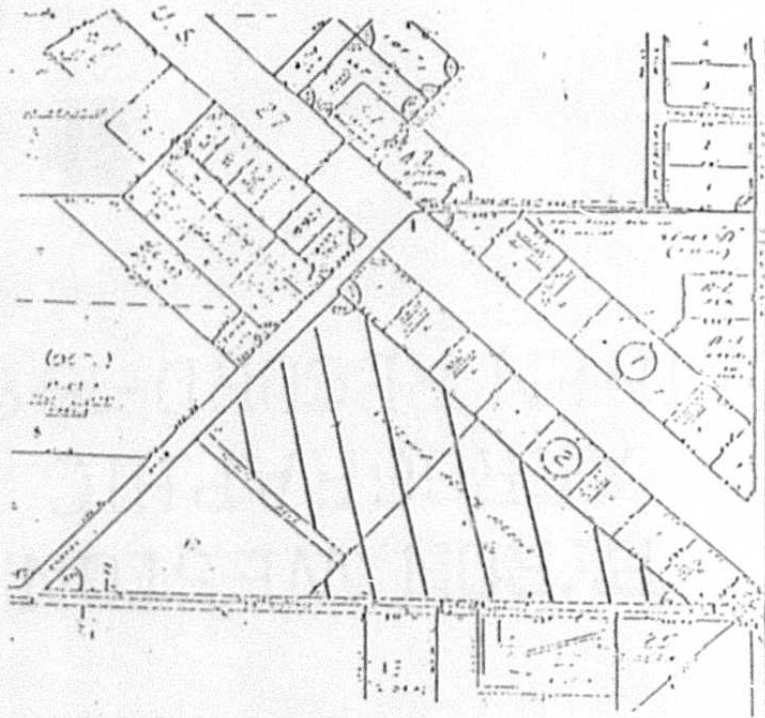
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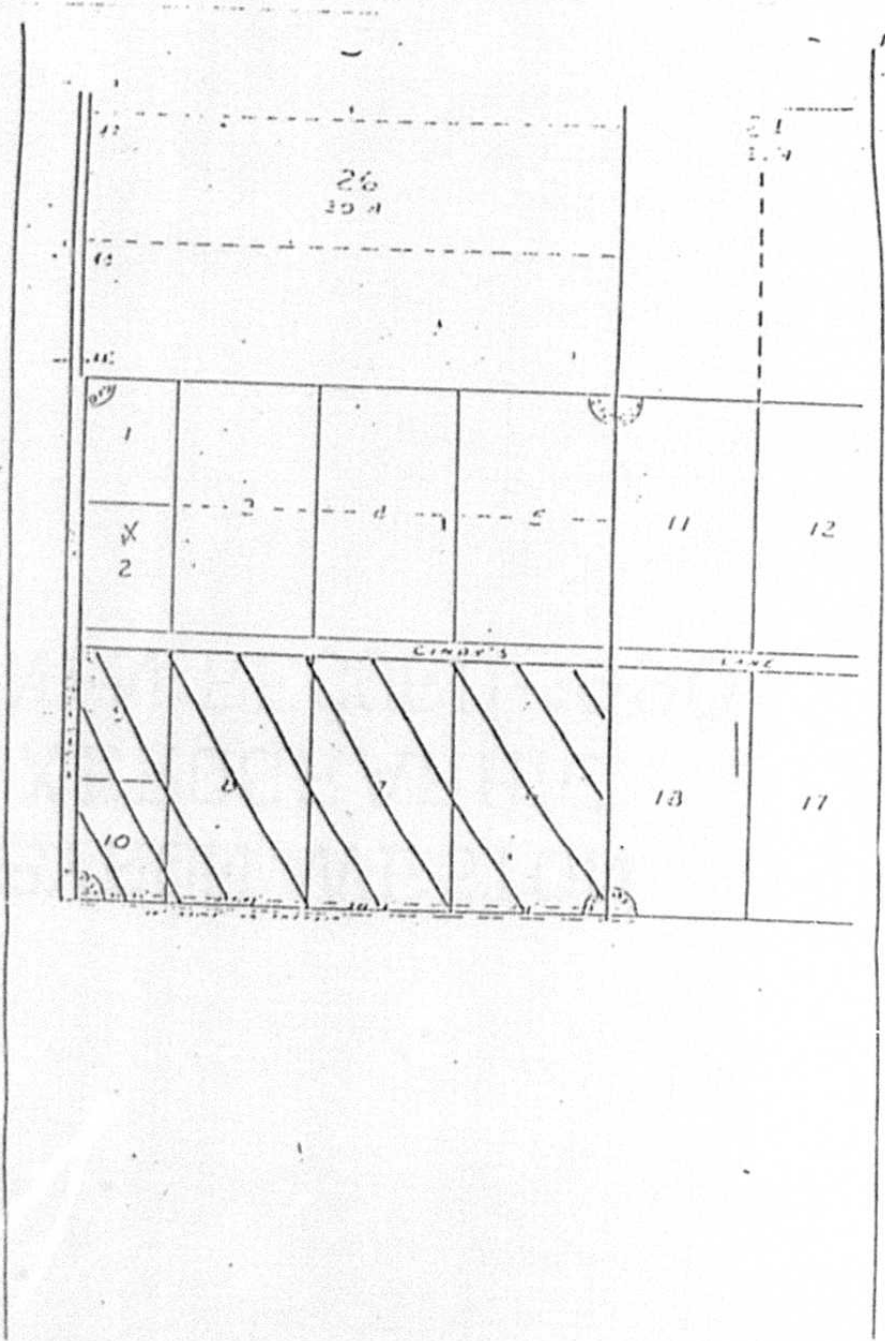
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MAP 5
LEGEND SHEET

