

CITY OF BROOK PARK, OHIO

P/C 6/16/20 Recreation  
Sp. Caucus 8/11/20  
1<sup>st</sup> R 8/11/20 Sp. Council  
2<sup>nd</sup> R 8/12/20 Sp. Council  
3<sup>rd</sup> R 8/13/20 Sp. Council  
B/C

ORDINANCE NO. 11154-2020

INTRODUCED BY: MAYOR GAMMELLA

**AN ORDINANCE  
AUTHORIZING THE CONSULTING ENGINEER TO  
PREPARE A LOT SPLIT AND CONSOLIDATION PLAT  
FOR THE BROOK PARK MUNICIPAL CAMPUS  
AND DECLARING AN EMERGENCY**

**WHEREAS**, the Berea School District Board of Education wishes to dispose of the property and building(s) on the northerly side of Holland Road (aka Brook Park Memorial Elementary School) in the City of Brook Park;

**WHEREAS**, the City of Brook Park wishes to acquire said property and building(s) and authorize the preparation of the legal instruments (plat and legal descriptions) that must be executed in order to facilitate the transfer;

**WHEREAS**, the said Plat will also include the vacations of Memorial Drive and Alva Drive;

**WHEREAS**, the said Plat will include the consolidation of nine (9) blocks and the split of four (4) blocks of land with the respective parcels within the Brook Park Municipal Campus;

**WHEREAS**, the Council and the Mayor of the City of Brook Park desire to enter into a professional services agreement with Euthenics Inc., a copy of which is attached hereto and marked "Exhibit A".

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Brook Park, State of Ohio, that:

**SECTION 1:** The Consulting Engineer is hereby authorized to prepare a Lot Split and Consolidation Plat along with other appurtenant documents.

**SECTION 2:** The Mayor is hereby authorized to enter into a professional services agreement in accordance with the proposal dated May 18, 2020 submitted by Euthenics Inc., a copy of which is attached hereto and marked "Exhibit A".

**SECTION 3:** The money needed to complete the aforesaid transaction shall be paid from the Capital Fund No. 401, theretofore appropriated or to be appropriated for said purpose.

**SECTION 4:** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 5:** This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of said City, and for the further reason that City Council deems it necessary to proceed with the acquisition of the former Brook Park Memorial Elementary School property and building(s) as soon as possible, therefore, provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately from and after its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: August 13, 2020  
Special Council

ATTEST: Michelle Blazak CLERK OF COUNCIL

APPROVED: [Signature] MAYOR  
8/17/2020 DATE

[Signature] PRESIDENT OF COUNCIL

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS

[Signature]  
 DIRECTOR OF LAW

**CERTIFICATE**

Michelle Blazak, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance/Resolution No. 1154-2020 passed on the 13th day of August 2020 by said council.

Michelle Blazak  
 Clerk of Council

I, Michelle Blazak, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at five of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library, 6165 Engle Road, for a period of fifteen days.

commenting August 18, 2020  
Michelle Blazak  
 MICHELLE BLAZAK  
 Clerk of Council

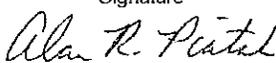
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Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schmuck	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

1154-2020

COMMISSIONER OF LAND

# EXHIBIT "A"

## An Agreement for the Provision of Limited Professional Services

Design Professional: Euthenics, Inc.		Client: City of Brook Park	
8235 Mohawk Drive		6161 Engle Road	
Strongsville, Ohio 44136		Brook Park, Ohio 44142	
Project No. N/A		Date: May 18, 2020	
Project Name: Brook Park Municipal Campus Lot Split and Consolidation Plat (See Letter Proposal Dated May 18, 2020)			
Location: Brook Park Municipal Campus, Brook Park, Ohio 44142			
PPN: 343-16-001, 343-16-002, 343-16-003, 343-16-017, 343-16-019, 343-17-001, 343-17-002 & 343-17-003			
Scope of Services: Engineering and Surveying Services for Lot Split and Consolidation Plat			
- Legal Descriptions			
- Appurtenant Documents (as required)			
Fee Arrangement: \$19,400 (Lump Sum)			
Principals	\$ n/a	Technicians	\$ n/a
Engineer	\$ n/a	Clerical	\$ n/a
Retainer Amounts: n/a			
Special Conditions: n/a			
<b>Offered by:</b>		<b>Accepted by: (Client):</b>	
Signature 		Signature _____ Date _____	
Printed name / title  Alan R. Piatak, Pres.		Printed name / title Signature indicates the authority to bind the company to the terms herein	
<u>The terms and conditions on the reverse of this form are part of this Agreement.</u>			

