



Expanded ADR Project  
Community Mediation Services  
Alachua County Courthouse  
201 E. University Ave  
Gainesville, FL 32601



## MEDIATION AGREEMENT

A Mediation Conference was held at the Alachua County Courthouse, Room 400 on the 10<sup>th</sup> day of February, 1999, from 10:00 a.m. to 2:30 p.m. Perry McGriff served as Mediator. The parties to the mediation are:

James and Jo Brasington  
Carol and John Koogler  
Bonnye and Larry Roose  
Ed and Carole Johnson  
John and Eve Cech

The Kooglers and Cechs were represented at the mediation by Attorney Charles Holden. The Rooses and Johnsons were represented at the mediation by Attorney David Coffey. The Brasingtons were not represented by an attorney. Present on behalf of the City of Gainesville was Teresa Scot, Director of Public Works. Present on behalf of Community Mediation Services was Alyson Carrel, Mediation Program Manager.

The Mediation Conference produced a consensus among the parties to the terms and conditions of this Mediation Agreement. Implementation of this Mediation Agreement is dependant upon approval by the Gainesville City Commission to the following:

1. Repaving of NW 7<sup>th</sup> Lane by the city;
2. Removal by the city of the westernmost existing "french drain" on NW 7<sup>th</sup> Lane; and
3. Removal by the city of the turn around immediately adjacent and west of the "french drain" as reflected on the attached drawing designated Exhibit "A" and marked "removed asphalt";
4. Placement of a pervious surface in the space now occupied by said "french drain" and the removed turnaround;

5. Designation by the City of said pervious area for neighborhood parking as indicated on attached Exhibit "A" and marked "area to be regraded";
6. Retention of the remaining turnaround (west of the turnaround to be removed) with not significant change to its configuration or removal of pine or other trees on the adjacent right of way as marked on Exhibit "A" as "EXIST PVMT EDGE";
7. Extend the repaving to include all paved areas west of the remaining turnaround;
8. Taper the roadway from the remaining turnaround west to the extent practical without causing risk of killing any existing trees or shrubs specified in the License Agreement attached hereto as Exhibit "B", and in particular the large existing camellia bushes, while at the same time assuring the continuity and appearance of the street;
9. Removal of the existing brick pillars indicated on the survey attached hereto as Exhibit "A" and marked "pillars to be removed"; and
10. Determination by the City Arborist of the point at which the tapering of the roadway called for in paragraph 8. above will risk killing trees or shrubs; and
11. Ensuring that all parties to this Agreement are fully advised and consulted of all steps in the decision-making processes of the city in dealing with all of its responsibilities under this Agreement.
12. Acknowledgment that the License Agreement attached hereto as Exhibit "B" exists and it's validity will not be challenged by the City.
13. Implementing the construction procedures as outlined in the Memorandum to Teresa Scott from Meg Niederhofer dated December 6, 1999, with the exception of paragraph 4 entitled "Pine Removal", a copy of said Memorandum being attached hereto as Exhibit "C" and by reference made a part hereof.

The Kooglers and Cechs agree as follows:

1. They will not, in the future, request vacation of the public right of way for NW 7<sup>th</sup> Lane as indicated on the recorded plat of Baker-Broom Plat as recorded in Plat Book "F", Page 8 of the Public Records of Alachua County, Florida, a portion of which is being used for lanscaping as authorized by the License Agreement attached hereto as Exhibit "B".
2. The Kooglers acknowledge that historically storm water drainage from NW 7<sup>th</sup> Lane has flowed onto their property, and they further acknowledge that this storm water drainage onto their property will continue. The elimination of the french drain by the City of Gainesville may slightly increase the flow of storm water from NW 7<sup>th</sup> Land

onto the Kooglers' property, and this fact is acknowledged by the Kooglers. It is understood that the City of Gainesville will not assume any responsibility or liability for such drainage upon the Kooglers' property provided any increase in drainage does not exceed ten (10%) percent of the historical drainage that has drained onto the Kooglers' property.

The Kooglers and Cechs agree to do the following:

1. To permit removal from the public right-of-way by the City of the pillars indicated on the survey attached hereto as **Exhibit "A"**; and
2. Maintain landscaping within the public right-of-way of NW 7<sup>th</sup> Lane in accordance with the landscaping plan indicated in the License Agreement attached hereto as **Exhibit "B"**. It is understood and agreed that from time to time plant material may be changed, but the general landscape plan shall be maintained. Change in plant type and material shall not be treated as a breach of the License Agreement. At no time will plant material further encroach on the existing paved area of the west end of NW 7<sup>th</sup> Lane.

