

KENT NEAL MCMILLAN

418 Ridgewood Road  
Austin, Texas 78746  
(512) 445-5441 Office  
(512) 447-0746 Fax

Registered Professional Land Surveyor

Texas Registration Number 4341  
email: kentmcm@swbell.net

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**Surveyor's Report No. 15-884B**

*Upon a Resurvey of the Boundaries of Lot 8 in Block "P" of DRIVING PARK ADDITION in the City of Austin, Travis County, Texas*

**General :**

The purpose of this report is to discuss the evidence that supports my determination of the actual shape and location of Lot 8 in Block "P" of DRIVING PARK ADDITION.

**Map No. 15-884A Accompanies Report :**

I have prepared Map No. 15-884A entitled "Map of Resurvey of Lot 8 in Block 'P' of DRIVING PARK ADDITION in the City of Austin, Travis County, Texas" to accompany this report and to show where I determined the boundaries of Lot 8 to be in relation to various survey markers and other evidence. This report supplements that map and gives some necessary historical background and discussion of methodology.

**Most Recent Conveyances :**

By Warranty Deed dated April 21, 2014 recorded as Doc. No. 2014060349 in the Travis County Real Property Records (TCRPR), Aurora R. Castillo conveyed to Harsh Doshy and Vijay Doshy property described as Lot 8 in Block "P" of DRIVING PARK ADDITION according to the plat recorded in Book 2 at Page 206 of the Travis County Plat Records (TCPR). Vijay Doshy in turn conveyed his interest in Lot 8 to Priyanka Doshy by Warranty Deed dated May 1, 2015 (Doc. No. 2015069733), also describing Lot 8 by reference to the recorded plat of DRIVING PARK ADDITION.

Lot 8 in Block "P" as shown upon the plat of DRIVING PARK ADDITION is bounded by Willow Street on the North, by Chicon Street on the West, by the Alley through Block "P" on the South, and on the East by the West line of Lot 7.

Lot 7 in Block "P" is presently owned by Daniel P. Gomez, holding the same under a Warranty Deed dated November 12, 1979 executed by Jesse Pena Gomez and wife, Carmen Perez Gomez, recorded in Volume 6776 at Page 2112 of the Travis County Deed Records (TCDR). In the deed to Daniel P. Gomez, the land conveyed is also described by reference to the plat of DRIVING PARK ADDITION recorded in Book 2 at Page 206 TCPR.

**History of Lots 7 and 8 in Block "P":**

Lots 6, 7, and 8 were originally conveyed by Colorado Townsite Company, the subdivider of DRIVING PARK ADDITION, to Mrs. Otilie Jessen (aka Mrs. O. Jessen) by two deeds. Lot 8 was conveyed to her by Warranty Deed dated May 14, 1910, filed for record March 5, 1912, and recorded in Volume 251 at Page 193 TCDR. Lots 6 and 7 were conveyed to her by Warranty Deed dated February 29, 1912, filed for record March 5, 1912, and recorded Volume 251 at Page 191. In those deeds, the lots conveyed to Mrs. Jessen were described by reference to the recorded plat of DRIVING PARK ADDITION. While both deeds gave the dimensions of the lots as being each 48 ft. by 140 ft., the deeds also referred to the recorded plat "for a better description". That plat gives dimensions of 48 ft. by 140.5 ft. for the lots.

Mrs. Jessen then conveyed Lot 6 to Louis Cherico by Warranty Deed dated July 20, 1912, filed for record January 10, 1920, and recorded in Volume 316 at Page 147 TCDR. She later conveyed her remaining Lots 7 and 8 to Richard H. Ebner by Warranty Deed dated April 24, 1922 recorded in Volume 348 at Page 445 TCDR. In these two conveyances, as in the case of the deeds by which the land was conveyed to Mrs. Jessen by the subdivider, the lots were described by reference to the plat of DRIVING PARK ADDITION. The earlier recital that the lots were 48 ft. by 140 ft. was omitted, evidently recognizing that the lots are actually shown as being 48 ft. by 140.5 ft. upon the record plat.

After his purchase from Mrs. Otilie Jessen, Richard H. Ebner held Lots 7 and 8 until 1932 when, by Warranty Deed dated December 10, 1932, recorded in Volume 486 at Page 276 TCDR he sold Lot 7 to W.R. Vinson and wife, Leoti Vinson. The purchase price of \$400.00 recited in that instrument indicates that Lot 7 was unimproved at the time. By Gift Deed dated April 23, 1934, Richard H. Ebner conveyed Lot 8 to Monroe Ebner and his wife, Olivia Ebner. In both of the deeds given by Ebner, the lots are described by reference to the recorded plat of DRIVING PARK ADDITION.

**Plat of DRIVING PARK ADDITION:**

The above instruments, beginning with the earliest deeds out of the subdivider and ending with the most recent conveyances, all describe the land conveyed as Lots 7 and 8 by reference to the record plat of DRIVING PARK ADDITION. Accordingly, that plat provides the primary description of the boundaries of Lot 8.

The plat of DRIVING PARK ADDITION recorded in Book 2 at Page 206 TCPR was filed for record May 3, 1910 and recorded on May 6, 1910, evidently by the County Clerk or one of his deputies laboriously copying the original map presented by the subdividers, Charles Rogan and W.B. Anthony, for record. What is almost certainly the original map of DRIVING PARK ADDITION is on file at the Texas General Land Office (GLO) as Map No. 2024. A reduced copy of this map appears on the following

page. The map bears the date of 04/26/1910 and the initials of one "McD" who was probably a GLO draftsman named H. F. McDonald. It is unusual for a plat of a subdivision of private land in which the State of Texas held no interest to be on file at the GLO, but in this case one of the subdividers was Charles Rogan, who had served as Commissioner of the GLO a few years before and who apparently was able to have draftsman McDonald make the map of DRIVING PARK ADDITION for him.

While the original plat of DRIVING PARK ADDITION at the GLO is more legible in all details than the version recorded in the Travis County Plat Records, neither plat gives any of the following data:

- any indication of markers set at lot or block corners or even any monument at all,
- any bearing noted for any lot or block line (beyond just the North Arrow drawn on the map in relation to which the bearings of the North-South streets scale as N22°30'E to a rough approximation and the East-West streets scale as roughly S67°30'E), or
- any indication that the plat represents any survey upon the ground.