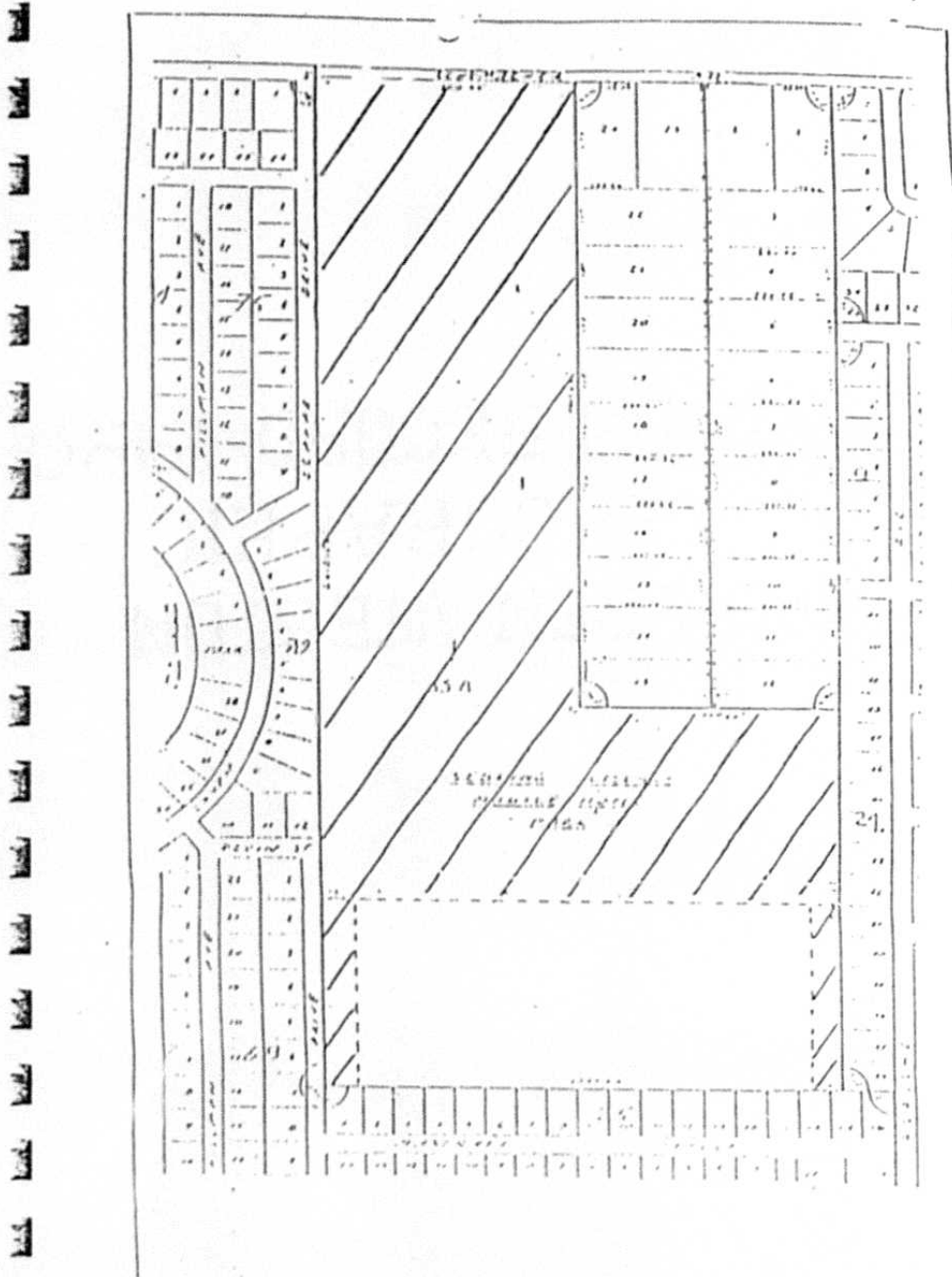
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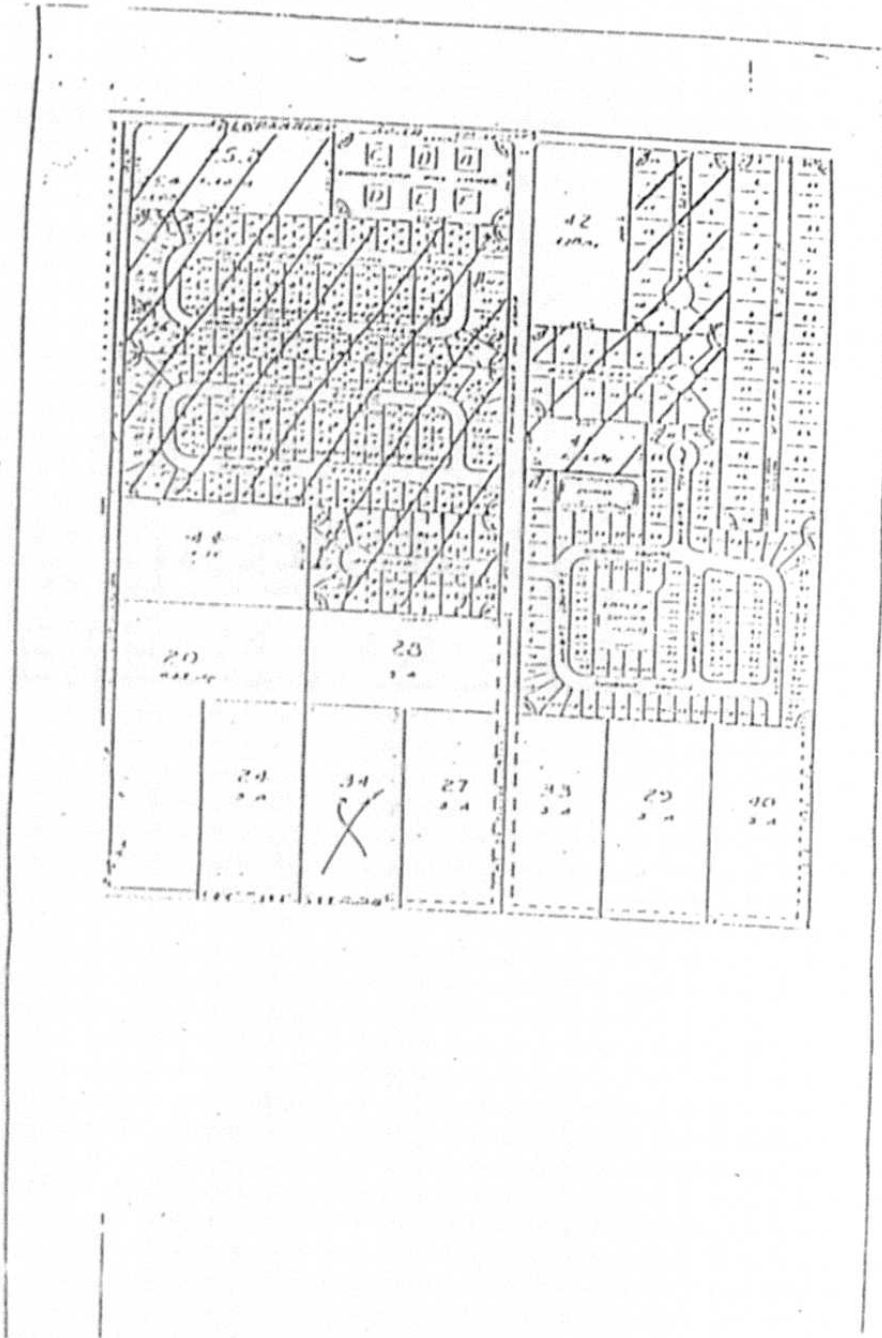
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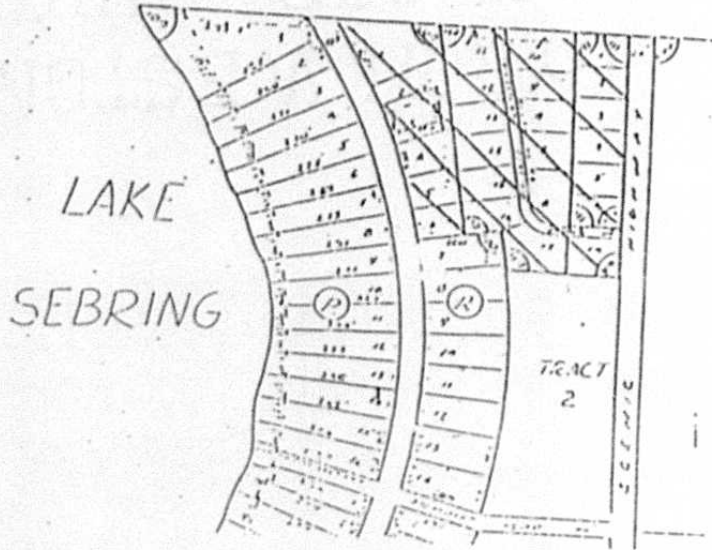
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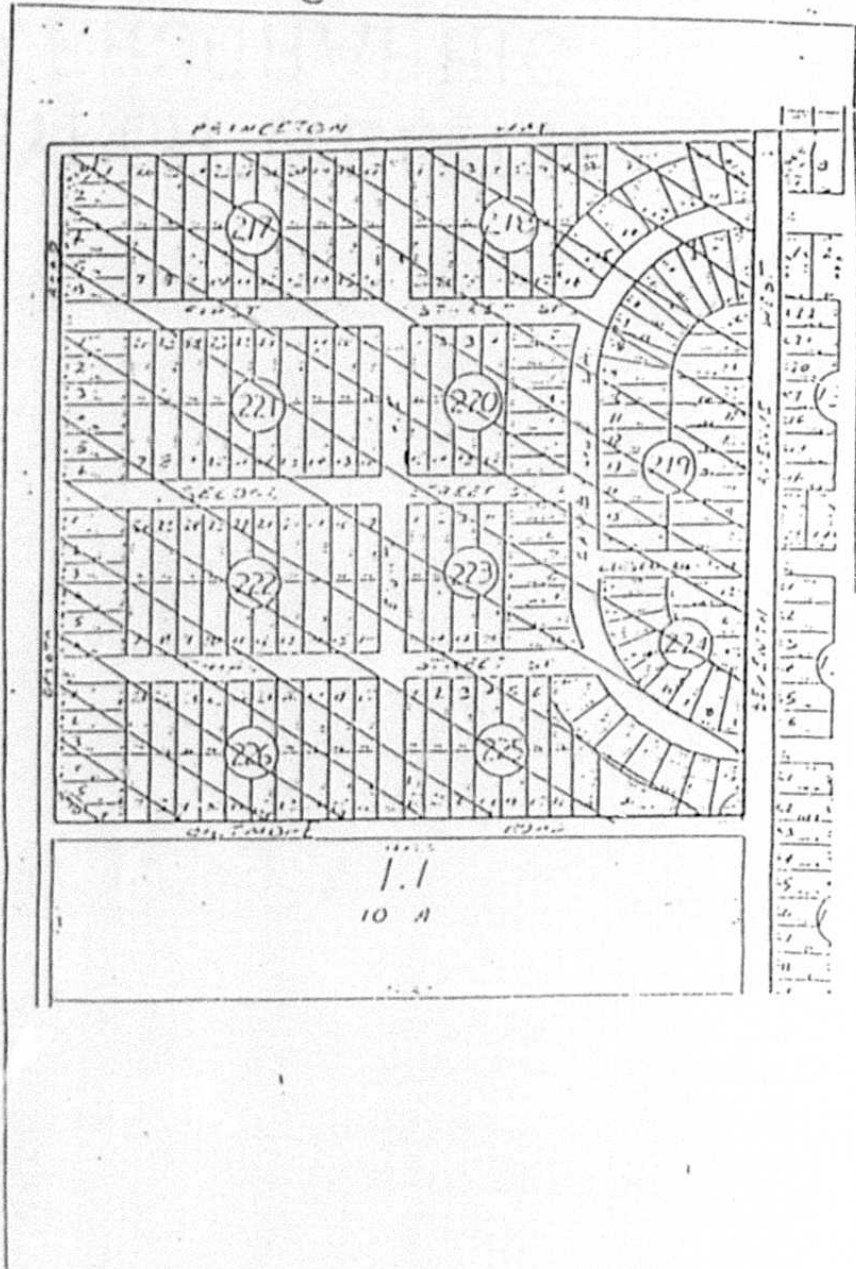
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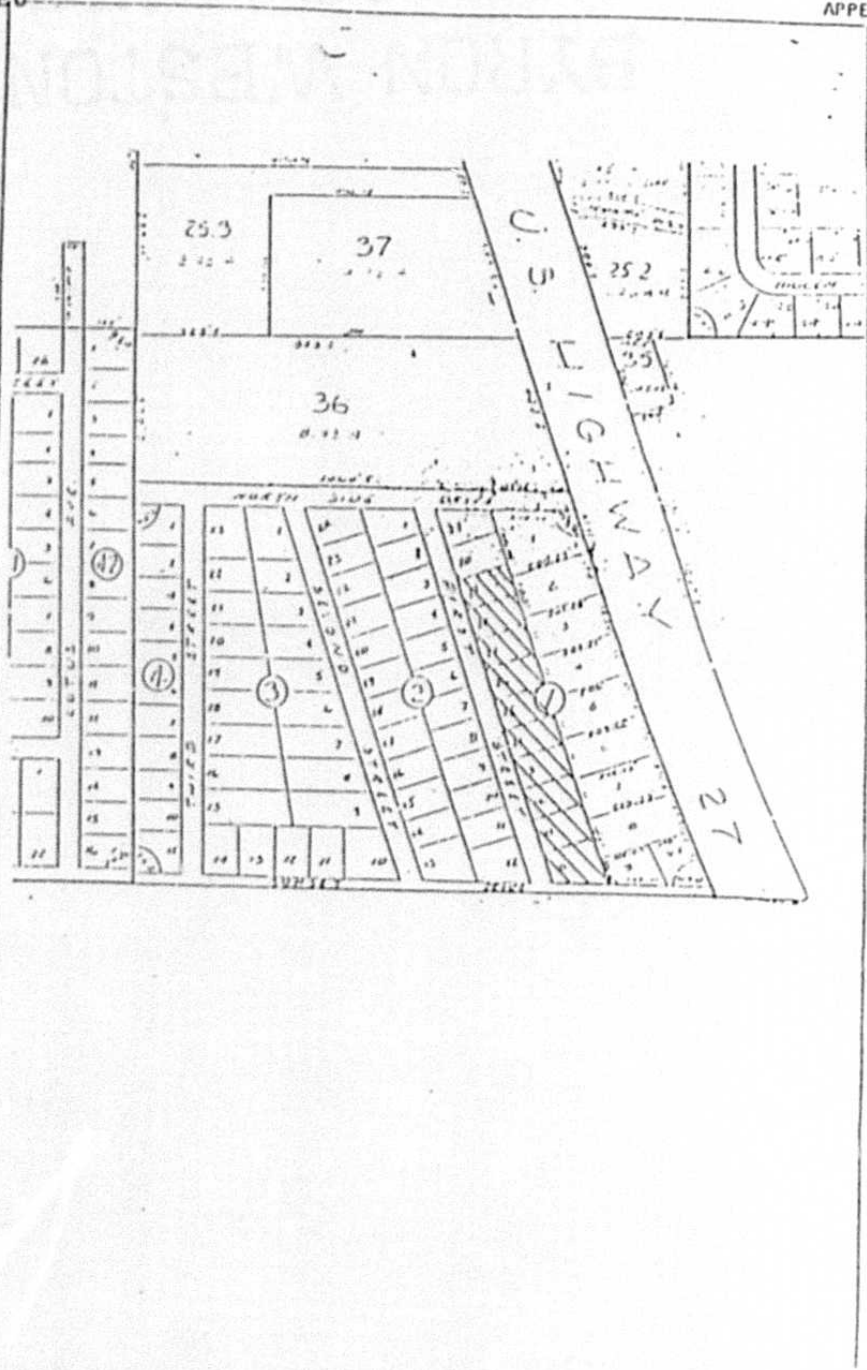
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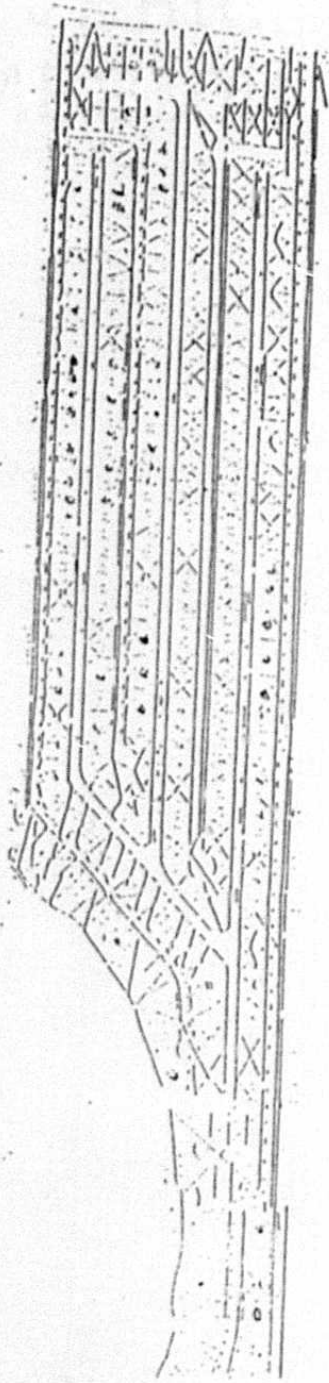
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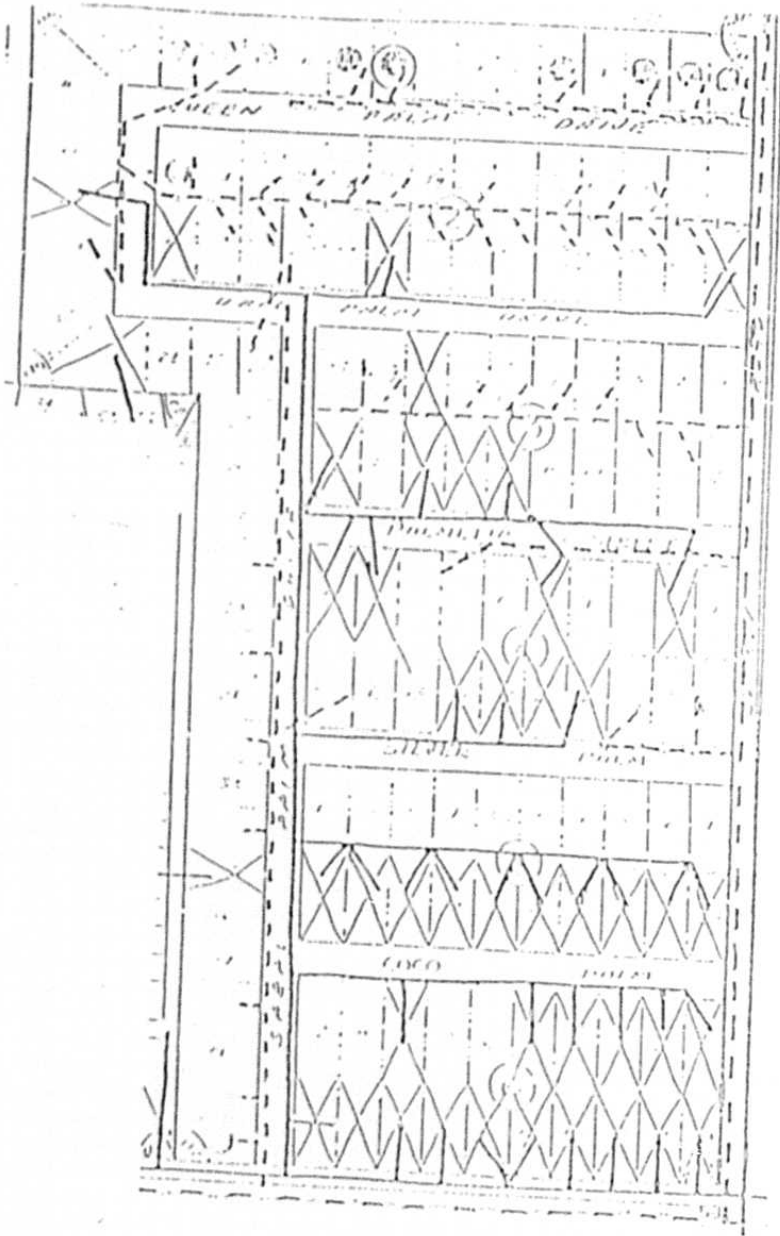
APPENDIX -



