

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 19
DATE: November 4, 2003
STAFF: Matt Baker/
Ron Phillips

SUBJECT

Resolution 2003-122 Accepting a Property Owner Petition Regarding the Initiation of a Special Improvement District, Stating the Need For, the Nature Of, and the Location of the Improvements to Be Made, Describing the Area to Be Assessed for the Same, and Directing the Director of Community Planning and Environmental Services to Prepare and Present to the City Council the Necessary Information for the Formation of Said District

RECOMMENDATION

Staff recommends adoption of the Resolution.

FINANCIAL IMPACT

This Special Improvement District will be financed privately by property owners developing in the proposed district, with normal Street Oversizing Program participation. There will not be any City of Fort Collins Special Improvement District Bonds issued.

EXECUTIVE SUMMARY

Traffic congestion at the Timberline/Prospect intersection is well below the City's Level of Service requirements, with almost all legs and turn movements failing during the AM and PM peak rush hours. In accordance with the Adequate Public Facilities Ordinance, any new development which impacts this intersection cannot proceed until these existing deficiencies are corrected. In the absence of any City Capital Improvement funding for this intersection, two impacted developers are electing to privately fund these improvements in order to proceed with their development projects. These developers are expected to constitute the majority of the property owners within the proposed District. They are proposing the initiation of the District to spread a portion of the costs to other undeveloped property in the area benefited by the improvements through assessments.

This Resolution accepts the petition of one of the participating property owners and directs City staff to prepare the plans and cost estimates. The Resolution is the first step in creating the District. In subsequent actions, City Council will be asked to accept the completed plans, approve the assessment method, hold a public hearing, and then create the SID by Ordinance.

BACKGROUND

Timberline Road, from Drake to Prospect is currently the highest deficiency segment in the City's street network. The Timberline/Prospect intersection experiences failing levels of service in both the AM and PM peak hours. Attempts by the City to create a funding mechanism for the necessary improvements have not been successful.

The City's Adequate Public Facilities (APF) Ordinance does not allow any additional development to impact failing intersections. A conceptual estimate indicates that \$2.3 million is needed to improve the intersection to meet minimum levels of service necessary to allow additional development in the area. The improvements contemplated are:

- Dedicated right turn lanes on all legs of the intersection
- Double left turn lanes on Timberline
- Additional through lanes on Timberline

These interim improvements will add capacity to the intersection, but will not include landscaped medians, concrete paving, enhanced crosswalks, or other elements not necessary to increase levels of service.

There are two large development parcels which are currently affected by the APF Ordinance. The James Company controls 221 acres on the east side of Timberline and north of Drake and is proposing development of approximately 925 residential lots. Timberline-Drake, Inc. is proposing 448 to 682 residential units and 7.2 acres of employment on the west side of Timberline and north of Drake. Neither of these developments can build in the absence of improvements to Timberline/Prospect. These developers have elected to fund the \$2.3 million APF improvements in order to proceed with their development projects.

There are other smaller undeveloped parcels in the one-mile radius area around Timberline/Prospect that are also affected by the City's APF Ordinance. Some have expressed interest in participating in the cost of improving the Timberline/Prospect intersection while others have indicated a desire to wait until the improvements are made before developing.

The James Company and Timberline-Drake Investments have proposed the formation of an SID as a financing mechanism to allow for fair and equitable assessment of all benefitting property owners. The terms of the district would generally be:

1. The amount financed is estimated to be \$2.3 million, or the amount needed to make the "APF" improvements to the Timberline/Prospect intersection.
2. No municipal or City-backed bonds will be issued. Financing will be by the developers, using cash or private placement bonds. The City would be the collection agency for assessments, but would not incur any financial liability. Actual payment of the \$2.3 million by the James Company and Timberline-Drake Investments will not occur until construction bidding (February 2005) to avoid capitalized interest. Security in the estimated amount of \$2.3 million will be necessary in order for development to continue during the formation of the Special Improvement District.