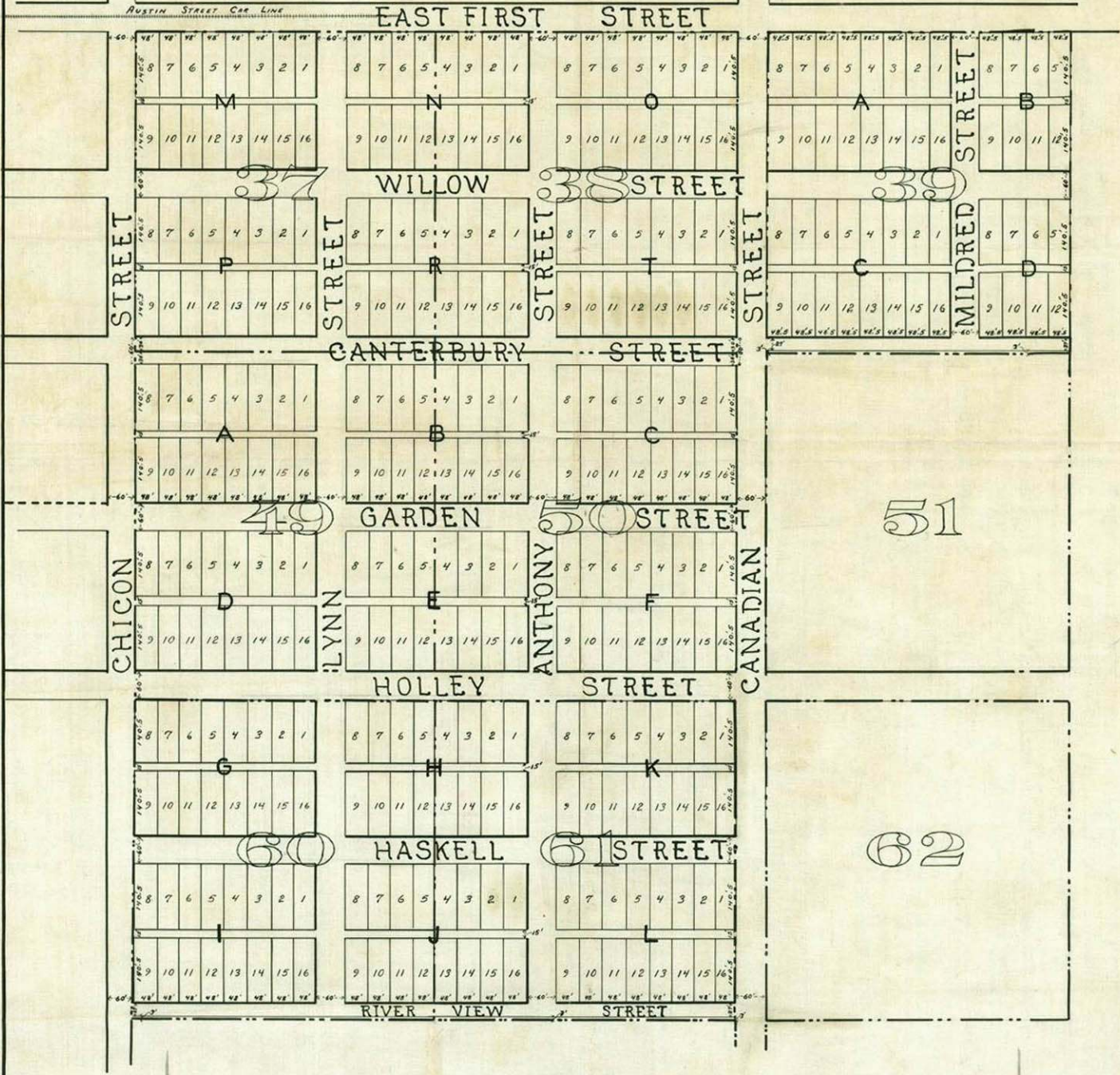
What the record plat of DRIVING PARK ADDITION does show is the subdivision into blocks and lots of the tracts known as Outlots 37, 38, 49, and 50 in Division "O" lying between Chicon Street and Canadian Street (the latter being presently known as Robert Martinez, Jr. Street, but to which I'll refer by its older name of "Canadian Street" in this report for consistency with the historical records) and between Holly Street and East 1st Street (presently known as East Cesar Chavez, but to which I'll also refer by its older name for purposes of consistency with records). The plat shows Chicon and Canadian Streets as being 60 ft. in width and the land lying between the East line of Chicon and the West line of Canadian divided into three North-South tiers of blocks of lots 8 x 48 ft. in nominal extent East and West with two additional 60 ft. wide North-South streets, Lynn and Anthony Streets, laid out between the blocks.

**Plat of DRIVING PARK ADDITION Probably Not from Survey :**

From the absence of survey data such as angles between street lines or any mention of monuments, and from the fact that the original plat of DRIVING PARK ADDITION was evidently a product of the drafting room at the GLO rather than the office of a surveyor or engineer responsible for having laid it out, I concluded that most likely the layout of DRIVING PARK ADDITION was largely made on paper as a theoretical scheme rather than as a direct reflection of an actual survey on the ground.

For comparison, the plat entitled "Plan of DRIVING PARK ADDITION NO. 2, Composed of Outlot 62 Div. O in the City of Austin, Travis County, Texas" recorded in Bk. 2 at Pg. 240 TCPR shows what plainly was the result of a survey on the ground. That plat states that it was "surveyed and staked out by M.V. Homeyer, C.E. June 5th to 7th, 1912" and indicates that monuments were set to mark the block and lot corners. It states that iron pipes 2-1/2 ft. x 1-1/4 in. were set at the block corners and that all other lot

PLAN OF  
**DRIVING PARK ADDITION**  
 Composed of Out-Lots 37, 38, 39, 49, 50, 60, & 61.  
 DIVISION "O" in the CITY OF AUSTIN.  
 Travis County, Texas.



51

62

SCALE, 1 INCH = 200 FEET.

TRAVIS-CITY PARK ADDITION  
 Driving Park Addition  
 3/89 1/3 Reduction  
 Woodbury  
 1000  
 K-5-P2  
 2034

corners were marked with 2 ft. x 2 in. x 2 in. painted stakes, almost certainly of wood. That same plat of DRIVING PARK ADDITION NO. 2 gives the angles that the lines of Holly St., Haskell St., and Riverview St. make in relation to the line of Canadian St. The 1910 plat of DRIVING PARK ADDITION shows none of those details and so is properly regarded as a theoretical scheme to be applied to the land when the blocks would be later actually laid out and the lots marked on the ground.

#### **Wood Stakes Most Likely at Lot Corners :**

It is reasonable to think that the lots of DRIVING PARK ADDITION were marked upon the ground in some manner at the time of the offering for sale by Colorado Townsite Company. It is also reasonable to think that some markers were in place showing the lines of a lot when a house was built upon it. Considering how commonly wood stakes were used in 1912 and before to mark the corners of lots in subdivisions, however, unless it can be shown that some more permanent markers were placed in the course of the original layout of DRIVING PARK ADDITION prior to sale of the lots, I consider the presumption that wood stakes were used to be quite reasonable.