Park and Normandy Shores

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APPENDIX - B



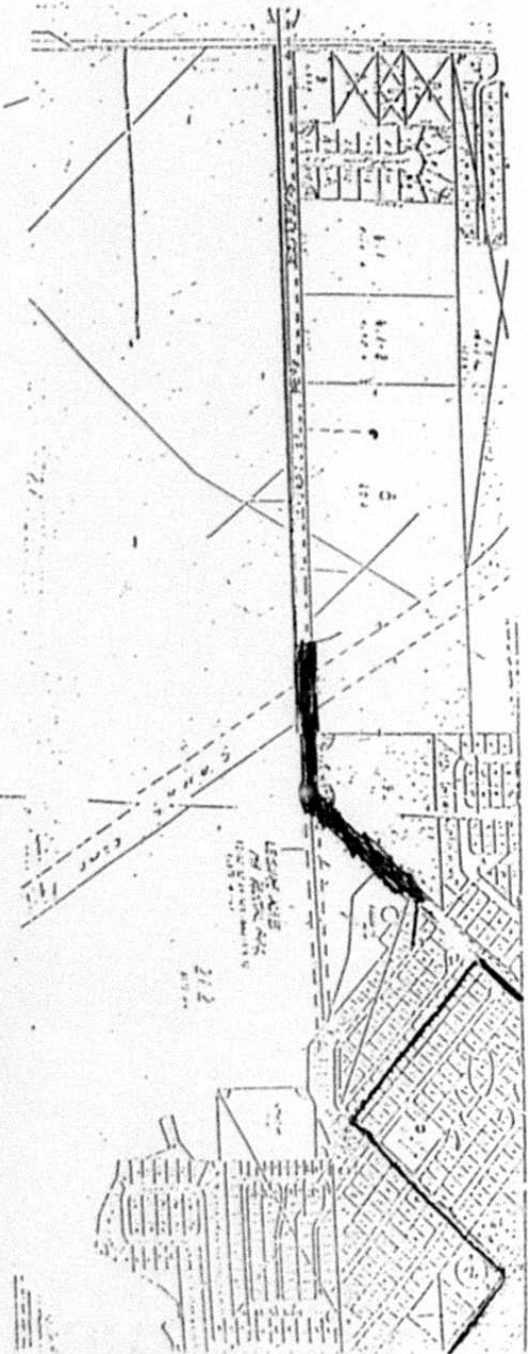
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SCHLOSSER ROAD FROM SPARTA TO COOPER ROAD

