

**COMMISSIONERS' COURT ADJOURNED TO EXECUTIVE SESSION AT 10:15 A.M. ON TUESDAY, APRIL 27, 2004.**

**AGENDA ITEM 27**

Discuss real estate (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.071 consultation with attorney).

No action was taken on this item in Executive Session.

**COMMISSIONERS' COURT RECONVENED FROM EXECUTIVE SESSION AT 11:25 A.M. ON TUESDAY, APRIL 27, 2004.**

**AGENDA ITEM 28**

Discuss and take appropriate action on real estate.

Moved: **Commissioner Boatright**

Seconded: **Commissioner Curlee**

Motion: To sign and accept the compromised settlement agreement with Roland Krienke.

Vote: **3 – 0**

< Attachment >

## COMPROMISE SETTLEMENT AGREEMENT

STATE OF TEXAS                   §  
   §       **KNOW AL MEN BY THESE PRESENTS:**  
 COUNTY OF WILLIAMSON       §

### A. PARTIES

This Compromise Settlement Agreement (the "Agreement") is entered into in Williamson County, Texas, by and between the following parties who shall be referred to as follows:

A.1. "Owner" shall mean and include Theophil R. Krienke, Jr. and Sharon R. Krienke, and all of their respective predecessors, successors, agents, representatives, and assigns.

A.2. "County" shall mean and include the County of Williamson, Texas and all of its respective political subdivisions, directors, agents, representatives, employees, servants, contractors, and assigns.

A.3. "Parties" shall mean and include Owner and County.

### B. DEFINITIONS

In addition to the foregoing parties, the following definitions shall apply to the Agreement:

B.1. "Property" shall mean and include that certain 3.716 acre tract of land situated in the Washington Anderson Survey, Abstract No. 15, Williamson County, Texas as described in a deed of record in Document No. 2002004728 of the Official Public Records of Williamson County, Texas.

B.2. "Driveway" shall mean and include the driveway constructed by County on the Property.

B.3. "Project" shall mean and include the Williamson County Road Bond Program 2003 Parmer Lane South-Phase 1.

### C. RECITALS

C.1 During the year of 2002, the County acquired portions of Owner's real property, which were deemed by the County to be necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of the Project. As a part of the negotiations and agreements between the County and Owner pertaining to County's acquisition of said real property, the County agreed to construct the Driveway on Owner's Property during construction of the Project. The County began construction of the improvements pertaining to the Project on or before December of 2002. Following the County's construction of the Driveway, disputes

arose between the County and Owner regarding the County's acquisitions of additional real property from Owner, the quality and completion of the construction pertaining to the Driveway, the design of the Driveway, the design of the drainage system and culvert under the Driveway, damages to trees on the Property and pollution of Spanish Oak Creek, as alleged by Owner.

## II. AGREEMENT

NOW, THEREFORE, for and in consideration of the Parties' mutual promises and agreements set forth herein, including the Recitals set forth above, the Parties, intending to be legally bound, desire to contractually compromise and settle the disputes between them and do hereby agree as follows:

C.1 Upon the County's full and complete satisfaction of this Agreement and for and in consideration of the sum of \$1,736.00, to be paid by County to Owner, Owner agrees to grant and convey to County that certain .055 acre tract of land situated in the Washington Anderson Survey, Abstract No. 15, Williamson County, Texas, being a portion of a 3.716 acre tract of land conveyed to Theophil R. Krienke, Jr. and Sharon R. Krienke by instrument recorded in Document No. 2002004728 of the Official Records of Williamson County, Texas and being more particularly described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein for all purposes. The County has deemed it to be necessary or convenient to purchase said real property for the construction, expansion, enlargement, extension, improvement, or operation of the Project. The County agrees, acknowledges and represents to Owner that no additional real property owned by Owner shall be necessary for the construction, expansion, enlargement, extension, improvement, or operation of the Project and that the County will not seek to acquire by purchase, condemnation, pursuant to its powers of eminent domain, or any way otherwise, for purposes of the Project, any additional real property owned by Owner. Owner hereby agrees to grant unto County a Temporary Construction Easement in and to the above described .055 acre tract to allow for the reconstruction of the Driveway and water drainage system, as more fully set forth below. Following full completion and satisfaction of this Agreement, Owner further agrees to grant and convey to County that certain .055 acre tract described above.