## TERMS & CONDITIONS

### Fee

The total fee, except stated lump sum, shall be understood to be an estimate, based upon Scope of Service, and shall not be exceeded by more than ten percent, without written approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates shall be those that prevail at the time services are rendered. Reimbursable expenses will include a mark-up of 1.10%. Any change in scope will be discussed prior to additional services being rendered.

### Billings/Payments

Invoices for services and reimbursable expenses shall be submitted, at the Design Professional's option, either upon completion of the services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. A service charge of 1.5% (or the maximum legal rate) per month will be applied to the unpaid balance after 30 days from the invoice date. Design Professional shall have the right to suspend/terminate services if payment is not received within 60 days after the invoice date and the Design Professional shall have no liability for any resultant delays or damages incurred by Client as a result of such suspension/termination. Retainers shall be credited on the final invoice. The Client agrees to pay all costs of collection, including reasonable attorney's fees.

### Standard of Care

In providing services under this agreement, the Design Professional will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Design Professional will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of Design Professional's part of the Project. Regardless of any other term or condition of this Agreement, Design Professional makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

### Consequential Damages

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither the Client nor the Design Professional shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.

### Hidden Conditions

A condition is hidden if concealed by existing finishes or structure or is not capable of investigation by reasonable visual observation. If the Design Professional has reason to believe that a condition may exist, the Client shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Client fails to authorize such investigation after such notification, or (2) the Design Professional has no reason to believe that such a condition exists, the Design Professional shall not be responsible for the existing conditions or any resulting damages or losses resulting therefrom.

### Hazardous Materials/Mold

The Design Professional shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form including mold. The Design Professional shall have no responsibility for an existing or constructed building that may, as a result of post-construction, use, maintenance, operation or occupation, contain or be caused to contain mold substances which can present health hazards and result in bodily injury, property damage and/or necessary remedial measures and costs.

### Indemnifications

The Client agrees, to the fullest extent permitted by law, to indemnify and hold Design Professional and its subconsultants harmless from and against any and all damage, losses or cost (including reasonable attorneys' fees and defense costs) caused in whole or in part by its acts, errors or omissions and those of anyone for whom they are legally liable. The Design Professional further agrees, subject to Risk Allocation below, to indemnify the Client for damages to the extent arising from its own negligent errors acts or omissions.

### Risk Allocation

In recognition of the relative risks and benefits of the Project to both the Client and the Design Professional, the Client agrees, to the fullest extent permitted by law, to limit the Design Professional's total liability to the Client or anyone making claims through the client, for any and all damages or claim expenses (including attorney's fees) arising out of this Agreement, from any and all causes, to the total amount of \$10,000 or the amount of the Design Professional's fee, whichever is greater.

### Termination of Services

This agreement may be terminated upon 10 days written notice by either party should the other fail to perform their obligations hereunder. In the event of termination, the Client shall pay the Design Professional for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

### Betterment

If a required item or component of the Project is omitted from the Design Professional's documents, the Design Professional shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been included or required in the Design Professional's original documents. In no event will the Design professional be responsible for any costs or expense that provides betterment or upgrades or enhances the value of the Project.

### Ownership of Documents

All documents produced by the Design Professional under this agreement, including electronic files, shall remain the property of the Design Professional and may not be used by this Client for any other purpose without the written consent of the Design Professional. Any such use or reuse shall be at the sole risk of Client who shall defend, indemnify and hold the Design Professional and its subconsultants harmless from any and all claims and/or damages arising therefrom. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to Design Professional and its subconsultants.

### Defects in Service

The Client shall promptly report to the Design Professional any defects or suspected defects in the Design Professional's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify the Design Professional shall relieve the Design Professional of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

### Construction Activities

The Design Professional shall not be responsible for the acts or omissions of any person performing any construction Work or for instructions given by the Client or its representatives to any one performing any construction Work, nor for construction means and methods or job-site safety.