The Kooglers agree to do the following:

Complete construction of a circular drive on Lot 1 of Baker-Broom Subdivision in accordance with the landscaping plan indicated in the License Agreement attached hereto as **Exhibit "B"**, within six (6) months from the date the City completes its work as outlined in this Mediation Agreement.

The Brasingtons, Johnsons and Rooses agree to:


Acknowledge the existence of the License Agreement attached hereto as **Exhibit "B"** and will not challenge the validity of said License Agreement so long as landscaping is maintained by the Kooglers and Cechs in accordance with said License Agreement, and shall not seek to have the License Agreement terminated by the City except in the case of a non-compliance with the terms of the License Agreement by the Kooglers or the Cechs or their successors in interest.

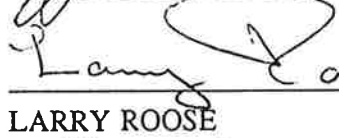
All parties to this Mediation Agreement acknowledge that inherent in the implementation of this Mediation Agreement is the necessity to deviate from some aspects of the License Agreement. All

parties acknowledge that where there is conflict with the provisions of this Mediation Agreement and the License Agreement, the terms of this Mediation Agreement shall prevail.

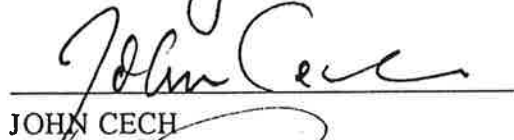
All parties to this Mediation Agreement acknowledge that the intent of this Mediation Agreement is, in part, to ensure that the western most end of NW 7<sup>th</sup> Lane functions as a public right-of-way with full access to the public and makes adequate provision for service vehicles serving abutting properties consistent with the terms and conditions of the aforementioned License Agreement.

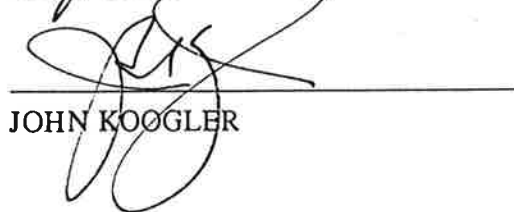
The terms and conditions of this Mediation Agreement are hereby agreed to by all parties to this Mediation Agreement as of this \_\_\_\_\_ day of March, 2000.