There is evidence that by 1916 iron pipes were in place marking some lot corners in DRIVING PARK ADDITION. For example, a map of a survey of the South Half of Block "T" between Anthony and Canadian Streets, made in January, 1916 by R.A. Muenster, one of City Engineer M.C. Welborn's assistants (City Engineer's Plan 2-F-656), indicates that a handful of markers alternately described as either "iron stake" or as "iron pipe stake" were in place in the vicinity. However, the Assistant City Engineer reported finding no existing markers at any corner of the eight lots comprising the South Half of Block "T" that were the subject of the survey. I interpret this to mean that most likely the "iron stakes" and "iron pipe stakes" reportedly found had been placed by surveys made at various times between 1910 and 1916 and that the lots had not been originally marked by permanent stakes at the time of platting.

#### **Excess Between Chicon St. and Canadian St. :**

This last fact is important in that the best evidence is that the actual distance between the East line of Chicon Street and the West line of Canadian Street is significantly in excess of the distance of 1272 ft. to which the dimensions sum that are given upon the plat of DRIVING PARK ADDITION for the intervening blocks and streets. For example, the plat of FAIR GROUNDS ADDITION, a Subdivision of Outlots 23 & 24 in Division "O" on the North side of East 1st Street recorded in Book 2 at Page 181 TCPR based upon a survey made prior to June 26, 1909 by then Austin City Engineer, George S. Iredell and Assistant City Engineer, M.C. Welborn, shows a total distance of 1277.6 ft. between the East line of Chicon and the West line of Canadian along the North line of East 1st Street immediately North of Outlots 37 and 38. That is an excess of 5.6 ft. over the DRIVING PARK ADDITION plat dimensions. By comparison, my modern resurvey found an excess of 5.46 ft. between the East line of Chicon and the West line of Canadian along the centerline of East 1st Street, which I consider to agree quite well with the 1909 work

by Iredell and Welborn.

The plat of FAIR GROUNDS ADDITION Showing Subdivisions of Outlots 39, 49, 50 & 60 in Division "O", executed by Charles Rogan and W. B. Anthony recorded April 4, 1910 in Book 2 at page 203 TCPR shows a distance of  $2 \times 637.2 \text{ ft.} = 1274.4 \text{ ft.}$  between the East line of Chicon Street and the West line of Canadian Street along the South line of East 1st Street rather than the distance of 1272 ft. reflected by the plat of DRIVING PARK ADDITION executed by W.B. Anthony and recorded roughly a month later. That distance shown on the earlier map is 2.4 ft. in excess of the dimensions later given on the plat of DRIVING PARK ADDITION.

A survey made the Austin City Engineer's staff on July 14, 1910 (City Engineer's Field Book 7 ) also reported a distance of 1277.8 ft. between survey markers found marking the East line of Chicon St. and the West line of Canadian Street on the North line of East 1st. St. In other words, records of surveys made around the same time as DRIVING PARK ADDITION, and even plats made by the same subdivider show a significantly greater distance between Chicon and Canadian than the plat of DRIVING PARK ADDITION does.

Locating Block "P" of DRIVING PARK ADDITION or any of the lots situated within it requires :

- determining whether in fact the excess reflected by the early records mentioned above does exist between Chicon and Canadian Streets along Willow and Canterbury Streets, and
- whether there is an old, established pattern of occupation or evidence of surveys made nearest in time to the original sale and development of lots that should be taken into account in determining how to distribute any excess.

As will be discussed below, along the centerline of Willow St., I found that the distance from the East line of Chicon Street to the West line of Canadian Street is 1277.09 ft., an excess of 5.09 ft. over the distance of 1272 ft. one would deduce from the dimensions given on the plat of DRIVING PARK ADDITION. Along the centerline of Canterbury St., my resurvey found an excess of 4.68 ft. over the plat dimensions. I concluded from the evidence of old occupation that placing an excess of 1.48 ft. in the North line of Block "P" - i.e. making the total frontage of Lots 1 through 8 along the South line of Willow St. 385.48 ft. rather than the length of  $8 \times 48 \text{ ft.}$  appearing on the record plat - fit the pattern of old evidence best and most likely reflected the original layout upon the ground of the lots of DRIVING PARK ADDITION along Willow Street. The evidence that I considered to be most important consisted of :

- the positions of old buildings that had plainly been built nominally on certain lines of the intervening North-South streets, Lynn and Anthony, as the buildings were found

to be positioned by surveys made by the City of Austin Engineering Department in 1928 and 1960, and

- how a survey made by the City of Austin in 1960 found Lots 1 through 8 on the North side of Block "P" fenced and used upon the ground.

#### **Width of East 1st Street:**

While the plat of DRIVING PARK ADDITION does not give a width for East 1st St., by resolution adopted by the Austin City Council on July 23, 1910 (Bk. 4 Pg. 518 City Council Min.), the right-of-way of East 1st. Street from Chicon to the City limits of the day East of Canadian Street was formally recognized by the Council as being 60 feet wide. By a second resolution adopted by the City Council on August 3, 1910 (Bk. 4 Pg. 525 City Council Min.), East 1st Street from East Avenue to the then City limits East of Canadian Street was formally recognized as being "a street of the uniform width of sixty feet".

The above-mentioned survey made along East 1st St. by the City Engineer's staff on July 14, 1910 was clearly made for the purpose of establishing the centerline of that street, i.e. giving the street an officially recognized location. Later records indicate that the City Engineer did afterwards recognize East 1st Street between Chicon and Canadian Streets as having an established centerline.

For example, in a report made to the City Council at its meeting on August 8, 1910 (Bk.4 Pg. 528 City Council Min.), Assistant City Engineer M.C. Welborn reported that in making a survey of Pedernales Street (running East of Canadian Street and approximately parallel with it), he had run a preliminary line in Pedernales "at right angles to the established centre line of East First Street". Less than a year later, a map prepared by City Engineer G.S. Iredell in January, 1911 showing land adjoining Canadian St. and East 1st St. delineates a line identified as "Established Center of East First Street" (City Engineer's Plan 2-F-607). When at its meeting on August 1, 1912, the Austin City Council established the centerline of Holly St. from Chicon St. running East to the Colorado River (Bk. 5 Pg. 290 City Council Min.), that centerline of Holly St. was described as "to be 1424 feet from the *established* center line of East 1st Street" [my emphasis]. In other words, the location of East 1st Street was plainly regarded as officially fixed in position in 1910 and thereafter.

#### **Established Centerline of East 1st Street:**

City records indicate that East 1st St. between Chicon and Canadian was paved in 1929. That segment of the right-of-way of East 1st St. is shown upon the Paving Plat No. 301-116 in the Austin City Engineer's records. The Paving Plat was prepared from a survey made by the City Engineer's staff in October, 1928 (City FB 707 Pg. 18 - 20) that included the centerline of East 1st St. between Chicon and Canadian. The field record of the 1928 survey shows that at the time a concrete monument was in place at East 1st and

Chicon in the position designated No.201 on my Map No. 15-884A at a point on the centerline of Chicon St. 10.00 ft. South of the established centerline of East 1st St. Street car tracks were in place along the centerline of East 1st, which was the reason for the 10 ft. offset line along which markers noted as "iron stakes" were shown to be in place.