### Dispute Resolution

Any claim or dispute between the Client and the Design Professional shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. If the Parties cannot agree upon a mediator the claim or dispute shall be submitted to the American Arbitration Association (AAA) for mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect.

### Relationship of the Parties

All services provided by Design Professional are for the sole use and benefit of the Client. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Design Professional.

### Entire of Agreement

This Agreement constitutes the entire agreement between the parties and these Terms & Conditions may only be amended by written agreement by both parties. Should any portion of this Agreement is found to be illegal or enforceable, such portion shall be deleted and the balance shall remain in effect.

**Applicable Law** The law applicable to this Agreement is the state of the Project location.



May 18, 2020

Mayor Michael D. Gammella  
City of Brook Park  
6161 Engle Road  
Brook Park, Ohio 44142

RE: P.P.N.'s 343-16-001A, -001B, -002, -003, -017, & -019; 343-17-001, -002, & -003;  
Lot Split and Consolidation Plat

Dear Mayor Gammella:

In accordance with your request we have enclosed our proposal to provide the engineering and surveying services required to prepare a Lot Split and Consolidation Plat and legal descriptions for permanent parcel numbers stated above in the City of Brook Park. The legal instruments to be prepared will facilitate transfer of land north of Holland Road that is currently owned by the Berea School District Board of Education (Brook Park Memorial Elementary), the vacation of Memorial Drive and Alva Drive, the consolidation of nine (9) blocks of land, and split of four (4) blocks of land with the respective parcels within the Brook Park Municipal Campus Area.

Our lump sum fee to perform the surveying, prepare the plat drawings and legal descriptions is \$19,400.00 in accordance with Attachment A. We estimate it will take four weeks to complete the survey and drawing once authorization is received. Note that our fee does not include any recording or transfer fees/costs.

Please call if you have any questions. We are ready to begin immediately upon your authorization to proceed.

Very truly yours,  
EUTHENICS, INC.

Edward R. Piatak, P.E.  
Consulting City Engineer

Encls.

F:\Jobs\187\Brook Park Memorial - Lot Split\Brook Park Memorial Lot Cons-Split Plat 051820.docx

**OFFICERS**

A. R. PIATAK, PE, PRESIDENT • E. R. PIATAK, PE, VICE PRESIDENT • D. T. BENDER, PE, SECRETARY • J. L. NEVILLE, PE, TREASURER

**ASSOCIATES**

R. A. BENDER • R. S. WASOSKY, PE, PS • M. E. KIMBERLIN, PE, PS • M. M. PILAT, PE • M. R. COSGRIFF, PE • L. A. BAKER, PE • A. J. MALINAK, PE • S. A. HORAN, PS • A. N. CHUCRAY, PB • B. P. SOPKO, PE

**CITY OF BROOK PARK  
MUNICIPAL CAMPUS LOT SPLIT AND CONSOLIDATION PLAT  
ENGINEERING & SURVEYING SERVICES**

**PART A - LOT SPLIT AND CONSOLIDATION PLAT**

Research - Deeds, Owner Information, etc..	=	26 MH
Develop Lot Split and Consolidation Plat	=	48 MH
	<u>Total =</u>	<u>74 MH</u>