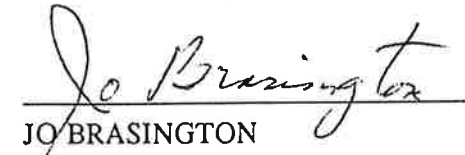
  
\_\_\_\_\_  
JAMES BRASINGTON

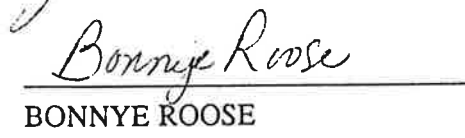
  
\_\_\_\_\_  
LARRY ROOSE

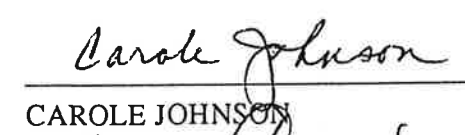
  
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ED JOHNSON

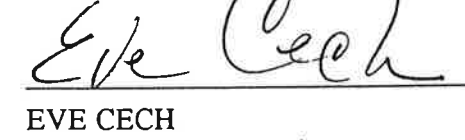
  
\_\_\_\_\_  
JOHN CECH

  
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JOHN KOOGLER

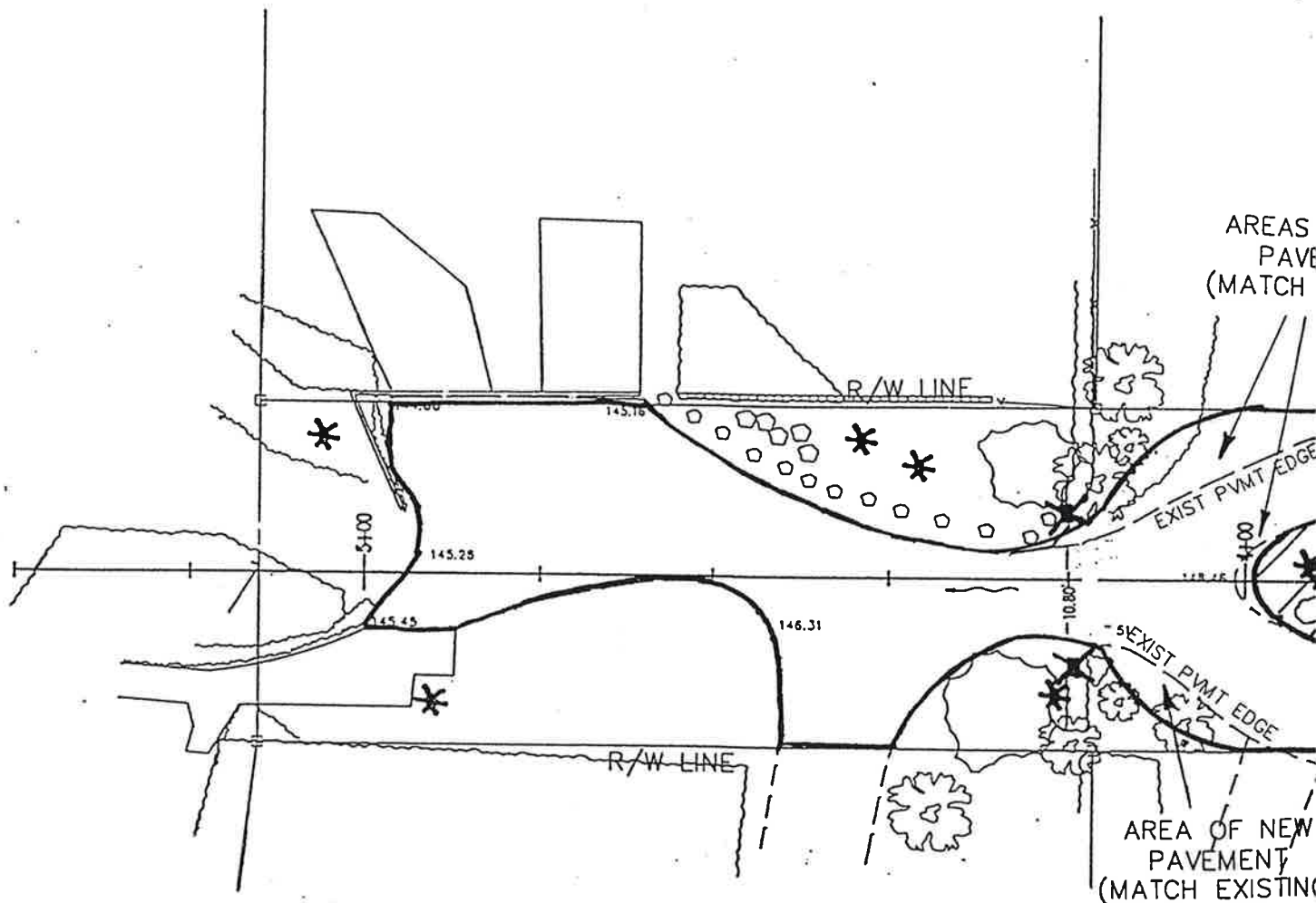
  
\_\_\_\_\_  
JO BRASINGTON

  
\_\_\_\_\_  
BONNYE ROOSE

  
\_\_\_\_\_  
CAROLE JOHNSON

  
\_\_\_\_\_  
EVE CECH

  
\_\_\_\_\_  
CAROL KOOGLER



**CONSTRUCTION NOTES :**

1. REMOVE ASPHALT AS SHADING INDICATES. THIS INCLUDES ADDITIONAL EXCAVATION FOR PLACEMENT OF 6" LIMEROCK BASE. REBUILD ROAD WITHIN RIGHT OF WAY TO MATCH EXISTING GRADES AT EACH END WHILE DRAINING WEST.
2. BUILD ADDITIONAL ROAD BASE (6" LIMEROCK) ON THE WEST END OF NW 7TH LANE ALONG THE OUTSIDE RADIUS (TWO LOCATIONS) AND INSIDE RADIUS (ONE LOCATION) AS SHOWN ON THE DRAWING. BUSHES AND TREES SHALL BE RELOCATED BY THE CITY
3. RESURFACE NW 7TH LANE FROM NW 22ND STREET TO WESTERN END (APPROX. STA 4+00) CONNECT DRIVEWAYS AS REQUIRED TO NEW OVERLAY.
4. REGRADE MEDIAN FROM STA 3+00 TO APPROX. STA 4+00 TO PERMIT WATER TO FLOW CONTINUOUSLY TO THE WEST. ALSO BACKFILL AND GRADE ALONG THE OVERLAY AS NEEDED. PLACE SOD AS NEEDED.
5. **PILLARS TO BE REMOVED.**

				Approved By:	Activity	Initials	Date
					Designed By:		
					Drawn By:	pk	2/1/99
Rev No	Description	Initials	Date				



EXHIBIT "C"

DEC - 8 1999

**City of Gainesville****Parks Division, Sta 27  
334-2171, FAX 334-3197****MEMORANDUM**

Date: December 6, 1999

To: Teresa Scott, Public Works Director

From: Meg Niederhofer, City Arborist

*Meg Niederhofer*Subject: NW 7<sup>th</sup> Lane, west of 22<sup>nd</sup> St.