Evidently, as a part of the paving work, concrete monuments were placed by the City Engineer's staff along the street centerline. In addition to the concrete monument in the position of No.201 at Chicon, the 1929 Paving Plat shows concrete monuments in place on the centerline of East 1st in the position of No.209 at Lynn St. and No.215 at Anthony St., as well as No.217 at the intersection of the centerlines of East 1st and Canadian Streets.

The following table shows the distances measured in 1928 between the "iron stakes" in place on the 10 ft. offset line, the distances between concrete monuments apparently subsequently placed as shown upon the 1929 Paving Plat and as measured in May, 1931 by other City surveyors (City FB 953 Pg 37).

From-To	1928 Survey FB 707 Pg 18-20	1929 Paving Plat No. 301-116	1931 Survey FB 953 Pg 37	Per my Resurvey
200-209	444.0	443.95	443.89 443.99 Calc.	444.07
209-215	444.0	444.00	444.02	444.18
215-217	449.4	449.05	449.12	449.21

Note that my reconstruction indicates that the distances shown along East 1st St. between Chicon and Canadian on the 1929 Paving plat were systematically short and require correction by a factor of approximately 1.00034 on average.

East 1st / Cesar Chavez is presently a street with heavy traffic including trucks and buses. I did not consider it to be practicable to make excavations to search for any of the concrete monuments that might remain beneath the pavement of that street. It could in theory be done very early in the morning with enough traffic control devices, but given that I had the advantage of a relatively accurately measured survey in 1960 that gave ties to the monuments on the centerline of 1st Street from other points that could be reestablished with relative certainty, and given that the resulting discrepancies were minimal, I judged it not worth the considerable effort that an attempt to uncover and tie any remaining concrete monuments in the positions that I have reconstructed as Nos.200, 209, 215, and 217 would require. I discuss this method of reconstruction below.

**No Excess Between East 1st St. and Holly Street:**

The record plat of DRIVING PARK ADDITION shows Holly Street as being 60 ft in width, but does not give a width for East 1st Street. However, a couple of months after the plat was recorded, East 1st was established by the City Council as having a 60-foot uniform width. Running South from the South line of East 1st to the North line of Holly Street, the plat shows the land divided into four East-West tiers of blocks of lots of 140.5

ft. + 15 ft. + 140.5 ft. = 296 ft. in nominal extent North and South with three additional 60 ft. wide East-West streets, Willow, Canterbury, and Garden Streets, laid out between the blocks. The plat dimensions sum to an overall distance of 1364 ft. between the South line of East 1st Street and the North line of Holly Street or a distance of 1424 between the centerlines of the same streets.

The City Council resolution of August 1, 1912 mentioned above that officially established the location of Holly Street, including that part running through DRIVING PARK ADDITION, fixed its centerline a distance of 1424 ft. from the centerline of East 1st Street. This means that the distance between the South line of East 1st St. and the North line of Holly St. exactly agrees with the distance shown upon the plat of DRIVING PARK ADDITION. From that, I concluded that there can be no significant shortage or excess to be distributed among the intervening blocks between East 1st and Holly St. There should be sufficient space between them to give Block "P" within which the subject lot is situated its full North-South dimension of 140.5 ft. + 15 ft. + 140.5 ft. = 296.0 ft.

#### **Later Surveys by City of Austin Engineering Department :**

The task of determining where Block "P" is located upon the ground consisted of the following :

- determining the location of the established centerline of East 1st St. between Chicon and Canadian Streets,
- locating the 60 ft. wide right-of-way of Willow Street parallel with the established centerline of East 1st and at the distance from it given by the dimensions of the intervening lots and alley on the record plat of DRIVING PARK ADDITION,
- locating the 60 ft. wide right-of-way of Canterbury Street parallel with the established centerline of East 1st and at the distance from it given by the dimensions of the intervening lots, street, and alleys on the record plat of DRIVING PARK ADDITION,
- determining the location of the established centerline of Chicon Street and locating the East line of Chicon Street bounding Block "P" at a distance of 30 ft. East of that centerline, and
- determining the location of the West line of Lynn Street in the location that best fits the evidence showing where it was originally laid out.

I found various records of old surveys made by the City Engineering Department that give what I consider to be the information most useful for accomplishing the above. These are the following City Engineering Field Books (FB):

FB 707 Pg.18	10/__/1928	Survey along East 1st St.
FB 984 Pg. 8	08/24/1931	Survey along Chicon N of 1st
FB 953 Pg.37	05/23/1931	Survey along East 1st St.
FB 973 Pg.49	02/06/1934	Survey along Chicon N of 1st
FB 1153 Pg.57	05/03/1938	Survey along Chicon St. S of 1st
FB 1171 Pg.30	08/09/1938	Survey along Canterbury St.
FB 1256 Pg.58	06/04/1940	Survey along Lynn St.
FB 1414 Pg.42	01/05/1946	Survey along Chicon St.
FB 1414 Pg.44	01/07/1946	Survey along Chicon St.
FB 1697 Pg.2	11/02/1950	Survey along Willow St.
FB 2488 Pg. 47-71	12/10/1960	Surveys throughout DRIVING PARK ADDN.

In addition to the above field records of the City's surveys, I found that the following maps and plans on file in the City Engineering Department records contain information that was useful for my resurvey:

Paving Plat 301-116	03/14/1929	East First Street, Chicon to Llano
Centerline Map R-34	12/01/1937	Chicon St., East 1st to Manor Road
District Map 15	08/20/1940	East 7th to Holly St., Comal to Canadian St.

#### **Centerline Monument at Chicon Street and East 1st St. :**

From examination of the above records, it is clear that the City Engineer placed a concrete monument at some time prior to October, 1928 to mark a point on the established centerline of Chicon St, 10.00 ft. South of the established centerline of East 1st St. The City Engineer's monuments were typically 1/4-inch copper pins set in concrete below pavement grade protected by a cast iron box with a cover. Generally, these monuments have survived well if not destroyed by utility construction. The records show that this monument has been historically considered by the City Engineer to fix the location of the centerline of Chicon St. South of East 1st, including along the West side of DRIVING PARK ADDITION. However, I determined that the position of that monument presently falls in a traffic lane at the intersection of East 1st and Chicon where in my judgment it would be both dangerous and difficult to excavate the monument to discover whether it still exists and to make careful measurements to it if it does.