3. It is anticipated that the proposed assessment method will be based on two factors associated with benefitting undeveloped property. These factors are trip generation and proximity to the intersection within a one-mile radius. Efforts will be made to obtain consent of any potentially assessable property owner prior to the creation of the District.
4. The properties included in the SID will begin repayment of their proportionate share (the assessments) upon completion of the construction and final accounting of the costs (tentatively in late 2006).

Providing a 10 year repayment schedule for properties being assessed could be an incentive for properties to participate in the SID without opposition. However, in accordance with the TABOR Amendment, a vote of district properties may be necessary to allow the City to enter into a multi-year obligation to collect assessments over time. The alternative to a 10 year payback is an immediate one time assessment of the full amount due. This one time assessment, without the option to pay in installments, would likely produce a greater protest from any involuntary participants in the District.

The initiating developers will also immediately provide \$100,000 in funds to allow the City to prepare the plans, estimate of costs, and maps of the district in order to complete the engineering design without cost to the City.

The improvements to Timberline along the frontage of the developing parcels will be funded in accordance with normal Street Oversizing Program participation. The entire segment of Timberline from Drake to Prospect, and the Timberline Prospect intersection improvements, are planned to be constructed at the same time in order to reduce the impacts of construction on motorists and to take advantage of cost savings due to economies of scale. A tentative timeline would be:

- November 2003 -- Acceptance of the petition
- November 2003 to August 2004 – Engineering design
- August/September 2004 – Second Resolution Accepting Plans, SID Creation Ordinance, call election within the District for TABOR requirement if necessary
- August 2004 to February 2005 – ROW Acquisition
- March 2005 to August 2006 – Construction
- Assessment Ordinance immediately after construction

Staff has reviewed the form of the petition of the proposed District and find it in compliance with adopted City Council policies regarding Special Improvement Districts. Staff believes the SID proposed for financing the corrections to the Adequate Public Facilities deficiencies is:

- Fair and equitable to undeveloped property owners in the District
- In the public's interest due to the health and safety problems associated with the Timberline/Prospect intersection
- A no risk financial solution to the City to fund improvements

The petition states that the Petitioner can withdraw the petition, as long as the Petitioner does so within five days of the passage of the resolution approving the plans, specifications, map and estimate of the City Engineer. Staff anticipates that this resolution will likely be presented to the Council in the summer or fall of 2004. If the Petitioner does withdraw the petition, it will still be up to the Council to decide whether to rescind the SID proceedings and call a halt to the SID. Even if the SID is terminated, however, the improvements will still be made, assuming that the property owners choose to construct their developments. The developers would then be limited to seeking reimbursement of their funding through reimbursement agreements rather than through the SID.

RESOLUTION 2003-122
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING A PROPERTY OWNER PETITION REGARDING THE
INITIATION OF A SPECIAL IMPROVEMENT DISTRICT,
STATING THE NEED FOR, THE NATURE OF, AND THE LOCATION
OF THE IMPROVEMENTS TO BE MADE, DESCRIBING THE AREA TO BE ASSESSED
FOR THE SAME, AND DIRECTING THE DIRECTOR OF COMMUNITY PLANNING AND
ENVIRONMENTAL SERVICES TO PREPARE AND PRESENT TO THE CITY COUNCIL
THE NECESSARY INFORMATION FOR THE FORMATION OF SAID DISTRICT

WHEREAS, the Council of the City of Fort Collins, Colorado (the "Council") has received a Petition from an affected property owner (the "Petitioner") in the area of a proposed special improvement district (the "District") requesting that the Council initiate proceedings for the creation of the District; and

WHEREAS, the District would be established for the purpose of constructing certain street improvements to Timberline Road between Drake Road and Prospect Road, including the Timberline/Prospect intersection, and

WHEREAS, such improvements are sorely needed to relieve severe traffic congestion in such area of the City; and

WHEREAS, the Council has received the Petition, accepts the same, and desires to proceed with the formation of the District.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS:

Section 1. That the Petition, as submitted by the Petitioner requesting the formation of the District, is hereby received and accepted.