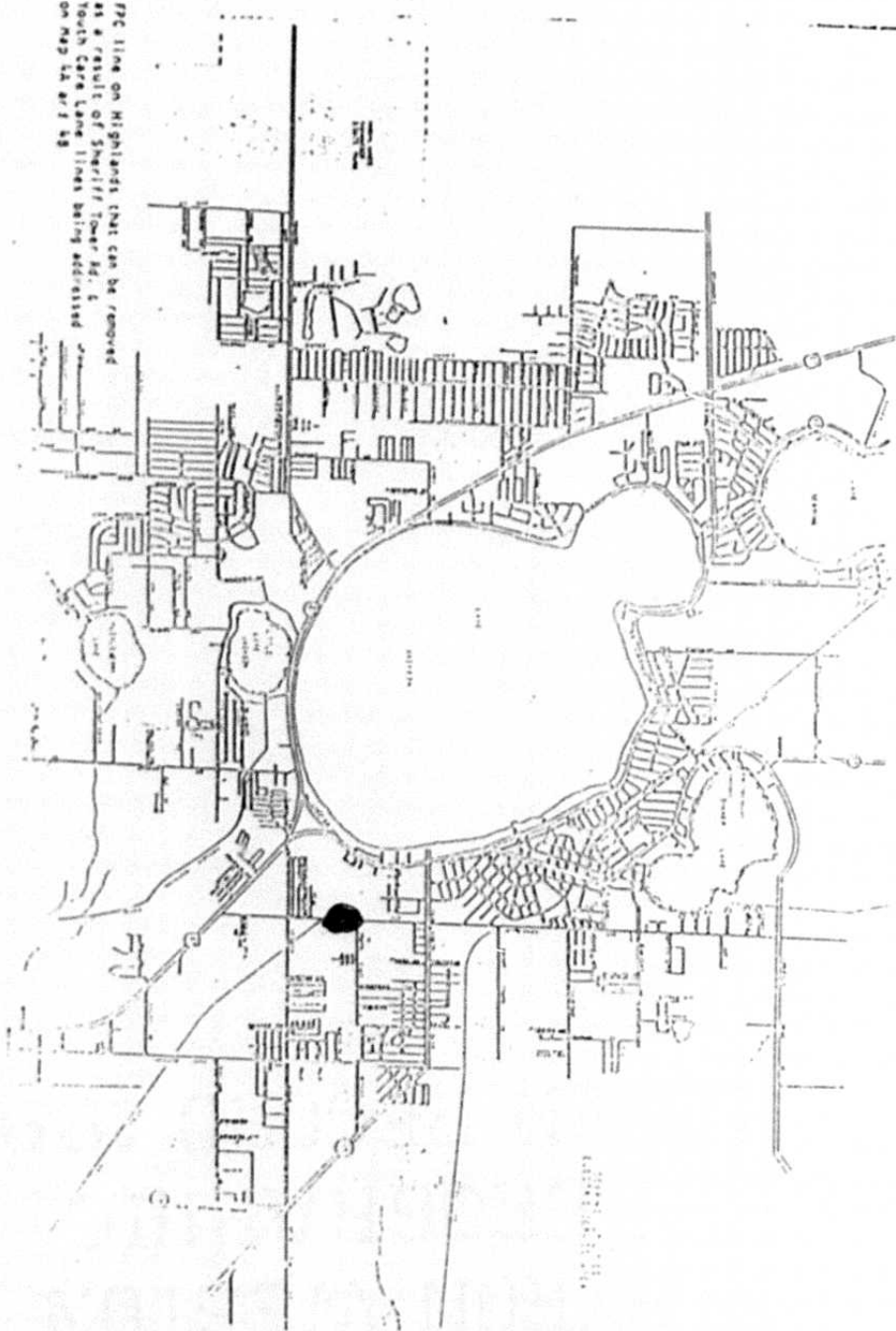


77C LINES TO BE REMOVED
77C LINES TO BE SURVEILED
77C LINES TO REMAIN
500 LINES



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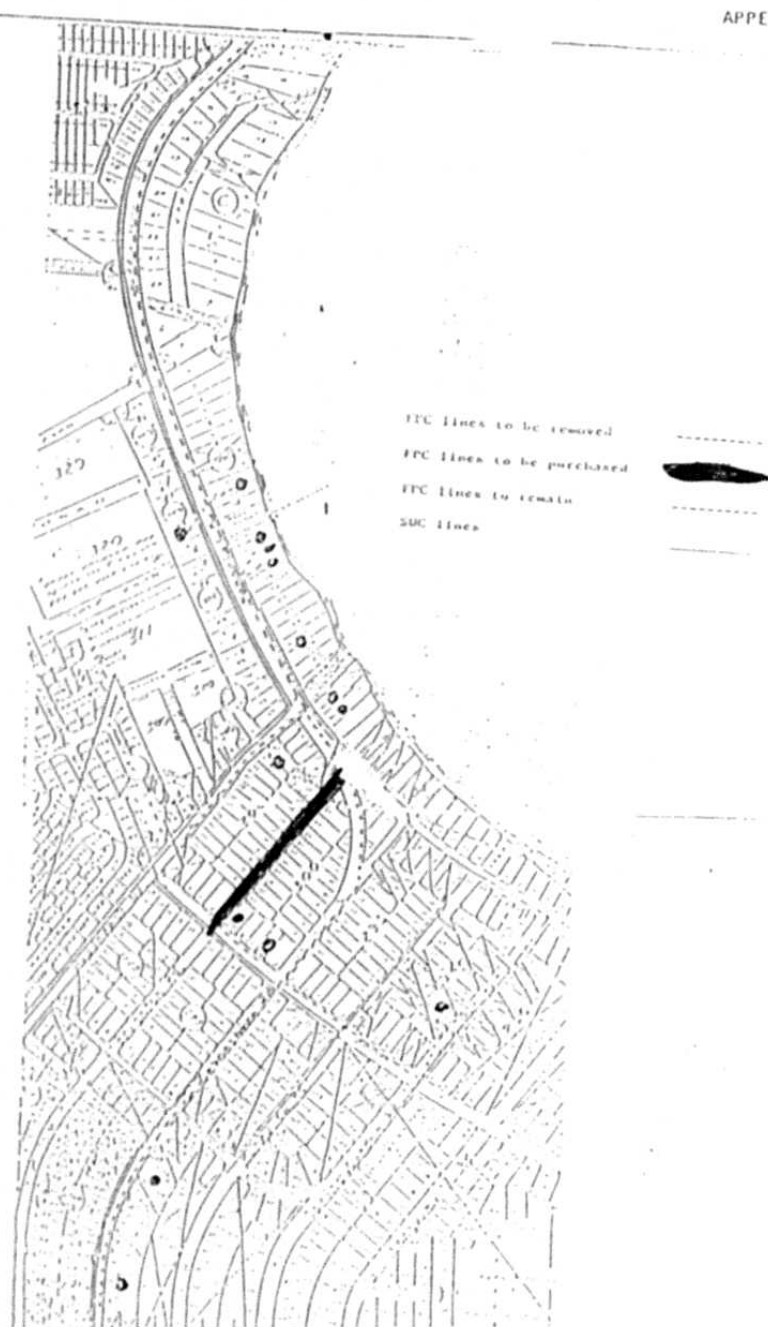
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PFC line on Highlands that can be removed
 as a result of Sheriff Tower 22. 5
 Youth Care Lane lines being addressed
 on Map 1A at 7-89

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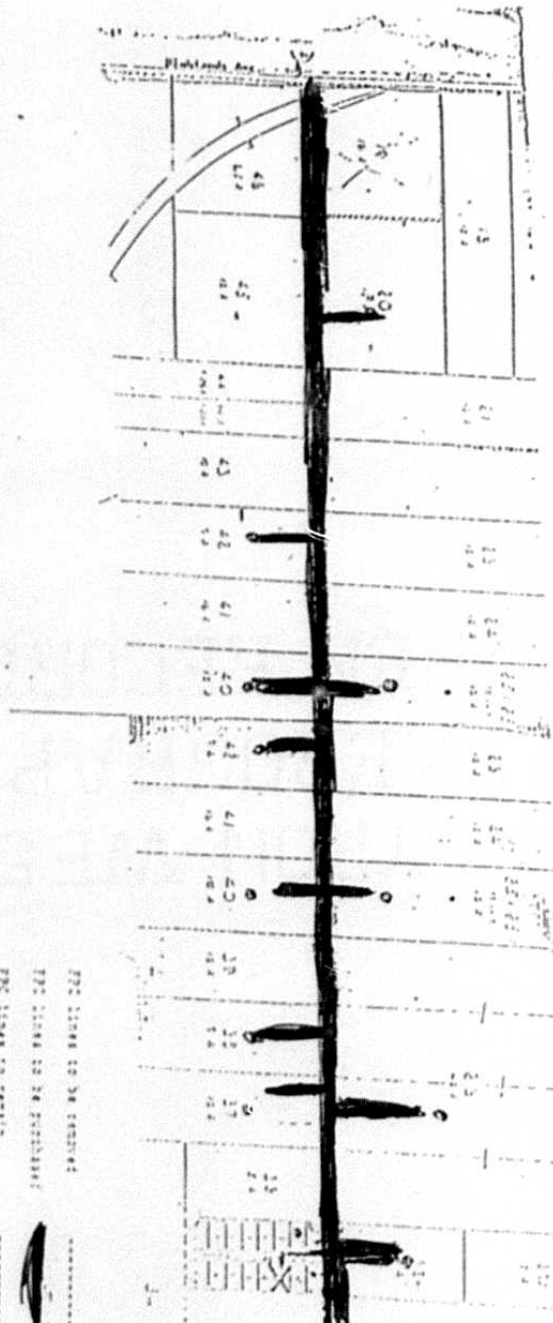