By other means, I was able to reconstruct the position of the Concrete Monument shown as Point No.201 on my Map No. 15-884A with what I consider to be satisfactory accuracy for the purposes of this survey. As shown upon my map, I located three of the City Engineer's monuments on the centerline of Chicon St. running Northerly from East 1st St.: Concrete Monument No.102 at East 2nd, No.100 at East 4th, and No.101 at East 5th. These three monuments were essentially on one straight line and I judged them to remain in place undisturbed. I located Point No.201 as the reconstructed position of the concrete monument on Chicon at East 1st St. by projecting the line Southerly defined by the above three concrete monuments found on the established centerline of Chicon and used the distance that early City surveys had measured between Concrete Monument

No.102 at East 2nd and the concrete monument at Chicon and East 1st St. to compute the position of that monument in East 1st St. shown as Point No.201 on my map.

From-To	Centerline Map R-34	1931 Survey FB 984 P.18	1934 Survey FB 973 P.49	District Map 15	Actual per resurvey
201-102	362.43	362.43	362.52	362.52	362.54
102-100	704.50	704.50	704.53	704.66	704.77
100-101	348.00	348.00	348.02	347.82	348.10

The distances shown upon the Centerline Map of Chicon Street North of East 1st Map No. R-34 dated 1937 were evidently based upon the 1931 survey as the agreement is exact. Comparison of the actual distances from Concrete Monument No.102 to No.100 and from No.100 to No.101 discloses that the 1931 measurements were systematically shorter than the actual distances. According to my resurvey measurements, the 1931 measurements need to be corrected by a scale factor of about 1.00030 to fit what is actually on the ground, a correction factor that is nearly identical to the average value deduced above between the concrete monuments on the centerline of East 1st St. That means that the distance of 362.43 ft. that was reported from Concrete Monument No.102 to Point No.201, the concrete monument at Chicon and East 1st St. was more likely actually closer to being a distance of 362.54 ft. I adopted that value and found that it agreed well with other ties made in 1938 and 1960 from the concrete monument at Chicon and East 1st to points South of East 1st St.

**Chicon Street Laid Out in 1840 :**

Block "P" of DRIVING PARK ADDITION is a part of a tract of land known as Outlot 37 in Division "O" of the City of Austin that was laid out in 1840 by a surveyor named S.C. Wiltse with whom the Republic of Texas contracted to subdivide the thousands of acres of land that the Republic had purchased on the North side of the Colorado River within which the original City of Austin had been laid out the year before. Mr. Wiltse's contract was specifically to survey and subdivide the remainder of the so-called Government Tract into large lots known as "outlots" of various sizes and there is evidence that he and his assistants and laborers did in fact survey and mark them on the ground using the tools of the day: surveying chains and compasses.

The Republic of Texas separately arranged with a draftsman named William H. Sandusky to produce a map showing the various lots that Mr. Wiltse had laid out. That map entitled "A Topographical Map of the Government Tract Adjoining the City of Austin" is the main surviving record of the 1840 survey, showing the numbers of the outlots and the layout of streets providing access to them. There is no reason to doubt that the 1840 Sandusky map was used in connection with the sale of the outlots, but what survives of the original map itself is a third-generation tracing of a tracing. As a secondary work, it is suspect in many of its details, but, by default, has been accepted as authoritative in the absence of evidence to the contrary.

The 1840 Sandusky map clearly shows the street presently known as Cesar Chavez (formerly East 1st St.) bounding Outlots 37 and 38 on the North, Holly Street bounding Outlots 49 and 50 on the South, Chicon Street bounding Outlots 37 and 49 on the West, and Robert Martinez Jr. Street (formerly Canadian St.) bounding Outlots 38 and 50 on the East. For the sake of simplicity, in the following discussion, I'll use the names East 1st St. and Canadian Street which appear in most of the historical records.

East 1st, Holly, Chicon, and Canadian Streets were not dimensioned on the Sandusky map, but have been recognized by the City authorities as having rights-of-way 60 ft. in width since 1910 or before. The 1840 Sandusky map that showed East 1st, Holly, Chicon, and Canadian Streets as originally laid out did not give not any survey dimensions or call for marks on the ground that would definitely fix the locations of the streets. Generally, the locations of East 1st, Holly, Chicon, and Canadian Streets have been settled by a combination of actions by the Austin City Council under authority of the City Charter and by early surveys made by the Austin City Engineer in the early 20th century as an officer of the City.

#### **Centerline of Chicon Street South of East 1st Street:**

The location of the centerline of Chicon St. South of East 1st shown upon my map No. 15-884A is what was recognized as the centerline of the 60 ft. right-of-way of Chicon for most of the 20th century. A confusion was introduced in 1958 by a survey made by the City Engineering Department staff when paving for this part of Chicon was being planned. That survey ran a line from the Concrete Monument on the centerline of Chicon at East 1st St. but using an angle that was in error by about  $0^{\circ}04'$  to determine the direction of the established centerline from the monument line 10 ft. offset from the centerline of East 1st West of Chicon. The 1958 City surveyors followed a theory that the centerline of Chicon running southerly made a counter clockwise angle of  $90^{\circ}15'$  or  $90^{\circ}15'30''$  from that offset monument line, rather than  $90^{\circ}10'$  or  $90^{\circ}11'$  as previous surveys by the City Engineer had reported the angle to be.

Records of the surveys made by the City Engineer before 1958 consistently indicate that the established centerline of Chicon South of East 1st St. makes a clockwise angle of  $89^{\circ}48'$  with the centerline of East 1st to the East of Chicon. In other words, the angle 209-200-208 shown upon my map at Point No.200 at the intersection of the centerlines of East 1st and Chicon as being  $89^{\circ}47'13''$  is consistently shown in all of the City Engineer's records from before 1958 that I examined as being  $89^{\circ}48''$ . The residual difference of  $0^{\circ}00'47''$  between those records and my reconstruction is one that for various reasons I do not consider to be significant since other evidence shows my reconstruction of the established centerline of Chicon St. to be correct.

Earlier surveys had either found or set iron pipes on the established centerline of Chicon at the intersections of Canterbury St. (City FB 1171 Pg.30; August, 1938) and Riverview St. (City FB 1414 Pg.44; January, 1946). These surveys placed the centerline of Chicon St. South of East 1st in a location that was in essential agreement with the centerline of

Chicon shown upon the plat of POPE'S RESUBDIVISION (Bk. 3 Pg. 57 TCPR) prepared by a very reputable local engineer named O.E. Metcalfe from a survey that he made in late 1916 and early 1917. Mr. Metcalfe marked the corners of the blocks in POPE'S RESUBDIVISION with concrete monuments, some of which still exist. For example, Concrete Monument No.168 at the Northwest corner of the intersection of Chicon and Haskell Streets is most likely the original Southeast corner of Lot 48 of POPE'S RESUBDIVISION placed in 1916 or 1917 by Mr. Metcalfe as shown upon the record plat. Mr. Metcalfe's plat indicates that Concrete Monument No.168 was 30 ft. distant from the centerline of Chicon Street as he found it then, and later City surveys found the distance to be 29.86 ft. (City FB 1153 Pg.57; May, 1938), 29.84 ft. (City FB 1414 Pg.44; January, 1946) and 29.88 (same City FB; notation by "C.R.S" evidently added in December, 1960).