C.2 Upon the County's full and complete satisfaction of this Agreement and for and in consideration of the sum of \$3,264.00, to be paid by County to Owner within 7 days from the execution of this Agreement, Owner hereby ACQUITS, RELEASES, AND FOREVER DISCHARGES the County and all of its political subdivisions, officers, directors, agents, representatives, employees, contractors, and servants of and any and all claims, remedies, demands, debts, expenses, costs, liens, causes of action, or liabilities, at law or in equity, either in contract, subrogation or in tort, liquidated or unliquidated, absolute or contingent, under common law, regulation, ordinance, statute, (including, but not limited to, the Texas Civil Practice and

Remedies Code, the Texas Deceptive Trade Practices Act, and the Restatement of Torts (2nd)) as well as any other character or kind of action now held or owned by Owner, in whole or in part, which Owner may now have or may hereafter claim to hold or possess on account of, growing out of, related to or concerning, of and from any and all damages alleged to have been sustained, or that could be claimed by Owner from or related to the trespass and/or damages to oak trees, cedar trees and natural vegetation on the Property, which Owner has alleged and contended to have occurred on or about December 13, 2002.

C.3 The County, at its sole cost, hereby agrees to reconstruct the Driveway according to the following design specifications and plans:

- a. the Driveway shall consist of a 2% slope for a distance of 15-feet from the end of the 8-foot shoulder of the Parmer Lane Extension
- b. the remaining portion of the Driveway, which extends to the interior of Owner's Property, shall consist of a 15% slope and continue at said slope until it ties into natural ground;
- c. the Driveway shall consist of a 22-foot wide asphaltic-concrete paved ribbon (20-foot wide driving surface)
- d. the gravel shoulders of the Driveway shall be approximately 6' in width for the entire length of the 15-foot portion of Driveway that is at a 2% slope; the gravel shoulders for the remaining portion of the Driveway that is at a 15% slope shall be tapered down until which point the Driveway ties into natural ground;
- e. the slopes of the Driveway shall be sufficiently seeded to minimize erosion potential; and
- f. the entrance of the Driveway shall have a paved 20-foot radius on either side of the Driveway.

The above described design specifications and plans are further set forth in the construction design drawings/schematics entitled "Krienke Driveway-STA 8+90"/"Driveway Plan STA 8+90" and dated October 7, 2003, which are attached hereto as Exhibit "B" and incorporated herein for all purposes. The County hereby agrees to cause construction of the Driveway to begin within 30 days from the execution of this Agreement and to be fully and finally completed on or before September 1, 2004.

C.4 The County, at its sole cost, hereby agrees to reconstruct the existing water drainage system and culvert which were previously constructed on both sides of and under the Driveway. The County agrees (i) to completely redesign and construct a water drainage system that will direct the flow of water through a new over-sized drainage pipe, of sufficient size and carrying capacity; (ii) that said over-sized drainage pipe and drainage system are to be

constructed within the right-of-way and under the Driveway; (iii) that the new drainage system shall divert the water drainage flow under the Driveway, from a southerly to northerly direction, so that said flow continues in a northerly direction parallel to the concrete retaining wall, within the right-of-way, towards Spanish Oak Creek; (iv) to reset the existing culvert under the Driveway to ground-level in order to pick up and drain any water that may accumulate on the south side of the Driveway; (v) that said culvert shall be constructed to drain the water from the south side of the driveway to the north side of the driveway so that the water flow will also be diverted to run from a southerly to northerly direction parallel to the concrete retaining wall, within the right-of-way, towards Spanish Oak Creek. The County further agrees and acknowledges that the redesign of the entire drainage system will alleviate any need for the County to purchase additional property or acquire a drainage easement from Owner for purposes of water drainage.

The above described design specifications and plans for the water drainage system are further set forth in the construction design drawings/schematics entitled "Krienke Driveway-STA 8+90"/"Driveway Plan STA 8+90" and dated October 7, 2003, which are attached hereto as Exhibit "B" and incorporated herein for all purposes. The County hereby agrees to cause construction of the water drainage system to begin within 30 days from the execution of this Agreement and to be fully and finally completed on or before September 1, 2004.