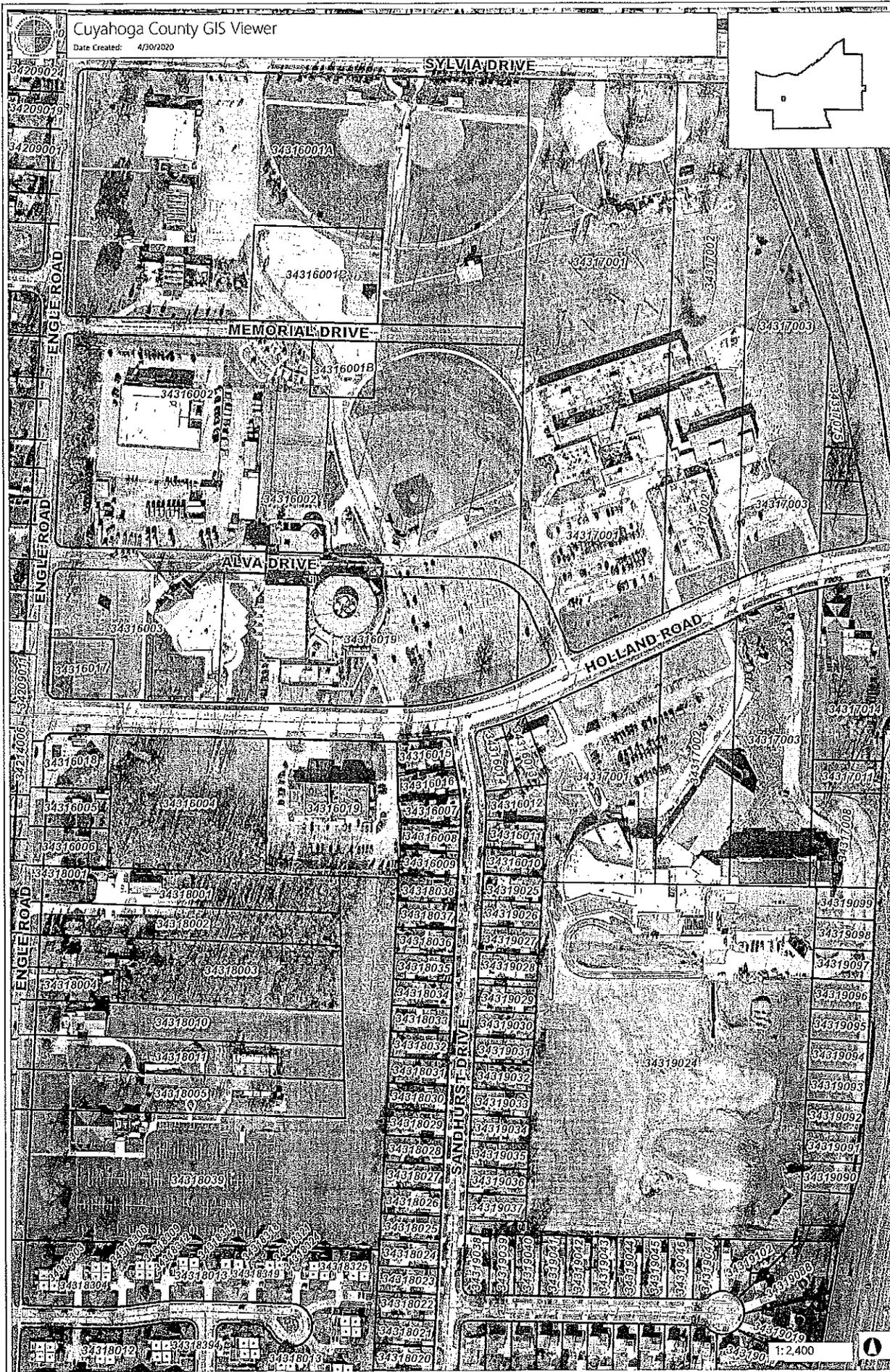
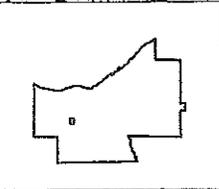
**PART B - SURVEY**

Field locate existing monumentation	=	40 CH
Establish project control	=	13 CH
Set property pins	=	28 CH
Property Owner Notification Letters (9 Properties)	=	5 MH
Office Support	=	2 CH
	<u>Total =</u>	<u>88 CH</u>