Section 2. That the Petitioner constitutes one percent (1%) of the owners of the area of the property be assessed in the District.

Section 3. That the improvements to be constructed will consist generally of improvements to Timberline Road between Drake Road and Prospect Road, including the Timberline/Prospect intersection, and will include, but need not be limited to, right-of-way acquisition, earthwork, curb and gutter, sidewalk, bicycle lanes, bridge expansion, railroad crossing expansion, drainage improvements, utility relocations, paving and other improvements that are necessary or appurtenant thereto.

Section 4. Such improvements are needed in order to provide adequate access for vehicles and pedestrians to the properties abutting Timberline Road to be improved, in order to relieve severe traffic congestion in the area, and to provide adequate storm drainage and landscaping amenities.

Section 5. That it is hereby recognized that improvements to be constructed in the District will confer special benefits on the real property in the District and general benefits to the City at large.

Section 6. That the nature and location of the improvements to be made in the District are as set forth on Exhibit "A" attached hereto and by this reference incorporated herein.

Section 7. That the Director of Community Planning and Environmental Services is hereby directed to prepare and present to the Council the following:

- a. Preliminary plans and specifications of the improvements described herein; and
- b. An estimate of the probable total cost of such improvements, including the cost of planning, constructing, or otherwise acquiring the same; engineering, legal and advertising costs; interest during construction and until assessments are made by ordinance against the property benefitted, and other incidental costs incurred in the District; and
- c. A map of the District to be assessed for the cost of the improvements.

Section 8. That the area to be assessed for the District improvements described on Exhibit "B," attached hereto and incorporated herein by this reference, shall be approximately as set forth in the Petition heretofore submitted by Petitioner and on file with the City Clerk.

Section 9. That the District shall be known as the Timberline/Prospect Special Improvement District No. 93.

Passed and adopted at a regular meeting of the City Council held this 4th day of November, A.D. 2003.

Mayor

ATTEST:

City Clerk

EXHIBIT “A”