C.5 On or before September 1, 2004, the County, at its sole cost, hereby agrees to construct and install rip-rap around the A-04 Drainage Inlet area, as such area is depicted and described in the construction plans of the Project, to prevent erosion to Owner's Property due to the adverse flow of water.

C.6 The County, at its sole cost, hereby agrees to restore the creek bed of Spanish Oak Creek by removing all raw dirt and/or materials located in or near said creek bed. The County further agrees to install and construct concrete and rip-rap in and around Spanish Oak Creek and the bridge located over said creek in order to slow the flow of water that drains into said creek and prevent erosion in the vicinity of said creek and bridge. In order to prevent damage and/or destruction to the newly reconstructed Driveway and water drainage system, the County acknowledges and agrees that the removal of dirt and the restoration of said creek bed, as described above, shall occur immediately prior to the reconstruction of the Driveway and water drainage system, as set forth above. Owner agrees and acknowledges that one tree located in the vicinity of said creek shall be trimmed in order for the excavation equipment to enter this area and perform such work.

C.7 In order to prevent further erosion to Owner's real property, the County, at its sole cost, hereby agrees to either remove or reconstruct the rock screen/filter situated in the dry creek

bed located north of Spanish Oak Creek and south of County Road 272. The County shall cause such removal or reconstruction within 7 days from the execution of this Agreement.

C.8 Within 7 days from the execution of this Agreement, the County hereby agrees to issue a written directive to its respective directors, agents, representatives, employees, servants, contractors and any other party related to the construction of the Project instructing said parties to cease, desist and otherwise refrain from littering, urinating, defecating, trespassing on, or otherwise disturbing Owner's real property. During the construction of improvements pertaining to the Property, as described above, the County further agrees, at its sole cost, to provide a portable toilet adjacent to the Property.

C.9 The Parties further agree that in the event that either of the Parties fail to complete or cause to be completed the acts and/or agreements specifically described herein or otherwise fail and/or refuse to comply with the terms of this Agreement, such party shall be deemed to be in breach of this Agreement. In the event of breach of either party, the non-breaching party shall have the right to sue for specific performance and/or sue for damages in addition to any other relief provided by law or in equity, or both. Such breaching party shall be liable to the non-breaching party for the reasonable and necessary attorney's fees and costs incurred by it in the enforcement of this Agreement. The breaching party will remain obligated to complete the actions and agreements specifically described herein, and will be in breach of this agreement until such time as such act has been accomplished or such party complies with this Agreement and the attorney's fees have been paid. Furthermore, the Parties hereto agree that the Owner's obligation to convey that certain real property described in Paragraph C.1 and the Owner's release of County set forth in Paragraph C.2 above are strictly contingent upon the County's full and final completion of each act and agreement specifically set forth herein. In the event the County fails to finally complete or cause the final completion of each act and/or agreement described herein, the Owner's obligation to convey said real property to Owner shall become unenforceable and the release set forth in Paragraph C.2 shall be withdrawn by Owner, without further notice to the County, and be deemed to be of no force or effect.

C.10 The County hereby agrees to pay any and all expenses, costs and fees, of any nature or kind, which may become necessary to effectuate and satisfy the terms and conditions of this Agreement. Such expenses, costs, and fees shall include, but not be limited to closing costs, document preparation fees, survey costs, title insurance premiums, messenger services, costs associated with obtaining and preparing tax certificates, construction costs and recording fees. Owner hereby agrees and acknowledges that Owner shall be obligated to pay the current year's ad valorem taxes for any property conveyed by Owner to County.

C.11 Each party hereto further warrants that it has not assigned, transferred, or conveyed the claims settled in this compromise, it is the sole holder of said claims, that each

party is duly authorized to execute this Agreement for the purposes and in the capacity set forth, and that any individual, business, or government entity executing this document is not under any legal, physical, or mental disability on the date of execution. The Parties further agree that the specific warranties set forth in this paragraph shall survive the execution of this Agreement.

#### **D. MISCELLANEOUS PROVISIONS**

D.1 Each party warrants that it has read and understands the effects of the foregoing Agreement and executes the same of its own free will in accord for the purposes and consideration set forth herein.