Construction procedures to give the two Camellias the best chances of survival when the right-of-way is improved:

(1) Preconstruction meeting. Six weeks before work is initiated, Earline Luhrman, Parks Division Horticulturist, or I will attend a pre-construction meeting with the Operations (Streets) Division Supervisor in charge of this project and the on-site Foreman.

(2) Root-pruning. Immediately after the preconstruction meeting, the Camellias will be root-pruned either by hand or by running a trencher 6" inside the innermost limits of construction. Root-pruning is done inside the outer limit of the construction area, because roots grow back from a cut surface only at the cut surface, unlike above-ground plant parts, where buds develop at nodes behind the cut back to the main stem. By cutting back 6" into the undisturbed area, new root sprouts will not be impacted by construction. Cutting the roots also eliminates the health problems engendered by pulverized roots being still attached to the Camellias after construction. Pulverized roots are a perfect substrate for the growth of pathogenic micro-organisms.

(3) Barricades constructed. After the root-pruning, barricades will be constructed by the Public Works Department between the line of work and the Camellias. The barricades should be 6" outside the root-pruning line on the construction side.

(4) Pine Removal. The pine at the outside edge of the construction on the north side will not be completely removed until after the construction is finished. The Parks Division will remove the tree to a height of 12'. A replacement tree (Southern Magnolia, Live Oak, or Winged Elm) will be planted on the public right-of-way to the north and east of the existing pine to be removed. Mrs. Cech has agreed to provide water and after care of this tree by acting as a Tree Sponsor.

(5) Control of soil pH. Because Camellias require acid soil for best growth (pH 5.0 to 6.0), instead of a limerock base, the City Operations Division will endeavor not to widen the pavement in that area. Should widening be necessary Public Works will use a non-limerock base material in the vicinity of the Camellias.

**Replacement Trees.** Should the two very large Camellias die within three years of the construction, the City of Gainesville will plant replacement trees. Replacements will be in 65 gallon containers. If the residents prefer larger trees to be planted, the City will contribute up to \$250 for each replacement (\$500 total). If the small American Plum on the public right-of-way die, the Parks Division will plant a replacement tree of a minimum container size of 15 gallons. The residents will provide the aftercare for these replacements.

Xc: Eve Cech, 2239 NW 7<sup>th</sup> Lane, 32603  
Carole Johnson, 2237 NW 7<sup>th</sup> Lane, 32603  
Bonnie Roose, 2236 NW 7<sup>th</sup> Lane, 32603

EXHIBIT "B"  
CITY OF GAINESVILLE

LH 98-C

LICENSE AGREEMENT

Date 10/21/98

LOCATION WEST 95 FT. OF NW 7<sup>TH</sup> LN. ABUTTING LOTS 1 & 2 OF BAKER-BROOME PLAT AND UNPLATTED PARCEL WEST THEREOF (SEE ATTACHED)

The City of Gainesville hereby grants permission to JOHN B AND CAROL C KOOGLER AND 2240 NW 7<sup>TH</sup> LN Applicant

JOHN AND EYE CRCH  
2239 NW 7<sup>TH</sup> LN

to MAINTAIN AND LANDSCAPE

Describe the type of activity

(SEE ATTACHED PLANS)

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The construction and/or maintenance of such activity shall not interfere with the property and rights of a prior occupant.
2. All work area restoration shall be done in accordance with the standards established by the City of Gainesville and under the supervision of the Public Works Director or his designee(s).
3. All materials and equipment shall be subject to inspection and approval by the Public Works Director or his designee(s).
4. During construction, all safety regulations, as defined by the State of Florida Traffic Control and Safe Practices Specifications, shall be observed. All maintenance of traffic shall be in accordance with Florida Department of Transportation standards.
5. All property, both private and public, shall be restored to its original condition, as far as is practical, as determined by the Public Works Director or his designee(s).
6. All overhead installations shall conform to clearance standards of the Florida Department of Transportation, and all underground crossing installations shall be laid at a minimum depth of thirty (30) inches below the pavement and at least twelve (12) inches below ditch grade. Exceptions may be made in special cases in writing by authority from the Public Works Director or his designee(s).
7. An attached plan covering details of this activity shall be made a part of this agreement.
8. It is expressly stipulated that this agreement is a license for permissive use only and that the placing of facilities upon public property pursuant to this agreement shall not operate to create or to vest any property rights in said holder.
9. Whenever necessary for the purpose of construction, repair, improvement, alteration, or relocation of all, or any portion of the City's facilities located on said right-of-way or easement, as determined by the Public Works Director, any or all of said poles, wires, pipes, cables or other facilities and appurtenances authorized hereunder, shall be immediately removed, reset, or relocated from or on said right-of-way or easement as required by the Public Works Director, and at the expense of the applicant.