DESCRIPTION OF IMPROVEMENTS

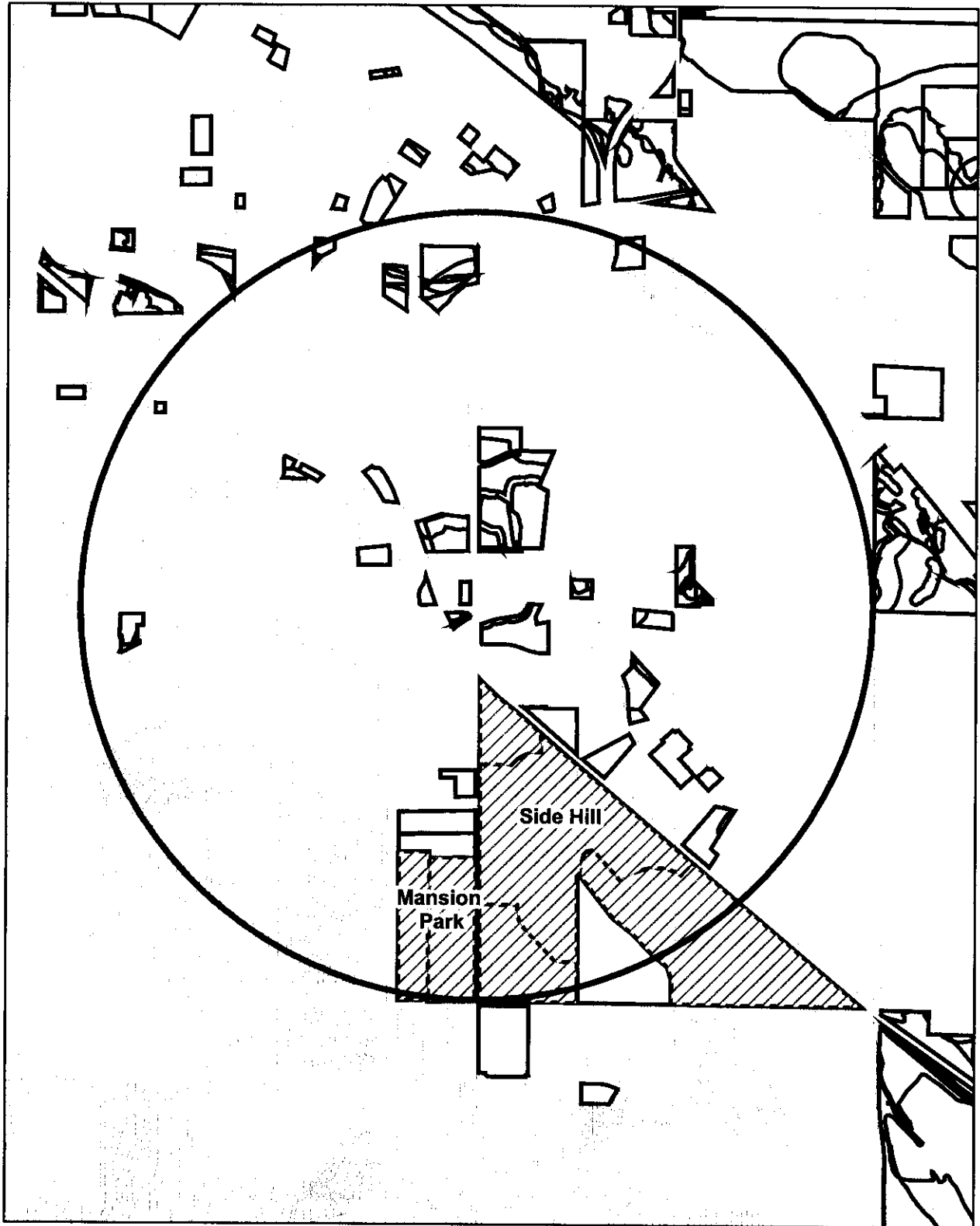
Timberline/Prospect SID # 93

The Timberline/Prospect Special Improvement will generally consist of roadway and intersection improvements to increase capacity at the Timberline Prospect intersection:




- Construction of dedicated right turn lanes on all legs of the intersection
- Construction of double left turn lanes on NB and SB Timberline Road
- Construction of additional through lanes on NB and SB Timberline Road for a total of four lanes
- Extension (widening) of the Timberline bridge over Spring Creek
- Extension of the RR crossing at the Great Western RR spur, including relocation of the existing signal crossing arms and warning devices
- Relocation of an existing high pressure gas main
- Relocation and upgrade of the existing Timberline/Prospect traffic signal
- All incidental utility and drainage work necessary for construction of the improvements
- Acquisition of all necessary ROW and easements

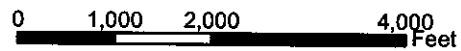
One Mile Radius Around Intersection of Timberline and Prospect

EXHIBIT "B"



Legend

-  Petitioning Properties
-  Buildable Land Inventory
-  Parcels



PROPERTY OWNER'S PETITION AND WAIVER FOR THE ORGANIZATION OF A
SPECIAL IMPROVEMENT DISTRICT FOR CERTAIN IMPROVEMENTS TO
TIMBERLINE ROAD BETWEEN DRAKE ROAD AND PROSPECT ROAD, WITHIN THE
CITY OF FORT COLLINS, COLORADO

PETITION

To the Honorable City Council of the City of Fort Collins:

The undersigned Petitioner, being the owner of certain real property located in the City of Fort Collins, Colorado (the "City") and described on Exhibit "A", attached hereto and incorporated herein by this reference, respectfully petition the City Council of the City (the "Council") to institute the necessary proceedings to authorize the adoption of an ordinance organizing certain street improvements and certain lots and lands that will receive special benefit from said improvements into a special improvement district (the "District") under the provisions of Article III of Chapter 22 of the Code of the City ("the Code"), for the purpose of ordering the construction of said improvements in accordance with such provisions of the Code and in accordance with plans and specifications to be approved by the Council. The boundaries of the District shall be generally as shown on Exhibit "B," attached hereto and incorporated herein by this reference. The Petitioner constitutes the owners of at least one percent (1%) of the area of the property to be assessed in the District.