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SHARPLEY TOWER ROAD

SHARPLEY TOWER ROAD

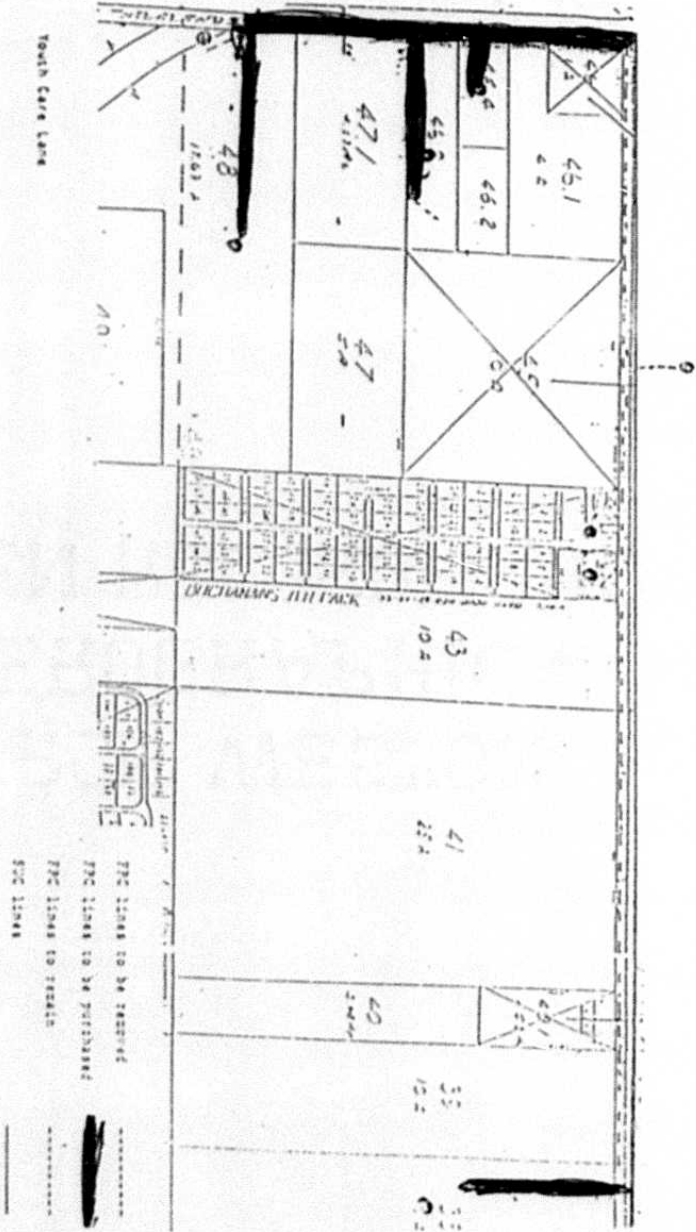


770 LINES TO BE REMOVED
770 LINES TO BE REINSTALLED
770 LINES TO BE REMOVED
770 LINES TO BE REINSTALLED
500 LINES



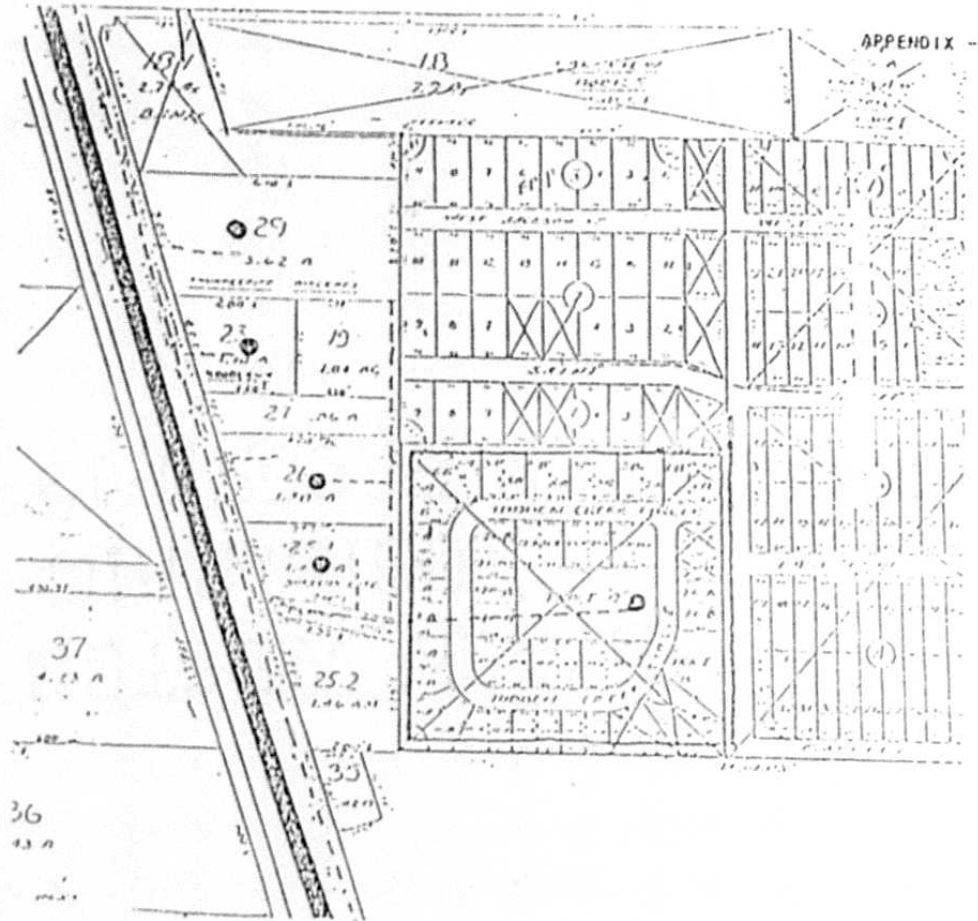
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FPC Lines to be removed -----