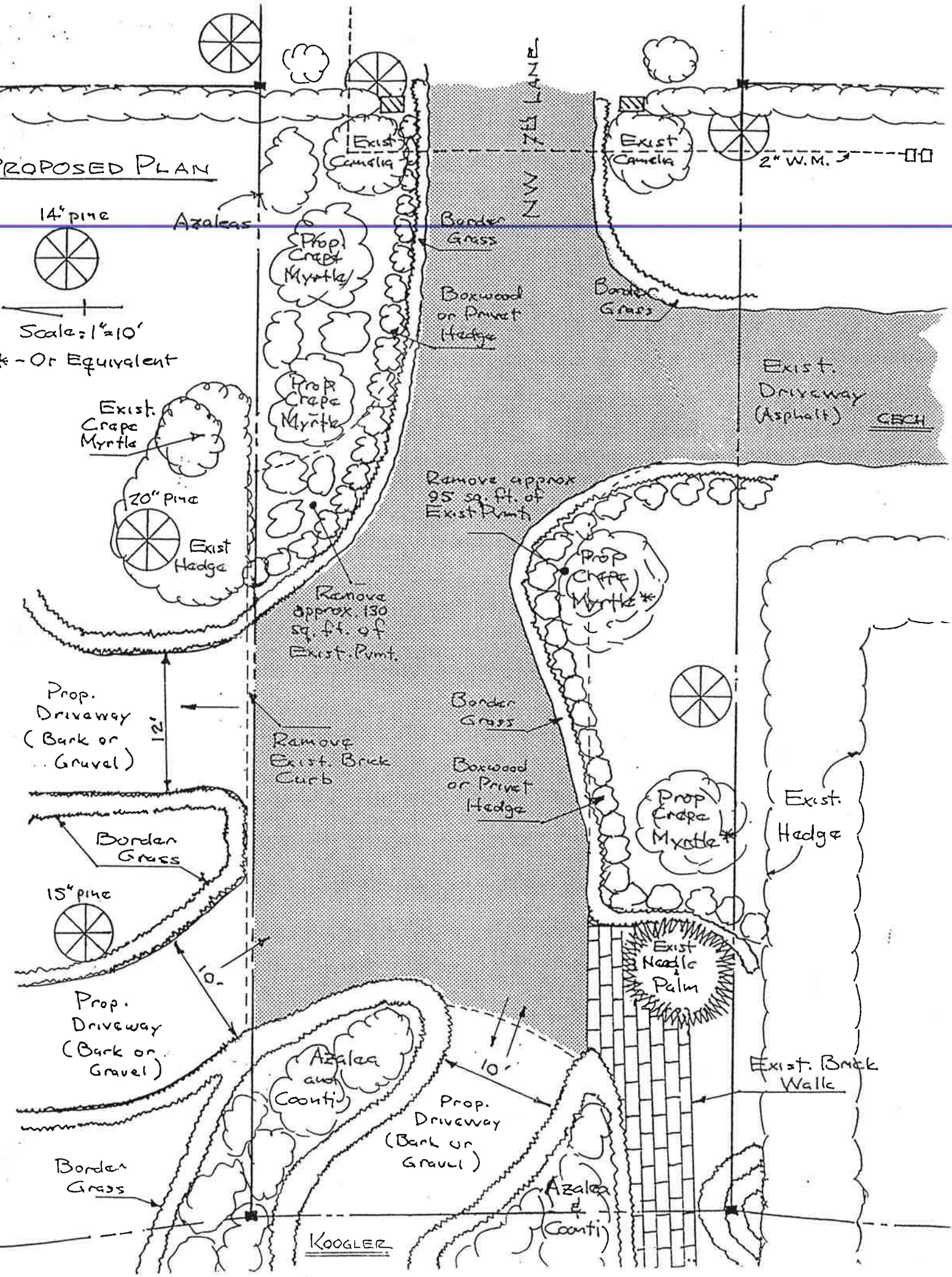


# PROPOSED PLAN

14" pine  
Scale: 1" = 10'  
\* - Or Equivalent

NW 7th Lane

2" W.M.



KOOGLER