D.2 It is understood and agreed that this Agreement shall be governed by, construed, and enforced in accordance with and subject to the laws of the State of Texas.

D.3 The Parties agree that proper venue for enforcing the terms of this Agreement shall be in the Courts of Williamson County, Texas.

D.4 Each party further warrants that it understands that this Agreement is contractual and not merely recital and that it has had an opportunity to review the Agreement with legal counsel of its choice. Time is of the essence in this Agreement.

D.5 This written agreement shall not be effective as to any party unless executed by all the Parties.

D.6 The County represents, acknowledges and agrees that it is operating under Section 1471 of the Government Code and pursuant to Section 257.001 of the Transportation Code in regards to the Project.

D.7 The Parties to this Agreement agree and stipulate that this Agreement and settlement are being made purely upon a compromise basis by the parties to rid themselves of the threat of litigation pertaining to the disputes described herein.

D.8 This Agreement embodies the entire agreement between the Parties hereto and supersedes all prior agreements and understandings between the Parties hereto relating to the subject matter hereof. This Agreement is unconditional and unqualified and expressly inures to the benefit of the Parties' predecessors, successors and assigns.

D.9 If any provision of this Agreement should, for any reason, be held violative of any applicable law, and so much of this Agreement be held unenforceable, then the invalidity of such

a specific provision in this agreement shall not be held to invalidate any other provisions in this agreement, which other provisions shall remain in full force and effect unless removal of this invalid provisions destroys the legitimate purposes of this Agreement, in which event this Agreement shall be canceled.

D.10 The Parties agree to cause their agents, officers, managers, directors, contractors, servants, and employees to comply with all applicable provisions of this Agreement and will execute such additional documents as necessary to effect compliance.

D.11 This written Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior contemporaneous or subsequent oral agreements of the parties. There are no unwritten or agreements between the parties. The provisions of this agreement may be amended or waived only by an instrument in writing signed by all parties affected by such amendment or waiver.

D.12 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all which together shall constitute one in the same instrument.

THE REMAINDER OF THIS PAGE IS BLANK



APPROVAL OF THEOPHIL R. KRIENKE AND SHARON R. KRIENKE

WE, Theophil R. Krienke and Sharon R. Krienke, WARRANT AND REPRESENT that we are fully authorized to make this release and execute this Agreement on behalf of ourselves, we have had the opportunity to have this Agreement explained to us by counsel of our choice, and we understand and agree to its terms.

\_\_\_\_\_  
Theophil R. Krienke

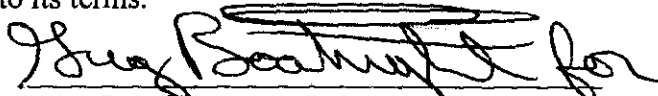
\_\_\_\_\_  
Sharon R. Krienke

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2004, by Theophil R. Krienke and Sharon R. Krienke for the purposes and consideration stated in the Agreement.

\_\_\_\_\_  
Notary Public in and for the State of Texas

## APPROVAL OF COUNTY OF WILLIAMSON, TEXAS

I, John Doerfler, County Judge of Williamson County, Texas, WARRANT AND REPRESENT that I am fully authorized to execute this Agreement on behalf of the County of Williamson, Texas, I have had the opportunity to have this Agreement explained to me by counsel of my choice, and I understand and agree to its terms.

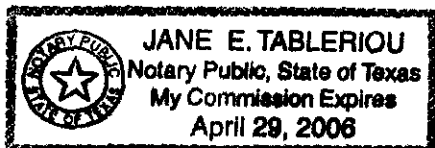


John Doerfler,  
County Judge of Williamson County, Texas

This instrument was acknowledged before me on the 27 day of April, 2004, by ~~John Doerfler~~ for the purposes and consideration stated in the Agreement.