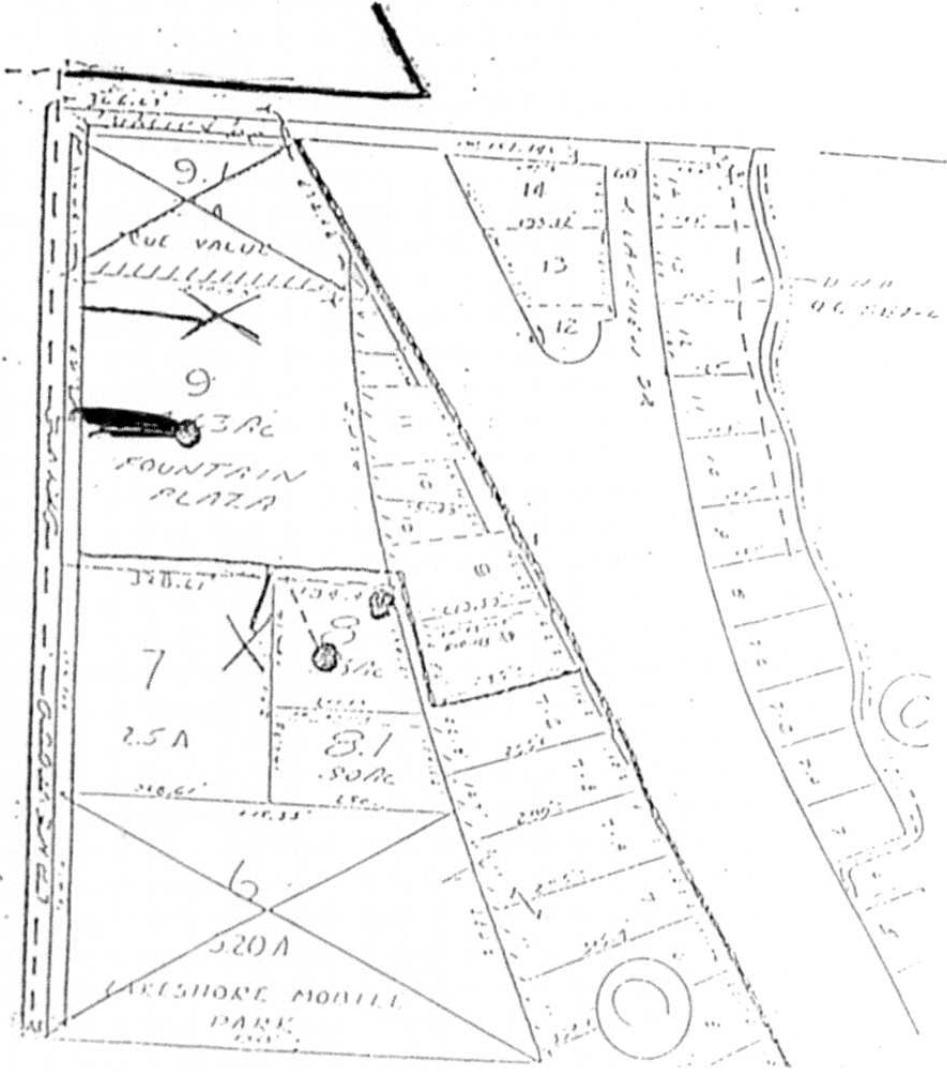
FPC Lines to be purchased -----

FPC Lines to remain -----

SBC Lines -----

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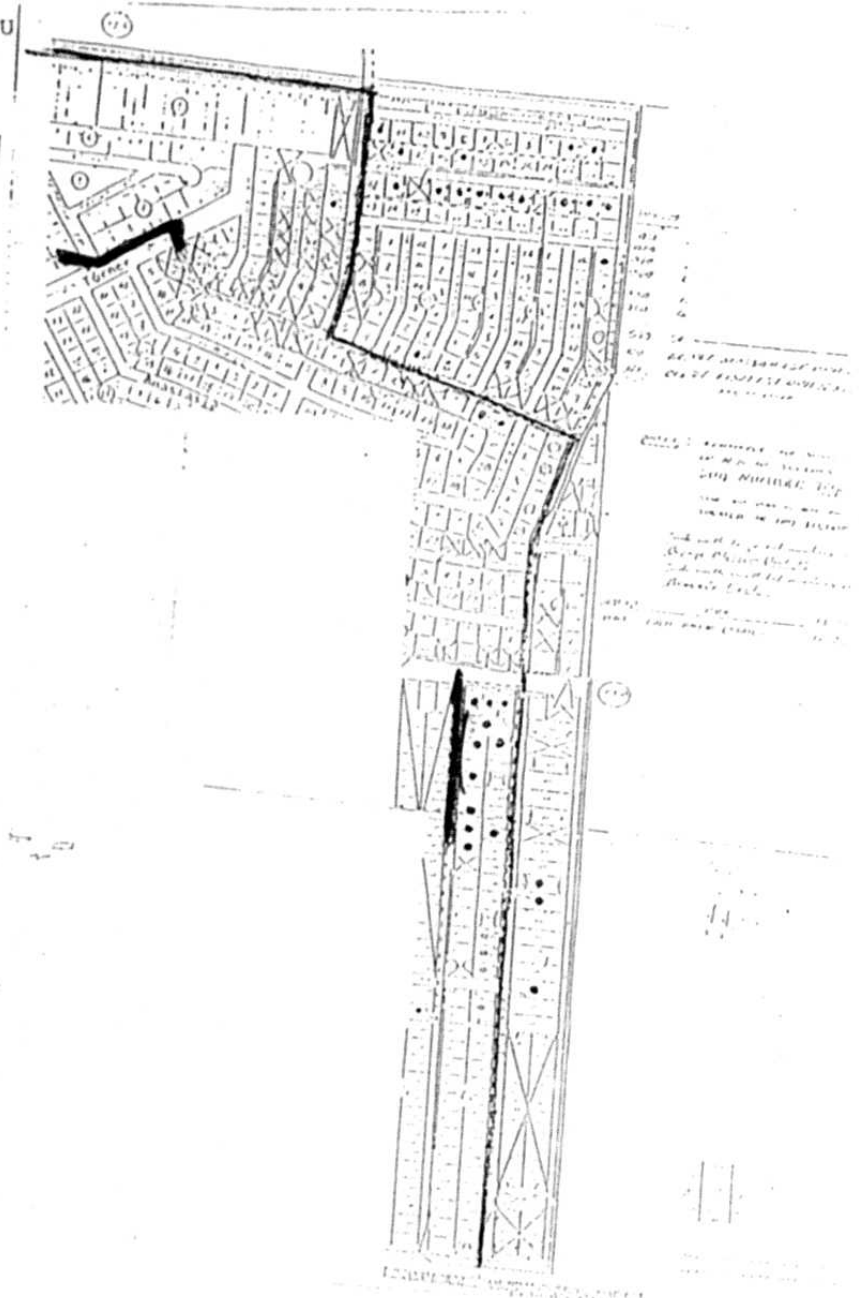
Fountain Plaza
Colony Square

- - - - - FPC Lines to be removed
- - - - - FPC Lines to be purchased
- - - - - FPC Lines to remain
- - - - - 500' ...



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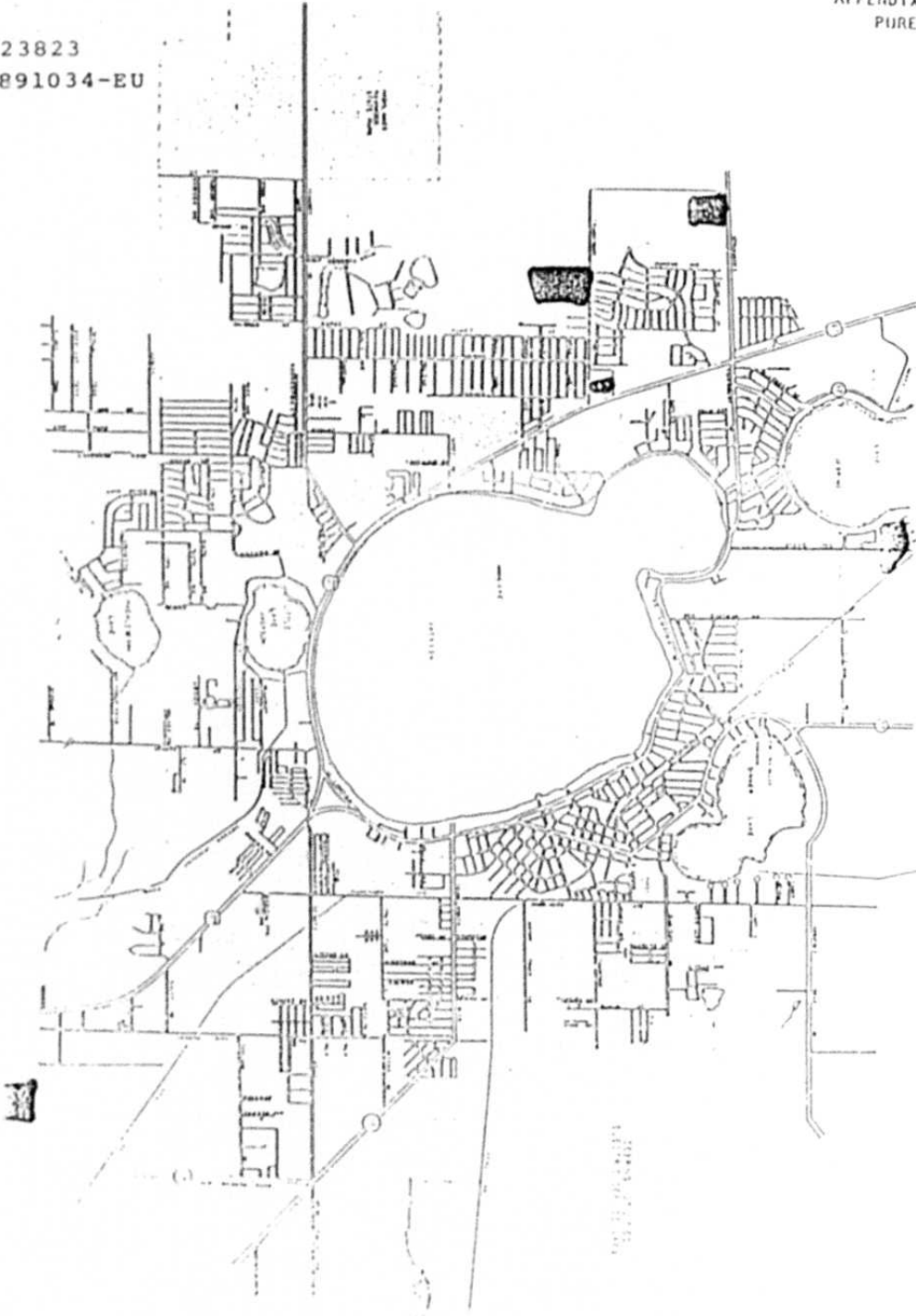
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Lafayette Road
Turner Boulevard
Jackson Avenue