I used the measurement of 29.88 ft. noted in 1960 to determine Point No.202 on the centerline of Chicon St. opposite Concrete Monument No.168 , but considering that Point No.202 is 1737.39 ft. distant from the position of Concrete Monument No.201 on the centerline of Chicon St. at East 1st, and Lot 8 in Block "P" lies opposite points on the centerline of Chicon that are less than 516.45 ft. from Point No.201, for the purposes of determining the East line of Chicon St. bounding Lot 8 in Block "P", either the 1946 measurement of 29.84 ft. or the 1960 measurement of 29.88 ft. give essentially identical locations of the West line of Lot 8 in Block "P".

Curb and gutter was laid along Chicon St. South of East 1st St. and paving placed at some time after May, 1958 and before December, 1960. In the process of construction, presumably most of the nails, pipes, and other markers that had previously been in place along the established centerline were destroyed. Point No.206 shown on my map is where I reconstructed the position of the iron pipe with a tacked wooden plug ("tack in IP"; City FB 1171 Pg.30) that in August, 1938 was recognized by a City surveyor as marking the intersection of the established centerline of Chicon and the centerline of Canterbury St. in DRIVING PARK ADDITION. This reconstruction was based upon the ties measured in 1938 by the City surveyor to objects that still exist, namely crosses chiseled in the tops of nearby storm sewer inlets, a distance measured from Concrete Monument No.201 at East 1st, and the distances measured to various features along Canterbury Street from the centerline of Canterbury Street run East from the "tack in IP" formerly in place at Point No.206.

Point No.206 shown upon my map falls exactly upon a line run from the position of Concrete Monument No.201 at East 1st to Point No.202, 29.88 ft. distant from Mr. Metcalfe's Concrete Monument No.168 at the corner of POPE'S RESUBDIVISION and demonstrates that the location of the centerline of Chicon Street shown upon my map is the centerline of Chicon Street as shown upon virtually all City records prior to 1958.

**Centerline of Canterbury Street :**

The centerline of Holly Street between Chicon and Canadian was established in 1912 by the Austin City Council at exactly the distance from the centerline of East 1st Street given by the plat of DRIVING PARK ADDITION given the width of 60 ft. recognized by the City Council for East 1st. That means that to lay out the plat upon the ground, the centerlines of the 60 ft. wide rights-of-way of Willow, Canterbury, and Garden Streets in DRIVING PARK ADDITION should be parallel with the centerline of East 1st and at the distances given by the record plat. That is, the centerlines of Willow Street and Canterbury Street should be 356 ft. and 712 ft. distant from the centerline of East 1st St., respectively, and parallel with the centerline of East 1st between Chicon and Canadian.

The records of the City Engineer show two surveys that the City Engineer's staff made, one in 1938 and one in 1960 that located a line that the City surveyors regarded as the centerline of Canterbury St. I was able to reconstruct the line that the 1960 survey had run in Canterbury (City FB 2388 Pg. 47-71) with what I consider to be more than adequate confidence. This is the line shown upon my Map No. 15-884A as running from Point No. 205 at Chicon and Canterbury to Bolt No.145 at Lynn and Canterbury.

Bolt No.145 was beneath the asphalt surface of the pavement and I judged it to most likely be the identical "St. Pin Set" shown at the intersection of Canterbury and Lynn Streets in the record of the 1960 survey before the asphalt pavement was placed (City FB 2388 Pg.59&60). I reconstructed the centerline shown in that same record to pass through Bolt No.145 and to pass certain curb inlets at distances that agreed well with those measured in 1960 to the same inlets from the centerline as run then. The following table shows the comparisons

Feature	Station / Offset per 1960 City Survey	Station / Offset per my resurvey
Point No. 205	0+00	0+00
Begin Inlet on North Curb	0+33.40, 14.63 ft. Lt.	0+33.43, 14.58 ft. Lt.
End Inlet on North Curb	0+40.67, 14.68 ft. Lt.	0+40.70, 14.63 ft.Lt.
Begin Inlet on South Curb	0+33.10, 15.30 ft. Rt.	0+35.00, 15.24 ft. Rt.
End Inlet on South Curb	0+43.09, 15.26 ft. Rt.	0+43.14, 15.22 ft. Rt.
Begin Inlet on South Curb	4+09.85	4+09.80, 14.76 ft. Rt.
End Inlet on South Curb	4+13.45, 14.77 ft. Rt.	4+13.57, 14.75 ft. Rt.
Bolt No.145	4+44.18	4+44.26

This placed Point No.205 in the position in which the 1960 City survey indicated that a “nail & cap” was set in the recently constructed pavement of Chicon St. at the supposed intersection of the centerlines of Chicon and Canterbury Streets. The 1960 surveyors were plainly using the data from a survey made by the City in 1958 that marked lines for construction of the curb and gutter in Chicon between East 1st and Holly St. (City FB 2275 Pg.33). The 1958 data was based upon the idea that the centerline of Chicon St. made a counter-clockwise angle of  $90^{\circ}15'$  with the monument line 10 ft. South of the centerline of East 1st St. running West from Chicon rather than  $90^{\circ}10'$  or  $90^{\circ}11'$  as the records of all prior surveys I have examined reflect. In other words, the 1958 survey ran a line for the supposed centerline of Chicon that veered progressively eastward from the established centerline of Chicon as the distance South of the monument at 1st and Chicon increased.

By the time that the 1958/1960 surveys reached the intersection of Canterbury St. in DRIVING PARK ADDITION, the supposed centerline was actually 0.79 ft. East of the established centerline of Chicon as recognized by prior surveys. On my map, Point No.205 is the position of the “nail & cap” set in 1960 and Point No.207, 0.79 ft. West of there, is actually on the established centerline of Chicon St.

The centerline of Canterbury St. run by the City surveyors in 1960 (shown in City FB 2488 Pg.47-71) is in essential agreement with the location of the centerline of Canterbury St. run by City surveyors in August, 1938 (shown City FB 1171 Pg.30) as demonstrated by the ties to the same curb inlets mentioned in the table above. The City survey of Canterbury in August, 1938 was made from a survey marker described as a “tack in IP” (tack in a wooden plug in an iron pipe) then in place on the centerlines of Chicon and Canterbury at a distance reported as 702.0 ft. from the concrete monument at Chicon and E. 1st (on the centerline of Chicon and 10.00 ft. South of the centerline of E. 1st).