*Greg Boatright*

*Jane E. Tableriou*  
Notary Public in and for the State of Texas





## METES AND BOUNDS DESCRIPTION

BEING A 0.055-ACRE TRACT OF LAND SITUATED IN THE WASHINGTON ANDERSON SURVEY, ABSTRACT NO. 15, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF A 3.716-ACRE TRACT OF LAND CONVEYED TO THEOPHIL R. KRIENKE, JR. AND SHARON R. KRIENKE BY INSTRUMENT RECORDED IN DOCUMENT NO. 2002004728 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.055-ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at a capped iron rod found on a point in the southerly boundary line of that certain 4.011-acre tract of land conveyed to Williamson County, Texas, by instrument recorded in Document No. 2001076274 of the Official Public Records of Williamson County, Texas, said point being the northeasterly corner of that certain 3.98-acre tract of land conveyed to Williamson County, Texas, by instrument recorded in Document No. 9634634, and Document No. 9634637 of the Official Records of Williamson County, Texas, same being the westernmost corner of that certain remnant portion of a 56.000-acre tract of land conveyed to Parmer/1431 Partnership by instrument recorded in Volume 1273, Page 941 of the Official Records of Williamson County, Texas;

THENCE with the southerly boundary line of said 4.011-acre Williamson County tract, same being a northerly boundary line of said Parmer/1431 Partnership remnant tract, N78°48'01"E for a distance of 14.20 feet to a capped iron rod found on a point being the southeasterly corner of said 4.011-acre Williamson County tract, same being the southwesterly corner of said 3.716-acre Krienke tract, for the southwesterly corner and POINT OF BEGINNING hereof;

THENCE with the easterly line of said 4.011-acre Williamson County tract and the westerly line of said 3.716-acre Krienke tract N45°13'47"W for a distance of 67.04 feet to a point for the most westerly corner hereof

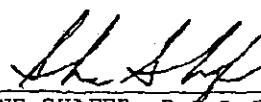
THENCE departing the easterly line of said 4.011-acre Williamson County tract, through the interior of said 3.716-acre Krienke tract, the following two (2) courses and distances:

- 1) N46°51'50"E for a distance of 33.48 feet to a point at the beginning of a non-tangent curve to the right for the most northerly corner hereof;

- 2) Along said non-tangent curve to the right, having a radius of 2213.00 feet, a delta angle of  $2^{\circ}12'33''$ , an arc length of 85.33 feet, and a chord which bears  $S42^{\circ}01'54''E$  for a distance of 85.32 feet to a capped iron rod set on a point in the southerly boundary line of said 3.716-acre Krienke tract, same being a northerly boundary line of said Parmer/1431 remnant tract, for the southeasterly corner hereof, from which a  $1/2''$  iron rod found on a point at an ell corner in the northerly boundary line of said Parmer/1431 remnant tract, same being the southeasterly corner of said 3.716-acre Krienke tract, bears  $N78^{\circ}48'01''E$  a distance of 269.27 feet;

THENCE  $S78^{\circ}48'01''W$  for a distance of 34.62 feet to the POINT OF BEGINNING hereof and containing 0.055 acres of land, more or less.

<> **DIAMOND SURVEYING, INC.**  
516 LEANDER ROAD, GEORGETOWN, TX 78626  
(512) 931-3100

  
SHANE SHAFER, R.L.S. NO. 5281  
DSI PARCEL NO. 104D-SR-9-10-03

9/11/03  
DATE



## SKETCH TO ACCOMPANY METES AND BOUNDS DESCRIPTION

FOR A 0.055 ACRE TRACT OF LAND SITUATED IN THE WASHINGTON ANDERSON SURVEY, ABSTRACT NO. 15, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF A 3.716 ACRE TRACT OF LAND CONVEYED TO THEOPHIL R. KRIENKE, JR. AND SHARON R. KRIENKE BY INSTRUMENT RECORDED IN DOCUMENT NO. 2002004728 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS.