DISTRICT IMPROVEMENTS

The District improvements requested by the Petitioner (the "Improvements") consists generally of street widening, reconstruction and asphalt paving of Timberline Road between Drake Road and Prospect Road, including the Timberline/Prospect intersection. The Improvements may include, but need not be limited to, right-of-way acquisition, earthwork, curb and gutter, sidewalk, bicycle lanes, bridge expansion, railroad crossing expansion, drainage improvements, utility relocations, paving and other improvements that are necessary or appurtenant thereto.

ASSESSMENTS

The Petitioner understands that, if the District is established by the Council, the costs of acquiring, constructing, or otherwise installing the Improvements shall be assessed against the properties in the District on such terms and conditions, and through such method of apportionment, as may be approved by the Council, and an estimate of such costs shall be more fully described in the estimate to be prepared pursuant to Section 22-35 of the Code.

The entire unpaid principal of such assessment, together with interest accruing thereon to the next assessment interest payment date, shall be immediately due and payable by the seller or transferor of any lot, tract, or parcel in the District prior to the sale or transfer of the same, unless the purchaser or transferee thereof shall acknowledge, in writing, receipt of notice that the seller or transferor is

not paying such assessment in full prior to such sale or transfer and that such assessment against any lot, tract, or parcel shall continue to be a lien thereon. The restriction of this paragraph shall be deemed to constitute a covenant of the undersigned Petitioner running with all properties in the District owned by the Petitioner and shall be binding upon the Petitioner and any subsequent owners of said properties. The Petitioner hereby covenants to take all steps necessary to assure that the restriction contained in this paragraph will be binding upon all owners, from time to time, of their properties in the District, including recordation of this Petition and Waiver, in all appropriate public offices for real property in Larimer County, Colorado. The Petitioner hereby covenants to include such restriction in any documents transferring any interest in said properties to another to the end that such transferee has notice that such transferee is bound by such restriction. The City shall have the right to seek specific performance of the requirements of this paragraph.

WAIVER

The Petitioner, by execution hereof, hereby waives any and all of the provisions of Article III of Chapter 22 of the Code relating to or requiring public hearings, notices, publications, letting of bids, and all other procedural aspects of the creation of the proposed District, the construction of the improvements, the levying of assessments therefor, the limit on assessments as set forth in Section 22-90 of the Code, the maximum cost of improvements as set forth in Section 22-36 of the Code, the provisions of Section 22-81 of the Code relating to apportionment of costs of street intersection improvements, and any right to challenge the manner or amount of the assessments to be made against real property in the District, and further, the Petitioner does hereby agree that the full amount of assessments against the real property in the District, as set forth in the legal documents creating the District, shall be made to pay the costs incurred for the improvements in the District. The Petitioner does hereby agree to hold the City harmless from any loss incurred by the Petitioner or third parties should the City fail to create or fund the proposed District. Any requirements of Article III of Chapter 22 of the Code deemed not waived hereby because of lack of specificity shall in no manner affect the valid waiver of requirements specifically stated herein. This Petition and Waiver may be amended after its submission with the consent of the City Manager for the purpose of adding additional waivers.

WITHDRAWAL OF PETITION

This Petition and Waiver may be withdrawn by the Petitioner or any of its successors in interest as long as any such withdrawal occurs no later than five (5) working days after the Council's adoption of a resolution approving the plan, specifications, map and estimate of the City Engineer pursuant to Section 22-61 of the Code. The Petitioner understands that if the Petition and Waiver is withdrawn by the Petitioner within such period of time: (1) the Council may or may not decide to rescind the SID proceedings pursuant to the Petitioner's request and such decision shall be entirely discretionary with the Council; and (2) if the Council does decide to rescind the SID proceedings, the Petitioner shall be obligated to reimburse the City for any and all costs that may have therefore been incurred by the City in connection with the proposed District.