**PART C - LEGAL DESCRIPTIONS**

Legal Descriptions (5)	=	20 MH
	<u>Total =</u>	<u>20 MH</u>

Attachment A



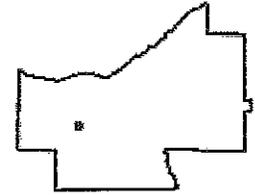
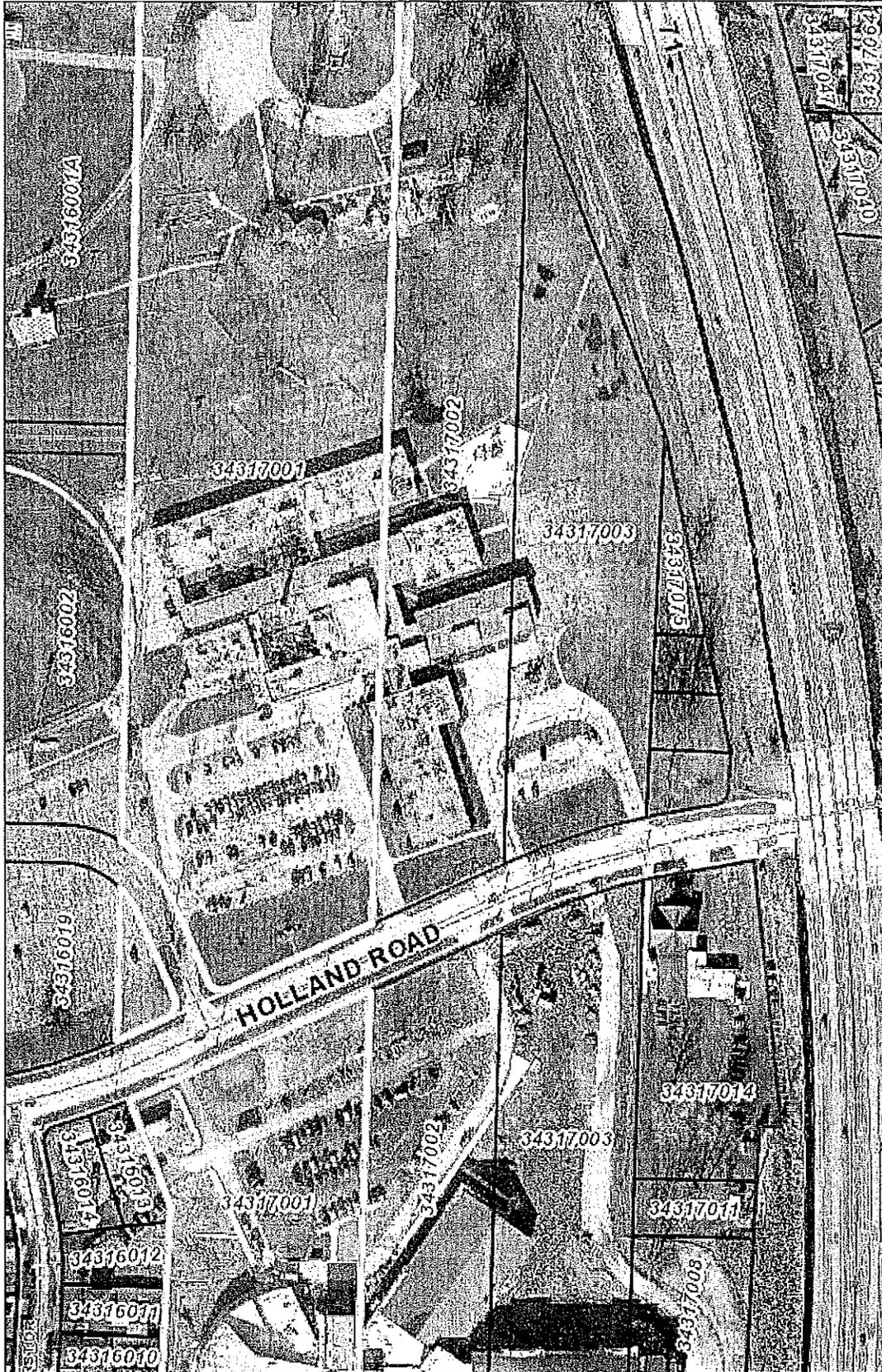
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THIS MAP IS NOT TO BE USED FOR NAVIGATION