LINE TABLE

L1	N46°51'50"E	33.48'
L2	N78°48'01"E	14.20'
L3	S78°48'01"W	34.62'

CURVE DATA

C-#	RADIUS	DELTA	LENGTH	CHORD	CH BEARING
C-1	2183.00'	1°45'30"	67.00'	67.00'	N42°15'25"W
C-2	2183.00'	3°29'58"	133.33'	133.31'	N47°19'57"W
C-3	2213.00'	2°12'33"	85.33'	85.32'	S42°01'54"E

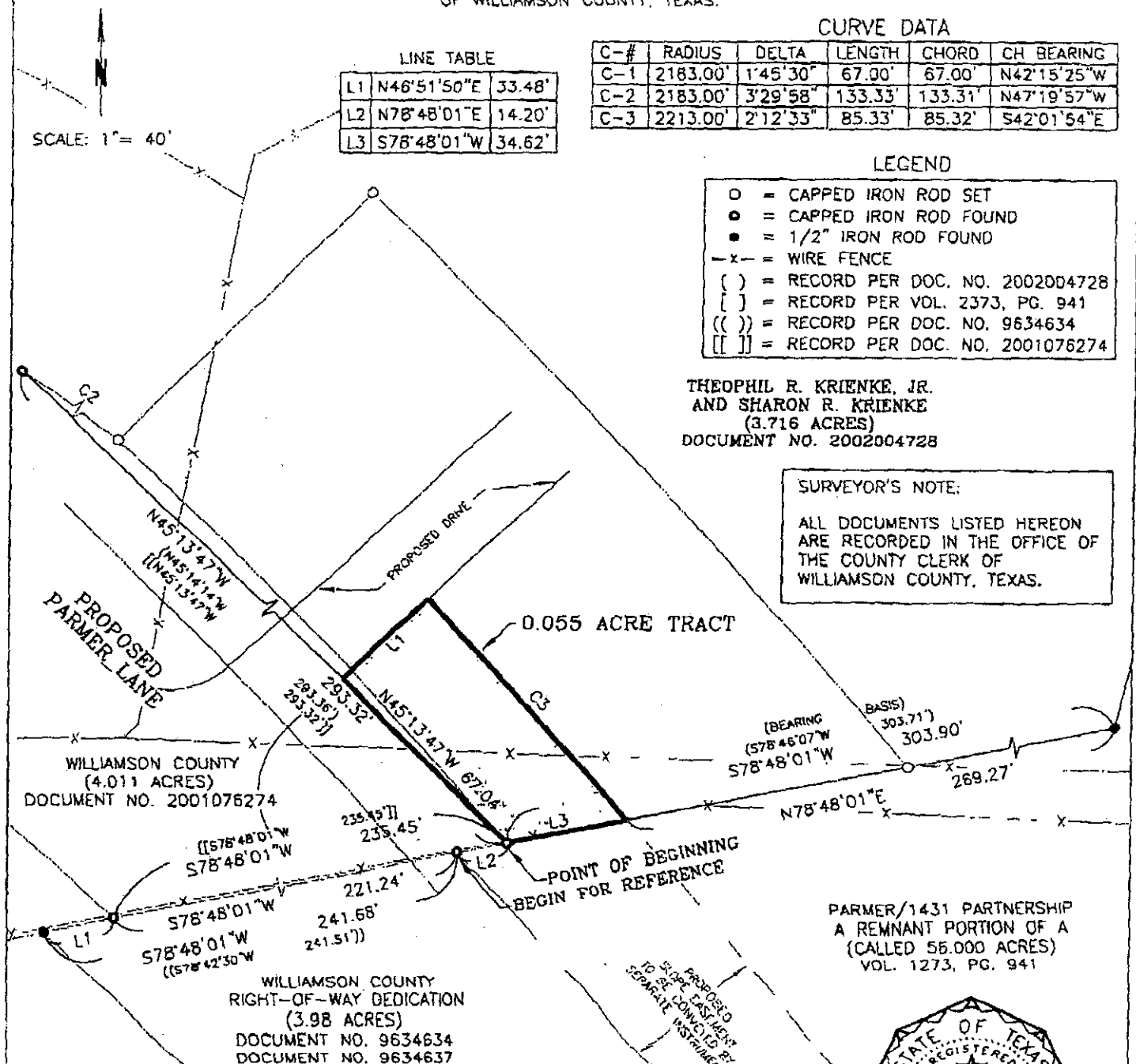
LEGEND

○	= CAPPED IRON ROD SET
●	= CAPPED IRON ROD FOUND
•	= 1/2" IRON ROD FOUND
-x-	= WIRE FENCE
( )	= RECORD PER DOC. NO. 2002004728
[ ]	= RECORD PER VOL. 2373, PG. 941
(( ))	= RECORD PER DOC. NO. 9634634
[ [ ] ]	= RECORD PER DOC. NO. 2001076274

THEOPHIL R. KRIENKE, JR.  
AND SHARON R. KRIENKE  
(3.716 ACRES)  
DOCUMENT NO. 2002004728

## SURVEYOR'S NOTE:

ALL DOCUMENTS LISTED HEREON  
ARE RECORDED IN THE OFFICE OF  
THE COUNTY CLERK OF  
WILLIAMSON COUNTY, TEXAS.