That “tack in IP” was reported in 1938 to be distances of 36.8 ft. and 39.3 ft. from crosses cut on the tops of the concrete curb inlets shown on Map No. 15-884A on the North and South sides of Canterbury, respectively. I found what are almost certainly the same chiseled crosses in place on the tops of those inlets and determined that my reconstruction of the position of the “tack in IP” at Point No.206 on the centerline of Chicon St. is 36.51 ft. and 39.37 ft. distant from the same crosses. Considering the geometry of the situation, I concluded that the tie of “36.8” ft. shown in the field book to the cross on the North inlet was probably actually a measurement of 36.5 ft. that got misrecorded. Otherwise, if the distances of 36.8 ft. and 39.3 ft. are used to reconstruct the position of the “tack in IP” at the intersection of the centerlines of Chicon and Canterbury, there is no line that can be run from that point for the centerline of Canterbury that would fit the ties to the concrete curb inlets from the centerline as shown in the record of the 1938 survey.

The record of the 1938 survey shows the “tack in IP” that was in the position that I've reconstructed as Point No.206 to have been on the centerline of Chicon St. 702.0 ft. from the Concrete Monument at Chicon and East 1st Streets that my work indicates was in the

position of Point No.201. The distance from Point No.201 to Point No.206 is 701.93 ft., which I consider to be good agreement with a distance measured with a steel tape as the 1938 measurement would have been.

Note that the angle 201-205-145, between the 1960 "centerline" of Chicon and the 1960 centerline of Canterbury according to my reconstruction of both, is  $90^{\circ}16'32''$ , which is essentially exactly the angle of  $90^{\circ}16'30''$  measured in 1960 according to the record of that work (City FB 2488 Pg.47).

**Centerline of Willow Street :**

In the course of that same 1960 survey shown in (City FB 2388 Pg. 47-71) a line was also run for the centerline of Willow Street equidistant between the centerlines of East 1st and Canterbury Streets. The record of that work gives ties by station and offset from the centerline of Willow St. to concrete curb inlets that remain in place along Willow St. as well as a tie to Bolt No.145 set in the course of that 1960 work at the intersection of Canterbury and Lynn St.

Feature	Station / Offset per 1960 City Survey	Station / Offset per my resurvey
Point No. 204	0+00	0+00
Begin Inlet on North Curb	0+30.0, 15.11 ft. Lt.	0+30.02, 15.06 ft. Lt.
End Inlet on North Curb	0+35.2, 15.11 ft. Lt.	0+35.24, 15.10 ft. Lt.
Fence Iron Rod No.174	0+77.8, Rt	0+77.78, 29.78 ft. Rt.
Ch. Link Fence Post No.111	1+74.2, Rt.	1+74.19, 30.07 ft. Rt
Begin Inlet on North Curb	12+97, 15.87 ft. Lt.	12+97.20, 15.79 ft. Rt
End Inlet on North Curb	13+04.35, 15.86 ft. Rt.	13+04.41, 15.83 ft. Rt
Point No.218	13+36.66	13+36.70

As in the case of the centerline of Canterbury St. run in 1960 as described above, the City surveyors set a "nail & cap" in the newly constructed pavement of Chicon St., in a position that they supposed to be on the centerline of Chicon. The position of this "nail & cap" is Point No.204 according to my reconstruction that fits the various details noted in the record of the 1960 work so well that I believe it to be essentially identical for practical purposes.

I found that Point No.204 is 345.97 ft. distant from Point No.201 in the position of the Concrete Monument on the centerline of Chicon St. and 10.00 ft. South of the centerline of East 1st St. and 355.97 ft. distant from Point No.205 in the reconstructed position of

the nail & cap set in 1960 at Chicon and Canterbury. Both are essentially the same as the distances of 346.0 ft. and 356.0 ft. one would deduce between the respective points from the plat of DRIVING PARK ADDITION, although differ from the distances of 345.88 and 355.88 ft. noted in the record of the 1960 work. That difference is probably best explained as an error resulting from uncorrected effects of thermal expansion on the steel tape that was almost certainly was used in making the measurement, particularly in light of the City survey made in 1938 discussed above that is in essential agreement with my reconstruction.

I also found that the centerline of Willow Street as run by the City surveyors in 1960 is within 0°00'08" of parallel with the centerline run by them for Canterbury Street between Chicon and Lynn St., and similarly parallel with the centerline of East 1st St. as I have reconstructed it from the record of the 1960 survey.

However, as in the case of Canterbury St., I found that Point No.204 in the position where the 1960 surveyors thought the intersection of the centerlines of Chicon St. and Willow St. to be was actually not on the centerline of Chicon, the true intersection being at Point No.207, 0.39 ft. West along the centerline of Willow St. from Point No.204.

#### **Significance of Centerlines of Willow and Canterbury Streets:**

Having satisfactorily reconstructed the centerlines run by the City surveyors in 1960 for Willow and Canterbury Streets, I used the angles and distances measured from various points along those lines as a part of the same 1960 survey to reconstruct the positions of the Concrete Monuments that I show as Points Nos.209, 215 and 217 on the centerline of East 1st St. that they reported in place, finding no significant discrepancies that I think inconsistent with the ordinary errors inherent in the older surveys.

#### **Centerline of Lynn Street :**

The position of the Concrete Monument shown as marking the intersection of the centerlines of East 1st and Lynn Streets on the 1929 Paving Plat 301-116 for East 1st is Point No. 209 on the map of my survey. All surveys of Lynn St made by the City after 1929 reflect the idea that the Concrete Monument No.209 correctly marks the centerline of Lynn St. and that the centerline of Lynn St. running South from East 1st makes a clockwise angle of 89°48' with the centerline of East 1st running easterly from Lynn.

The theory that the City surveyors evidently followed in locating the Concrete Monument at East 1st and Lynn Streets was that the centerlines of Lynn and Anthony Streets should be located the distances of 444 ft. and 888 ft., respectively, from the centerline of Chicon St. as given by the plat of DRIVING PARK ADDITION. By that theory, all of the significant excess distance (5.37 ft.) that exists along the centerline of East 1st between Chicon and Canadian Streets was to be placed in the blocks of lots between Anthony and Canadian Streets instead of making an equitable distribution of that excess as the decisions of Texas courts have held to be proper in similar circumstances.

The line that I show upon my map as the centerline of Lynn Street actually intersects the centerline of East 1st St. at Point No.210, 1.50 ft. East of Point No.209 in the position of the Concrete Monument considered by the City surveyors to be on the centerline of Lynn St. My location of Lynn Street is in what I consider to be good agreement with :

- the location of a building in place on Lot 1 in Block "M" that was apparently built right up to the street line (City FB 707 Pg.18; October, 1928 & City FB 1256 Pg.58; June, 1940),
- the location of a building in place on Lot 8 in Block "R" that was apparently built right up to the street line (City FB 1256 Pg.58; June, 1940)
- Pipe No.156 found on the East line of Block "R" nominally on South side of the alley,
- Pipe No.150 found marking the Southwest corner of Block "N" (although 0.24 ft. East of the location of the East line of Lynn Street shown on my map).