EXHIBIT A

Legal Description:

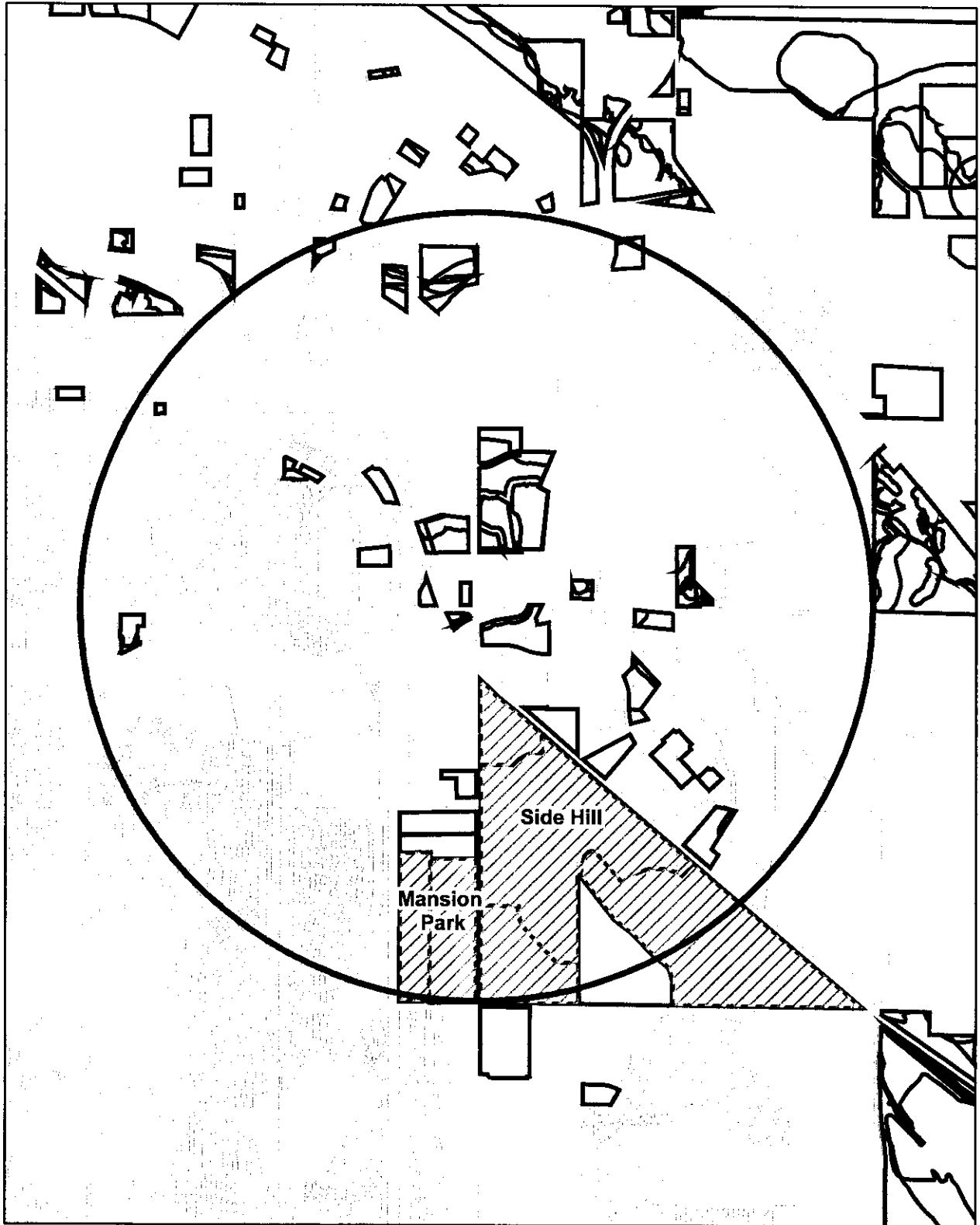
A TRACT OF LAND SITUATE IN SECTION 20, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, WHICH, CONSIDERING THE SOUTH LINE OF SAID SECTION 20 AS BEARING EAST AND WEST, AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, IS CONTAINED WITHIN THE BOUNDARY LINES WHICH BEGIN AT A POINT WHICH BEARS EAST 1337.40 FEET, AND AGAIN $N00^{\circ}51'00''W$ 1748.80 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 20, AND RUNS THENCE $N00^{\circ}51'00''W$ 1479.02 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF THE EXISTING RAILROAD; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, $S50^{\circ}12'00''E$ 5042.05 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 20; THENCE ALONG SAID SOUTH LINE, WEST 2587.66 FEET TO THE SOUTHEAST CORNER OF THE PROPERTY DEEDED TO CARGILL IN BOOK 1383 AT PAGE 143; THENCE ALONG THE EASTERLY AND NORTHERLY BOUNDARY OF SAID PROPERTY DEEDED TO CARGILL, $N00^{\circ}34'00''E$ 339.79 FEET, AND AGAIN $N15^{\circ}14'00''W$ 193.40 FEET, AND AGAIN $N50^{\circ}23'00''W$ 360.30 FEET, AND AGAIN $N42^{\circ}24'00''W$ 246.15 FEET, AND AGAIN $N50^{\circ}48'00''W$ 366.40 FEET, AND AGAIN $N38^{\circ}26'30''W$ 729.12 FEET, AND AGAIN $N77^{\circ}15'00''W$ 36.75 FEET TO THE POINT OF BEGINNING,