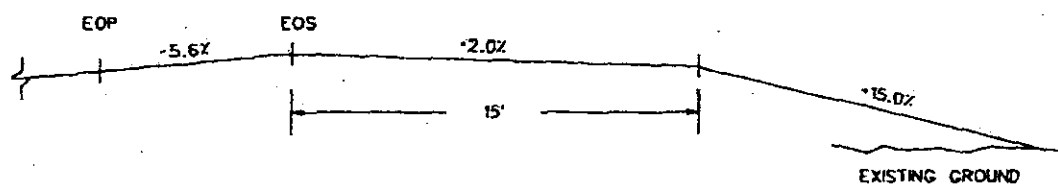
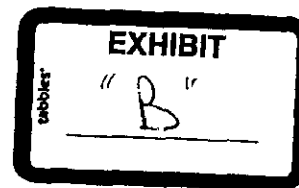
I, Shane Shafer, Registered Professional Land Surveyor in the State of Texas, hereby certify that this plat represents a survey made on the ground under my direct supervision, completed on June 5, 2002. At the time of this survey there were no encroachments, conflicts, or protrusions apparent on the ground, EXCEPT AS SHOWN. This survey was performed in connection with the Title Report described in Case No. 2002 RR 232263-W (00199) of Austin Title Company. USE OF THIS SURVEY BY PARTIES FOR PURPOSES OTHER THAN INTENDED SHALL BE AT THEIR OWN RISK AND UNDERSIGNED SURVEYOR IS NOT RESPONSIBLE FOR ANY LOSS RESULTING THEREFROM.