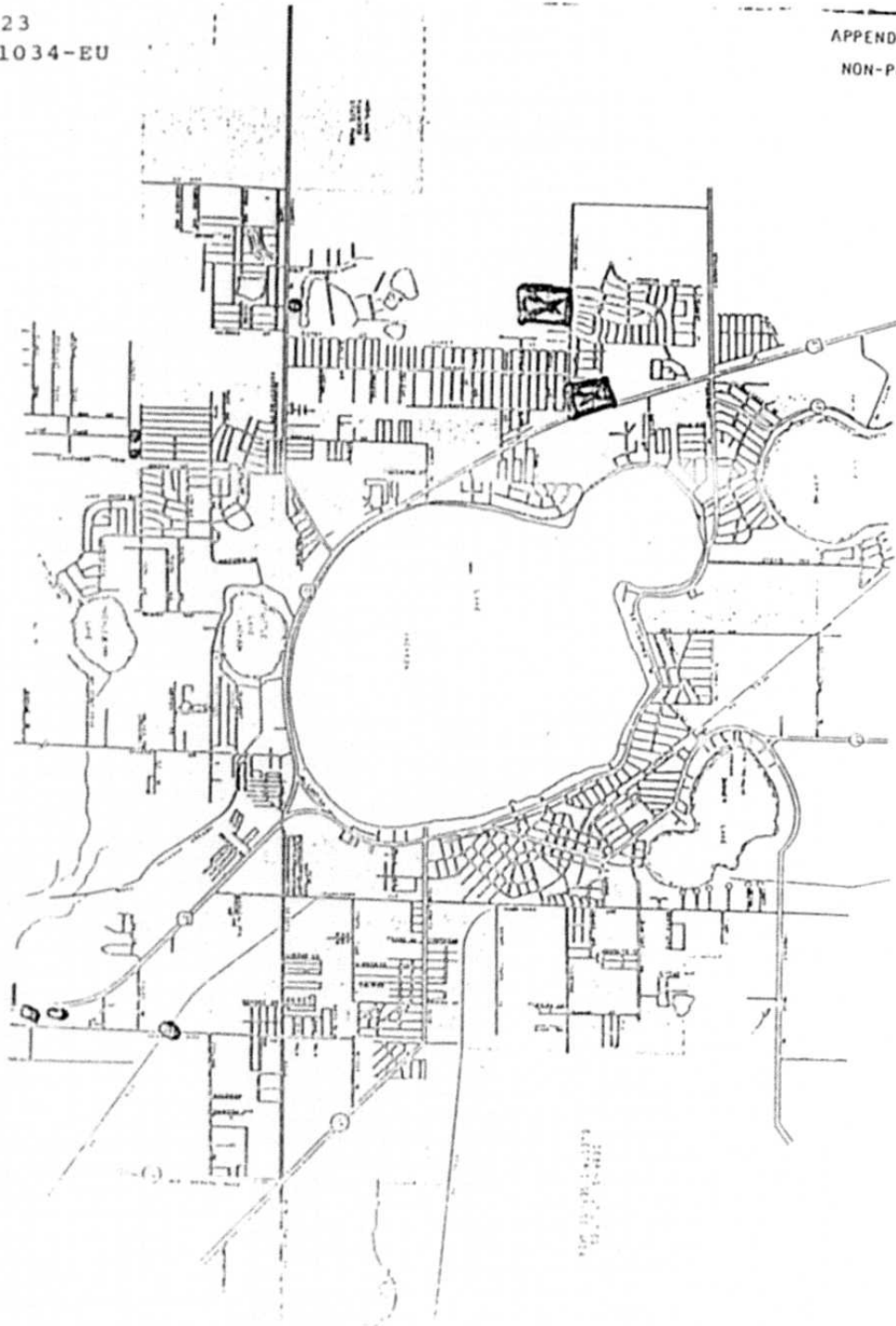
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175 - [unclear]

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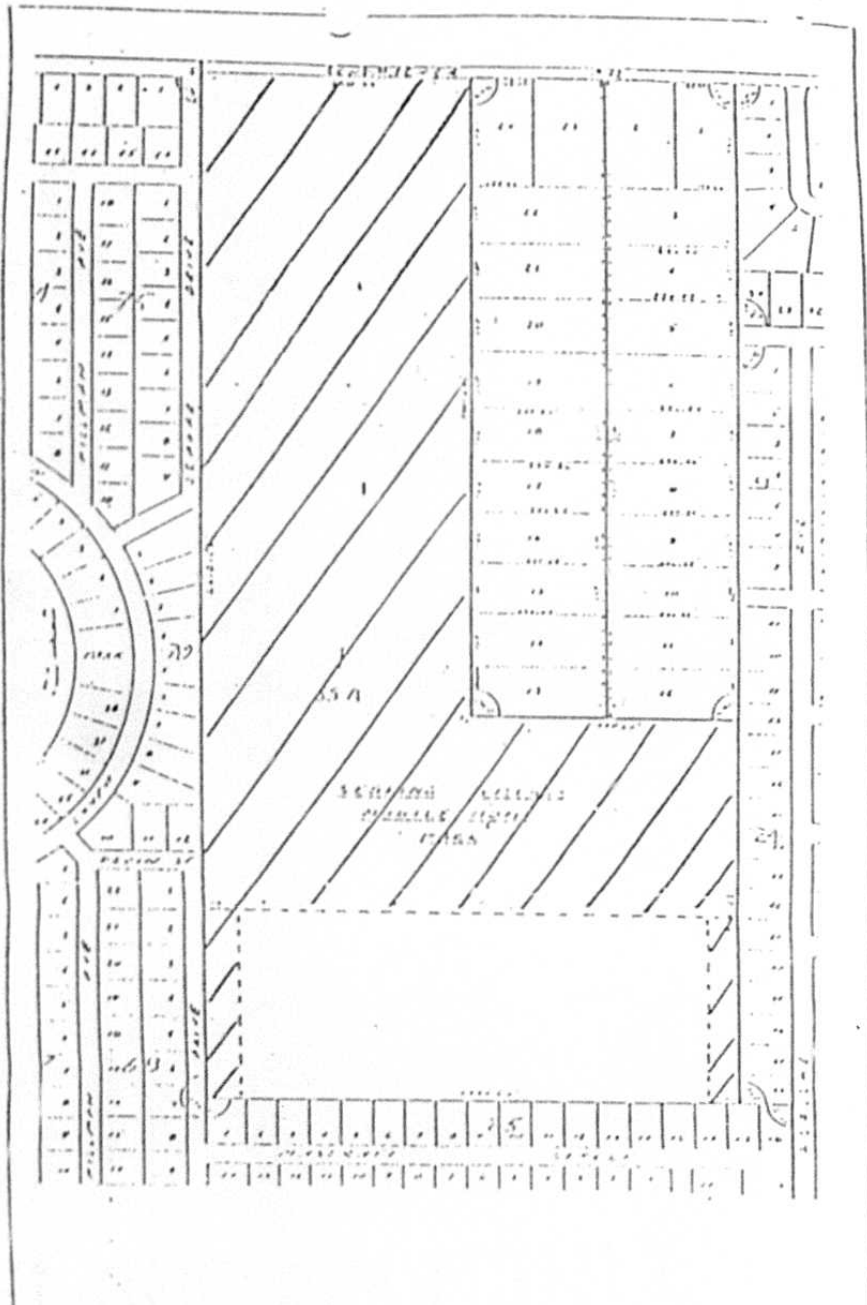
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NON-PURE