Cuyahoga County  
**Enterprise GIS**  
PUTTING CUYAHOGA COUNTY ON THE MAP



# Cuyahoga County GIS Viewer



Date Created: 6/2/2020

### Legend

- Municipalities
- Right Of Way
- Platted Centerline
- Parcel

1:2,400



— Cuyahoga County —  
**Enterprise GIS**  
 PUTTING CUYAHOGA COUNTY ON THE MAP

400 0 200 400Feet

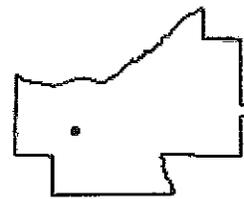
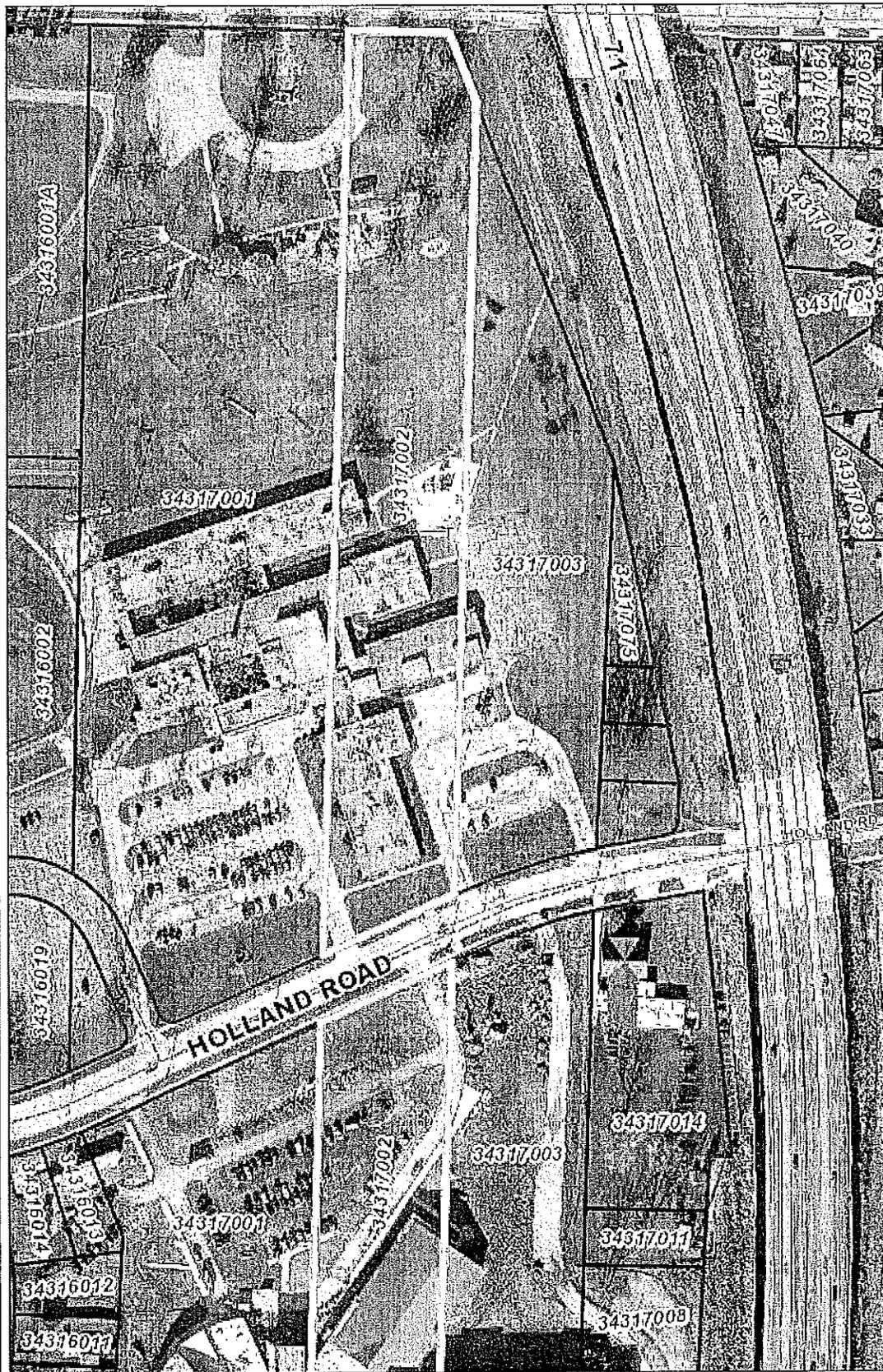