SHANE SHAFER, R.P.L.S. No. 5281

DATE

<>

D.S.I. PARCEL #104-D SE  
DIAMOND SURVEYING, INC  
516 LEANDER ROAD, GEORGETOWN, TX 78626  
(512) 951-3100



KRIENKE DRIVEWAY - STA 8+90

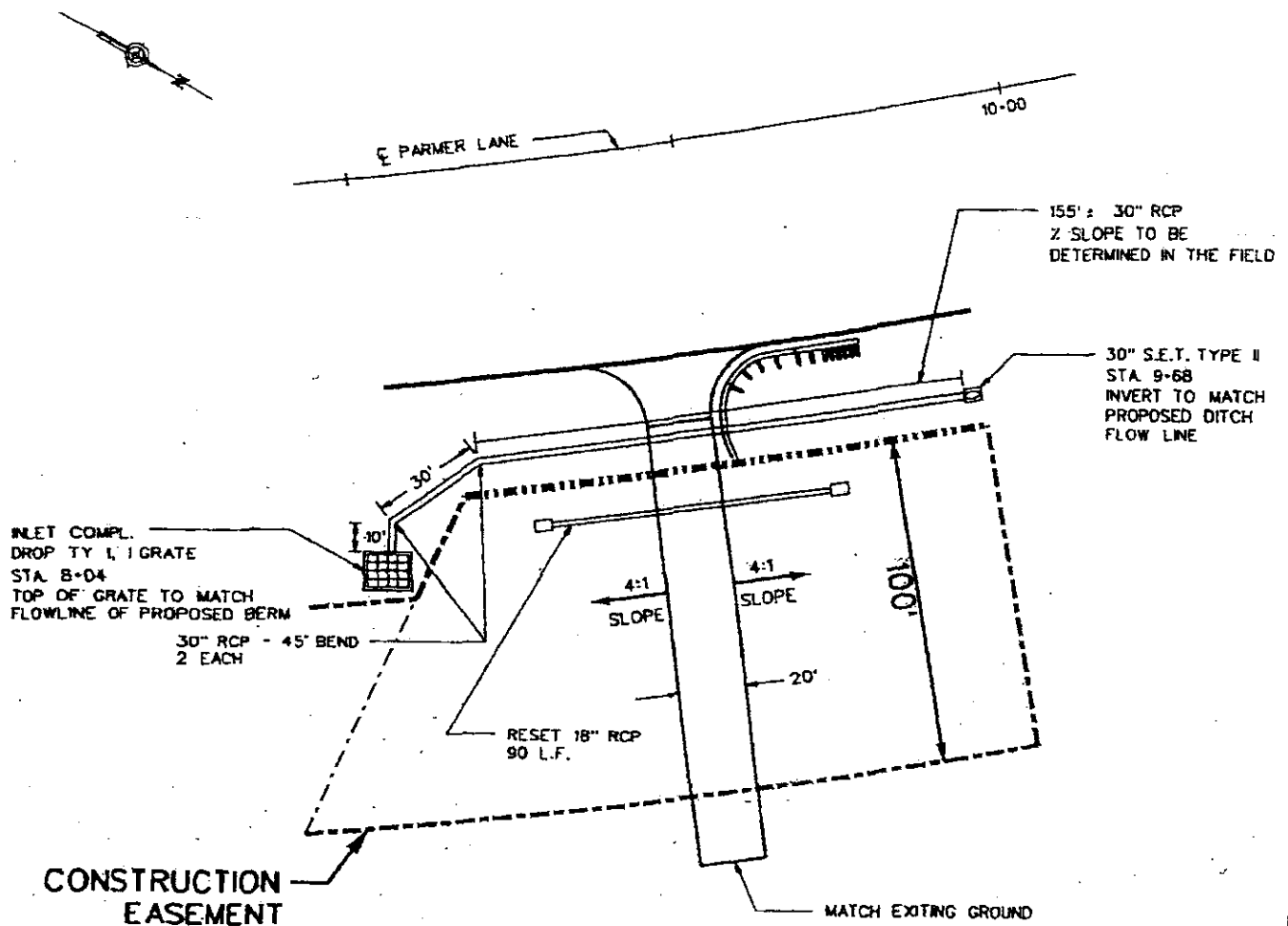
N.T.S.

WILLIAMSON COUNTY  
ROAD BOND PROGRAM 2003  
PARMER LANE SOUTH - PHASE I

**HNTB** ARCHITECTS ENGINEERS PLANNERS  
THE HNTB COMPANIES  
14 BULLOPE ROAD  
PUEBLO, COLORADO 81001-3944

DWG DATE: 10/7/03

DWG BY: BDH



# DRIVEWAY PLAN STA 8+90

N.T.S.

WILLIAMSON COUNTY  
ROAD BOND PROGRAM 2003  
PARKER LANE SOUTH - PHASE I

**HNTB**

ARCHITECTS ENGINEERS PLANNERS  
THE HNTB COMPANIES  
110 WALLINGTON ROAD  
FOLK RICH, TEXAS 75081 (936) 244-1000

DWG DATE: 10/7/03

DWG BY: BDH

**AGENDA ITEM 29****Comments from commissioners.**

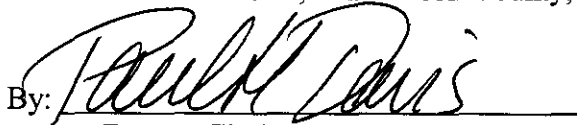
**Commissioner Curlee** noted the birthday of Deputy County Clerk Paul Davis (April 21). He also noted that he has enjoyed working with the Commissioners' Court.

**Commissioner Boatright** thanked **Commissioner Curlee** for his time and work on this Court.

**COMMISSIONERS' COURT ADJOURNED AT 11:26 A.M. ON TUESDAY, APRIL 27, 2004.**

THE FOREGOING MINUTES recorded on Minutes Pages 1 through **185** inclusive, had at a Special Session of Commissioners' Court of Williamson County, Texas, having been read are hereby approved this 4th day of May, 2004.

ATTEST: Nancy E. Rister, Clerk County Court & Ex-officio Clerk,  
Commissioners' Court, Williamson County, Texas

By:   
Deputy Clerk