Under the theory followed by the City surveyors, the building on Lot 1 in Block "M" that was built before October, 1928 would have been between 1.3 and 1.5 ft. into the right-of-way of Lynn St.

Similarly, the line that I show upon my map as the centerline of Anthony St. actually intersects the centerline of East 1st St. at Point No.216, 3.80 ft. East of Point No.215 in the position of the Concrete Monument considered by the City surveyors to be on the centerline of Anthony St. My location of Anthony Street is nominally 30 ft. East of the East faces of buildings formerly in place upon Lots 1 and 16 in Block "N" on the West side of Anthony St. Under the theory adopted by the City surveyors, those two buildings would be approximately 3.80 ft. into the right-of-way of Anthony St.

What my map shows is that old evidence of occupation in the form of building improvements reflected a method of distribution of the excess between Chicon and Canadian Streets that was different than that adopted by the City surveyors and more equitable. In my view, the City surveyors' scheme was simply incorrect and contrary to law.

#### **Old Occupation Along Willow Street :**

Having located the centerlines of the streets bounding Block "P", I constructed the lines of the block as lines 30.00 ft. distant from those centerlines and constructed the 15.00 ft. wide alley through the block along a centerline equidistant from the centerlines of Willow and Canterbury Streets.

This gave a total frontage of 385.48 ft. along Willow Street, an excess of 1.48 ft. greater than the frontage of 8 x 48 ft. = 384 ft. that the plat of DRIVING PARK ADDITION reflects. A uniform distribution of that excess along the Willow St. fronts of Lots 1 through 8 in Block "P" would give each 48.185 ft. of frontage in theory.

	As found in 1960 FB 2488 Pg.48 & 49	Theoretical Lot Corners	
Point <u>No.204</u>	0+00		
Fence	0+30	0+29.72	NW Cor Lot 8
Fence	0+77.8	0+77.90	Cor Lots 7 & 8
		1+26.09	Cor Lots 6 & 7
Ch. Link Fence	1+74.2	1+74.28	Cor Lots 5 & 6
Fence	2+22.3	2+22.46	Cor Lots 4 & 5
Fence	2+71.0+/-	2+70.64	Cor Lots 3 & 4
Fence	3+18.0 *	3+18.83	Cor Lots 2 & 3
Ch. Link Fence	3+67.3	3+67.02	Cor Lots 1 & 2
Ch. Link Fence	4+18.8 *	4+15.20	NE Cor Lot 1

What the above comparison of the locations of the fences found in place in December, 1960 near the common lines of Lots 1 through 8 in Block "P" shows is that, with the exception of the measurements to fences marked with an asterisk, the pattern of fencing was generally quite consistent with a more or less uniform excess in the fronts of the lots in the block. In other words, the pattern of occupation that existed in 1960 agreed quite well with my conclusions as to the locations of the lots fronting on Willow St in Block "P".

**Common Line of Lots 7 and 8 :**

As my map shows, I found an old 1/2 in. Iron Rod No.174 in place in the vicinity of the theoretical common corner of Lots 7 and 8 in Block "P". This rod is in a position that falls essentially exactly in line with a fence that the City surveyor found in place in 1960 between Lot 7 and 8. I was unable to discover who had set Rod No.174, but it is presently in Concrete 0.30 ft. East of the center of a 2-inch Galvanized Chain Link Post of a fence that I understood from Daniel Gomez, the owner of Lot 7, had been built by a former owner of Lot 8 at some time after 1979.

Rod No.174 is a piece of #4 Steel Reinforcing Bar with a pattern of deformations that was typically produced in the US after 1947. It is not possible that it was either placed in 1910 when DRIVING PARK ADDITION was platted, or in 1932 when Richard H. Ebner sold Lot 7 (then unimproved) to W.R. Vinson and wife. Rod No.174 is moderately corroded and I found an old scrap of red plastic surveyor's flagging that appeared to have once been affixed to it. My estimate was that Rod No.174 had most likely been set at some time after 1960, possibly in 1979 in connection with a mortgage loan that was made to Mr. Gomez for his purchase of Lot 7. Rod No.174 was clearly in place at the time that the galvanized chain link post was set and concrete poured around it, and so pre-dates the chain link fence running southerly between Lots 7 and 8.

I consider that the above evidence indicates that Iron Rod No.174 is a marker that:

- was established by a surveyor at some time in the past, probably decades earlier,
- perpetuated the position of an older fence that in 1960 was in place between Lots 7 and 8, and
- had been relied upon by the adjacent owners when the chain link fence between Lots 7 and 8 was built.

I set Rod and Cap No.230 as shown upon my map to mark the South corner of Lots 7 and 8 on the North line of the Alley through Block "P". I found that a line run Southerly from Rod No.174, parallel with the East line of Chicon St. to where I set Rod and Cap No.230 at the intersection of the North line of the 15 ft. Alley, fell in an old Fence Post Hole. This gave Lot 8 a frontage of 48.06 ft on the Alley. The common line of Lots 7 and 8 located by this method parallels on average the chain link fence that had been built between the lots and does not place any inequitable shortage in the width of Lot 8. In light of the facts set out above, I consider it to be the proper location of the common lot line.

Iron Rod No.174 is 0.22 ft. North of the South line of Willow St. as located by my survey. Corner No.231 at the North common corner of Lots 7 and 8 as shown on my map falls in a position where I was unable to set a permanent marker. The position is simply too close to the chain link fence to do so. So, as described on my map in the "Key to Survey Marks", Corner No.231 is referenced by Iron Rod No.174 and by a Spike and Washer No.11 that I set in the concrete sidewalk 6.28 ft. away.

#### **West corners of Lot 8 :**

I marked the West corners of Lot 8 on the East line of Chicon St. with Rod and Cap Markers No.226 and 227 as shown upon my map. These Rod and Cap Markers are 30 inches long or more and were set after a landscaping crew had constructed a cedar post and wire panel yard fence on Lot 8.

#### **Permanent Control Points :**

Note that on my Map No. 15-884A, I have also indicated the positions of Spike and Washer Markers Nos.1 through 20. These all were set in holes drilled in existing concrete

curbs and sidewalks and are expected to last well. Note that I have provided accurate coordinates of all points shown on the map, including these Spikes and Washers, expressed within the Texas Coordinate System of 1983 (Central Zone).



Respectfully submitted,

A handwritten signature in black ink that reads "Kent Neal McMillan".

Kent Neal McMillan  
Registered Professional Land Surveyor  
No. 4341