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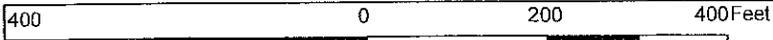
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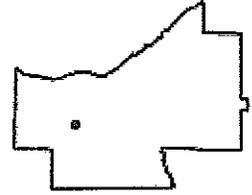
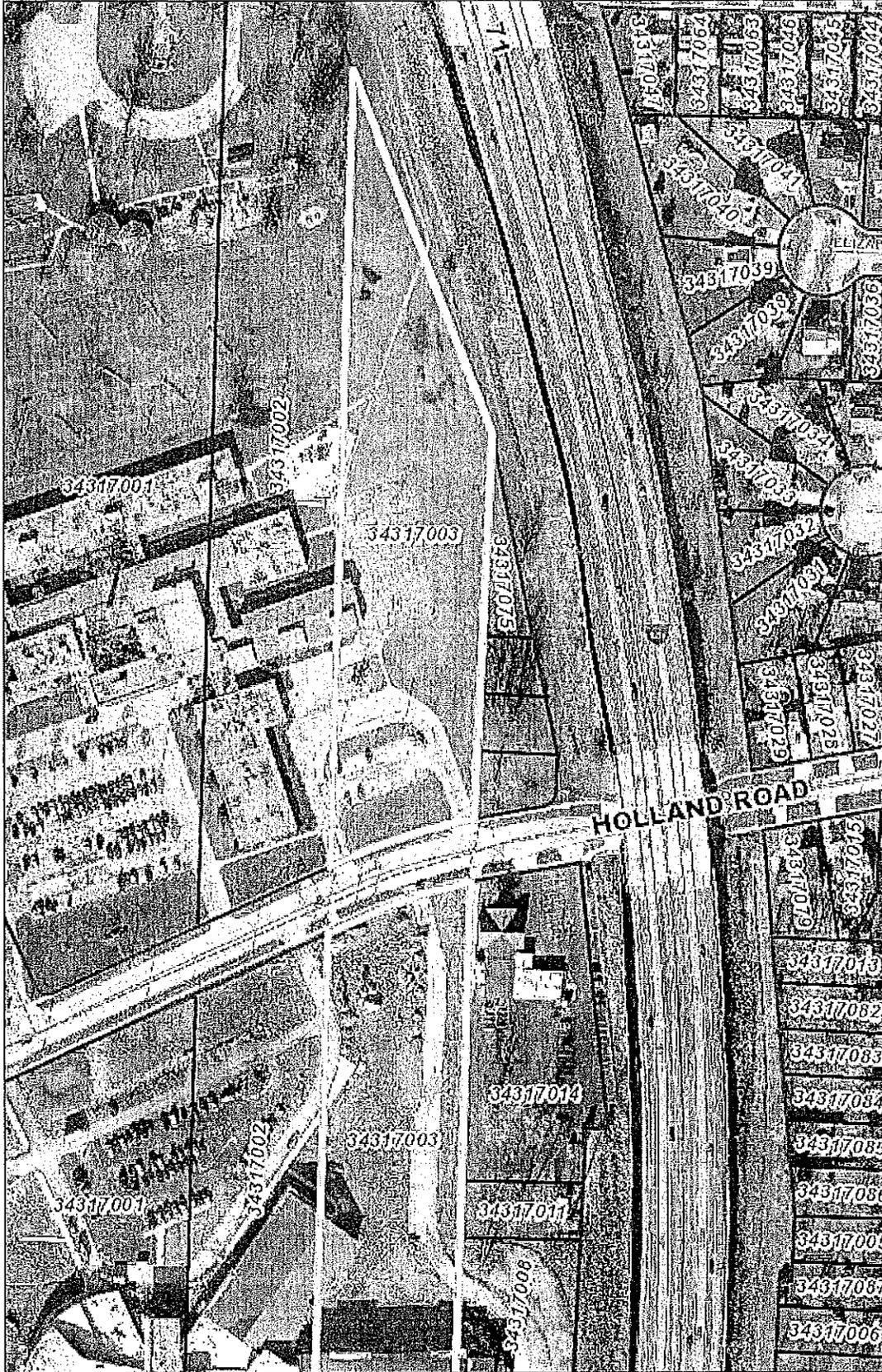
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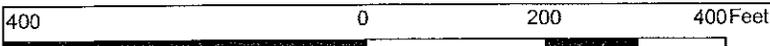
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