AND



A TRACT OF LAND SITUATE IN THE WEST ONE-HALF OF SECTION 20, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO WHICH CONSIDERING THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 20 AS BEARING $N90^{\circ}00'00''E$ AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO IS CONTAINED WITHIN THE BOUNDARY LINES WHICH BEGIN AT THE SOUTHWEST CORNER OF SAID SECTION 20 AND RUN THENCE $N90^{\circ}00'00''E$ 1337.40 FEET ALONG THE SOUTH LINE OF THE SAID SOUTHWEST ONE-QUARTER TO THE SOUTHWEST CORNER OF THE TRACT DESCRIBED IN BOOK 1383 AT PAGE 143 OF THE LARIMER COUNTY RECORDS; THENCE ALONG THE WEST LINE OF THE SAID TRACT ALONG AN EXISTING FENCE LINE, $N00^{\circ}51'00''W$ 1748.80 FEET TO THE NORTHWEST CORNER OF THE SAID TRACT; THENCE CONTINUING ALONG THE EXISTING FENCE LINE $N00^{\circ}51'00''W$ 1480.05 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN RAILROAD; THENCE ALONG THE SAID RIGHT-OF-WAY LINE $N50^{\circ}11'57''W$ 1359.36 FEET AND AGAIN ALONG THE ARC OF A 2914.93 FOOT RADIUS CURVE TO THE RIGHT OF DISTANCE 409.71 FEET, THE LONG CHORD OF WHICH BEARS $N46^{\circ}10'21''W$ 409.38 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 20; THENCE $S00^{\circ}45'40''E$ 1730.46 FEET ALONG THE WEST LINE OF THE SAID NORTHWEST ONE-QUARTER; THENCE $S00^{\circ}35'15''E$ 2651.99 FEET TO THE POINT OF BEGINNING.

One Mile Radius Around Intersection of Timberline and Prospect

EXHIBIT "B"



Legend

-  Petitioning Properties
-  Buildable Land Inventory

0 1,000 2,000 4,000 Feet