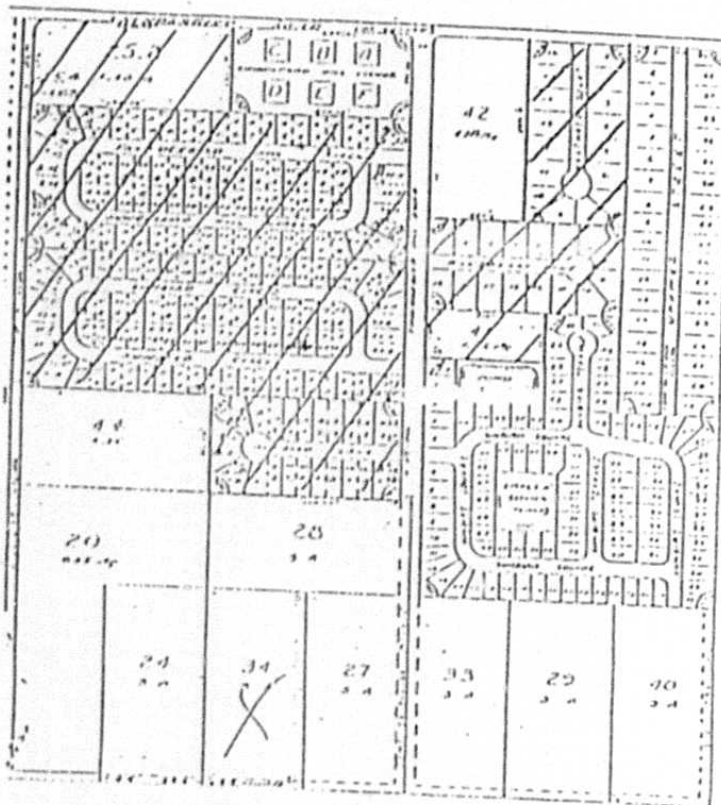
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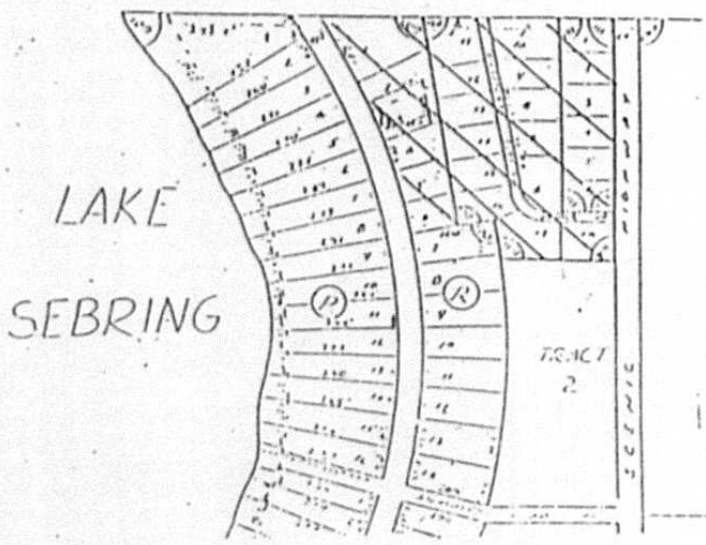
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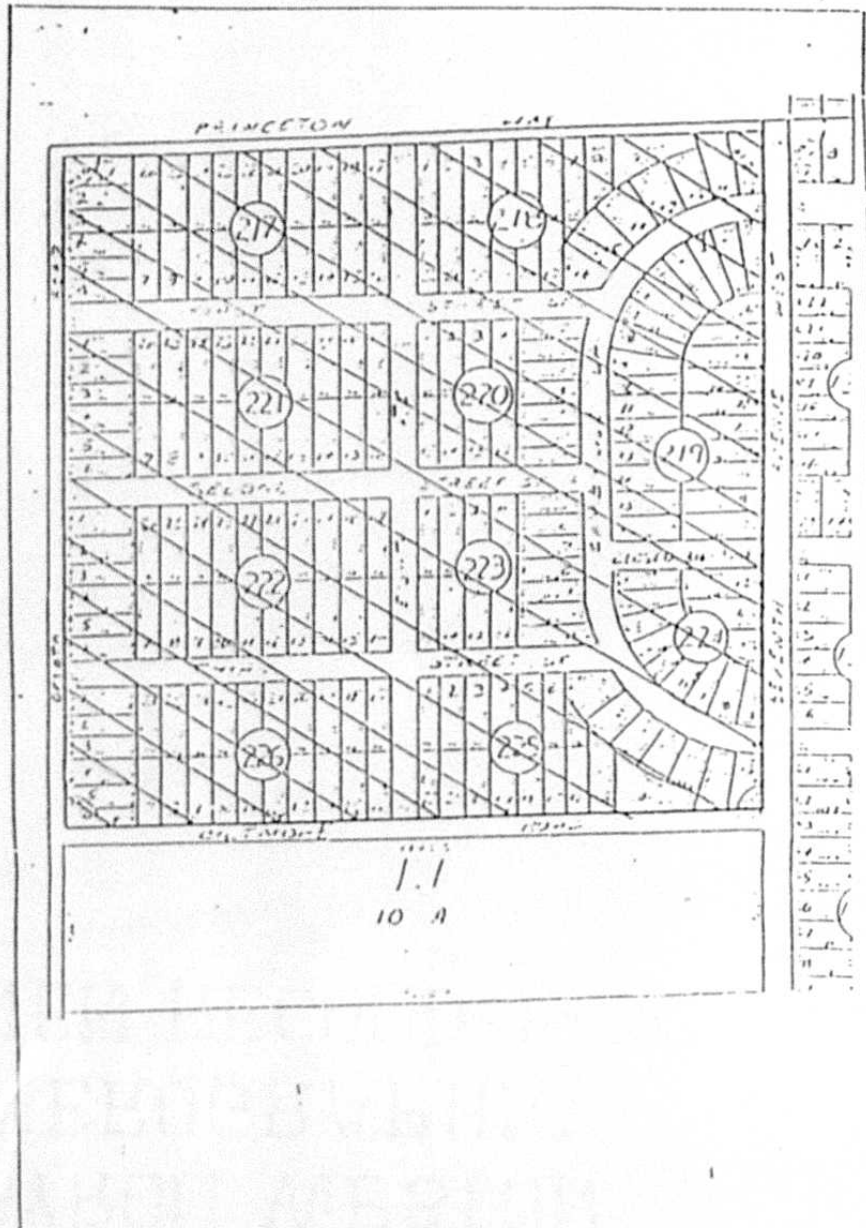
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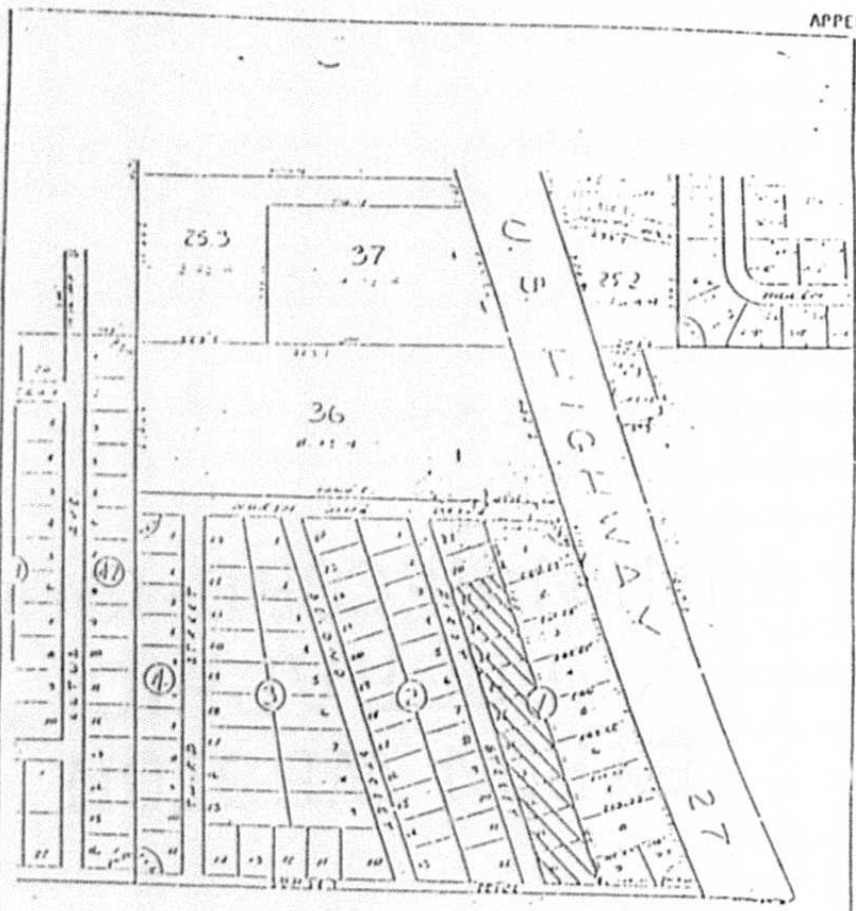
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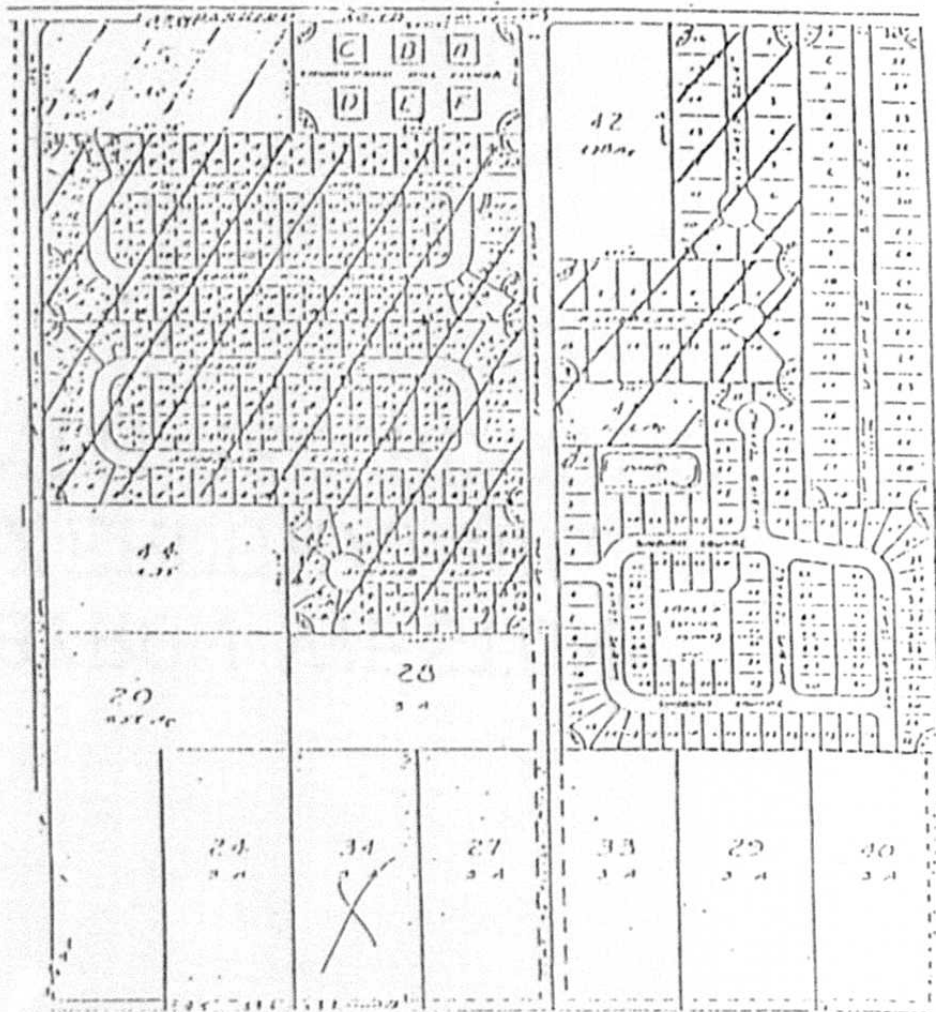
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APPENDIX - E



Hundredth Hill South Bible Home Park